

1 XAVIER BECERRA
 Attorney General of California
 2 MARK R. BECKINGTON
 ANTHONY R. HAKL
 3 Supervising Deputy Attorneys General
 GABRIELLE D. BOUTIN, SBN 267308
 4 ANNA T. FERRARI, SBN 261579
 TODD GRABARSKY, SBN 286999
 5 R. MATTHEW WISE, SBN 238485
 Deputy Attorneys General
 6 1300 I Street, Suite 125
 P.O. Box 944255
 7 Sacramento, CA 94244-2550
 Telephone: (916) 210-6053
 8 Fax: (916) 324-8835
 E-mail: Gabrielle.Boutin@doj.ca.gov
 9 *Attorneys for Plaintiff State of California, by and
 through Attorney General Xavier Becerra*

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

15 **STATE OF CALIFORNIA, by and through**
 16 **Attorney General Xavier Becerra,**

3:18-cv-01865

17 Plaintiff,

18 v.

**PLAINTIFFS' EVIDENTIARY
 OBJECTION TO DEFENDANTS'
 REPLY IN SUPPORT OF THEIR
 MOTION FOR SUMMARY JUDGMENT**

19 **WILBUR L. ROSS, JR., in his official**
 20 **capacity as Secretary of the U.S.**
Department of Commerce; U.S.
 21 **DEPARTMENT OF COMMERCE; RON**
JARMIN, in his official capacity as Acting
 22 **Director of the U.S. Census Bureau; U.S.**
CENSUS BUREAU; DOES 1-100,

Date: December 7, 2018
 Time: 10:00 a.m.
 Dept: 3
 Judge: The Honorable Richard G.
 Seeborg
 Trial Date: January 7, 2019
 Action Filed: March 26, 2018

23 Defendants.
 24
 25
 26
 27
 28

1 Pursuant to Federal Rule of Civil Procedure 56(c), Plaintiffs hereby submit the following
2 objection to Exhibit A of the Declaration of Carol Federighi, submitted in support of Defendants'
3 Reply in Support of Their Motion for Summary Judgment. Because Exhibit A is inadmissible
4 hearsay, it should be excluded from the Court's consideration of Defendants' Motion for
5 Summary Judgment.

6 **OBJECTION**

7 Exhibit A contains an excerpt from the November 14, 2018, trial testimony of Dr. John
8 Abowd, Chief Scientist of the Census Bureau, in the matter *New York v. United States*
9 *Department of Commerce*, 18-cv-2921 (S.D.N.Y.). Federighi Decl. ¶ 1 & Ex. A. Because
10 Defendants seek to utilize that prior testimony for the truth of the matter asserted therein, *see*,
11 *e.g.*, Defs' Reply, at 4, that testimony is hearsay. Fed. R. Evid. 801(a)-(c).

12 To the extent the Court finds that Exhibit A may be admissible for the purposes of summary
13 judgment under Federal Rule of Civil Procedure 56, Plaintiffs reserve all rights to object to its
14 admissibility—or the admissibility of any other transcript excerpts from the trial in *New York v.*
15 *United States Department of Commerce*—in future proceedings, including at trial.

16 **CONCLUSION**

17 For the foregoing reasons, this Court should sustain Plaintiffs' objection and exclude
18 Exhibit A from its consideration of Defendants' Motion for Summary Judgment.

19
20
21
22
23
24
25
26
27
28

1 Dated: November 30, 2018

Respectfully Submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 MARK R. BECKINGTON
5 ANTHONY R. HAKL
6 Supervising Deputy Attorneys General
7 ANNA T. FERRARI
8 TODD GRABARSKY
9 R. MATTHEW WISE
10 Deputy Attorneys General

11 /s/ Gabrielle D. Boutin
12 GABRIELLE D. BOUTIN
13 Deputy Attorney General
14 *Attorneys for Plaintiff State of California, by and*
15 *through Attorney General Xavier Becerra*

16 Dated: November 30, 2018

17 /s/ Charles L. Coleman
18 CHARLES L. COLEMAN III, SBN 65496
19 DAVID I. HOLTZMAN
20 HOLLAND & KNIGHT LLP
21 50 California Street, 28th Floor
22 San Francisco, CA 94111
23 Telephone: (415) 743-6970
24 Fax: (415) 743-6910
25 Email: charles.coleman@hklaw.com
26 *Attorneys for Plaintiff County of Los Angeles*

27 Dated: November 30, 2018

28 MIKE FEUER
City Attorney for the City of Los Angeles

/s/ Valerie Flores
VALERIE FLORES, SBN 138572
Managing Senior Assistant 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

1 Dated: November 30, 2018

HARVEY LEVINE
City Attorney for the City of Fremont

2
3 /s/ Harvey Levine
SBN 61880
3300 Capitol Ave.
4 Fremont, CA 94538
Telephone: (510) 284-4030
5 Fax: (510) 284-4031
6 Email: hlevine@fremont.gov

7 Dated: November 30, 2018

CHARLES PARKIN
City Attorney for the City of Long Beach

8
9 /s/ Michael J. Mais
MICHAEL K. MAIS, SBN 90444
Assistant City Attorney
10 333 W. Ocean Blvd., 11th Floor
Long Beach CA, 90802
11 Telephone: (562) 570-2200
Fax: (562) 436-1579
12 Email: Michael.Mais@longbeach.gov

13 Dated: November 30, 2018

BARBARA J. PARKER
City Attorney for the City of Oakland

14
15 /s/ Erin Bernstein
MARIA BEE
16 Chief Assistant City Attorney
ERIN BERNSTEIN, SBN 231539
17 Supervising Deputy City Attorney
MALIA MCPHERSON
18 Deputy City Attorney
City Hall, 6th Floor
19 1 Frank Ogawa Plaza
Oakland, California 94612
20 Telephone: (510) 238-3601
Fax: (510) 238-6500
21 Email: ebernstein@oaklandcityattorney.org

22 Dated: November 30, 2018

JOHN LUEBBERKE
City Attorney for the City of Stockton

23
24 /s/ John Luebberke
SBN 164893
25 425 N. El Dorado Street, 2nd Floor
Stockton, CA 95202
26 Telephone: (209) 937-8333
Fax: (209) 937-8898
27 Email: John.Luebberke@stocktonca.gov
28

CERTIFICATE OF SERVICE

Case Name: **State of California, et al. v.** No. **3:18-cv-01865**
Wilbur L. Ross, et al.

I hereby certify that on November 30, 2018, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

PLAINTIFFS' EVIDENTIARY OBJECTION TO DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 30, 2018, at Sacramento, California.

Eileen A. Ennis

Declarant

/s/ Eileen A. Ennis

Signature