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

NATIONAL URBAN LEAGUE, et al., Plaintiffs, v. GINA RAIMONDO et al., Defendants.	CASE NO. 5:20-cv-05799-LHK STIPULATED ORDER REGARDING DISMISSAL
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1. PREAMBLE

Plaintiffs National Urban League; League of Women Voters; Black Alliance for Just Immigration; Harris County, Texas; King County, Washington; City of Los Angeles, California; City of Salinas, California; City of San Jose, California; Rodney Ellis; Adrian Garcia; the National Association for the Advancement of Colored People; City of Chicago, Illinois; County of Los Angeles, California; Navajo Nation; and Gila River Indian Community, and Defendants Gina Raimondo, in her official capacity as Secretary of Commerce; United States Department of Commerce; Dr. Ron Jarmin, in his official capacity as Acting Director of the United States Census Bureau; and the United States Census Bureau (collectively, “Parties”) hereby stipulate and agree to, and request the Court order, dismissal without prejudice of the above-captioned action pursuant to Federal Rule of Civil Procedure 41(a)(2), as follows.

1 **2. PREMISES**

2 WHEREAS, Plaintiffs filed their Complaint on August 18, 2020, ECF No. 1, their
3 Amended Complaint on September 1, 2020, ECF No. 61, and their Second Amended Complaint
4 on October 27, 2020, ECF No. 352 (“SAC”);

5 WHEREAS, Plaintiffs allege that Defendants’ conduct related to the 2020 decennial census
6 violated the Enumeration Clause of the United States Constitution and the Fourteenth Amendment
7 to the United States Constitution, and the Administrative Procedure Act, SAC ¶¶ 460–84;

8 WHEREAS, Defendants deny that their actions related to the 2020 decennial census were
9 unconstitutional or unlawful, Answer to SAC, ECF No. 418, ¶¶ 460–84;

10 WHEREAS, on August 25, 2020, Plaintiffs moved for a preliminary injunction, ECF No.
11 36, and on September 3, 2020, Plaintiffs moved for a Temporary Restraining Order, ECF No. 66;

12 WHEREAS, on September 5, 2020, the Court granted Plaintiffs’ request for a Temporary
13 Restraining Order, enjoining Defendants from implementing the Replan until the Court’s
14 September 17, 2020 hearing on Plaintiffs’ motion for preliminary injunction, ECF No. 84;

15 WHEREAS, on September 17, 2020, the Court extended the Temporary Restraining Order
16 until September 24, 2020, ECF No. 142;

17 WHEREAS, the District Court issued a preliminary injunction on September 24, 2020,
18 enjoining Defendants from implementing the Replan’s September 30, 2020 deadline for the
19 completion of data collection and December 31, 2020 deadline for reporting the tabulation of the
20 total population to the President, holding that the Replan was promulgated in violation of the
21 Administrative Procedure Act, ECF No. 208;

22 WHEREAS, the District Court later clarified that the Preliminary Injunction required
23 Defendants to continue data collection operations through October 31, 2020, ECF No. 288;

24 WHEREAS, Defendants appealed to the United States Court of Appeals for the Ninth
25 Circuit on September 25, 2020, ECF No. 210;

26 WHEREAS, the District Court denied Defendants’ request to stay the preliminary
27 injunction, and the Court of Appeals denied it in part and granted it in part, ECF Nos. 212 & 277;

28

1 WHEREAS, the Supreme Court granted Defendants’ request to stay the preliminary
2 injunction on October 13, 2020, *Ross v. National Urban League*, 141 S. Ct. 18 (2020);

3 WHEREAS, Defendants generally concluded field operations on October 15, 2020;

4 WHEREAS, Defendants moved to dismiss the SAC on November 10, 2020, ECF No. 354,
5 which the Court denied on December 22, 2020, ECF No. 401;

