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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CITY OF SAN JOSE, a municipal corporation;
and BLACK ALLIANCE FOR JUST
IMMIGRATION, a California Non-Profit
Corporation,

Plaintiffs,

v.

WILBUR L. ROSS, JR., in his official capacity
as Secretary of the U.S. Department of
Commerce; et al.,

Defendants.

Case No. 3:18-cv-02279

**TRIAL AFFIDAVIT OF KRISTEN
CLEMENTS**

Dept: 3
Judge: The Honorable Richard G.
Seeborg

Trial Date: January 7, 2019
Complaint Filed: April 17, 2018

Pursuant to 28 U.S.C. § 1746(2), I, Kristen Clements, declare as follows:

1. I am the Division Manager for the City of San Jose's Department of Housing, overseeing the Policy and Planning Team, the Grants Management Team, and the Housing & Community Development Commissions. I have been in my current position for approximately 1.5 years. I have worked with the City of San Jose Department of Housing for over 13 years. I submit this declaration to supplement the November 2, 2018 declaration that I submitted in this matter. For the reasons stated in that declaration and below, I believe that if the addition of a citizenship question on the 2020 Census leads to an undercount of the population of San Jose relative to other

1 jurisdictions, the City will not receive the necessary of level of federal funding necessary to
2 effectively implement critical affordable housing programs for our community. In addition,
3 inaccurate demographic data from the Census will affect the City's ability to identify and address
4 key housing and other social needs within the City.

5 2. I received an undergraduate degree from Duke University in Durham, North
6 Carolina, with a major in Public Policy Studies focusing on international development and
7 telecommunications policy. I received a Masters Degree in Public Policy at the John F. Kennedy
8 School of Government at Harvard University in Cambridge, Massachusetts, focusing on housing
9 and community development.

10 3. Prior to working for the City of San Jose, I held positions at Price Waterhouse
11 (now PriceWaterhouseCoopers), where I did government sector consulting on housing and
12 community development-related issues and clients; the Federal Home Loan Bank of San
13 Francisco, where I worked on an affordable housing grant program; and Bank of America, where
14 I worked in affordable housing finance products. My career for more than two decades has
15 focused on housing and community development issues.

16 4. Displacement of affordable housing is a serious issue in San Jose, and I have
17 personally observed the development of a housing shortage here. When I first began working for
18 the City of San Jose fifteen years ago, our agency ran programs that would help moderate-income
19 households buy their own homes with subsidies of \$60,000 to \$100,000. We would provide larger
20 subsidies to low-income families to buy homes. And the City subsidized the development of
21 thousands of affordable rental housing units. The housing market produced both for-sale homes
22 and rental developments, many of which included some affordable units through our Inclusionary
23 Housing Policy. Over the past decade, the growth of the technology sector has brought many
24 well-paying jobs to San Jose, but has also made housing much more expensive. New apartments
25 that are built are class A luxury units with very few affordable units included in the properties, as
26 in-lieu fees are less expensive than reducing high rents down to required affordable levels. Few
27 for-sale homes have been built over the past decade since the economic downturn. Low housing
28 production levels in the Bay Area, including San Jose, relative to its population increases

1 continue to constrain supply and raise housing prices. The dramatic increase in housing costs in
2 San Jose has increased the rate of housing displacement and caused a spike in homelessness.

3 **5.** At the City of San Jose's Department of Housing, my duties include, among other
4 things, overseeing the management of six federal grant sources: Community Development Block
5 Grant Program ("CDBG"), and the Home Investment Partnership Program ("HOME");
6 Emergency Solutions Grants ("ESG"), Housing for Persons with AIDS ("HOPWA"); and
7 HOPWA for the Violence Against Women Act ("HOPWA-VAWA"), a demonstration program.

8 **6.** The CDBG and HOME programs are administered by the United States
9 Department of Housing and Urban Development ("HUD").

10 **7.** San Jose is required to submit a Fair Housing Assessment to HUD as a condition
11 for receiving CDBG and HOME funding. Recently, the State of California passed a law requiring
12 local governments to provide an Assessment of Fair Housing to the State as well, so even if HUD
13 relaxes or eliminates its requirement, our Department will continue to be required to provide an
14 Assessment of Fair Housing.

