UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No: 1:17-cv-22652-Williams/Torres

DAVID M. RODRIGUEZ and MARAT PAPAZIAN,

Plaintiffs,

vs.

THE PROCTER & GAMBLE COMPANY,

Defendant.
_____/

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL AND INCORPORATED MEMORANDUM OF LAW

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Procter & Gamble Company ("P&G" or "Defendant") enforces a strict, express, and long-standing policy of not hiring non-U.S. citizens – not even interviewing them – unless they possess what Defendant deems as "unrestricted long-term work authorization," *i.e.*, Green Card holders. So even if a non-U.S. citizen can otherwise legally work in the United States by other means than a Green Card, P&G almost without exception rejects their applications through an automated, online pre-screening process. P&G has thus denied Plaintiffs and hundreds of applicants with valid U.S. work authorization an opportunity to be considered for jobs. P&G is not compelled to do this by U.S. immigration law. In P&G's own words, the company prefers hiring Green Card holders because they have declared that it is a meaningful indicator of future success as a P&G employee. Ex. 54 to Miazad Decl. ("To ensure a fast start, we have our new hires begin their careers in a location where they have the best opportunity to succeed. This typically means a location where they have exceptional business knowledge, language skills, technical mastery and unrestricted work authorization."); Ex. 24 to Miazad Decl. ("We typically recommend US educated foreign nationals start a P&G assignment in their home country. With the support & comfort of their family and local culture, we find greater success and retention.").[1]

P&G's policy violates the Civil Rights Act of 1866, as codified by 42 U.S.C. § 1981 ("Section 1981"), which prohibits discrimination based on citizenship. This case falls into the uncommon category of facial discrimination, the figurative "sign reading 'Whites Only' on the hiring-office door." *Teamsters v. United States*, 431 US 324, 365 (1977). While P&G hires some categories of non-citizens, that does not insulate it from liability for facially excluding

[1] Unless otherwise indicated, all Exhibits are attached to the Declaration of Ossai Miazad in Support of Plaintiff's Motion for Class Certification ("Miazad Decl."). Excerpts of Deposition Transcripts are attached as Exs. 61 to 62, in chronological order.

others, any more than an employer that bars some women from working in a battery-assembly room can avoid liability for sex discrimination by allowing other women to work there. *United Automobile Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 192 (1991). Here, through a uniform and centrally administered screening process, P&G blocks non-U.S. citizens from advancing in the hiring process unless they can document work authorization by way of a Green Card. P&G cannot avoid liability when confronted with such a facially-discriminatory policy. Once a facially-discriminatory policy is identified, the employer is liable unless it can establish a statutory exemption, which P&G cannot. *Ferrill v. Parker Grp., Inc.*, 168 F.3d 468, 473-74 (11th Cir. 1999) (business necessity and 'BFOQ' defenses not available to defendant in Section 1981 race discrimination case).

Plaintiff presents numerous common legal and factual issues regarding P&G's uniform, national hiring policy and practice. The ultimate question is one uniquely suited for class treatment: whether P&G's express policy requiring non-U.S. citizen residents who are lawfully authorized to work in the U.S. to have "long-term unrestricted work authorization" in the form of a Green Card constitutes unlawful citizenship discrimination under Section 1981. The claim raised in this case is precisely the sort of claim that Fed. R. Civ. P. 23 ("Rule 23") was designed to facilitate. As the Advisory Committee Notes explain, Rule 23(b)(2) was adopted in order to permit the prosecution of civil rights actions; *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997) ("Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of matters suitable for class certification under Rule 23(b)(2)).

As set forth herein, Plaintiff David Rodriguez[2] seeks certification pursuant Rule 23(b)(2) on liability, injunctive relief and incidental (nominal) damages and, or in the alternative, an "issue" class pursuant to Rule 23(c)(4).

II. FACTUAL BACKGROUND

A. P&G's Corporate Organization and Common Hiring Practices

P&G is a multinational consumer goods company headquartered in Cincinnati, Ohio. Answer to FAC ¶ 6. P&G is divided into various regions globally and then subsequently those regions are divided into consumer goods categories. *See* Isenhart Tr. at 42:2-9, 43:24.[3] Within each category, P&G classifies groups of employees doing similar work into corporate functions, including brand management, product supply, research and development, human resources, legal, sales, and finance. Isenhart Tr. at 42:8-23. P&G has a uniform and centralized system for recruiting and hiring employees throughout the United States. Isenhart Tr. 48:21-24. The Talent Supply Group has overall responsibility for recruiting, hiring, and onboarding for the entire company across North America (which includes the US, Canada, and Puerto Rico). Isenhart Tr. 39:18-20; 44:5-15, 46:12-15, 48:18-20; *see* Ex. 3 to Miazad Decl. (list of approximately 25 employees in Talent Supply); Isenhart Tr. 60:9-12.

Talent Supply oversees hiring for approximately 2,000 entry-level positions, 300-500 of which are paid internships, annually. *Id.* at 39:18-41:2; 89:9-90:7. Of the 2,000 positions Talent Supply hires annually, approximately 90-95% constitute entry-level or "Band 1" positions. *See id.* at 40:1-41:20. Within Talent Supply there are two central teams or divisions, sourcing and

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[2] Plaintiff Marat Papazian has filed a motion to withdraw as a Named Plaintiff. ECF No. 84.

[3] Current Talent Supply Leader, Scott Isenhart, was designated as a Rule 30(b)(6) witness on these topics. *Lebron v. Royal Caribbean Cruises, Ltd.*, No. 16 Civ. 24687, 2018 WL 4258269, at *2 (S.D. Fla. Sept. 6, 2018) (purpose of Rule 30(b)(6) deposition is for "deponent to give knowledgeable and binding answers for the organization"); *see also QBE Ins. Corp. v. Jorda Enters., Inc.*, 277 F.R.D. 676, 688 (S.D. Fla. 2012).

recruiting. Ex. 7 to Miazad Decl. at P&G_151362. The sourcing team or the "top of the recruitment funnel" focuses on the initial outreach to a candidate including attracting and encouraging applicants to apply to P&G up until their initial interview. Isenhart Tr. 61:2-8. The recruiting team, or the "bottom of the funnel," manages candidates later in the application process, including initial and panel interviews, and offer and acceptance. *Id.* at 61:9-12. Employees in Talent Supply sourcing and recruiting teams are a point of contact for candidates and support consistent outside messaging and communication with candidates. To the extent HR managers and recruiters have questions about P&G's policies or "seek guidance for unique situations" they "seek alignment" with management so that their decisions and communications with candidates are consistent with the stated policy. Ex. 41 to Miazad Decl.

Talent Supply manages all internship and entry-level employment applications from start to end. Isenhart Tr. 39:23-41:12. The application cycle operates in the following manner for all P&G entry-level positions:[4]

1. Application Pre-screening

All candidates are required to submit their applications to P&G via www.pgcareers.com. In order to submit an application, a candidate must register and create an account through Taleo, the application database P&G employs to accept and process applications. Isenhart Tr. 86:1-25. After creating an account in Taleo, a candidate is assigned a unique username and identifying code. Candidates are then required to complete a profile that contains general information about themselves. *Id.* at 177:13-19. As part of the profile, applicants are asked to indicate their country or region of citizenship. *Id.* at 189:23-191:6.

[4] Isenhart Tr. 119:8-120:16.

Candidates are prompted to answer a series of pre-screen questions that assess their eligibility for the particular position or 'requisition" for which they applied. *Id.* at 122:12-18, 201:6-7. Some pre-screen questions require a specific response to move forward. *Id.* at 182:20-183:2. Other pre-screen questions do not have a required response and do not block the candidate from proceeding. Failure to provide the "required" response to these pre-determined screening questions causes the Taleo system to automatically reject a candidate and triggers the mailing of an automated rejection message from P&G to the candidate. *Id.* at 123:6-124:4.

Unless a Talent Supply employee manually alters the automated process to reverse course, the Taleo system will send an automated form email to the candidate to inform them that they have been rejected. *Id.* If the individual provides the "correct" answers to the required pre-screen questions, the system automatically passes the individual and release a link to assessments that the candidate must complete. *Id.* at 121:1-122:18. Only employees in the Talent Supply Group have access to the Taleo system and the ability to manually alter the pre-determined rejections or pass-throughs designated in Taleo. *Id*. at 148:16-20.

P&G Talent Supply receives approximately 250,000 to 300,000 applications for all U.S. positions for which it oversees hiring. *Id.* at 62:11-13. Of the approximately 250,000 to 300,000 applications P&G receives annually, about 70% of applicants meet the pre-screening requirements (*i.e.*, do not provide disqualifying responses). *Id.* at 64:13-20.

2. Initial Interview and Day Visit

Candidates who successfully complete assessments are invited to interview, generally over the phone, with a recruiter or another company representative. Approximately 8,000 to 10,000 initial interviews are conducted annually. *Id.* at 61:17-19. If an initial interview is successful, the candidate is invited to participate in a day visit, where the candidate visits a nearby P&G facility or business center for one or two additional interviews. *Id.* at 139:8-142:7.