6 WHEREAS, additional details regarding the claims in this case and the procedural history,
7 including the Parties’ disputes regarding Defendants’ conduct as to production of the
8 Administrative Record and other documents in this case and Defendants’ conduct as to compliance
9 with the Court’s orders, are set forth in the Court’s Order Extending Temporary Restraining Order
10 for Defendants’ Partial Production of the Administrative Record (ECF No. 142), Order Granting
11 Plaintiffs’ Motion for Stay and Preliminary Injunction (ECF No. 208), Order Re: Clarification of
12 Stay and Preliminary Injunction (ECF No. 288), Order Granting Motion to Compel (ECF No. 372),
13 Amended Order Denying Motion for Reconsideration and Clarifying Order to Compel (ECF No.
14 380), and Order Granting Plaintiffs’ Renewed Motion to Compel; Deferring Ruling on Sanctions
15 (ECF No. 462), among others;¹

16 WHEREAS, the Court’s various rulings regarding the merits of Plaintiffs’ claims can be
17 found in, among other orders, the Court’s Order Granting Motion for Temporary Restraining Order
18 (ECF No. 84), Order Granting Plaintiffs’ Motion for Stay and Preliminary Injunction (ECF No.
19 208), Case Management Order (ECF No. 357), and Order Denying Defendants’ Motion to Dismiss
20 and Motion for Stay of Proceedings (ECF No. 401);

21 WHEREAS, pursuant to the expedited trial date and compressed discovery period in the
22 case, up to January 15, 2021 the parties were engaged in deep fact and expert discovery, with
23

24 ¹ See, e.g., ECF No. 174 (Order After In Camera Review as to Attorney-Client Privilege
25 Asserted by Defendants); ECF No. 179 (First Order After In Camera Review as to Deliberative
26 Process Privilege Asserted by Defendants); ECF No. 182 (Second Order After In Camera
27 Review as to Deliberative Process Privilege Asserted by Defendants); ECF No. 184 (Third Order
28 After In Camera Review as to Deliberative Process Privilege Asserted by Defendants); ECF No.
306 (Order After In Camera Review of Documents Identified on Defendants’ October 4
Privilege Log); ECF No. 407 (Order After In Camera Review of Disputed Documents Identified
in Government’s December 21 Privilege Log); ECF No. 416 (Order Granting In Part and
Denying In Part Plaintiffs’ Requests for Relief in December 29, 2020 Joint Status Report); ECF
No. 428 (Order After Audit of Withheld Documents).

1 numerous upcoming depositions noticed for various senior officials at the Census Bureau,
2 including Director Steve Dillingham;

3 WHEREAS, rather than continue with discovery, the scheduled depositions, and Plaintiffs’
4 request for sanctions against Defendants, and pursuant to Defendants’ request for a stay amid
5 assurances that all efforts to deliver truncated, flawed and constitutionally impermissible state
6 population counts to the Trump administration prior to the January 20, 2021 transition of
7 administrations would halt, on January 15, 2021, the Parties filed with the Court a stipulation
8 seeking a 21-day stay in proceedings. In that filing, Defendants stipulated that the Census Bureau
9 would not (i) finalize or provide apportionment data or (ii) provide reports, estimates, or data
10 relating to the July 21, 2020 Presidential Memorandum on Excluding Illegal Aliens from the
11 Apportionment Base Following the 2020 Census or Executive Order 13880, entitled Collecting
12 Information About Citizenship Status in Connection with the Decennial Census (July 11, 2019),
13 until many weeks into the new administration, ECF No. 455;

14 WHEREAS, the Court granted the 21-day stay, ECF No. 456;

15 WHEREAS, on February 3, 2021 the Parties stipulated to a further 21-day stay of
16 proceedings, pursuant to Defendants agreeing to certain stipulations resolving a number of
17 Plaintiffs’ concerns in this case and providing for the relief Plaintiffs sought, including: (1) that
18 the tabulation of total population by States based on 2020 Census data and described by 13 U.S.C.
19 § 141(b), and the P.L. 94-171 Redistricting Summary Data File based on 2020 Census data and
20 described by 13 U.S.C. § 141(c), would not include or otherwise incorporate any information on
21 citizenship or immigration status, nor would such counts or data products be affected by any
22 information on citizenship or immigration status, and (2) that the Census Bureau would continue
23 data processing for an appropriate period of time and would not, under any circumstances, report
24 the results of the 2020 Census to the Secretary of the Department of Commerce, the President, and
25 Congress, before April 16, 2021—a schedule equivalent to the COVID-19 plan timeline for data
26 processing sought by Plaintiffs’ complaint. That order ensured, in Plaintiffs’ view, that the Bureau
27 would no longer artificially accelerate the count and instead allow its experts to conduct the
28 remaining census processes in accordance with appropriate statistical practices, and provided

