

1 MANATT, PHELPS & PHILLIPS, LLP
JOHN F. LIBBY (Bar No. CA 128207)
2 E-mail: jlibby@manatt.com
JOHN W. MCGUINNESS (Bar No. CA 277322)
3 E-mail: jmcguinness@manatt.com
EMIL PETROSSIAN (Bar No. CA 264222)
4 E-mail: epetrossian@manatt.com
11355 West Olympic Boulevard
5 Los Angeles, California 90064
Telephone: (310) 312-4000
6 Facsimile: (310) 312-4224

7 LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
KRISTEN CLARKE (*Pro Hac Vice* Application Forthcoming)
8 Email: kclarke@lawyerscommittee.org
JON M. GREENBAUM (Bar No. CA 166733)
9 E-mail: jgreenbaum@lawyerscommittee.org
EZRA D. ROSENBERG (*Admitted Pro Hac Vice*)
10 E-mail: erosenberg@lawyerscommittee.org
DORIAN L. SPENCE (*Admitted Pro Hac Vice*)
11 E-mail: dspence@lawyerscommittee.org
1401 New York Avenue NW, Suite 400
12 Washington, DC 20005
Telephone: (202) 662-8600
13 Facsimile: (202) 783-0857

14 *Attorneys for Plaintiffs*
CITY OF SAN JOSE and BLACK ALLIANCE FOR JUST IMMIGRATION

15 *[Additional Counsel Listed on Signature Page]*

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17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

19 CITY OF SAN JOSE, a municipal corporation;
and BLACK ALLIANCE FOR JUST
20 IMMIGRATION, a California nonprofit
corporation,

21 Plaintiffs,

22 vs.

23 WILBUR L. ROSS, JR., in his official capacity
as Secretary of the U.S. Department of
24 Commerce; U.S. DEPARTMENT OF
COMMERCE; RON JARMIN, in his official
25 capacity as Acting Director of the U.S. Census
Bureau; U.S. CENSUS BUREAU,
26

27 Defendants.
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Case No. 3:18-cv-2279-RS

**PLAINTIFFS' SUPPLEMENTAL
STATEMENT IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

Date: December 7, 2018
Time: 10:00 a.m.
Dept: 3
Judge: The Hon. Richard Seeborg
Trial Date: January 7, 2019

1 During the hearing on Plaintiffs’ motion for partial summary judgment (“Motion”) held
2 on December 7, 2018, the Court posed the following question to counsel for Plaintiffs City of San
3 Jose and Black Alliance for Just Immigration (“Plaintiffs”):

4 What I'm really asking is the effect of a grant of summary
5 judgment on the APA claim, and its impact on any subsequent
6 trial proceedings in this case. . . . What impact would it have?

6 December 7, 2018 Hearing Transcript at 46:17-22.

7 Plaintiffs responded:

8 Then, then we have the issue of a remedy.
9 And if -- and again, I'd want to consult with my colleagues,
10 but without prejudging the issue, if the remedy on the APA
11 claim is the same as the remedy on the enumeration claim, then
12 I'm not sure there's a reason to go to trial on the
13 Enumeration claim. If that makes sense.

11 December 7, 2018 Hearing Transcript at 47:5-10.

12 To further clarify, Plaintiffs provide this supplement in response to the Court’s question.¹

13 Depending on the nature of the remedy ordered by the Court, it is possible that it would
14 not be necessary to try the Enumeration Clause claim, particularly if the remedy provides the full
15 relief that Plaintiffs would obtain under their Enumeration Clause claim. However, even if the
16 Enumeration Clause claim were tried, it is highly likely that the trial time would be significantly
17 reduced. Because this Court would need to find that there is no question of fact regarding
18 Plaintiffs’ standing to rule in Plaintiffs’ favor, no evidence on standing would need to be provided
19 at trial. No evidence would be presented regarding testing, internal protocols, pretext, political
20 motivation, the reliance on the Department of Justice’s request, or the Bureau’s recommendation
21 to Secretary Ross and his response.

22 The only evidence that would need to be presented at trial would be whether adding a
23 citizenship question to the 2020 Decennial Census “is so uniquely impactful on the process of
24 counting itself, that it becomes akin to a mechanics-of-counting-type challenge.” (Order Denying
25 Motion to Dismiss, Doc. 86, Aug. 17, 2018.) Plaintiffs have not conferred with Defendants on
26

27 ¹ This case has not been consolidated with *California v. Ross*, 18-cv-1865. This statement does
28 not represent those plaintiffs’ position in the event this Court grants partial summary judgment to
the San Jose/BAJI plaintiffs.

1 this issue specifically, but based upon discussions of trial evidence in general, Plaintiffs City of
2 San Jose and Black Alliance for Just Immigration believe such a trial could be conducted in
3 approximately three to five trial days.

4 As further explained at argument, because the Supreme Court is currently reviewing the
5 New York case on an expedited basis, including the issue of whether the trial court erred in
6 allowing the parties extra-record discovery, if summary judgment is granted in this case solely on
7 the administrative record, it gives the reviewing courts a case that does not implicate the issue
8 currently on appeal.

9 Respectfully submitted,

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Dated: December 10, 2018

MANATT, PHELPS & PHILLIPS, LLP

By: s/ John F. Libby

John F. Libby
John W. McGuinness
Emil Petrossian
Ana G. Guardado
Andrew C. Case
Rory Adams
Salvador E. Perez
Olufunmilayo O. Showole
11355 West Olympic Boulevard
Los Angeles, California 90064
Telephone: (310) 312-4000
Facsimile: (310) 312-4224

LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Kristen Clarke
Jon M. Greenbaum
Ezra D. Rosenberg
Dorian L. Spence
1401 New York Avenue NW, Suite 400
Washington, DC 20005
Telephone: (202) 662-8600
Facsimile: (202) 783-0857

PUBLIC COUNSEL

Mark Rosenbaum
610 South Ardmore Avenue
Los Angeles, California 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

CITY OF SAN JOSE

Richard Doyle, City Attorney
Nora Frimann, Assistant City Attorney
Office of the City Attorney
200 East Santa Clara Street, 16th Floor
San José, California 95113-1905
Telephone Number: (408) 535-1900
Facsimile Number: (408) 998-3131
E-Mail: cao.main@sanjoseca.gov

Attorneys for Plaintiffs
CITY OF SAN JOSE and BLACK ALLIANCE FOR JUST IMMIGRATION

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FILER’S ATTESTATION

Pursuant to Civil Local Rule 5-1(i)(3), regarding signatures, Ana G. Guardado hereby attests that concurrence in the filing of this document has been obtained from all the signatories above.

Dated: December 10, 2018

s/ Ana G. Guardado
Ana G. Guardado

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CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2018, I served the foregoing with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

/s/ Ana G. Guardado
Ana G. Guardado