

1 STEPHANIE S. CHRISTENSEN
 Acting United States Attorney
 2 SCOTT M. GARRINGER
 Assistant United States Attorney
 3 Chief, Criminal Division
 ANDREW BROWN (Cal. Bar No. 172009)
 4 VICTOR A. RODGERS (Cal. Bar No. 101281)
 MAXWELL COLL (Cal. Bar No. 312651)
 5 Assistant United States Attorneys
 Major Frauds/Asset Forfeiture Sections
 6 1100/1400 United States Courthouse
 312 North Spring Street
 7 Los Angeles, California 90012
 Telephone: (213) 894-0102/2569/1785
 8 Facsimile: (213) 894-6269/0142
 E-mail: Andrew.Brown@usdoj.gov
 9 Victor.Rodgers@usdoj.gov
 Maxwell.Coll@usdoj.gov

10 Attorneys for Defendants
 11 UNITED STATES OF AMERICA AND
 TRACY L. WILKISON AND KRISTI KOONS JOHNSON
 12 IN THEIR OFFICIAL CAPACITY ONLY

13 UNITED STATES DISTRICT COURT
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 15 WESTERN DIVISION

16 PAUL SNITKO, JENNIFER SNITKO,
 JOSEPH RUIZ, TYLER GOTHIER,
 17 JENI VERDON-PEARSONS,
 MICHAEL STORC and TRAVIS MAY,

18 Plaintiffs,

19 v.

20 UNITED STATES OF AMERICA, ET
 21 AL.,

22 Defendants.

Case No. 2:21-cv-04405-RGK-MAR

**DEFENDANTS UNITED STATES OF
 AMERICA, ET AL.'S RESPONSE TO
 PLAINTIFFS' APPLICATION FOR
 LEAVE TO FILE DOCUMENTS
 UNDER SEAL; DESIGNATING
 PARTY'S DECLARATION IN
 SUPPORT OF APPLICATION TO
 FILE UNDER SEAL PURSUANT TO A
 PROTECTIVE ORDER**

23
 24
 25 Defendants United States of America and Tracy L. Wilkison and Kristi Koons
 26 Johnson in their official capacity only (collectively, "the government"), hereby
 27 respectfully submit this response to Plaintiffs' Application for Leave to File Documents
 28 Under Seal and filed July 19, 2022 as Docket No. 113.

1 Plaintiffs' application requests they be allowed to file under seal various items
2 they have identified as Exhibits A and B in their application. As plaintiffs note in their
3 papers, the government advised plaintiffs that the government does not object if
4 plaintiffs wish to file those items under seal. Docket No. 113 at page 3 of 10, lines 13-
5 18.¹

6 The remaining items subject to plaintiffs' application pertain to four deposition
7 transcripts that plaintiffs wish to file publicly in their entirety. Those deposition
8 transcripts are for United States Postal Inspector Lyndon Versoza (103 page deposition
9 transcript), the 30(b)(6) deposition of FBI Special Agent ("SA") Lynne Zellhart (80 page
10 deposition transcript), DEA SA Justin Carlson (112 page deposition transcript) and the
11 30(b)(6) deposition of FBI SA Jessie Murray (125 page deposition transcript). Plaintiffs
12 have lodged those transcripts with the Court as part of their application and referenced
13 them as Exhibits L, M, N and O, respectively, to the Declaration of Robert Frommer.
14 Docket No. 113-8 to 113-11; see also Docket No. 112-8 at ¶¶ 13-15 (referencing the
15 deposition transcripts). Plaintiffs are seeking to file these deposition transcripts in their
16 entirety, notwithstanding the fact their July 19, 2022 opening brief cites only specified
17 pages of three of the four transcripts and contains no mention whatsoever of the fourth
18 (i.e., Carlson transcript, which is Ex. N). As explained in more detail below, the
19 government has no objection to plaintiffs filing publicly those pages of the transcript
20 they have cited in their July 19, 2022 opening brief.

21 When plaintiffs filed their opening brief on July 19, 2022, they citing therein and
22 therefore notified the government for the first time of the pages and lines of the three
23
24

25 ¹ However, the government does not agree that any information regarding the
26 contents of boxes is private. The government designated the Exhibit A and B items as
27 confidential under the protective order because they are items retrievable via the
28 government's computer records (i.e., a system of records) using identifying particulars
that may potentially contain information within the scope of the Privacy Act and
therefore cannot be produced without a protective order. Baker v. Navy, 814 F.2d 1381,
1384 (9th Cir. 1987); 5 U.S.C. § 552a(b)(11); Docket No. 92 (protective order at 1:22-
25).

1 deposition transcripts upon which their brief relied.² Plaintiffs accurately state they
 2 advised the government on July 12 and 14, 2022 they wished to file deposition
 3 transcripts with their opening brief, but plaintiffs never specified what pages of the
 4 transcripts they wished to file.³ Notwithstanding the citations in their brief and the
 5 government’s July 18, 2022 notification that they should file those portions of the
 6 deposition transcript upon which they rely under seal (Rodgers Decl. ¶ 5), plaintiffs
 7 apparently wish to file the four deposition transcripts in their entirety.

8 It is unclear why plaintiffs wish to file entire deposition transcripts as part of their
 9 opening brief, including the transcript of one deponent (SA Carlson) whose testimony is
 10 neither cited nor mentioned in their brief. The customary practice and Local Rule
 11 requirements direct that a filer attach only those pages of discovery, such as a deposition
 12 transcript, that are cited in the filer’s papers. Local Rule 26-2 (“Discovery Documents-
 13 Filing. When a discovery request or response is required to use in a proceeding, only
 14 that part of the document which is in issue shall be filed”) (emphasis added). See also
 15 Rutter Group Practice Guide: Federal Civil Procedure Before Trial ¶ 12:51 (2021)
 16 (discussing the filing of any type of motion, stating “[i]n most courts, only the portions
 17 of the discovery request and response at issue should be filed”) (citing Local Rule 26-2).