1 sufficient rationale to stay the litigation and upcoming trial while the parties worked to resolve any
2 remaining issues;

3 WHEREAS, the Court granted the 21-day stay, ECF No. 467, and later extended it further
4 at the Parties' requests, ECF Nos. 471 and 475; and

5 WHEREAS, the parties have continued to engage in discussions, including as to Plaintiffs'
6 concerns about Defendants' conduct during the data collections/field operations period and
7 Defendants' concerns regarding the production of Census Bureau data that raise privacy and
8 confidentiality concerns regarding Title XIII and may lead to extensive additional litigation in this
9 case, and have reached resolution on the appropriate terms and conditions regarding Plaintiffs'
10 dismissal of their claims without prejudice, as set forth below.

11 **3. STIPULATED ORDER REGARDING DISMISSAL**

12 NOW, THEREFORE, THE PARTIES JOINTLY STIPULATE AND REQUEST THE
13 COURT ORDER DISMISSAL WITHOUT PREJUDICE AS FOLLOWS:

14 1. Plaintiffs' SAC shall be dismissed pursuant to Federal Rule of Civil Procedure
15 41(a) without prejudice and Defendants shall dismiss all pending appeals pursuant to Federal Rule
16 of Appellate Procedure 42(b).

17 2. The tabulation of total population by States based on 2020 Census data and
18 described by 13 U.S.C. § 141(b), and the P.L. 94-171 Redistricting Summary Data File based on
19 2020 Census data and described by 13 U.S.C. § 141(c), will not include or otherwise incorporate
20 any information on citizenship or immigration status, nor will such counts or data products be
21 affected by any information on citizenship or immigration status. The Census Bureau recognizes
22 that the citizenship and immigration status data collected in accord with the "Memorandum
23 Excluding Illegal Aliens From the Apportionment Base Following the 2020 Census" (Presidential
24 Memorandum) and Exec. Order No. 13,880, § 1, 84 Fed. Reg. 33,821, 33,821 (July 16, 2019), are
25 incomplete and that the data products that the Bureau was assembling in accord thereto are
26 statistically unfit for use for apportionment or redistricting purposes.

27 3. The Census Bureau will continue its data processing under an appropriate timeline,
28 whereby the apportionment data from the 2020 Census are scheduled to be released by April 30,

1 2021 and Defendants will not under any circumstances report the results of the 2020 Census to the
2 Secretary of Commerce, the President, and Congress, before April 26, 2021.

3 4. With respect to Plaintiffs' concerns regarding Defendants' conduct during the data
4 collections/field operations period, given that (i) the data-processing timeline for the 2020 Census
5 was extended, (ii) the data collected pursuant to the Presidential Memorandum and Exec. Order
6 13,880 will no longer be used, (iii) the Census Bureau believes that it is premature to assess the
7 quality of the data collections process or the data received from that process until additional
8 reports, assessments and surveys are run, (iv) the Census Bureau has assured Plaintiffs that it has
9 been and is currently actively engaged in compiling various data quality metrics that will provide
10 insight into the quality of data collected and processed during the 2020 Decennial Census,
11 including with the involvement of numerous third parties such as the JASON group and the
12 American Statistical Association, (v) the Census Bureau has provided various information to
13 Plaintiffs consistent with these representations of ongoing diligence, in addition to engaging in
14 numerous detailed conversations (including directly between Census Bureau senior officials and
15 Plaintiffs' experts) in an effort to assure Plaintiffs that the Census Bureau is now operating under
16 appropriate direction, (vi) the Census Bureau is continuing to conduct its Post-Enumeration
17 Survey, which will provide a significant amount of additional information regarding the quality of
18 the data collection process in the months and years to come, and (vii) the likelihood that reengaging
19 the instant litigation will lead to significant disputes and satellite appellate litigation regarding
20 whether and to what extent Title XIII protections prevent disclosure of various data that Plaintiffs
21 are currently entitled to receive, under the orders of this Court, and may ultimately lead to delay
22 in the publication of state population counts and redistricting numbers that may have residual
23 effects, the parties agree that rather than continuing to dispute whether a violation of the
24 Enumeration Clause or Census Act has occurred with respect to Defendants' truncated data
25 collections/field operations period, the parties will instead proceed in the following manner: The
26 Census Bureau will continue to carry out data-quality review for the U.S. total, each of the 50
27 states, District of Columbia, and Puerto Rico, as well as at sub-state levels, including county and
28 census-tract levels.

