

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

8 LATHAM & WATKINS LLP
Melissa Arbus Sherry (*pro hac vice*)
9 melissa.sherry@lw.com
Richard P. Bress (*pro hac vice*)
10 rick.bress@lw.com
Anne W. Robinson (*pro hac vice*)
11 anne.robinson@lw.com
Tyce R. Walters (*pro hac vice*)
12 tyce.walters@lw.com
Gemma Donofrio (*pro hac vice*)
13 gemma.donofrio@lw.com
Christine C. Smith (*pro hac vice*)
14 christine.smith@lw.com
555 Eleventh Street NW, Suite 1000
15 Washington, D.C. 20004
Telephone: 202.637.2200
16 Facsimile: 202.637.2201

LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
Kristen Clarke (*pro hac vice*)
kclarke@lawyerscommittee.org
Jon M. Greenbaum (Bar No. 166733)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (*pro hac vice*)
erosenberg@lawyerscommittee.org
Ajay P. Saini (*pro hac vice*)
asaini@lawyerscommittee.org
Maryum Jordan (Bar No. 325447)
mjordan@lawyerscommittee.org
Pooja Chaudhuri (Bar No. 314847)
pchaudhuri@lawyerscommittee.org
1500 K Street NW, Suite 900
Washington, D.C. 20005
Telephone: 202.662.8600
Facsimile: 202.783.0857

*Additional counsel and representation
information listed in signature block*

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

19 NATIONAL URBAN LEAGUE, et al.,

20 Plaintiffs,

21 v.

22 WILBUR L. ROSS, JR., et al.,

23 Defendants.
24

CASE NO. 5:20-cv-05799-LHK

**PLAINTIFFS' STATEMENT RE:
PRIVILEGE LOGS**

Date: TBD
Time: TBD
Place: Courtroom 8
Judge: Hon. Lucy H. Koh

1 Because Defendants have not provided a privilege log regarding their December 14
2 production, Plaintiffs submit the following Statement Re: Privilege Logs to respectfully propose an
3 additional round of briefing for privilege disputes to ensure that the Court and the parties are not
4 hit with the entirety of the privilege disputes on December 23, 2020.

5 Pursuant to the Court's Amended Order Denying Motion for Reconsideration and
6 Clarifying Order to Compel ("December 13 Order") (Dkt. 380), the parties filed a Joint Statement
7 Re: Privilege Log and Privilege Disputes ("Joint Statement") (Dkt. 382). In the Joint Statement,
8 Defendants represented to the Court that they would provide a privilege log relating to documents
9 in the December 14, 2020 production. Joint Statement at 2 ("**December 14, 2020**: Defendants
10 provide their first privilege log, accompanying their production of over 60,000
11 documents"). Subsequently, the Court referenced the "December 14 privilege log" in its
12 December 15 Procedures For In Camera Review of Documents on Privilege Logs ("Order on
13 Privilege Procedures") (Dkt. 383). Order on Privilege Procedures at 2. Presumably, the Court
14 believed a privilege log had been provided (based on Defendants' representation). Plaintiffs
15 likewise understood the Court's Order on Privilege Procedures to indicate that the Magistrate
16 Judge Panel expected Defendants to produce a December 14 privilege log that would capture any
17 documents withheld from the December 14 production of over 60,000 documents.

18 The only privilege log provided to Plaintiffs to date, with respect to their productions in
19 response to Plaintiffs' November 17, 2020 Requests for Production, corresponds to Defendants'
20 earlier, December 8, 2020 production of 516 documents. That privilege log references a total of 42
21 withheld documents ("December 8 privilege log"), and has now been definitively resolved between
22 the parties with Defendants producing 40 of the documents and continuing to withhold 2.¹ When
23 Plaintiffs asked Defendants whether they had produced a December 14 privilege log, Defendants

24 _____
25 ¹ In accordance with the Order on Privilege Procedures, Plaintiffs provided Defendants with a list of
26 challenged entries in Defendants' December 8 privilege log on December 16, 2020 prior to 3:00 p.m. P.M.
27 Plaintiffs and Defendants then met and conferred on December 16, 2020 prior to 7:00 p.m. P.M., and were
28 able to come to agreement regarding the privilege disputes. As a result, Plaintiffs understand that neither
Plaintiffs nor Defendants will be filing briefing requiring a decision by the Magistrate Judge Panel regarding
redacted or withheld documents from the December 8 privilege log.

1 acknowledged that they did not yet produce privilege log corresponding to the December 14
2 production; to date, no such privilege log has been provided.