3. Offer/Acceptance and Onboarding

P&G extends an offer of employment contingent on the successful completion of a drug screen, a background check, and a medical evaluation. Ex. 34 to Miazad Decl. at P&G_154831-32. In addition, employment offers are contingent upon completion of the federal Form I-9 verifying work authorization. *Id.* at P&G_154832; *see also* Ex. 46 to Miazad Decl.

B. Employers' Obligations Regarding Verifying Work Authorization

The Immigration and Nationality Act (INA), an amendment to the Immigration Reform and Control Act of 1986 (IRCA), requires employers to verify the employment authorization of employees and retain a Form I-9 for each employee.[5] Employers are in fact cautioned to "refrain from discriminating against individuals on the basis of national origin or citizenship." *Id.*

Non-citizens seeking to work in the United States must have one of the following documents: 1) a permanent resident card (also known as a Green Card); 2) an employment authorization document (work permit or "EAD"); or 3) an employment-related visa which allows an individual to work for a particular employer.[6]

There are various avenues through which an individual can obtain an EAD including Deferred Action for Childhood Arrivals ("DACA"). The DACA program, announced by President Obama on June 15, 2012, allows noncitizens who entered the United States as children and who met certain requirements to apply for work authorization and relief from deportation proceedings. In addition, DACA recipients are eligible to apply for and receive social security numbers, enabling them to identify themselves for employment and other contractual purposes.

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[5] *See* United States Citizenship and Immigration Services, Handbook for Employers M-274, 1.0 Why Employers Must Verify Employment Authorization and Identity of New Employees (Jul. 17, 2017), *available at* https://www.uscis.gov/i-9-central/10-why-employers-must-verify-employment-authorization-and-identity-new-employees (last visited Apr. 7, 2019).

[6] United States Citizenship and Immigration Services, Working in the US (Jun. 14, 2017), *available at* https://www.uscis.gov/working-united-states/working-us (last visited Apr. 7, 2019).

There are other avenues in addition to DACA through which a non-U.S. citizen can obtain an EAD such as through Temporary Protected Status ("TPS" is a status designated to certain foreign nationals due to conditions in the country that prevent the country's nationals from returning safely), U visa (for victims of certain crimes who have suffered abuse and are helpful to law enforcement in the investigation or prosecution of criminal activity) , and T visa (for victims of human trafficking who assist law enforcement in investigation or prosecution of human trafficking).

P&G's policy requiring non-U.S. citizens to have long-term unrestricted work authorization goes well beyond employers' legal obligation to confirm that employees are legally authorized to work in the United States. P&G employs the I-9 process to screen candidates for eligibility consistent with its discriminatory policy and in a manner that directly contravenes the directives on the face of the I-9 form. *Compare* Ex. 43 to Miazad Decl. (using I-9 process as a "final failsafe" to ensure otherwise legally authorized applicants are eligible pursuant to the policy); *with* Ex. 4 to Miazad Decl. (USCIS Form I-9 ("Anti-Discrimination Notice: It is illegal to discriminate against work-authorized individuals. Employers **CANNOT** specify which document(s) an employee may present to establish employment authorization and identity. The refusal to hire or continue to employ an individual because the documentation presented has a future expiration date may also constitute illegal discrimination.")).

C. P&G Uniform Exclusionary Policy and Practice Discriminates Against Job Applicants Based on Alienage[7].

1. P&G has a policy of refusing to extend employment to non-citizens who are not legal permanent residents/Green Card holders, regardless of whether they have valid work authorization.

[7] Alienage refers to the state of being an alien, i.e. a non-citizen of the United States.

P&G admits that it treats non-citizen, non-legal permanent resident applicants, as *facially ineligible* for employment despite being legally authorized to work in the United States. P&G's "U.S. policy" states that applicants for employment must have "unrestricted long-term work authorization." Ex. 56 to Miazad Decl.; Isenhart Tr. 83:13-84:1. The foundation of this facially discriminatory policy is P&G's "belief that long term probability of success is greatest when a new hire starts employment in a location that offers no language, culture or other barriers that could potentially impact early success." Ex. 41 to Miazad Decl.; Isenhart Tr. 247:22-25 ("We look to start people where they are most familiar with the language, the culture and typically that also means, of course, then they have unrestricted work authorization."); *see also* Ex. 54 to Miazad Decl. (correspondence from Kris Richardson articulating P&G's policy); Ex. 27 to Miazad Decl. (correspondence from Scott Isenhart describing P&G's policy); Ex. 24 to Miazad Decl. (correspondence from Robert Schottelkotte describing the importance of working with the "support & comfort of [one's] family and local culture").

As such the only non-U.S. citizens that P&G hires are those with Green Cards, even for short-term employment as interns (internships at P&G typically last about three months, or the course of one summer, Isenhart Tr. 92:13-20). *See e.g.*, Ex. 8 to Miazad Decl.; Ex. 37 to Miazad Decl. ("We seek individuals with long term work authorization, meaning permanent resident status or US citizenship, for US careers."). Accordingly, all other non-legal permanent resident aliens with EADs are considered ineligible under P&G's policy. *See e.g.*, Ex. 10 to Miazad Decl.; Ex. 21 to Miazad Decl.; Ex. 58 to Miazad Decl.; Ex. 40 to Miazad Decl. (correspondence rescinding offer to candidate who was legally authorized to work but did not have a Green Card); Ex. 32 to Miazad Decl. (same); Ex. 34 to Miazad Decl. (same); Ex. 23 to Miazad Decl. (same).

P&G is so strict in enforcing the "U.S. policy" that it denies those applicants who have been granted Legal Permanent Residency, but do not physically possess the Green Card at the time of applying. *See* Isenhart Tr. 149:11-151:14; Ex. 18 to Miazad Decl.; Ex. 28 to Miazad Decl. (Isenhart advises, "[b]asically we don't offer employment (fulltime, intern, CSW) until candidate has obtained unrestricted, long term work authorization for USA and has it in hand (not in process)); Ex. 9 to Miazad Decl.; Ex. 47 to Miazad Decl.; Ex. 15 to Miazad Decl.; Ex. 41 to Miazad Decl.

There is no evidence that P&G has altered its policy and in fact it appears to be reinforcing it. *See* Ex. 55 to Miazad Decl. ("We're now [d]eliberately [m]anaging our workforce composition in an open and transparent way, how do you feel defending our talent strategy that we require unrestricted long term work authorization? Let's get back to defending our position that all of this must be in hand at the time of application."); *see also* Isenhart Tr. 266:23-267:11; Ex. 51 to Miazad Decl. (justifying policy with regards to DACA recipients).

P&G acknowledges that the requirement applies *only* to non-citizens because citizens, inherently, do not require special work authorization or visa sponsorship. Isenhart Tr. 366:15-369:3. In fact, it is so engrained in staff that the requirement for long-term unrestricted work authorization is nearly akin to a citizenship requirement that it is repeatedly referred to as the "citizenship" question or requirement by P&G employees. *See e.g.*, Ex. 52 to Miazad Decl. (describing pre-screen questions as "Citizenship Pre-Screening Questions"); Ex. 12 to Miazad Decl. (inquiring about the "US citizen question"); Ex. 13 to Miazad Decl. (correspondence describing "requirements regarding citizenship status to work at P&G, either as an intern or full-time"); Ex. 22 to Miazad Decl. (discussion regarding the "Citizenship/Work Authorization questions" as they relate to a rejected candidate); Ex. 31 to Miazad Decl. (discussion about the

"Citizenship Question"); Ex. 29 to Miazad Decl. (same); Ex. 16 to Miazad Decl. (Farris Bukhari, employee in Talent Supply, confirms that a work authorized applicant was "rejected due to not being a US citizen"); Ex. 30 to Miazad Decl. (Sheila Neil, Senior Recruiting Specialist, in a discussion with Scott Isenhart suggests that P&G would require an applicant to "reapply after he obtains citizenship"); Ex. 6 to Miazad Decl. ("[W]e are doing school visits soon and have noticed many of the rejected applicants are due to lack of citizenship.").

2. P&G collects information about citizenship status from applicants at the application pre-screening stage and automatically rejects the vast majority of Covered Non-Citizen Resident[8] applicants based on alienage.

P&G obtains information about citizenship status at the outset of an application through the use of a profile question asking candidates to identify their country of citizenship and through defined citizenship pre-screen questions. Although P&G has slightly altered its citizenship pre-screen questions over time, its policy requiring "long term unrestricted work authorization" has remained steadfast and consistent. Regardless of the iteration of the citizenship pre-screen questions, they have been drafted and implemented with the objective of ascertaining long term unrestricted work authorization, which has consistently been defined as citizenship or legal permanent residence.

Throughout the relevant period, P&G asked the following citizenship pre-screen questions on all job postings in order to filter out the vast majority of work-authorized non-legal permanent resident aliens pursuant to its policy.

For fiscal year 2013-2014 P&G asked three pre-screen questions:

1. Are you currently a U.S. citizen OR national, OR an alien lawfully admitted for permanent residence, OR a refugee, OR an individual granted asylum, OR

[8] For purposes of this Motion, "Covered Non-Citizen Resident" refers to non-U.S. citizen, non-legal permanent resident applicants, who were otherwise legally authorized to work in the U.S.

admitted for residence as an applicant under the 1986 immigration amnesty law? Please answer this question based on your current status only. Do not answer based on a status which you have applied, but have not been granted.