15 **8.** The Assessment of Fair Housing is used to establish our funding and program
16 priorities in addressing housing displacement and related issues. To develop the Assessment, we
17 use demographic data from the United States Census Bureau, including data on race, income, and
18 housing conditions.

19 **9.** We use the Assessment of Fair Housing, along with other data, to create our Five-
20 year Consolidated Plan ("Consolidated Plan") which HUD requires from all communities that
21 receive funds under the CDBG and HOME programs. We also create one-year Annual Action
22 Plans that implement to the five-year Consolidated Plan. These Plans identify some key locations
23 to administer services within the City of San Jose as we implement the goals set forth in the
24 Assessment of Fair Housing. To identify these key locations, we use demographic data from the
25 United States Census and the American Community Survey ("ACS"), including data on race,
26 income, and housing conditions.

27 **10.** HUD awards the City of San Jose, as an entitlement jurisdiction, an annual
28 allocation of CDBG and HOME funding. I regularly communicate with HUD officials regarding

1 the CDBG and HOME programs. As is set forth in the next several paragraphs, the amount of
2 funding the City of San Jose receives under these programs is directly tied to data from the
3 Census.

4 **11.** HOME was established under the Cranston-Gonzales National Affordable
5 Housing Act. The formula for providing funds under HOME considers following factors:
6 “inadequate housing supply, substandard housing, the number of low-income families in housing
7 likely to be in need of rehabilitation, the costs of producing housing, poverty, and the relative
8 fiscal incapacity of the jurisdiction to carry out housing activities eligible under section 12742 of
9 this title without Federal assistance. Allocation among units of general local government shall
10 take into account the housing needs of metropolitan cities, urban counties, and approved consortia
11 of units of general local government.” 42 U.S.C. § 12747(b)(1)(a). The statute requires that these
12 data “be data obtained from a standard source that are available to the Secretary 90 days prior to
13 the beginning of that fiscal year.” 42 U.S.C. § 12747(b)(1)(b). HUD uses Census and ACS data
14 to make these allocations

15 **12.** Funding provided to metropolitan areas under the CDBG program is allocated by
16 one of two federal formulas. 42 U.S.C. § 5306(b)(1).

17 **13.** The first formula, Formula A, considers the average of the ratios between “(i) the
18 population of that city and the population of all metropolitan areas; (ii) the extent of poverty in
19 that city and the extent of poverty in all metropolitan areas; and (iii) the extent of housing
20 overcrowding in that city and the extent of housing overcrowding in all metropolitan areas.” 42
21 U.S.C. § 5306(b)(1)(A).

22 **14.** The second formula, Formula B, considers the average of the ratios between “(i)
23 the extent of growth lag in that city and the extent of growth lag in all metropolitan cities; (ii) the
24 extent of poverty in that city and the extent of poverty in all metropolitan areas; and (iii) the age
25 of housing in that city and the age of housing in all metropolitan areas.” 42 U.S.C. §
26 5306(b)(1)(B).

27 **15.** San Jose’s funding is allocated pursuant to Formula A. The population element of
28 Formula A is calculated based on data reported by the United States Census Bureau (the

1 “Bureau”) based on the census conducted every ten years (the “Decennial Census”) and the
2 subsequent American Community Survey (“ACS”).

3 16. In 2015, San Jose received \$2,381,725.00 in HOME funding and \$8,259,253.00 in
4 CDBG funding.

5 17. In 2016, San Jose received \$2,573,775 .00 in HOME funding and \$8,389,991.00 in
6 CDBG funding.

7 18. In 2017, San Jose received \$ 2,512,787.00 in HOME funding and \$8,196,038.00 in
8 CDBG funding.

9 19. In 2018, San Jose received \$ 3,550,726.00 in HOME funding and \$8,927,311.00 in
10 CDBG funding.

11 20. Because the population, poverty rate, and housing overcrowdedness of San Jose as
12 reported by the Decennial Census is an element in the funding calculation for CDBG allocations,
13 if the Decennial Census underreports the population of San Jose relative to other participating
14 jurisdictions, the City will receive less CDBG funding.