3 According to the prior Declaration of Brian DiGiacomo (“DiGiacomo Declaration”) (Dkt.
4 376-2), of the approximately 88,765 documents ordered “to be produced to Plaintiffs by December
5 14, 2020,” Defendants intended to withhold approximately 25,512 documents on the basis of
6 privilege. DiGiacomo Declaration at 1-2. However, the December 8, 2020 privilege log contains
7 merely 42 redacted or withheld documents. Exhibit A. Accordingly, Plaintiffs expect to receive a
8 single privilege log from Defendants covering over 25,000 withheld documents—and perhaps
9 containing many thousands of entries—on December 21, 2020 at 7:00 p.m. PT, in addition to
10 additional log entries corresponding to Defendants’ productions from December 14 through
11 December 21, 2020. To comply with the Court’s Order on Privilege Procedures, Plaintiffs would
12 then be required to review all of these privilege log entries in 20 hours, and provide a list of all
13 challenged objections to Defendants by December 22, 2020 at 3:00 p.m. PT. More significantly, the
14 Magistrate Judge Panel would then be presented with briefing regarding objections to a subset of
15 potentially thousands of privilege log documents on December 23, 2020, and would have to
16 adjudicate this massive volume of privilege disputes in one fell swoop. This is infeasible, and places
17 an enormous burden on both the Magistrate Judge Panel.

18 To ease the burden on the Magistrate Judge Panel and the parties, Plaintiffs respectfully
19 propose that the Court order a modified privilege log schedule that adds the following:

- 20 • **December 17, 2020 by 5:00 p.m. PT:** Defendants produce a privilege log to Plaintiffs
21 containing all documents redacted or withheld from the December 14, December 16, and
22 December 17, 2020 productions.
- 23 • **December 18, 2020 by 10:00 a.m. PT:** Plaintiffs provide Defendants with a list of
24 challenged entries.
- 25 • **December 18, 2020 by 12:00 p.m. PT:** Plaintiffs and Defendants meet and confer on
26 privilege disputes.
- 27 • **December 19, 2020 by 12:00 a.m. PT:** Plaintiffs and Defendants filed simultaneous briefs
28 on unresolved privilege disputes.

1 Plaintiffs propose that the privilege dispute process outlined in the Court's Order on Privilege
 2 Procedures, calling for Defendants to produce a privilege log by December 21 at 7:00 p.m. PT,
 3 continue largely as planned. In this way, Defendants' December 21 privilege log would contain any
 4 documents redacted or withheld from Defendants' December 18, December 19, December 20, and
 5 December 21 productions, and the parties would meet and confer, and submit briefing on these
 6 documents. Accordingly, the Magistrate Judge Panel would receive two, more manageable batches
 7 of privilege disputes, on December 19 and December 23 respectively, and Plaintiffs would not be
 8 required to work through tens of thousands of privilege log entries in less than two days, an
 9 impossible task.

10 For the aforementioned reasons, and in light of Defendants' failure to produce a December
 11 14 privilege log thus far, Plaintiffs respectfully seek an order from the Court modifying the
 12 privilege log dispute process as outlined above. Plaintiffs raised this issue with Defendants
 13 yesterday during a meet and confer, and presented this proposal to Defendants this morning.
 14 Plaintiffs shared a draft of this filing and sought to have a joint filing between the parties.
 15 Defendants were unable to provide a position or their ascent before this filing.

16
 17 Dated: December 17, 2020

LATHAM & WATKINS LLP

18 By: /s/ Sadik Huseny
 19 Sadik Huseny

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

25
 26
 27 Melissa Arbus Sherry (*pro hac vice*)
 melissa.sherry@lw.com
 28 Richard P. Bress (*pro hac vice*)
 rick.bress@lw.com

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Anne W. Robinson (*pro hac vice*)
anne.robinson@lw.com
Tyce R. Walters (*pro hac vice*)
tyce.walters@lw.com
Gemma Donofrio (*pro hac vice*)
gemma.donofrio@lw.com
Christine C. Smith (*pro hac vice*)
christine.smith@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 National Urban League;
League of Women Voters; Black Alliance for
Just Immigration; Harris County, Texas; King
County, Washington; City of San Jose,
California; Rodney Ellis; Adrian Garcia; and
the NAACP*

Dated: December 17, 2020

By: /s/ Jon M. Greenbaum
Kristen Clarke (*pro hac vice*)
kclarke@lawyerscommittee.org
Jon M. Greenbaum (Bar No. 166733)
jgreenbaum@lawyerscommittee.org
Ezra D. Rosenberg (*pro hac vice*)
erosenberg@lawyerscommittee.org
Ajay Saini (*pro hac vice*)
asaini@lawyerscommittee.org
Maryum Jordan (Bar No. 325447)
mjordan@lawyerscommittee.org
Pooja Chaudhuri (Bar No. 314847)
pchaudhuri@lawyerscommittee.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 National Urban League;
City of San Jose, California; Harris County,
Texas; League of Women Voters; King County,
Washington; Black Alliance for Just
Immigration; Rodney Ellis; Adrian Garcia; the
NAACP; and Navajo Nation*

