[Counsel identified on signature page]

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

CITY OF SAN JOSE, CALIFORNIA, et al., Plaintiffs, vs. DONALD J. TRUMP, et al., Defendants.	CASE NO. 5:20-cv-05167-LHK **JOINT CASE MANAGEMENT STATEMENT** Date: August 18, 2020 Time: 10:30 a.m. Courtroom: Videoconference Judge: Hon. Lucy H. Koh
STATE OF CALIFORNIA, et al., Plaintiffs, vs. DONALD J. TRUMP, et al., Defendants.	CASE NO. 5:20-cv-05169-LHK **JOINT CASE MANAGEMENT STATEMENT** Date: August 18, 2020 Time: 10:30 a.m. Courtroom: Videoconference Judge: Hon. Lucy H. Koh

Pursuant to the Court's August 12, 2020 Order (Dkt. 38) and August 14, 2020 Order (Dkt. 43) in Case No. 5:20-cv-05167-LHK, the parties in the above-captioned cases, by their respective counsel, respectfully submit the following Joint Case Management Statement for the Initial Case Management Conference set for August 18, 2020 at 10:30 a.m. This Joint Case Management Statement only addresses the topics identified in the Court's Orders (Dkts. 38 and 43), and not the sections required by the Standing Order for All Judges of the Northern District of California. The Plaintiffs in Case No. 5:20-cv-05167-LHK are referred to herein as the "San Jose Plaintiffs." The Plaintiffs in Case No. 5:20-cv-05169-LHK are referred to herein as the "California Plaintiffs."

I. SCHEDULING FOR DISPOSITIVE MOTIONS

The San Jose Plaintiffs intend to move for partial summary judgment on two of their claims: (1) violation of the Apportionment Clause, as amended by the Fourteenth Amendment; and (2) violation of Census Act.

The California Plaintiffs intend to move for partial summary judgment on three of their claims: (1) violation of Article I and the Fourteenth Amendment; (2) violation of separation of powers; and, (3) violation of Census Act.

Defendants intend to file a dispositive motion pursuant to Federal Rule of Civil Procedure 12(b)(1), 12(b)(6), and/or 56.

The parties submit below competing briefing schedules for these early dispositive motions for both cases. The parties also request that the Court allow for the page limits for each brief as set forth below.

Event	Plaintiffs' Proposal	Defendants' Proposal	Page Limit
Plaintiffs file a joint brief in support of their respective motions for partial summary judgment	August 27, 2020	August 27, 2020	40 pages
Defendants file a single brief opposing both summary judgment motions and in support of Defendants' dispositive motion	September 10, 2020	September 14, 2020	50 pages
Plaintiffs file a joint brief replying in support of their partial summary judgment motions, and opposing Defendants' dispositive motion	September 21, 2020	September 25, 2020	35 pages
Defendants file a single reply brief in support of their dispositive motion	September 28, 2020	October 5, 2020	25 pages
Hearing on all motions for both cases	October 8, 2020	October 15, 2020	

Plaintiffs' Position: Plaintiffs are willing to discuss at the Case Management Conference measures to increase efficiency in electronic filings. Plaintiffs seek to ensure that under any order it will continue to be clear which filings apply to which action.

Defendants' Position: To improve efficiency in these matters, Defendants request that the Court enter an order providing that any filing that is applicable to both of the related actions shall be filed in the lowest-numbered action, *City of San Jose, California, et al. v. Trump, et al.*, No. 5:20-cv-05167-LHK, and shall automatically be deemed to be a filing in both actions, unless denoted otherwise. The parties may, however, file in the individual actions as well at their option.

II. THREE-JUDGE COURT

San Jose Plaintiffs will file prior to the Case Management Conference a First Amended Complaint that includes a request for a three-judge court on the basis of San Jose Plaintiffs' constitutional challenges to President Trump's Apportionment Exclusion Order, as well as San Jose Plaintiffs' new claim challenging the use of any statistical sampling method in the enumeration for apportionment in violation of 13 U.S.C. § 195. The California plaintiffs also intend to file a request for a three judge panel and seek the Court's direction on the Court's preferred form for the request. A three-judge court is warranted for two reasons.

