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[Counsel identified on signature pages]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

NATIONAL URBAN LEAGUE, et al.,

Plaintiffs,

v.

WILBUR L. ROSS, JR., et al.,

Defendants.

CASE NO. 5:20-cv-05799-LHK

**JOINT CASE MANAGEMENT
STATEMENT**

Date: January 15, 2021

Time: Noon

Place: Courtroom 8

Judge: Hon. Lucy H. Koh

1 Pursuant to Civil Local Rule 16-10(d) and the Court's January 11, 2021 Case
2 Management Order (Dkt. 444), the parties to this action, by their respective counsel, respectfully
3 submit the following Joint Case Management Statement in anticipation of the Further Case
4 Management Conference scheduled for January 15, 2021 at noon. For the reasons set forth
5 below, in light of the current depositions, motions and discovery deadlines on calendar and the
6 pending transition to a new Administration, Defendants have requested a 21-day stay of the case
7 in order to provide for an orderly transition and to let the new Administration assess the case.
8 Pursuant to Defendants' express representations set forth below, which ensure that various
9 counts and data will not be pushed out until after the new Administration is in place (and only
10 upon advance notice to Plaintiffs) and otherwise ensure that Plaintiffs will not be prejudiced in
11 any way, Plaintiffs agree to the 21-day stay.

12 The parties look forward to discussing this matter with the Court at the case management
13 conference scheduled for later today.

14 **I. REQUEST FOR 21-DAY STAY OF LITIGATION TO ALLOW FOR**
15 **TRANSITION TO THE NEW ADMINISTRATION**

16 As the Defendants have stated in prior Case Management Conferences, the Census
17 Bureau is working to complete an accurate census as quickly as possible. However, it has now
18 become evident that the Census Bureau will not be in position to finalize or provide
19 apportionment data until many weeks after January 20, 2021, the date on which the incoming
20 Administration will take responsibility for supervision of the Census Bureau. It has also become
21 clear that the Census Bureau will not be in position to finalize or provide reports, estimates, or
22 data relating to (i) the July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from
23 the Apportionment Base Following the 2020 Census or (ii) Executive Order 13880, entitled
24 Collecting Information About Citizenship Status in Connection with the Decennial Census (July
25 11, 2019), until many weeks after January 20, 2021. This ongoing litigation has required
26 Defendants to expend substantial resources, including for preparation of many depositions
27 scheduled for next week and the production of numerous documents and materials. In
28

1 Defendants' view, the additional expenditure of these resources during a transition to the new
2 Administration, and when Defendants are now representing to Plaintiffs and the Court that they
3 are not in a position to finalize or provide any of the information set forth above, would not be
4 the most efficient use of resources. Moreover, because this litigation is occurring during a
5 transition to the new Administration, Defendants believe that it may, in fact, divert the incoming
6 Administration's attention from the Census Bureau's statutory duties during a time period critical
7 for the Census Bureau to complete those duties.

8 Defendants believe that the public interest would be served by staying all proceedings in
9 this litigation for 21 days. Such a stay would permit the incoming Administration to evaluate the
10 Census Bureau's and the Department of Commerce's operations and assess, among other things,
11 the interests of the United States and its litigating positions in light of Plaintiffs' claims in this
12 case. The proposed stay would apply to any outstanding obligations to the Court, as well as to
13 all outstanding discovery except as noted below. A stay would have the benefit of allowing the
14 Census Bureau to focus its resources during the pendency of the stay on continuing its efforts to
15 complete the census.

16 In light of the impossibility of Defendants finalizing or providing the above information
17 until many weeks after the change in Administration on January 20, 2021, and to facilitate the
18 transition of census matters to the next Administration, Defendants, by and through their counsel
19 at the Department of Justice, acknowledge and represent to this Court that:

20 1) Reports, estimates, or data relating to the July 21, 2020 Presidential Memorandum on
21 Excluding Illegal Aliens from the Apportionment Base Following the 2020 Census will not be
22 finalized, reported or publicly disclosed prior to the change of Administration on January 20,
23 2021. Should such information be finalized after the change of Administration but prior to the
24 end of the proposed stay, Defendants would provide Plaintiffs with 7 days' detailed notice prior
25 to reporting or publicly disclosing it.

26 2) Reports, estimates, or data relating to Executive Order 13880, entitled Collecting
27 Information About Citizenship Status in Connection with the Decennial Census (July 11, 2019),
28 will not be finalized, reported or publicly disclosed prior to the change of Administration on

1 January 20, 2021. Should such information be finalized after the change of Administration but
2 prior to the end of the stay, Defendants would provide Plaintiffs with 7 days' detailed notice
3 prior to reporting or publicly disclosing it.

4 3) Neither the Census Bureau nor the Department of Commerce will report or publicly
5 disclose any population counts or estimates relating to the population as of April 1, 2020,
6 including counts or estimates of the illegal alien/undocumented immigrant population, prior to
7 the change of Administration on January 20, 2021. To the extent such population counts or
8 estimates are developed after the change of Administration but prior to the end of the stay,
9 Defendants would provide Plaintiffs with 7 days' detailed notice prior to reporting or publicly
10 disclosing them.

11 The parties agree that the restrictions contained in (1) – (3) above shall not apply to
12 Defendants' obligations to respond to information requests from Congress or the Office of the
13 Inspector General.

14 Plaintiffs remain ready and willing to continue litigating this case in all respects under the
15 current schedule. However, in light of Defendants' express acknowledgments and
16 representations in this filing, which are provided for the purposes of Plaintiffs not being
17 prejudiced in any way by the 21-day stay Defendants have asked for in light of the upcoming
18 transition to a new Administration, Plaintiffs agree and respectfully ask that the case be stayed
19 for 21 days.

20 Notwithstanding the proposed stay, the parties ask this Court to resolve Plaintiffs'
21 Renewed Motion to Compel and for Sanctions, ECF No. 433, except that Plaintiffs ask the Court
22 to hold their request for sanctions contained therein in abeyance and not resolve it at this time,
23 subject to Plaintiffs renewing such request in the future if warranted given the parties' ongoing
24 discussions on these matters. If the Magistrate Judge Panel issues a decision on Plaintiffs'
25 Motion to Compel, the parties reserve their right to appeal that decision to the District Court and
26 the appellate courts, and to seek a stay pending any appeal of any adverse decision.

27 Defendants acknowledge and represent that, should the parties not reach resolution and
28 the case restart once the 21-day stay is lifted (under the exact same schedule currently in place,
continued by 21 days), Defendants will not resist or challenge Plaintiffs taking any of the

1 depositions currently scheduled, or producing any of the documents and materials Defendants
2 currently are obligated to produce, but Defendants reserve their rights to assert the objections
3 that they would have had in the normal course.

4 The parties propose providing a Joint Case Management Statement two business days
5 before the conclusion of the proposed 21-day stay, should the Court enter a stay.

6 Dated: January 15, 2021

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ATTESTATION

I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

Dated: January 15, 2021

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