

The Honorable Robert S. Lasnik

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

SUSAN SOTO PALMER, et al.,

Plaintiffs,

v.

STEVEN HOBBS, in his official capacity
as Secretary of State of Washington, and
the STATE OF WASHINGTON,

Defendants/
Cross-Defendants,

and

JOSE TREVINO, ISMAEL G. CAMPOS,
and State Representative ALEX YBARRA,

Intervenor-Defendants/
Cross-Plaintiffs.

NO. 3:22-cv-5035-RSL

STATE OF WASHINGTON'S
ANSWER TO INTERVENOR-
DEFENDANTS'/CROSS-
PLAINTIFFS' CROSSCLAIM
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Defendant State of Washington (the State) hereby answers Intervenor-
Defendants'/Cross-Plaintiffs' Crossclaim (Dkt. # 103 at pp. 33-54) as follows. The State
reserves the right to amend this pleading as permitted by the Court's rules and orders and
Federal Rule of Civil Procedure 15.

PRELIMINARY STATEMENT TO CROSS-CLAIM

1
2 1. The State admits that as part of the 2021 redistricting process, the Washington
3 State Redistricting Commission approved, and the Washington State Legislature amended and
4 ratified, a plan for the redistricting of state legislative districts. The remainder of this paragraph
5 states legal conclusions and argument to which no response is required. To the extent a further
6 response is required, the State denies the remaining allegations.

7 2. The State is without information sufficient to form a belief as to the truth of the
8 remaining allegations in this paragraph and therefore denies them.

9 3. This paragraph states legal conclusions and argument to which no response is
10 required.

11 4. This paragraph states legal conclusions and argument to which no response is
12 required.

13 5. This paragraph states legal conclusions and argument to which no response is
14 required.

15 6. This paragraph states legal conclusions and argument to which no response is
16 required.

17 7. This paragraph states legal conclusions and argument to which no response is
18 required. To the extent a further response is required, denied.

CROSSCLAIM

19
20 8. This paragraph states Intervenor–Defendants’/Cross–Plaintiffs’ intent, to which
21 no response is required. To the extent a further response is required, the State admits that
22 Intervenor–Defendants/Cross–Plaintiffs allege that Washington State Legislative District 15 in
23 the Yakima Valley violates the Equal Protection Clause of the Fourteenth Amendment of the
24 United States Constitution, but specifically denies that their Crossclaim has any merit.

25 9. The State admits that as part of the 2021 redistricting process, the Washington
26 State Redistricting Commission approved, and the Washington State Legislature amended and

1 ratified, a plan for the redistricting of state legislative districts. The State is without information
2 sufficient to form a belief as to the truth of the remaining allegations in this paragraph and
3 therefore denies them.

4 10. This paragraph states legal conclusions and argument to which no response is
5 required.

6 11. This paragraph states legal conclusions and argument to which no response is
7 required.

8 12. This paragraph states legal conclusions and argument to which no response is
9 required. To the extent a response is required, the State admits only that Legislative District 15
10 crosses five county lines and bisects two of the largest cities in Central and Eastern Washington.
11 The State denies that the Legislative District “flies in the face of traditional districting principles
12 (as well as Washington state constitutional and statutory requirements).” The State is without
13 information sufficient to form a belief as to the truth of the remaining allegations in this
14 paragraph and therefore denies them.

15 13. The State admits only that some Commissioners expressed support for a majority-
16 Latino Citizen Voting Age Population (CVAP) legislative district as an element of the
17 Redistricting Plan. The State is without information sufficient to form a belief as to the truth of
18 the remaining allegations in this paragraph and therefore denies them.

19 14. The State is without information sufficient to form a belief as to the truth of the
20 allegations in this paragraph and therefore denies them.

21 15. This paragraph states legal conclusions and argument to which no response is
22 required.

23 16. This paragraph states legal conclusions and argument to which no response is
24 required.

25 17. This paragraph states legal conclusions and argument to which no response is
26 required.