1 a. The Census Bureau has already released some data quality metrics, which are
2 available [here](#). This data includes:

- 3
- 4 • Self-response rates down to the tract level
 - 5 • Total completion rates at the state level
 - 6 • NRFU workload completion rates for the area census offices

7 b. At or around the release of the apportionment data, the Census Bureau will
8 produce quality metrics for the United States, each of the 50 states, the District of
9 Columbia, and Puerto Rico, as described [here](#). The Census Bureau will produce
10 operational metrics for the United States, each of the 50 states, the District of Columbia
11 and Puerto Rico, including the metrics identified in Exhibit 1.

12 c. Around May 2021, the Census Bureau will release additional information for the
13 50 states, the District of Columbia, and Puerto Rico, including operational quality metrics
14 identified in Exhibit 2.

15 d. Around the date when the Census Bureau releases redistricting products, the
16 Bureau will provide summary level information for sub-state levels, including county and
17 census tract levels (for example, “XX% of tracts had proxy rates greater than 50%”).

18 e. The Census Bureau will continue to conduct its own internal subject matter expert
19 reviews as well as having external experts, like the American Statistical Association,
20 conduct reviews of the processing files for the 2020 Census for both the apportionment
21 numbers and the redistricting data. The Census Bureau will also continue all activities
22 necessary for the Data Quality Executive Guidance Group to review 2020 Census results
23 for accuracy prior to publication. These reviews will include reviewing and assessing
24 issues identified in Plaintiffs Complaint, including:

- 25 • The use of administrative records and quality of enumerations using those
26 records
- 27 • The use of proxies and quality of enumerations using proxy responses
- 28 • The use of “pop-count only” enumerations and other enumerations

1 containing less characteristics and demographic data than a full
2 enumeration

3 f. The Census Bureau agrees to hold video briefings for Plaintiffs every two months
4 to allow an opportunity for questions and answers regarding status of forthcoming data-
5 quality metrics and assessment of released data quality metrics, with one final briefing
6 occurring after the release of the final results from the Post-Enumeration Survey. The
7 briefings will be open to Plaintiffs and their attorneys and will also be open to the public.
8 No less than 48 hours prior to those briefings, the Census Bureau will provide Plaintiffs
9 with the materials it plans on discussing during the briefings, which may include detailed
10 synopses of current data, findings, assessments and data quality metrics at an appropriate
11 level of geographic granularity.

12 5. This Court shall retain jurisdiction over this matter. Should any Plaintiff intend to
13 (1) file a motion to enforce this order, or (2) file a complaint involving the claims currently raised
14 in this litigation, or substantially similar claims, regarding Defendants' conduct regarding the 2020
15 decennial census data collection period, they shall first meet and confer in good faith with
16 Defendants in an attempt to resolve any dispute. No such meet and confer obligation shall be
17 required for any new claims that Plaintiffs may bring, in any court, related to the ultimate counts
18 resulting from the 2020 decennial census. After sixty days following the Census's final briefing
19 described in ¶ 4(f) of this Agreement after the release of the final results from the Post-Enumeration
20 Survey, Plaintiffs (a) forever waive and release Defendants from any liability or claim arising from
21 Defendants' data collection or data processing during the 2020 Census not asserted by that date
22 and (b) may not file or re-file any complaint in any court involving the claims currently raised in
23 this litigation or substantially similar claims. The date identified in the foregoing sentence shall
24 in no event precede June 1, 2022, and does not affect any action filed by any Plaintiff involving a
25 challenge to the ultimate counts resulting from the 2020 decennial census under the Census
26 Bureau's Count Question Resolution program.