2. Are you an individual who is now completing the permanent residency process but has not yet been granted permanent residency?
3. Will you now, or in the future, require sponsorship for U.S. employment visa status (e.g., H-1B or permanent residency status)?

Ex. 52 to Miazad Decl. at P&G_160199-200. These questions had accompanying codes, "USCITIZEN," "PREVISA," and "32043," and "required" responses, "yes," "no," and "no," respectively. *Id.* The intent and the result of these screening questions was to identify and disqualify all applicants who were not either citizens or legal permanent residents.

For fiscal year 2014-2015, in addition to the three prior questions, P&G added a fourth pre-screen question: Are you an individual admitted exclusively on a nonimmigrant visa, such as B, H, O, E, TN or L or an individual on the F-1 visa completing CPT (Curricular Practical Training) or OPT (Optional Practical Training)? *Id.* at P&G_160199. The question had the accompanying code, "PREVISA," and required a "no" response. *Id.* The change further filters for individuals who are non-U.S. citizens and who have work authorization by means other than a Green Card. P&G did not alter its pre-screen questions in fiscal year 2015-2016. *Id.* at P&G_160198-99.

For fiscal year 2016-2017, after having notice of Plaintiff's claims, P&G scaled back its "citizenship questions" to only: "Will you now, or in the future, require sponsorship for U.S. employment visa status (e.g., H-1B or permanent residency status)?" with the code "32043" and the required response "no." *Id.* at P&G_160198.

The revision removes the questions that explicitly asked candidates about their citizenship status, but the underlying policy remained unchanged. Ex. 25 to Miazad Decl. ("There were 2 changes to the US templates regarding our citizenship questions…3 of the 4

questions have been removed, leaving: Will you now, or in the future require sponsorship for U.S. employment visa status? (e.g., H-1B or permanent residency status) Yes or No (Required answer would be NO for majority of US reqs, exception for PhD. roles)"); Ex. 26 to Miazad Decl. ("We used to ask a few legally approved questions to get at this data. Starting in FY 16/17, we only ask the following legally approved question…'Will you now, or in the future, require sponsorship for US employment visa status? (e.g., H-1B or permanent residency status).'"); Ex. 27 to Miazad Decl. (same).

Finally, for fiscal year 2017 and 2018 P&G asked two pre-screen questions:

1. Do you currently require sponsorship for U.S. employment visa status?
2. Will you at any point in the future require sponsorship for U.S. employment visa status?

Ex. 52 to Miazad Decl. These questions are coded as "1718VISASTATUS" and "1718SPONSOR," respectively, and both require "no" responses. *Id.*

Failure to provide the "required" response, as described above, results in an automated rejection. Isenhart Tr. 123:21-124:4; *see* Ex. 50 to Miazad Decl.; *see also* Ex. 20 to Miazad Decl.; Ex. 19 to Miazad Decl. Within days of entering the disqualifying response to these pre-screen questions, Taleo automatically issues a generic denial letter to the applicant. Isenhart Tr. 123:6-16. The prescreen questions are specifically designed to automatically remove all non-citizens who are not legal permanent residents. *See* Ex. 28 to Miazad Decl. (Scott Isenhart states that a candidate will get "auto-regretted as they won't meet the prescreen questions"); Ex. 35 to Miazad Decl. (Scott Isenhart states that "the prescreen questions on any of the US requisitions will determine if [a candidate] meets the work eligibility requirements.").

P&G's policy remains unchanged and post-2016 versions of P&G's pre-screen questions continue to screen out the vast majority of Covered Non-Citizen Residents. *See* Ex. 36 to

Miazad Decl. (Scott Isenhart states in January 2017 that "99% of [the] time our requisition prescreen question will get it right."); Ex. 44 to Miazad Decl. (Scott Isenhart states in September 2017 "US P&G hires talent with unrestricted long term work authorization for both intern and full time positions. Don't try to explain to students. Encourage them to apply online and the prescreen questions will take care of determin[ing] their work eligibility."); Ex. 45 to Miazad Decl. (same); Ex. 58 to Miazad Decl. (same).

3. P&G rejects applicants based on alienage at various stages of the application process.

All candidates for employment at P&G must submit applications via the Taleo system. While virtually all Covered Non-Citizen Residents are automatically rejected by P&G pursuant to its "citizenship policy" policy, Ex. 36 to Miazad Decl. (Scott Isenhart states "99% of [the] time our requisition prescreen question will get it right"), some applicants, particularly after July 1, 2016 when P&G transitioned to a single question ("Will you now, or in the future, require sponsorship for U.S. employment visa status (e.g., H-1B or permanent residency status)?"), survived rejection at the application pre-screening stage.

Although some Covered Non-Citizen Residents who indicated in the post-2016 citizenship question that they did not require sponsorship at the time or in the future proceeded to the next phase of the hiring process at P&G, they were subsequently screened out and deemed ineligible because they lacked long-term unrestricted work authorization. P&G maintains that the "accurate" (albeit disqualifying) response to the question, "Will you now, or in the future, require sponsorship for U.S. employment visa status (e.g., H-1B or permanent residency status)?" for a Covered Non-Citizen Resident is "yes."

P&G implements a number of measures to identify and remove Covered Non-Citizen candidates from its hiring process once they have proceeded beyond the application pre-screening phase.

As an initial measure, in order to screen out individuals without long term unrestricted work authorization, recruiters, hiring managers, and other Talent Supply representatives will proactively re-ask the pre-screen questions to applicants who they think have answered the questions in the Taleo system "inaccurately." Ex. 33 to Miazad Decl. at P&G_154828 ("[]Should a concern be raised, during the Recruiting process, you can re-ask the current pre-screening question."); *see* Isenhart Tr. 250:17-252:4; Ex. 31 to Miazad Decl. (Scott Isenhart states that Talent Supply employees should be informed by function employees if they "need to go back to the candidate and ask them to clarify if they answered [the] question correctly"); Ex. 43 to Miazad Decl. (Talent Supply discussing that additional measures to the "contingencies" that are already built into Taleo, including methods for re-asking pre-screen questions). Additionally, even after the 2016 pre-screen questions were implemented, Talent Supply employees were re-verifying candidates' citizenship using former versions of the questions, including the question: "Are you a U.S. citizen or national, or an alien lawfully admitted for permanent residence, or a refugee, or an individual granted asylum, or admitted for residence as an applicant under the 1986 immigration amnesty law?". *See* Ex. 38 to Miazad Decl.

Recruiters are additionally prompted to ask about citizenship during the interview process. Ex. 14 to Miazad Decl. at P&G_153103; Ex. 57 to Miazad Decl. at P&G_168077. An interviewer is prompted to stop the interview and decline to proceed if the applicant provides a disqualifying response. *See* Ex. 60 to Miazad Decl. (Scott Isenhart provides guidance that

interviewers need not proceed with candidates who are identified as non-citizens, non-legal permanent residents).

Recruiters and other Talent Supply employees are also trained to spot "red flags" or indicators that can help identify candidates who are not citizens or legal permanent residents. Ex. 31 to Miazad Decl.; *see also* Ex. 59 to Miazad Decl. (notes from a presentation on P&G's policies provided by Talent Supply representatives); Ex. 60 to Miazad Decl. at P&G_171038 (Elizabeth Regan, Senior Sourcing Specialist in Talent Supply advises "Going forward, if you see indicators on a candidate[']s resume in regards to citizenship, you can follow up with a screening call . . ."); Ex. 39 to Miazad Decl. (Talent Supply leader notices that the candidate is an international student and asks whether there are "any additional confirmations about her work visa status other than the question in the application"); *see also* Ex. 48 to Miazad Decl.; Ex. 53 to Miazad Decl.

One such indicator recruiters rely on to determine whether a candidate who passed through the application pre-screening is eligible pursuant to P&G's policy is the citizenship identified in their Taleo profile. Ex. 59 to Miazad Decl. ("They also have to fill in their country of citizenship as generic profile (except Canada) . . . read into resume more to understand where they're from vs the citizenship point"); *see* Ex. 17 to Miazad Decl. Similarly, Talent Supply employees are advised to review resumes to spot red flags such as listing of a foreign educational institution. *See* Ex. 49 to Miazad Decl.; Ex. 39 to Miazad Decl.

D. P&G Rejected Plaintiff Rodriguez's Employment Applications Based on his Alienage.

Mr. Rodriguez was born in Caracas, Venezuela, Rodriguez Tr. 8:7-8, and came to the United States in 1998 at around the age of 14. *Id.* 10:11-14. Mr. Rodriguez attended high school in Miami, Florida, Rodriguez Tr. 41:14-18, and subsequently attended Florida International

University ("FIU") as a part-time student. *Id.* 42:22-23. Mr. Rodriguez graduated in May 2017, *Id.* 58:1, with a 3.96 GPA, *id.* 56:25-57:1, and a degree in bachelor's degree in Business Administration, with two concentrations and a minor. *Id.* 64:10-16.

On December 5, 2012, Mr. Rodriguez was granted an Employment Authorization Document ("EAD") pursuant to DACA. FAC ¶ 15.