15 21. Because the inadequacy of housing supply relative to its population, supply of
16 substandard rental housing, number of low-income families in rental housing units likely to be in
17 need of rehabilitation, and incidence of poverty of San Jose as reported by the Decennial Census
18 is an element in the funding calculation for HOME allocations, if the Decennial Census
19 underreports the population of San Jose relative to other participating jurisdictions, the City will
20 receive less HOME funding.

21 22. The City of San Jose identifies housing needs based, in part, on income data from
22 the Census and the American Community Survey. Income levels are calculated based upon
23 household income and family size. If two families have the same income but one family is larger,
24 the larger family has a lower income level. Therefore, if family size is under-reported in the
25 Census and the ACS, income levels will likewise be overstated, thereby understating the needs of
26 San Jose communities.

27 23. The City of San Jose uses federal funding to pay for community-serving priorities
28 in four program areas identified as priorities in its current Consolidated Plan (for the 2015-2020

1 cycle): to increase housing opportunities; to respond to homelessness and its effects on the
2 community; to strengthen neighborhoods; and to promote fair housing.

3 **24.** The program areas identified as priorities in the current Consolidated Plan cycle
4 are identified based, in part, on the Assessment of Fair Housing's precursor, the Analysis of
5 Impediments (which uses Census and ACS data) and based, in part, on Census and ACS data
6 themselves. The program areas identified as priorities in the future Consolidated Plan cycle will
7 be identified based, in part, on the Assessment of Fair Housing (which uses Census and ACS
8 data) and based, in part, on Census and ACS data themselves. We identify Census tracts where
9 the needs for affordable housing and community improvements appear to be most acute and
10 address those areas. These areas are addressed through neighborhood infrastructure improvements
11 such as curb cuts and LED lighting, targeted code enforcement, and 'green' alleyway
12 improvements to promote safety, walkability and sustainability in low-income neighborhoods;
13 community-serving capital projects such as community gardens, libraries and community centers;
14 emergency home rehabilitation for low-income homeowners; rehabilitation of nonprofit facilities
15 such as homeless shelters and services spaces; and, land acquisition and infrastructure supporting
16 affordable housing creation.

17 **25.** If the Census and ACS data that are used to create the Fair Housing Assessment
18 and the Consolidated Plan are less accurate, then we would identify locations for improvement
19 and development that would not further our mission and objectives properly.

20 **26.** The City of San Jose recently has used HOME for development of new affordable
21 rental housing, acquisition and rehabilitation of existing market-rate housing to create newly
22 affordable rental housing, homebuyer loans for low-income homebuyers, and tenant-based rental
23 subsidies for vulnerable populations including formerly homeless individuals and families.

24 **27.** The City of San Jose has identified locations for development projects to develop
25 with HOME funding based on Census and ACS data. For example, we avoid building permanent
26 support housing for the homeless population in areas that would increase the concentration of
27 low-income residents over a certain threshold. We therefore use Census and ACS data to
28 determine where to place such developments. If the Census and ACS data were inaccurate, then

1 we would site these developments in locations where they would not fulfill our mission and
2 objectives properly.

3 **28.** The City of San Jose uses analysis from the University of California at Berkeley's
4 Urban Displacement Project to identify areas in San Jose that are undergoing or are at-risk of
5 housing displacement. The City of San Jose is also examining partnering with the Urban
6 Displacement Project to engage San Jose-specific studies on housing displacement. One
7 possibility is a longitudinal displacement study over the next decade to determine where displaced
8 residents go and what strategies are effective to avoid displacement. This study would rely on
9 numerous sources of data, including Census and ACS data on income, household size, rent
10 burden, and race, to develop and implement long-term strategies for addressing the issue of
11 displacement in San Jose. This partnership and possible study has the potential to provide
12 significant guidance towards addressing housing anti-displacement strategies. If the Census and
13 ACS data used to create this study is compromised, the guidance developed from the study will
14 also be compromised.

15 **29.** The City of San Jose's Department of Housing therefore relies on accurate Census
16 and ACS data to perform its core missions of obtaining, administering and disbursing its fair
17 share of federal funding under certain key programs and identifying and addressing key issues
18 and needs in our community.

19
20 I declare under penalty of perjury pursuant to 28 U.S.C. § 1746(2) that the foregoing is
21 true and correct.

22 Executed this 14th day of December, 2018 at San Jose, California

23 

24 Kristen Clements
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