Wendy R. Weiser (*pro hac vice*)
weiserw@brennan.law.nyu.edu
Thomas P. Wolf (*pro hac vice*)
wolft@brennan.law.nyu.edu
Kelly M. Percival (*pro hac vice*)

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28

percivalk@brennan.law.nyu.edu
BRENNAN CENTER FOR JUSTICE
120 Broadway, Suite 1750
New York, NY 10271
Telephone: 646.292.8310
Facsimile: 212.463.7308

*Attorneys for Plaintiffs National Urban League;
City of San Jose, California; Harris County,
Texas; League of Women Voters; King County,
Washington; Black Alliance for Just
Immigration; Rodney Ellis; Adrian Garcia; the
NAACP; and Navajo Nation*

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

Doreen McPaul, Attorney General
dmcpaul@nndoj.org
Jason Searle (*pro hac vice*)
jasearle@nndoj.org
**NAVAJO NATION DEPARTMENT OF
JUSTICE**
P.O. Box 2010
Window Rock, AZ 86515
Telephone: (928) 871-6345

Attorneys for Navajo Nation

Dated: December 17, 2020

By: /s/ Danielle Goldstein
Michael N. Feuer (Bar No. 111529)
mike.feuer@lacity.org
Kathleen Kenealy (Bar No. 212289)
kathleen.kenealy@lacity.org
Danielle Goldstein (Bar No. 257486)
danielle.goldstein@lacity.org
Michael Dundas (Bar No. 226930)
mike.dundas@lacity.org
**CITY ATTORNEY FOR THE CITY OF
LOS ANGELES**
200 N. Main Street, 8th Floor
Los Angeles, CA 90012
Telephone: 213.473.3231
Facsimile: 213.978.8312

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Attorneys for Plaintiff City of Los Angeles

Dated: December 17, 2020

By: /s/ Michael Mutalipassi
Christopher A. Callihan (Bar No. 203010)
legalwebmail@ci.salinas.ca.us
Michael Mutalipassi (Bar No. 274858)
michaelmu@ci.salinas.ca.us
CITY OF SALINAS
200 Lincoln Avenue
Salinas, CA 93901
Telephone: 831.758.7256
Facsimile: 831.758.7257

Attorneys for Plaintiff City of Salinas

Dated: December 17, 2020

By: /s/ Rafey S. Balabanian
Rafey S. Balabanian (Bar No. 315962)
rbalabanian@edelson.com
Lily E. Hough (Bar No. 315277)
lhough@edelson.com
EDELSON P.C.
123 Townsend Street, Suite 100
San Francisco, CA 94107
Telephone: 415.212.9300
Facsimile: 415.373.9435

Rebecca Hirsch (*pro hac vice*)
rebecca.hirsch2@cityofchicago.org
**CORPORATION COUNSEL FOR THE
CITY OF CHICAGO**
Mark A. Flessner
Stephen J. Kane
121 N. LaSalle Street, Room 600
Chicago, IL 60602
Telephone: (312) 744-8143
Facsimile: (312) 744-5185

Attorneys for Plaintiff City of Chicago

1
2 Dated: December 17, 2020

By: /s/ Donald R. Pongrace
Donald R. Pongrace (*pro hac vice*)
dpongace@akingump.com
Merrill C. Godfrey (Bar No. 200437)
mgodfrey@akingump.com
**AKIN GUMP STRAUSS HAUER & FELD
LLP**
2001 K St., N.W.
Washington, D.C. 20006
Telephone: (202) 887-4000
Facsimile: 202-887-4288

*Attorneys for Plaintiff Gila River Indian
Community*

3
4
5
6
7
8
9 Dated: December 17, 2020

By: /s/ David I. Holtzman
David I. Holtzman (Bar No. 299287)
David.Holtzman@hkllaw.com
HOLLAND & KNIGHT LLP
Daniel P. Kappes
Jacqueline N. Harvey
50 California Street, 28th Floor
San Francisco, CA 94111
Telephone: (415) 743-6970
Fax: (415) 743-6910

Attorneys for Plaintiff County of Los Angeles

10
11
12
13
14
15
16
17
18
19
20
21 **ATTESTATION**

22 I, Sadik Huseny, am the ECF user whose user ID and password authorized the filing of this
23 document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred
24 in this filing.

25 Dated: December 17, 2020

LATHAM & WATKINS LLP

26
27 By: /s/ Sadik Huseny
Sadik Huseny
28