In September 2013, Mr. Rodriguez attended an on-campus information session at FIU advertising P&G's internship program. Eduardo Moreno, a P&G recruiter and FIU alumnus, and Jose Nuñez, an FIU student who had completed a P&G internship and worked as a company Campus Ambassador, hosted the information session. FAC ¶ 16. During the information session, Mr. Moreno discussed the various types of internships P&G offered and informed the attendees that the internships were paid, were approximately 10 to 12 weeks in duration, and could be based in either Cincinnati, Ohio or Boston, Massachusetts. FAC ¶ 17.

After the information session, Mr. Moreno handed out his business card and instructed the attendees, including, Mr. Rodriguez, to send him their resumes so that he could review the resumes and give the attendees advice about obtaining an internship with P&G. FAC ¶ 19.

Shortly thereafter, Mr. Rodriguez applied to P&G via its online application system. Mr. Rodriguez answered "no" to the pre-screening question that asked applicants "Are you currently a U.S. citizen or national, or an alien lawfully admitted for permanent residence, OR a refugee, OR an individual granted asylum, OR admitted for residence as an applicant under the 1986 immigration amnesty law?" Rodriguez Tr. 137:12-140:17. He answered "yes" to the question "Are you an individual who is now completing the permanent residency process but has not yet been granted permanent residency?". *Id.* Finally, he answered "no" to the question "Will you

now, or in the future, require sponsorship for U.S. employment visa status (e.g., H-1B or permanent residency status)?" *Id.*

According to the information given to attendees at the FIU information session, the next step in Mr. Rodriguez's application process was for him to complete two types of assessment tests online, which should have been sent to him automatically following the submission of his application. Mr. Rodriguez did not receive the expected access to P&G's assessment tests and after a week of waiting, he emailed Mr. Moreno to inquire about the status of his application. Ex. 2 to Miazad Decl. Mr. Moreno responded via email and instructed Mr. Rodriguez to correct his graduation date on his online application and re-submit it to P&G, as Mr. Rodriguez had erroneously indicated that he would graduate from FIU on the Fall of 2014 instead of the Winter of 2014. *Id.* at P&G_000126.

Mr. Rodriguez revised his online application and then emailed Mr. Moreno to advise him of the adjustment and request an update regarding the delay in receiving the assessments. *Id.* at P&G_000125. Mr. Moreno indicated that he would "look at why the system ha[d] not resent [Mr. Rodriguez] the assessments." *Id.* Mr. Moreno followed up immediately, asking Mr. Rodriguez if he required visa sponsorship to work in the United States. *Id.* In response, Mr. Rodriguez explained that he possessed a valid work permit and did not need employer sponsorship to work lawfully in the United States. *Id.* Shortly thereafter, Mr. Moreno responded via email and told Mr. Rodriguez that he was not eligible to be hired because, "per P&G policy, applicants in the U.S. should be legally authorized to work with no restraints on the type, duration, or location of employment." *Id.*; FAC ¶ 30. Mr. Rodriguez also received a generic internship rejection letter from P&G via email. *See* Ex. 5 to Miazad Decl.

III. ARGUMENT

A. Legal Standard

1. Federal Rule of Civil Procedure 23

The Court may certify a class if the requirements of Federal Rule of Civil Procedure 23(a) are met, along with one of the prongs of Rule 23(b). *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). Although "a court's class-certification analysis must be rigorous and may entail some overlap with the merits of the plaintiff's underlying claim, . . . [m]erits questions may be considered . . . only to the extent [] that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Ret. Plans and Trust Funds*, 568 U.S. 455, 465-66 (2013) (quoting *Dukes*, 564 U.S. at 351) (internal quotation marks and citation omitted).

Here, Plaintiff Rodriguez seeks class certification of his Section 1981 claim for liability and injunctive relief under Rule 23(b)(2). Plaintiff seeks to certify a class of all Covered Non-Citizen Residents who applied (or will apply) for internship or entry-level employment with P&G and whose application was rejected (or will be rejected) between July 17, 2013 and the date of judgment in this action (the "Covered Period") based on P&G's policy requiring long-term unrestricted work authorization. Members of the Class shall hereinafter be referred to as "Class Members" for purposes of this Motion. As described below, Plaintiff's proposed class satisfies all requirements of Rule 23(a), as well as the requirements of Rules 23(b)(2) and 23(c)(4).

2. Liability Under Section 1981

A court's "certification analysis may entail some overlap with the merits of the plaintiff's underlying claim," however, "Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage." *Palm Beach Golf Ctr.-Boca, Inc. v. Sarris*, 311 F.R.D. 688, 693 (S.D. Fla. 2015) (Williams, J.) (quoting *Amgen*, 568 U.S. at 465-66) (2013).

Section 1981 provides, in relevant part, that "*[a]ll persons* within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white *citizens*." 42 U.S.C. § 1981(a) (emphasis added). Although Section 1981 was initially enacted to combat race discrimination, the statute was later amended to cover "all persons" (rather than just "citizens") in order to "alleviate the plight of Chinese immigrants in California, who were burdened by state laws restricting their ability to work . . . and otherwise discouraging them from immigrating to and living" in the state. *Anderson v. Conboy*, 156 F.3d 167, 173 (2d Cir. 1998) (discussing legislative history); *see also McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273, 291 n.21 (1976). Thus "[r]efusing to hire an individual on the basis of alienage is illegal under [Section] 1981." *Wright v. Southland Corp.*, 187 F.3d 1287, 1297 n.12 (11th Cir. 1999). Although there are a host of federal laws regulating immigration, *no law* endorses, requires, or permits an employer to adopt policies or practices refusing employment to DACA recipients, or other aliens who are lawfully authorized to work, solely based on their citizenship.

To state a claim under Section 1981, a plaintiff must allege that (1) he or she is a member of a protected class, (2) the defendant intentionally discriminated against him or her on the basis of membership in that protected class; and (3) the discrimination concerned one of § 1981's enumerated activities. Order Denying Defendant's Motion to Dismiss, ECF No. 49 at 4 (hereinafter "Order on Mot. to Dismiss"); *see also Jackson v. Bellsouth Telecomms.*, 372 F.3d 1250, 1270 (11th Cir. 2004) (same); *Juarez v. Northwestern Mut. Life Ins. Co., Inc.*, 69 F. Supp. 3d 364, 367 (S.D.N.Y. 2014) (same).

Here, Plaintiff alleges that Plaintiff and Class Members (1) are aliens (i.e. non-U.S. citizens); (2) who were subject to P&G's facially exclusionary policies and practices that

intentionally discriminated against them on the basis of alienage; and (3) who suffered alienage discrimination in attempting to contract for employment with P&G. Regardless of whether they would have ultimately secured employment with P&G, Plaintiff and Class Members suffered an injury under Section 1981 when they were barred from competing in P&G's application process solely due to their citizenship status. *See* Order on Mot. to Dismiss at 6 ("Here, P&G's policy, as alleged in the complaint, could be construed to discriminate a subset of legal aliens, which are a protected class under section 1981."); *see also Amini v. Oberlin Coll.*, 440 F.3d 350, 359 (6th Cir. 2006) ("[P]roof of a facially discriminatory employment policy . . . is direct evidence of discriminatory intent.") (cited in Order on Mot. to Dismiss at 5) (quoting *Nguyen v. City of Cleveland*, 229 F.3d 559, 563 (6th Cir. 2000)).

Plaintiffs are entitled to equitable and injunctive relief under Section 1981. *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 460 (1975) ("An individual who establishes a cause of action under 1981 is entitled to both equitable and legal relief . . ."); *Caldwell v. Nat'l Brewing Co.*, 443 F.2d 1044, 1045 (5th Cir. 1971) (same).

B. Standing and Ascertainability

1. Plaintiff Rodriguez Has Standing

As a threshold matter, Plaintiff Rodriguez has Article III standing to raise class claims. *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279 (11th Cir. 2000) ("at least one named class representative [must] ha[ve] Article III standing to raise each class subclaim"). To establish Article III standing, a plaintiff must demonstrate three elements:

> First, the plaintiff must have suffered an 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992) (quotation marks, citations, and alterations omitted). Further, "[t]o have standing to represent a class, a [plaintiff] . . . must also be part of the class and possess the same interest and suffer the same injury as the class members." *Mills v. Foremost Ins. Co.*, 511 F.3d 1300, 1307 (11th Cir. 2008) (quotations and citations omitted).

Plaintiff Rodriguez contends that he has suffered a concrete injury, *i.e.*, the denial of equal consideration for employment, which was the direct result of P&G's blanket policy excluding non-citizens who are not legal permanent residents determined to have long-term unrestricted work authorization. This injury can be redressed by declaratory and injunctive relief requiring P&G to cease its discriminatory practices and take affirmative steps to ensure that non-U.S. citizens who are lawfully authorized to work are not unfairly barred from employment. Without such injunctive relief, the threat of future injury is "real and immediate," not hypothetical, because Plaintiff and other Class Members will continue to be barred from consideration for future employment applications based on their immigration status under P&G's discriminatory policy. *See Drayton v. W. Auto Supply Co.*, No. 01 Civ. 10415, 2002 WL 32508918, at *4 (11th Cir. Mar. 11, 2002) ("A civil rights plaintiff seeking prospective injunctive relief must demonstrate a 'real and immediate' threat of future injury."). Finally, Plaintiff is a member of the class he seeks to represent, and he seeks redress for the same injury suffered by Class Members. Standing is therefore established.