27 6. In light of Defendants previously stipulating to grant Plaintiffs the relief they sought
28 in this action regarding the processing period of the 2020 decennial census (*see* ECF 466),

1 Plaintiffs hereby waive and release Defendants from any liability or claim that rely exclusively on
2 information known to them as of the date this Stipulated Order Regarding Dismissal is entered and
3 which liability or claim is based solely on Defendants' seeking to shorten the data processing
4 period of the 2020 decennial census pursuant to the Census Bureau's Replan. However, if
5 Plaintiffs learn of or reasonably believe that new information forms the basis of a new or renewed
6 claim based on data processing, Plaintiffs may re-file a complaint involving the claims currently
7 raised in this litigation or substantially similar claims so long they first meet and confer with
8 Defendants.

9 7. Nothing in this Stipulated Order Regarding Dismissal shall constitute or be
10 construed to constitute an admission of any wrongdoing or liability by Defendants, an admission
11 by Defendants of the truth of any allegations or the validity of any claim asserted in this Action, a
12 concession or admission by Defendants of any fault or omission of any act or failure to act, or a
13 finding that Defendants acted in bad faith.

14 8. The Parties waive and release any request for sanctions arising from this case,
15 including but not limited to any request for sanctions related to discovery or discovery obligations
16 in this case.

17 9. The Defendants will pay Plaintiffs \$1,500,000 in total for Plaintiffs' reasonable
18 attorneys' fees and the United States will pay \$150,000 in costs incurred in this matter to date.

19 Dated: April 22, 2021

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IT IS SO ORDERED.

DATED: _____

LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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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: April 22, 2021

LATHAM & WATKINS LLP

By: /s/ Sadik Huseny
Sadik Huseny

EXHIBIT 1

2020 Census Data Quality Operational Metrics: Release 1

Total Addresses (Count)

Final Status of Addresses

Percent Resolved as:

- Self-Response Occupied
- Self-Response Vacant/Delete (applies to 2020 Census only)
- Nonresponse Followup Occupied
- Nonresponse Followup Vacant
- Nonresponse Followup Delete
- Group Quarters Occupied
- Group Quarters Vacant/Delete
- Other Occupied (2020: UE, RA, SRQA, and Cov Imp; 2010: UE, RUE, RA, and CFU)²
- Other Vacant (2020: UE, RA, SRQA, and Cov Imp; 2010: UE, RUE, RA, and CFU)
- Other Delete (2020: UE, RA, SRQA, and Cov Imp; 2010: UE, RUE, RA, and CFU)
- Unresolved (went to Count Imputation)
 - Unresolved, data collection
 - Unresolved, person unduplication (applies to 2020 Census only)

Resolution of Housing Unit Enumeration

Percent Housing Units (including Deletes) Resolved as:

Self-Response

- Internet (applies to 2020 Census only)
- Paper
- Telephone

All NRFU and Other (2020: UE, RA, SRQA, and Cov Imp; 2010: UE, RUE, RA, and CFU)

Enumeration Activities

- Household Interview
- Proxy
 - Occupied
 - Vacant
 - Delete
- Unknown Respondent Type (applies to 2010 Census only)
- Administrative Records (applies to 2020 Census only)
 - Occupied (applies to 2020 Census only)

² Acronyms defined: NRFU: Nonresponse Followup; UE: Update Enumerate; RUE: Remote Update Enumerate; RA: Remote Alaska; SRQA: Self-Response Quality Assurance; Cov Imp: Coverage Improvement; CFU: Coverage Follow-up

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Vacant (applies to 2020 Census only)

Delete (applies to 2020 Census only)

Unresolved Housing Units (went to Count Imputation)