First, Title 28 U.S.C. § 2284(a) states that "[a] district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts . . . ." The parties agree that the case law addressing the issue suggests that both Plaintiffs' constitutional challenges fall within the jurisdiction created by 28 U.S.C. § 2284. If those claims are adjudicated by a single district judge when they should have been heard by a three-judge court, it could be a jurisdictional error requiring reversal. *See Karlson v. Paterson*, 542 F.3d 281, 286-87 (2d Cir. 2008). The parties therefore agree that the prudent course is to convene a three-judge court in both cases because an ultimate decision by the three-judge court could be certified by this Court as one the Court would independently reach, allowing for prompt appeal to the Ninth Circuit or the Supreme Court. *See Fed'n for Am. Immigration Reform v. Klutznick*, 486 F. Supp. 564, 577-78 (D.D.C. 1980) (three-judge court) (including certification from District Judge that "he individually arrived at the same conclusion that we collectively reached" out of "'abundant caution'" to ensure "that in the event we are mistaken, an appeal can still be expeditiously taken in the appropriate forum" (quoting *Swift & Co. v. Wickham*, 230 F. Supp. 398, 410 (S.D.N.Y. 1964 (three-judge court))).

Second, 13 U.S.C. § 195 prohibits "the use of the statistical method known as 'sampling'" in the "determination of population for purposes of apportionment of Representatives in Congress among the several States." The parties in Case No. 5:20-cv-05167-LHK agree that Congress has provided a right of action to enforce this provision, and has further provided that any action brought under that section "shall be heard and determined by a district court of three judges in accordance with section 2284 of title 28, United States Code." Departments of Commerce, Justice, and State, The Judiciary, and Related Agencies Appropriations Act, 1998, § 209(b), (e)(1), Pub. L. No. 105-119, 111 Stat. 2440, 2481-82 (1997) (codified at 13 U.S.C. § 141 note). Thus, for this second reason also, the parties in Case No. 5:20-cv-05167-LHK agree that a three-judge court should be convened.

III. CONSOLIDATION OF THESE CASES

The parties agree that formal consolidation of the cases is unnecessary, but agree that the cases can be handled together and on the same schedule. Plaintiffs in both cases intend to

cooperate as much as possible to avoid redundancy of submissions to ease the burdens on the Court and the Defendants.

IV. INTERPLAY WITH OTHER CASES

While the cases previously identified by Plaintiffs pending in other Districts (*see* Dkt. 33) raise overlapping issues and claims with this case, the parties agree that the Court (or three-judge court) should proceed to the merits in this case regardless of those other cases.

Dated: August 17, 2020

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny

Steven M. Bauer (Bar No. 135067)
steve.bauer@lw.com
Sadik Huseny (Bar No. 224659)
sadik.huseny@lw.com
Amit Makker (Bar No. 280747)
amit.makker@lw.com
Shannon D. Lankenau (Bar. No. 294263)
shannon.lankenau@lw.com
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: 415.391.0600
Facsimile: 415.395.8095

Richard P. Bress (admitted *pro hac vice*)
rick.bress@lw.com
LATHAM & WATKINS LLP
555 Eleventh Street NW, Suite 1000
Washington, D.C. 20004
Telephone: 202.637.2200
Facsimile: 202.637.2201

Attorneys for Plaintiffs City of San Jose, California; King County, Washington; Arlington County, Virginia; Black Alliance for Just Immigration; Sam Liccardo; Zerihoun Yilma; and Lovette Kargbo-Thompson