2. The Class is Ascertainable and Properly Defined.

Courts in this Circuit have also read Rule 23 to contain an implicit requirement that a proposed class be "adequately defined and clearly ascertainable." *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012). Ascertainability is satisfied if class members can be identified "by reference to objective criteria," *Bussey v. Macon Cty. Greyhound Park, Inc.*, 562

F. App'x 782, 787 (11th Cir. 2014), through an "administratively feasible" process, *Karhu v. Vital Pharm., Inc.*, 621 F. App'x 945, 946 (11th Cir. 2015). In other words, class members should be identifiable through a process that does not require substantial individual inquiry. *Bussey*, 562 F. App'x at 787. A plaintiff can rely upon a defendant's business records to ascertain class members, so long as such records are "useful for identification purposes." *Karhu*, 621 F. App'x at 948.

Courts have expressed "serious . . . doubt that the judicially created ascertainability requirement applies to Rule 23(b)(2) classes." *Braggs v. Dunn*, 317 F.R.D. 634, 671-73 (M.D. Ala. 2016) (citing cases).[9] Nevertheless, Plaintiff's proposed class is clearly ascertainable in any event. Through the use of the searchable Taleo system, P&G can ascertain the identity of class members. As discussed further *infra*, during the course of discovery P&G has produced computerized, machine-readable, and computer-manipulable data containing the names, last known addresses, telephone numbers, email addresses, job location and position for all Class Members during the Covered Period. Miazad Decl. ¶ 8. The parties can use this data to determine which individuals were barred from consideration for intern and entry-level positions at P&G based on their citizenship. Once identified, Class Members can also demonstrate with objective documentary evidence that they were legally authorized to work when they applied to work at P&G. For example, in addition to self-certifying by affidavit, Class Members could be required to provide a record of valid work authorization. Given the objective and verifiable

[9] *See id.* at 671-72 ("[T]he court is not aware[] of any cases within this circuit applying the ascertainability requirement to a Rule 23(b)(2) class, much less any binding precedent doing so. Moreover, the circuits that have squarely addressed the issue have generally concluded that the ascertainability requirement does not apply to Rule 23(b)(2) injunctive-relief classes.") (citing First, Third and Tenth Circuit cases).

nature of such evidence, Defendant can easily review and, if necessary challenge Class Members' submissions.

The class is also adequately defined. In accordance with Rule 23(c)(1)(B),[10] the class is defined to include Covered Non-Citizen Residents who applied (or will apply) for internship or entry-level employment with P&G and whose application was rejected (or will be rejected) during the Covered Period based on P&G's policy requiring long-term unrestricted work authorization. This definition properly excludes all non-citizens who were legal permanent residents, and therefore considered eligible for employment under P&G's citizenship policy. Further, it excludes individuals who lacked legal work authorization and were therefore ineligible for employment at P&G, as well as those who were rejected for reasons other than citizenship status.

However, to the extent the Court finds the definition is too broad it should not deny Plaintiffs' motion for class certification because it "is empowered to amend an over-inclusive class definition." *A&M Gerber Chiropractic LLC v. GEICO Gen. Ins. Co*., 321 F.R.D. 688, 696 (S.D. Fla. 2017); *see also Messner v. Northshore Univ. Health Sys*., 669 F.3d 802, 825 (7th Cir. 2012) (courts should first consider "refining the class definition rather than flatly denying class certification") (collecting cases); *In re Monumental Life Ins. Co.*, 365 F.3d 408, 414 (5th Cir. 2004) ("[H]olding plaintiffs to the plain language of their definition would ignore the ongoing refinement and give-and-take inherent in class action litigation, particularly in the formation of a workable class definition"); *In re Photochromic Lens Antitrust Litig.*, MDL No. 2173, 2014 WL

[10] Rule 23(c)(1)(B) provides: "An order that certifies a class action must *define the class* and the class claims, issues, or defenses, and must appoint class counsel under Rule 23(g)." Fed. R. Civ. P. 23(c)(1)(B).

1338605, *15 (M.D. Fla. April 3, 2014) ("[C]ourts are authorized to amend class definitions, even if the amendment is made subsequent to the initial certification pleadings").

C. Plaintiff's Section 1981 Claim Satisfies Rule 23(a).

Rule 23(a) requires that: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Together, these requirements seek to "limit the class claims to those fairly encompassed by the named plaintiff's claims." *Dukes*, 564 U.S. at 349.

1. The Class Is Sufficiently Numerous.

Rule 23(a)(1) requires that the members of a class are "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Parties seeking class certification do not need to know the "precise number of class members," but they "must make reasonable estimates with support as to the size of the proposed class." *Fuller v. Becker & Poliakoff, P.A.*, 197 F.R.D. 697, 699 (M.D. Fla. 2000) (citing *Evans v. U.S. Pipe & Foundry*, 696 F.2d 925, 930 (11th Cir. 1983)). The focus of the numerosity inquiry is not whether the number of proposed class members are "too few" to satisfy the Rule, but "whether joinder of the proposed class members is impracticable." *Armstead v. Pingree*, 629 F. Supp. 273, 279 (M.D. Fla. 1986).

While "mere allegations of numerosity are insufficient," Rule 23(a)(1) imposes a "generally low hurdle," and "a plaintiff need not show the precise number of members in the class." *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1267 (11th Cir. 2009) (quoting *Evans*, 696 F.2d at 930 (internal quotations omitted)). "Nevertheless, a plaintiff still bears the burden of making *some* showing, affording the district court the means to make a supported factual finding, that the class actually certified meets the numerosity requirement." *Id.* Although mere numbers

are not dispositive, the general rule in the Eleventh Circuit is that "less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors." *Palm Beach Golf Ctr.*, 311 F.R.D. at 695 (quoting *Manno v. Healthcare Revenue Recovery Grp., LLC*, 289 F.R.D. 674, 684 (S.D. Fla. 2013)).

Here, Plaintiff reasonably believes that there are thousands of Class Members in the class. In response to Plaintiff's request for Class Members' contact information and job application data, on September 7, 2018, Defendant produced a list of all internship candidates who submitted applications and were automatically rejected during the Covered Period because of one or more disqualifying responses to P&G's citizenship-related pre-screen questions. Miazad Decl. ¶ 9. Further, following a hearing before Magistrate Judge Torres on September 28, 2018, in which the Defendant was ordered to produce a list for entry-level or "Band 1" applicants, ECF No. 69, on October 19, 2018, Defendant also produced a list of all entry-level candidates who submitted applications and were automatically rejected during the Covered Period due to disqualifying responses to P&G's citizenship-related pre-screen questions. Miazad Decl. ¶ 10.

P&G's Class Member data is computer-manipulable, allowing the parties to identify putative Class Members with specificity. Below is an estimate of Covered Non-Citizen Residents based on disqualifying responses for each fiscal year:[11]

	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18
Prospective Entry-Level Class Members	60	250	1,017	654	210

Prospective Intern Class Members for the Covered Period	10,147

[11] *See* Declaration of Christopher Alter ("Alter Decl.") regarding the methodology applied.

While the size of the proposed class is highly relevant to the Court's determination of numerosity, courts must also consider factors such as "the geographic diversity of the class members, the nature of the action, the size of each plaintiff's claim, judicial economy and the inconvenience of trying individual lawsuits, and the ability of the individual class members to institute individual lawsuits." *In re Terazosin Hydrochloride Antitrust Litig.*, 220 F.R.D. 672, 685 (S.D. Fla. 2004) (citing *Walco Inv., Inc. v. Thenen*, 168 F.R.D. 315, 324 (S.D. Fla. 1996)). Given the large number of Class Members, and the fact that the proposed Class Members are geographically dispersed nationwide, numerosity is easily satisfied. *Id.* (numerosity satisfied where thousands of class members were geographically dispersed, making joinder impracticable).

2. There Are Common Questions of Law and Fact That Will Drive the Resolution of Plaintiff's Claims.

Commonality is satisfied where "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "[F]or purposes of Rule 23(a)(2) even a single common question will do." *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 984 (11th Cir. 2016) (quoting *Dukes*, 564 at 359). "That common contention . . . must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350; *see also Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1355 (11th Cir. 2009) ("Commonality requires that there be at least one issue whose resolution will affect all or a significant number of the putative class members.") (internal quotation marks omitted) (cited by *Palm Beach Golf Ctr.*, 311 F.R.D. at 695). Under this "relatively light burden," commonality will generally be satisfied "if the allegations involve a common course of conduct by the defendant." *Palm Beach Golf Ctr.*, 311 F.R.D. at 695 (internal quotation marks and citation omitted).

Here, a number of common questions, capable of classwide resolution are presented:

(1) whether it is, or has been, P&G's policy or practice to reject internship and entry-level job applicants who are legally authorized to work in the United States because they are not U.S. citizens, or legal permanent residents determined to have long-term unrestricted work authorization;

(2) whether P&G's policy as set forth above deprives Plaintiff and the Class of the right to contract for employment in violation of 42 U.S.C. § 1981;

(3) whether Plaintiff and the Class suffered harm by reason of Defendant's unlawful policy;

(4) whether Plaintiff and the Class are entitled to equitable and injunctive relief;

(5) what equitable and injunctive relief for the Class is warranted; and

(6) the scope of a resulting permanent injunction.