Unresolved, data collection

Unresolved, person unduplication (applies to 2020 Census only)

Resolution of Housing Unit Enumeration

Percent Housing Units (including Deletes) Resolved as:

Within Self-Response

Internet (applies to 2020 Census only)

Paper

Telephone

Within NRFU and Other (2020: UE, RA, SRQA, and Cov Imp; 2010: UE, RUE, RA, and CFU)

Enumeration Activities

Household Interview

Proxy

Occupied

Vacant

Delete

Unknown Respondent Type (applies to 2010 Census only)

Administrative Records (applies to 2020 Census only)

Occupied (applies to 2020 Census only)

Vacant (applies to 2020 Census only)

Delete (applies to 2020 Census only)

All Nonresponse Followup Occupied

Percent Resolved by:

Household Interview

Proxy

Unknown Respondent Type (applies to 2010 Census only)

Administrative Records (applies to 2020 Census only)

All Nonresponse Followup Vacant

Percent Resolved by:

Proxy

Administrative Records (applies to 2020 Census only)

All Nonresponse Followup Deletes

Percent Resolved by:

Proxy

Administrative Records (applies to 2020 Census only)

Within Nonresponse Followup, Pop Count Only (NRFU Occupied from Household Interviews and Proxy Interviews)

Percent Resolved by:

Household Interview

Proxy Interview

Unknown Respondent Type (applies to 2010 Census only)

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EXHIBIT 2

2020 Census Data Quality Operational Metrics: Release 2

Average Housing Unit Size:

- Of Self-Response Occupied Housing Units
- Of Nonresponse Followup (NRFU) Occupied Housing Units
 - Of NRFU Household Interviews
 - Of NRFU Proxy Interviews
- Of NRFU Administrative Records Enumerations (applies to 2020 Census only)
- Of Other Occupied Housing Units (2020: UE, RA, SRQA, ETL, and Cov Imp; 2010: UE, RUE, RA, ETL, and CFU)
- Of Results from Count Imputation

Percent Single-Person Housing Units:

- Of Self-Response Occupied Housing Units
- Of Nonresponse Followup (NRFU) Occupied Housing Units
 - Of NRFU Household Interviews
 - Of NRFU Proxy Interviews
- Of NRFU Administrative Records Enumerations (applies to 2020 Census only)
- Of Other Occupied Housing Units (2020: UE, RA, SRQA, ETL, and Cov Imp; 2010: UE, RUE, RA, ETL, and CFU)
- Of Results from Count Imputation

Percent Two-Person Housing Units:

- Of Self-Response Occupied Housing Units
- Of Nonresponse Followup (NRFU) Occupied Housing Units
 - Of NRFU Household Interviews
 - Of NRFU Proxy Interviews
- Of NRFU Administrative Records Enumerations (applies to 2020 Census only)
- Of Other Occupied Housing Units (2020: UE, RA, SRQA, ETL, and Cov Imp; 2010: UE, RUE, RA, ETL, and CFU)
- Of Results from Count Imputation

Percent Housing Units Enumerated by:

- Self-Response
 - ID Processing
 - Non-ID Processing
- Nonresponse Followup
 - Household Interview
 - Proxy Interview
- Administrative Records
- Other (2020: UE, RA, SRQA, ETL, and Cov Imp; 2010: UE, RUE, RA, ETL, and CFU)
- By Count Imputation

Percent Housing Units Enumerated as:

- Occupied
 - Self-Response
 - Nonresponse Followup Household and Proxy Enumerations
 - Administrative Records Enumerations (applies to 2020 Census only)
 - Other Enumerations (2020: UE, RA, SRQA, ETL, and Cov Imp; 2010: UE, RUE, RA, ETL, and CFU)
 - By Count Imputation
- Vacant
 - Self-Responses

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Nonresponse Followup Household and Proxy Enumerations
Administrative Records Enumerations (applies to 2020 Census only)
Other Enumerations (2020: UE, RA, SRQA, ETL, and Cov Imp; 2010: UE, RUE, RA,
ETL, and CFU)
By Count Imputation