Kristen Clarke (*pro hac vice* forthcoming)
kclarke@lawyerscommittee.org
Jon M. Greenbaum (Bar No. 166733)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (admitted *pro hac vice*)
erosenberg@lawyerscommittee.org
Dorian L. Spence (admitted *pro hac vice*)
dspence@lawyerscommittee.org
Maryum Jordan (admitted *pro hac vice*)
mjordan@lawyerscommittee.org
Ajay Saini (admitted *pro hac vice*)
asaini@lawyerscommitee.org
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
1500 K Street NW, Suite 900
Washington, DC 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

Attorneys for Plaintiffs City of San Jose, California; King County, Washington; Black Alliance for Just Immigration; Sam Liccardo; Zerihoun Yilma; and Lovette Kargbo-Thompson

Mark Rosenbaum (Bar No. 59940)
mrosenbaum@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, California 90005
Telephone: 213.385.2977
Facsimile: 213.385.9089

Attorneys for Plaintiff City of San Jose, California

Dated: August 17, 2020

XAVIER BECERRA
Attorney General of California
THOMAS S. PATTERSON
Senior Assistant Attorney General
ANTHONY R. HAKL
Supervising Deputy Attorney General

/s/ Gabrielle D. Boutin
GABRIELLE D. BOUTIN
R. MATTHEW WISE
Deputy Attorneys General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 210-6046
Fax: (916) 324-8835
E-mail: Gabrielle.Boutin@doj.ca.gov
E-mail: Matthew.Wise@doj.ca.gov
Attorneys for Plaintiff State of California

Dated: August 17, 2020

MIKE FEUER
City Attorney for the City of Los Angeles

/s/ Valerie Flores
VALERIE FLORES, SBN 138572
Managing Senior Assistant City Attorney
MICHAEL J. DUNDAS, SBN 226930
Deputy City Attorney
200 North Main Street, 7th Floor, MS 140
Los Angeles, CA 90012
Telephone: (213) 978-8130
Fax: (213) 978-8222
Email: Valerie.Flores@lacity.org

Dated: August 17, 2020

CHARLES PARKIN
City Attorney for the City of Long Beach

/s/ Charles Parkin
SBN 159162
333 W. Ocean Blvd., 11th Floor
Long Beach CA, 90802
Telephone: (562) 570-2200
Fax: (562) 436-1579
Email: Charles.Parkin@longbeach.gov

Dated: August 17, 2020

BARBARA J. PARKER
City Attorney for the City of Oakland

/s/ Maria Bee
MARIA BEE, SBN 167716
Chief Assistant City Attorney
MALIA MCPHERSON
Deputy City Attorney
City Hall, 6th Floor
1 Frank Ogawa Plaza
Oakland, California 94612
Telephone: (510) 238-3601
Fax: (510) 238-6500
Email: mbee@oaklandcityattorney.org

Dated: August 17, 2020

DANNIS WOLIVER KELLEY

/s/ Sue Ann Salmon Evans
Sue Ann Salmon Evans, SBN 151562
Keith A. Yeomans, SBN 245600
115 Pine Avenue, Suite 500
Long Beach, CA 90802
Telephone: 562.366.8500
Facsimile: 562.366.8505
sevans@DWKesq.com
kyeomans@DWKesq.com
Attorneys for Los Angeles United School District

ETHAN P. DAVIS
Acting Assistant Attorney General

DAVID MORRELL
Deputy Assistant Attorney General

ALEXANDER K. HAAS (SBN 220932)
Branch Director

DIANE KELLEHER
BRAD P. ROSENBERG
Assistant Branch Directors

Dated: August 17, 2020

/s/ Daniel D. Mauler
DANIEL D. MAULER
(Va. Bar No. 73190)
Trial Attorney
Civil Division, Federal Programs Branch
U.S. Department of Justice
1100 L St. NW
Washington, DC 20005
Phone: (202) 616-0773
Fax: (202) 616-8470
E-mail: dan.mauler@usdoj.gov

Counsel for Executive Branch Defendants

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: August 17, 2020

/s/ Sadik Huseny
Sadik Huseny

Sadik Huseny (Bar No. 224659)
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Telephone: 415.391.0600
Facsimile: 415.395.8095