FAC ¶ 47.

Where, as here, plaintiff claims liability based on "a standardized course of conduct that affects all class members," courts routinely find commonality to be satisfied. *In re Terazosin Hydrochloride*, 220 F.R.D. at 685; *see also Palm Beach Golf Ctr.*, 311 F.R.D. at 695 (same). Commonality is likewise generally satisfied where plaintiffs seek classwide declaratory or injunctive relief to remedy unlawful common policies. *See* 1 William B. Rubenstein, *Newberg on Class Actions* § 3:27 (5th ed. 2018) ("A claim that the opposing party 'has acted or refused to act on grounds that apply generally to the class' necessarily presents a common question of fact; similarly, a claim that injunctive or declaratory relief is appropriate for the class as a whole presents a common question of law." (internal citation omitted)).

Plaintiff asserts liability based on uniform policies that apply to all Class Members. P&G treats all Covered Non-Citizen Residents as facially ineligible for employment despite being legally authorized to work in the United States. P&G's "U.S. policy" states that applicants for employment must have "unrestricted long-term work authorization," Ex. 56 to Miazad Decl.;

Isenhart Tr. 83:13-84:1, and P&G applies this policy to exclude DACA and TPS recipients, visa holders and other non-permanent residents, Ex. 21 to Miazad Decl. To this end, P&G advertises that it "requires applicants for U.S. based positions to be legally authorized to work in the U.S. without the need for current or future sponsorship," Ex. 11 to Miazad Decl., which again, P&G interprets to exclude Class Members, Ex. 8 to Miazad Decl. P&G acknowledges that this policy applies *only* to non-citizens because citizens maintain long-term unrestricted work authorization. Isenhart Tr. 366:15-369:3.

Here, common questions as to whether Defendant in fact adopted such a citizenship policy, whether this policy violates Section 1981, and whether and what form of equitable and injunctive relief is warranted as a result will resolve Plaintiff's class claims "in one stroke." *Dukes*, 564 U.S. at 350 (commonality satisfied where classwide proceedings will generate common answers "apt to drive the resolution of the litigation" (internal citation omitted)); *see also Palm Beach Golf Ctr.*, 311 F.R.D. at 695 (commonality satisfied based on common questions as to whether defendant sent faxes constituting advertisements under the Telephone Consumer Protection Act). Commonality is therefore readily established.

3. The Representative Plaintiff's Claims Are Typical of the Class Members' Claims.

In certifying a class, courts must find that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Like the commonality requirement, the typicality requirement is permissive: representative claims are 'typical' if they are reasonably co-extensive with those of absent class members[.]" *In re Checking Account Overdraft Litig.*, 275 F.R.D. 666, 674 (S.D. Fla. 2011); *see also Brown v. SCI Funeral Servs. of Fla., Inc.*, 212 F.R.D. 602, 605 (S.D. Fla. 2003). "A class representative must

possess the same interest and suffer the same injury as the class members in order to be typical under Rule 23(a)(3)." *Manno*, 289 F.R.D. at 686 (internal citation omitted).

However, the "[c]lass members' claims need not be identical to satisfy the typicality requirement; rather, there need only exist 'a sufficient nexus…between the legal claims of the named class representatives and those of individual class members to warrant class certification.'" *Ault v. Walt Disney World Co.*, 692 F.3d 1212, 1216 (11th Cir. 2012) (quoting *Prado-Steiman*, 221 F.3d at 1278-79) (*cited by Palm Beach Golf Ctr.*, 311 F.R.D. at 696). The required nexus exists "if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Id.* at 1216 (quoting *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984)). "Thus, typicality is often met when, in proving her case, the representative plaintiff establishes the elements needed to prove the class members' case." *Colomar v. Mercy Hosp., Inc.*, 242 F.R.D. 671, 677 (S.D. Fla. 2007).

While commonality and typicality are related, the Eleventh Circuit has "distinguished the two concepts by noting that, '[t]raditionally, commonality refers to the group characteristics of the class as a whole, while typicality refers to the individual characteristics of the named plaintiff in relation to the class.'" *Vega*, 564 F.3d at 1274 (quoting *Piazza v. Ebsco Indus., Inc.*, 273 F.3d 1341, 1346 (11th Cir. 2001)); *Manno*, 289 F.R.D. at 686 (same).

Plaintiff David Rodriguez's claims are typical of the claims of the Class: (1) At all relevant times, Plaintiff Rodriguez was within the jurisdiction of the United States and not a citizen of the United States; (2) he was legally authorized to work within the United States; (3) he applied for a covered position at P&G; and (4) he was rejected because of alienage. FAC ¶¶ 2-3, 23-25, 28-30; *see* Ex. 1 to Miazad Decl. (David Rodriguez's Taleo workflow reflects that he

would have otherwise moved forward in the application process because he provided the required responses for seven of the nine pre-screen questions, but was rejected because he provided disqualifying answers to two of the three citizenship pre-screen questions); *see also* Ex. 2 to Miazad Decl. (correspondence with recruiter, Eduardo Moreno, regarding rejection); Ex. 5 to Miazad Decl. (form rejection email). Plaintiff's and Class Members' claims arise from the same course of conduct by Defendant, and the relief sought is common. While the facts surrounding each Class Member's rejection and resulting injuries will inevitably differ, typicality is nonetheless satisfied because "the [court's] focus should be on the defendants' conduct and plaintiff's legal theory, not the injury caused to the plaintiff." *In re First American Corp. ERISA Litig.*, 258 F.R.D. 610, 618 (C.D. Cal. 2009) (internal quotation omitted); *see also Parsons v. Ryan*, 754 F.3d 567, 685 (9th Cir. 2014) ("[T]ypicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief sought." (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992))).

Further, although "[t]ypicality may be destroyed by the existence of unique defenses that would preoccupy the named plaintiff to the detriment of the interests of absent class members," *Green v. FedEx Nat., LTL, Inc*., 272 F.R.D. 611, 615 (M.D. Fla. 2011) (reversed on other grounds *sub nom Britt Green Trucking, Inc. v. FedEx Nat. LTL, Inc.*, 511 Fed. App'x 848 (11th Cir. 2013)), no such defenses are available here. Plaintiff Rodriguez's claim is within the statute of limitations and he met all of P&G's other pre-screen requirements at the time he applied for an internship position. To the extent P&G argues that Mr. Rodriguez would have been rejected at a subsequent step in the application process (such as the assessment, initial interview, or panel interview), which Plaintiff disputes, this is of no consequence. Like all Class Members, Plaintiff suffered an injury under Section 1981 when he was preliminarily disqualified based on his

alienage and therefore denied the same right to "make . . . contracts . . . as is enjoyed by white *citizens*." 42 U.S.C. § 1981(a) (emphasis added). This is because, under P&G's exclusionary policy, Non-Citizen Residents (but not U.S. citizens and legal permanent residents) are automatically disqualified from consideration, regardless of whether they possess the necessary credentials or skills to ultimately secure an offer of employment. Further, the question of whether Plaintiff or any particular Class Member is entitled to individualized damages as a result of P&G's ultimate failure to hire him or her is not at issue in the instant motion.

4. The Representative Plaintiff and Class Counsel Will Adequately Protect the Interests of the Class.

Adequacy requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement is met where the class representatives: (1) have common, and not antagonistic, interests with unnamed class members, and (2) will vigorously prosecute the interests of the class through qualified counsel. *Amchem*, 521 U.S. at 625-27 & n.20. "[A] party's claim to representative status is defeated only if the conflict between the representative and the class is a fundamental one, going to the specific issues in controversy." *Pickett v. Iowa Beef Processors*, 209 F.3d 1276, 1280 (11th Cir. 2000). "Thus, a class cannot be certified when its members have opposing interests or when it consists of members who benefit from the same acts alleged to be harmful to other members of the class." *Id.*

Here, adequacy is easily met because Plaintiff Rodriguez has the same interests as other Class Members, and has already shown that he can fairly and adequately protect the Class Members' interests. Fed. R. Civ. P. 23(a)(4). Like all Class Members, Plaintiff was denied the opportunity to pursue employment with P&G as a result of his citizenship status. Plaintiff has no conflicts of interest with the Class Members and, indeed, Class Members stand to benefit

substantially from Plaintiff's pursuit of injunctive relief on their behalf. Plaintiff has also vigorously represented the interests of his fellow Class Members and devoted substantial time to the prosecution of this action. Miazad Decl.¶ 11. Plaintiff Rodriguez has demonstrated his commitment to the Class throughout this litigation by answering document requests and interrogatories, appearing for a deposition, and serving as advisor to counsel. Miazad Decl. ¶ 12.

Counsel for Plaintiff has also prosecuted this action vigorously—by, inter alia, successfully litigating a motion to dismiss and a motion to compel, and engaging in extensive discovery. *Id.* ¶ 13. In doing so, counsel have demonstrated their dedication to the Class—and will continue to do so. *Id*. Further, counsel have extensive experience in prosecuting discrimination class actions and will continue to commit the time and resources to represent this Class. Miazad Decl. ¶¶ 2-7; Perales Decl. ¶¶ 6-11; Mazer ¶¶ 2-4.