18 Entire deposition transcripts are never filed, but instead where appropriate are
 19 lodged with the Court (which plaintiffs have already done via their application) in certain
 20 circumstances involving trials and evidentiary hearings. See Local Rule 32-1.⁴ The

21 _____
 22 ² In this trial-on-the-briefs case, the government’s opposition brief is due August
 9, 2022 and plaintiffs reply brief is due August 16, 2022. Docket No. 103.

23 ³ Undersigned government counsel deposed the seven named plaintiffs-class
 24 representatives on July 13, 14 and 15, thus making it impossible to review 400 pages of
 25 deposition transcripts with the four deponents and designate particular pages and lines of
 26 those transcripts as Confidential immediately as plaintiffs were requesting and before the
 27 30 day deadline allowed in the protective order for the designation (Docket No. 113 at
 1:20-28; Docket No. 92 at 5:1-4 and 6:11-26; Rodgers Decl. ¶¶ 4 and 5), as well as
 address approximately ten additional categories of items plaintiffs wished to file publicly
 with their July 19, 2022 opening brief (see under seal Frommer Decl. ¶¶ 3-6; Rodgers
 Decl. ¶¶ 2-5).

28 ⁴ Local Rule 32-1 provides “Use at Trial or an Evidentiary Hearing. Deposition
 transcripts to be used at trial or an evidentiary hearing shall be marked as provided in
 (footnote cont’d on next page)

1 government does not intend to file entire deposition transcripts of plaintiffs with its
2 opposition on August 9, 2022, but instead will file only those portions of the deposition
3 transcripts the government cites in its opposition brief.

4 Plaintiffs' July 19, 2022 opening brief contains no citation to any portion of the
5 Carlson deposition (Frommer Decl. Ex. N), and therefore Plaintiffs should not be
6 allowed to file that deposition transcript, publicly or otherwise, as part of their July 19
7 brief. Set forth below are the particular pages and lines of deposition transcripts cited in
8 plaintiffs' brief, with reference in parenthesis () to the page and line of the brief where
9 the citation occurs. The government has no objection to plaintiffs filing these specific
10 pages of the deposition transcripts of the Versoza, and Zellhart and Murray 30(b)(6)
11 deposition transcripts publicly, as well as the cover pages to those depositions reflecting
12 the identity of the deponent and attorneys, and respectfully submits that these are the
13 only pages and lines of the transcripts plaintiffs should be permitted to file publicly.
14 Plaintiffs' filing of these pages of their deposition transcript publicly would also allow
15 them to remove the redactions in the July 19, 2022 brief they filed publicly. The pages
16 are set forth below:

17 Deposition of SA Lyndon Versoza, Exhibit L

18 1116:4-16 (2:28); 1121:14-19 (2:24-25); 1122:18-23 (2:21-22); 1132:19-1133:2 (3:19);
19 1135:10-19 (3:22); 1135:22-25 (3:23); 1152:8-23 (6:15); and 1153:22-1154:12 (7:18).

20 Deposition of 30(b)(6) Witness SA Lynne Zellhart, Exhibit M

21 1215:3-9 (5:25); 1217:9 (19:28); 1217:12-17 (6:9-10); 1218:17-21 (5:27-28); 1221:13-
22 19 (2:15); 1221:20-23 (2:17); 1230:20-24 (3:20); 1239:8-18 (3:12); 1249:24-1250:9
23 (7:11 and 10:17); 1251:16-25 (7:10); 1252:2-9 (7:7-8); 1255:12-18 (11:15); 1279:23-
24 1280:3 (12-19-13:1); and 1281:15-22 (13:5-6).

25 ///

26 ///

27 _____
28 L.R. 16-2.7. The original deposition shall be lodged with the Clerk on or before the first
day of a trial or at least ten (10) days before an evidentiary hearing unless required to be
filed earlier under L.R. 16-11.2." Emphasis added.

Deposition of 30(b)(6) Witness SA Jessie Murray, Exhibit O

1
2 1494:3-1495:7 (4:12); 1525:15-1526:5 (3:6); 1526:23-1527:3 (3:8); 1527:10-18 (3:7);
3 1533:8-14 (4:2); 1534:21-24 (4:3); 1534:25-1535:12 (4:2); 1537:14-16 (4:4); 1547:23-
4 1548:2 (6:19); 1554:4-11 (6:25); 1556:13-16 (6:25); 1557:16-23 (7:20 and 11:8, and
5 6:25 [1557:21-23]); 1560:2-15 (4:10); 1562:1-17 (4:9, 10:26-27; 14:16-17; and 15:1);
6 1563:16-21 (4:10); 1563:22-1564:7 (10:27); 1564:4-7 (4:10); and 1573:20-1574:2
7 (6:28).

8 Respectfully submitted,

9 Dated: July 22, 2022

10 STEPHANIE S. CHRISTENSEN
Acting United States Attorney
11 SCOTT M. GARRINGER
Assistant United States Attorney
Chief, Criminal Division

12 /s/ Victor A. Rodgers

13 ANDREW BROWN
14 VICTOR A. RODGERS
MAXWELL COLL

15 Assistant United States Attorneys
16 Attorneys for Defendants
UNITED STATES OF AMERICA, et al.