D. The Court Should Certify Plaintiff's Injunctive Relief Class Under Rule 23(b)(2).

Certification under Rule 23(b)(2) requires a showing that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).[12] A class is properly certified under Rule 23(b)(2) "when a single injunction or declaratory judgment would provide relief to each member of the class." *Ibrahim v. Acosta*, 326 F.R.D. 696, 699 (S.D. Fla. 2018) (quoting *Dukes*, 564 U.S. at 360); *see also Holmes v. Continental Can Co.*, 706 F.2d 1144, 1155 (11th Cir. 1983) (Rule 23(b)(2) "by its terms, clearly envisions a class defined by the homogeneity and cohesion of its members' grievances, rights

[12] The Advisory Committee Notes explain that "[d]eclaratory relief 'corresponds' to injunctive relief when as a practical matter it affords injunctive relief *or serves as a basis for later injunctive relief*." Fed. R. Civ. P. 23 advisory committee's note to 1966 amendment (emphasis added).

and interests") (internal citation omitted); *Dukes*, 564 U.S. at 360 ("The key to the (b)(2) class is 'the indivisible nature of the injunctive or declaratory remedy warranted. . . that [] can be enjoined or declared unlawful only as to all of the class members or as to none of them'" (internal citation omitted)).

Civil rights actions, such as this, through which plaintiffs seek injunctive relief to remedy "unlawful, class-based discrimination are prime examples" of certifiable Rule 23(b)(2) class actions. *Amchem*, 521 U.S. at 614 (citations omitted); *see also* 7A Charles Alan Wright, et al., *Fed. Prac. & Proc. Civ.* § 1776 (3d ed. 2018) (Rule 23(b)(2) was added in part "to make it clear that civil-rights suits for injunctive or declaratory relief can be brought as class actions."); Fed. R. Civ. P. 23 (advisory committee's notes to 1966 amendment) (actions in the "civil rights field where a party is charged with discriminating unlawfully against a class" are "[i]llustrative" of those suitable for class adjudication under Rule 23(b)(2)). Some courts have gone so far as to say that the rule's requirements are "almost automatically satisfied in actions primarily seeking injunctive relief." *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 58 (3d Cir. 1994) (cited in *Braggs*, 317 F.R.D. at 667-69 (certifying (b)(2) class of state prisoners seeking injunctive relief under the Eighth and Fourteenth Amendments)).

Courts have long recognized that claims for declaratory and injunctive relief under Section 1981 are appropriately certified under Rule 23(b)(2). *See Wynn v. Dixieland Food Stores, Inc.*, 125 F.R.D. 696, 697 (M.D. Ala. 1989) (certifying class of black applicants and employees raising section 1981 claims, finding Rule 23(b)(2) "particularly applicable to employment discrimination class actions") (citing *Giles v. Ireland*, 742 F.2d 1366, 1372 (11th Cir. 1984)); *Holmes*, 706 F.2d at 1152 (noting in Section 1981 and Title VII case that "[c]ivil rights class actions…are generally treated under subsection (b)(2) of Rule 23"); *Sims v.*

Montgomery Cnty. Comm'n, 766 F. Supp. 1052, 1081 (M.D. Ala. 1990) (noting certification of (b)(2) class of past, present and future black Sheriff's Department officers raising discrimination claims).[13] This is so notwithstanding individualized differences among the class members' claims and resulting injuries. *See Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (affirming certification of Rule 23(b)(2) class of non-citizens raising due process claims, and holding that certification may be appropriate "[e]ven if some class members have not been injured by the challenged practice" (citing 7A Charles Alan Wright, et al., *Fed. Prac. & Proc. Civ.* § 1775 (2d ed. 1986) ("All the class members need not be aggrieved by or desire to challenge the defendant's conduct in order for some of them to seek relief under Rule 23(b)(2).")); *Holmes*, 706 F.2d at 1155 n.8 ((b)(2) certification of section 1981 claims appropriate even though interests of class members "are by no means identical").

Here, Plaintiff seeks a declaration that P&G's policy and practice of categorically barring Covered Non-Citizen Residents from eligibility for employment because they are not Green Card holders determined to have "long-term unrestricted work authorization" constitutes unlawful citizenship discrimination under Section 1981. Plaintiff further seeks an order enjoining P&G from engaging in such policies and practices. As appropriate, Plaintiff may also seek more specific injunctive relief, including for example, an order requiring P&G to revise is eligibility criteria to conform with Section 1981, notify employees involved in the hiring process of its

[13] *See also Unthaksinkun v. Porter*, No. 11 Civ. 0588, 2011 WL 4502050, at *25 (W.D. Wash. Sept. 28, 2011) (certifying Rule 23(b)(2) class challenging state's application of "facially discriminatory" standards to exclude certain aliens from health insurance coverage under Fourteenth Amendment and Section 1983); *Satchell v. FedEx Corp.*, No. 03 Civ. 02659, 2005 WL 2397522, at *9 (N.D. Cal. Sept. 28, 2005) (certifying Rule 23(b)(2) classes of minority employees raising section 1981 and related claims where plaintiffs challenged a "set of policies, procedures and systems that allegedly affect class members in a similar fashion").

change in policy, train hiring personnel on its new policies, and engage in marketing and outreach efforts to inform Covered Non-Citizen Residents of their eligibility for employment.

Plaintiff primarily seeks declaratory and injunctive relief because such relief will most effectively remedy the injury suffered by Class Members—namely, being prevented from competing for employment at P&G on the same footing as U.S. citizens and legal permanent residents. The availability of such declaratory or injunctive relief depends on the lawfulness of P&G's blanket exclusionary policy. Because "[t]hat issue may be resolved on a class-wide basis without regard to the specific circumstances of each class member," certification under Rule 23(b)(2) is appropriate. *De Abadia-Peixoto v. U.S. Dep't of Homeland Sec.*, 277 F.R.D. 572, 577 (N.D. Cal. 2011); *see also A&M Gerber*, 321 F.R.D. at 700-01 (claim for declaratory and injunctive relief challenging lawfulness of "uniform practice applicable to all members of the putative class" is "the type envisioned by Rule 23(b)(2)").

In addition to declaratory and injunctive relief, Class Members may also be entitled to nominal monetary damages that are "*incidental* to [the] requested injunctive or declaratory relief" under Rule 23(b)(2). *Murray v. Auslander*, 244 F.3d 807, 812 (11th Cir. 2001) (internal citation omitted). In this Circuit, "incidental damages" are those that "flow directly from liability to the class *as a whole* on the claims forming the basis of the injunctive or declaratory relief," generally "in the nature of a group remedy." *Id.* (quoting *Allison v. Citgo Petrol. Corp.*, 151 F.3d 402, 415 (5th Cir. 1998); *see also Dukes*, 564 U.S. at 362 ("individualized monetary claims belong in Rule 23(b)(3)").

While back pay is an equitable remedy traditionally subject to class apportionment under Rule 23(b)(2),[14] Plaintiff recognizes that the determination of back pay in this case may require individualized determinations making it unsuitable for class wide adjudication. Without waiving their right to seek back pay and other equitable or monetary remedies on a class basis in the event that doing so would be permissible at a later date, Plaintiff does not seek such relief under subsection (b)(2) now. As the Eleventh Circuit has recognized, to the extent a request for relief requires extensive "individual determinations," the court should "exempt[] the damages claim from class treatment under Fed. R. Civ. P. 23(b)(2)." *Murray*, 244 F.3d at 812; *see also Holmes*, 706 F.2d at 1158 (endorsing the two-stage process under Title VII whereby, after an initial finding of liability, class members may present their back pay claims in individualized hearings to "resolve whether a particular employee is in fact a member of the covered class, has suffered financial loss, and thus is entitled to back pay or other appropriate relief.").

As discussed further *infra*, such a bifurcated procedure is appropriate here. *See Brown v. Electrolux Home Prod., Inc.*, 817 F.3d 1225, 1239 (11th Cir. 2016) (district courts "have many

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[14] *See Cooper v. Southern Co.*, 390 F.3d 695, 720 (11th Cir. 2004) ("[b]ack pay is considered equitable relief and can therefore be awarded in a case certified under Rule 23(b)(2)"), *overruled on other grounds, Ash v. Tyson Foods, Inc.*, 546 U.S. 454 (2006); *Holmes*, 706 F.2d at 1152 (characterizing "back pay as equitable relief and thus cognizable under subsection (b)(2)"); *Johnson v. Gen. Motors Corp.*, 598 F.2d 432, 437 (5th Cir. 1979) ("despite the ostensible restriction of Rule 23(b)(2) to injunctive or declaratory relief, individual back pay awards for absent class members can be sought in a (b)(2) class action") (citation omitted); *Winston v. Jefferson Cty., Ala.*, No. 05 Civ. 0497, 2006 WL 6916381, at *10 (N.D. Ala. June 26, 2006) ("make whole" equitable group remedies such as back pay "flow directly from a finding of liability to the Class as a whole" and are properly certifiable under Rule 23(b)(2)). While back pay is no longer presumptively available as a class-based equitable remedy under Rule 23(b)(2), *Dukes*, 564 U.S. at 365, class treatment of back pay claims may still be appropriate under certain circumstances. *See, e.g., Easterling v. Conn. Dep't of Correction*, No. 08 Civ. 826, 2012 WL 13027455, at *1-2 (D. Conn. June 27, 2012) (noting post-*Dukes* denial of motion to decertify (b)(2) class seeking back pay, and finding that any back pay award should be calculated "in the aggregate" and distributed to class members "on a pro rata basis").

tools to decide individual damages" questions in class actions cases, including, inter alia, (1) "bifurcating liability and damage trials"; (2) "appointing a magistrate judge or special mater to preside over individual damages proceedings"; (3) "providing notice to class members concerning how they may proceed to prove damages"; (4) "creating subclasses"; or (5) "altering or amending the class.") (quoting *In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d 124, 141 (2d Cir. 2001) (discussing management tools allowing plaintiffs to litigate damages individually after a finding of liability)); *Leszczynski v. Allianz Ins.*, 176 F.R.D. 659, 674 (S.D. Fla. 1997) (granting (b)(2) certification and noting that "[t]he determination of who is entitled to recover damages and in what amount will be considered separately by the Court.") (citing *Ligon v. Frito-Lay*, Inc., 82 F.R.D. 42, 49 (N.D. Tex. 1979) (ancillary relief of damages in Title VII class action determined separately from request for injunctive relief)).

E. The Court Should Certify an Issue Class on Liability and Injunctive Relief Under Rules 23(b)(2) and 23(c)(4).

In addition (or in the alternative) to certification of an injunctive relief class under Rule 23(b)(2), Plaintiff seeks to certify an "issue" class pursuant to Rule 23(c)(4) as to (1) whether P&G's policy and practice of categorically barring Covered Non-Citizen Residents from eligibility for employment because they are not Green Card holders determined to have "long-term unrestricted work authorization" constitutes unlawful citizenship discrimination under Section 1981 and (2) whether, and if so, what form of declaratory or injunctive relief is warranted.

Rule 23(c)(4) permits a class action to be certified "with respect to particular issues." Fed. R. Civ. P. 23(c)(4). The Eleventh Circuit has long recognized the availability of issue class certification, noting that "there should be no hard requirement that (b)(2) be mutually exclusive, . . . since subpart (c)(4)(A) allows an action to be maintained "with respect to

particular issues[.]" *Holmes*, 706 F.2d at 1158 n.10 (quoting Fed. R. Civ. P. 23(c)(4); *see also In re Visa Check/MasterMoney Antitrust Litig.*, 280 F.3d at 141 (endorsing the use of Rule 23(c)(4) to certify issue classes or subclasses as among the various "management tools available to the court") (cited with approval in *Brown*, 817 F.3d at 1239). Other circuit courts are in accord. *See, e.g., In re Deepwater Horizon*, 739 F.3d 790 (5th Cir. 2014) (agreeing with its "fellow circuits" in finding that obstacles to Rule 23(b)(3) certification due to individualized damages are "largely irrelevant '[w]here determinations on liability and damages have been bifurcated' in accordance with Rule 23(c)(4)") (alteration in original); 2 *Newberg on Class Actions* § 4:38 (5th ed.) (courts may bifurcate liability and damages by "determin[ing] liability using issue certification under Rule 23(c)(4)").[15]

Several cases illustrate how Rule 23(c)(4) can be used to further the instant litigation. In *McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, African-American financial advisors brought class action claims against their employer, alleging racial discrimination in violation of § 1981 and Title VII. 672 F.3d 482 (7th Cir. 2012), *abrogated on other grounds* in *Matz v.*

[15] While courts have been reticent to use Rule 23(c)(4) when doing so would effect an "end run" around Rule 23(b)(3)'s predominance requirement, *Harris v. Nortek Glob. HVAC LLC*, No. 14 Civ. 21884, 2016 WL 4543108, at *17 (S.D. Fla. Jan. 29, 2016), this concern is inapplicable here. Plaintiff is seeking class treatment solely to resolve common questions as to liability, injunctive relief and incidental (nominal) damages under subsection (b)(2); individualized damages questions under subsection (b)(3) are irrelevant. *Cf. id.* (denying Rule 23(c)(4) certification in products liability action where plaintiffs failed to challenge a common policy for purposes of (b)(2) certification, and further failed to demonstrate predominance under Rule (b)(3)). In any event, while not necessary to decide the instant motion, the notion that Rule 23(c)(4) cannot be invoked where plaintiffs seek (b)(3) certification and predominance is lacking has also been significantly undercut by the Fifth Circuit's finding in *In re Deepwater Horizon*, 739 F.3d at 817, that the predominance requirement as to individualized damages is now "largely irrelevant" where liability and damages have been bifurcated under Rule 23(c)(4), implicitly retracting its prior finding to the contrary in *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745 n.21 (5th Cir. 1996), upon which *Harris* and other cases rely. *See also Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 439 (4th Cir. 2003) (Requiring plaintiffs to show Rule 23(b)(3) predominance for the "entire cause of action" defeats the purpose of Rule 23(c)(4) and renders it superfluous); *In re Nassau Cnty. Strip Search Cases*, 461 F.3d 219, 230 (2d Cir. 2006) (same); 2 *Newberg on Class Actions* § 4:91 (5th ed. 2012) (same).

Household Int'l Tax Reduction Investment Plan, 687 F.3d 824 (7th Cir. 2012). As here, the plaintiffs requested class certification of two overlapping classes: (1) an injunctive relief class under Rule 23(b)(2) and (2) an issue class, as to whether defendant's policies and practices violated federal antidiscrimination laws, under Rule 23(c)(4). *Id.* at 483.[16] On appeal, the Seventh Circuit reversed the district court's denial of Rule (b)(2) and (c)(4) certification, finding that the lawfulness of defendant's challenged policies could most efficiently be decided on a classwide basis, rather than in 700 individual lawsuits. *Id.* at 490-92. While noting that the issuance of an injunction could not ultimately "resolve class members' [individual] claims," deciding the common liability issue on a class-wide basis under subsection (c)(4) would "at least" avoid the need for duplicative individual trials on that issue. *Id.* at 490-91.

Similarly, in *Houser v. Pritzker*, applicants for jobs with the U.S. Census Bureau brought class action claims alleging racial discrimination in the Census Bureau's applicant screening process in violation of Title VII. 28 F. Supp. 3d 222 (S.D.N.Y. 2014). Plaintiffs sought hybrid certification of an injunctive relief class under Rule 23(b)(2) and a damages class under Rule 23(b)(3). *Id.* at 241. In the alternative, plaintiffs sought certification of a Rule 23(c)(4) issue class "to isolate the liability and injunctive relief questions," along with a Rule 23(b)(2) injunctive relief class to address those issues, "leav[ing] damages calculations for individualized hearings." *Id.* While denying (b)(3) certification on predominance grounds, the court granted (b)(2) certification, noting that plaintiffs "plainly satisfy" the applicable requirements "[i]nsofar as the Plaintiffs seek injunctive relief." *Id.* at 249. The court further granted (c)(4) certification because resolving common liability questions on a classwide basis would "materially advance

[16] In addition, the *McReynolds* plaintiffs, (unlike Plaintiff here), also requested certification of a compensatory and punitive damages class under Rule 23(b)(3), but asked the court to defer decision on Rule (b)(3) certification. *Id.*

the litigation and make the proceedings more manageable" by "avoid[ing] the extreme time and expense necessary to try each class member's claims individually." *Id.* at 254; *see also Little v. Washington Metro. Area Transit Auth.*, 249 F. Supp. 3d 394, 418 (D.D.C. 2017) (finding certification proper under Rule 23(b)(2) and (c)(4) for a determination of liability and injunctive relief under (b)(2) in employment discrimination case where plaintiffs challenged uniform applicant screening policy).

The same rationale applied in *McReynolds* and *Houser* extends here. As in those cases, a finding on the common questions of liability and injunctive relief (*e.g.*, whether P&G's blanket exclusionary policy violates Section 1981, and whether classwide injunctive relief is warranted) will "materially advance the litigation" and avoid the need for duplicative individual hearings. *Houser*, 28 F. Supp. 3d at 254. In addition, a finding as to liability will substantially simplify any subsequent damages proceedings that may be brought by, or on behalf of, individual class members. Because the lawfulness of P&G's exclusionary policies and the availability of injunctive relief "can most efficiently be determined on a class-wide basis," *McReynolds*, 672 F.3d at 491, certification of a Rule 23(b)(2) and (c)(4) class is warranted.

IV. CONCLUSION

For the reasons set forth above, Plaintiff respectfully requests that the Court grant the motion for class certification, certifying an injunctive relief class under Rule 23(b)(2) and, or in the alternative, an "issue" class pursuant to Rule 23(c)(4) as to (1) whether P&G's policy and practice of categorically barring Covered Non-Citizen Residents from eligibility for employment because they are not Green Card holders determined to have "long-term unrestricted work authorization" constitutes unlawful citizenship discrimination under Section 1981 and (2) whether, and if so, what form of declaratory or injunctive relief is warranted.

CERTIFICATION OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that the undersigned has conferred with counsel for Defendant by electronic mail in a good faith effort to resolve the issues raised above, and I am authorized to represent that Defendant objects to the relief requested.

Dated: Miami, Florida
April 12, 2019

Respectfully submitted,

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