1 18. This paragraph states legal conclusions and argument to which no response is
2 required. To the extent a further response is required, the State admits only that complying with
3 Section 2 of the VRA is a compelling state interest.

4 19. The State admits that at least two Commissioners expressed the view that
5 Section 2 of the Voting Rights Act compelled the creation of a majority-Latino CVAP district.
6 The State admits that at least one Commissioner expressed the view that Section 2 of the Voting
7 Rights Act compelled the creation of a majority-Latino CVAP district that enabled Latino voters
8 to elect their candidates of choice

9 20. The State admits that at least two Commissioners expressed the view that
10 Section 2 of the Voting Rights Act compelled the creation of a majority-Latino CVAP district,
11 but denies that this belief was “based [primarily on] upon a short presentation solicited by the
12 State Senate Democratic Caucus and created by an interested advocacy organization.” The State
13 also admits that at least some of the Commissioners were aware of prior litigation challenging
14 methods of election in the Yakima Valley.

15 21. This paragraph states legal conclusions and argument to which no response is
16 required.

17 22. This paragraph states legal conclusions and argument to which no response is
18 required.

19 23. This paragraph states legal conclusions and argument to which no response is
20 required. To the extent a response is required, the State admits that this paragraph accurately
21 provides the citation for cites *Thornburg v. Gingles*, 478 U.S. 30 (1986), which speaks for itself.

22 24. This paragraph states legal conclusions and argument to which no response is
23 required. To the extent a response is required, the State admits only that the three conditions
24 identified in the paragraph roughly track the three-preconditions stated in *Thornburg*.

1 25. This paragraph states legal conclusions and argument to which no response is
2 required. To the extent a further response is required, the State denies the allegations in this
3 paragraph.

4 26. This paragraph states legal conclusions and argument to which no response is
5 required. To the extent a further response is required, the State denies the allegations in this
6 paragraph.

7 27. This paragraph states legal conclusions and argument to which no response is
8 required. To the extent a further response is required, the State denies the allegations in this
9 paragraph.

10 28. This paragraph states legal conclusions and argument to which no response is
11 required. To the extent a further response is required, the State denies the allegations in this
12 paragraph.

13 29. This paragraph's allegation that "race-based sorting neither served a compelling
14 government interest nor was narrowly tailored to that end" and therefore "violates the Equal
15 Protection Clause of the Fourteenth Amendment" is a legal conclusion and argument to which
16 no response is required. To the extent a further response is required, the State denies the
17 allegation. The State is without information sufficient to form a belief as to the truth of the
18 remaining allegations in this paragraph and therefore denies them.

19 30. This paragraph states legal conclusions and argument to which no response is
20 required. To the extent a further response is required, the State denies the allegations in this
21 paragraph.

22 31. This paragraph asserts Intervenor-Defendants/Cross-Plaintiffs' requests for
23 relief, to which no response is required. To the extent a response is required, the State denies that
24 Intervenor-Defendants/Cross-Plaintiffs are entitled to the relief requested with respect to the
25 State of Washington.
26

PARTIES

32. The State is without information sufficient to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

33. The State admits that Intervenor–Defendant/Cross–Plaintiff Alex Ybarra is a State Representative for Legislative District 13. The State is without information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies them.

34. The State admits that the Intervenor–Defendants’/Cross–Plaintiffs’ Crossclaim purports to state a Crossclaim against Secretary Hobbs in his official capacity as the Secretary of State of Washington and that Legislative District 15 is comprised of voters from two or more counties. The referenced provisions of the Revised Code of Washington speak for themselves. To the extent a further response is required, the State admits that the paragraph accurately quotes portions of the Revised Code of Washington.

35. This paragraph consists of legal conclusion and argument to which no response is required. To the extent a further response is required, the State admits.

JURISDICTION AND VENUE

36. This paragraph states legal conclusions and argument to which no response is required.

37. The State admits that the State of Washington is a state of the United States of America and that Secretary Hobbs is a state official who resides in Washington and performs his official duties in Olympia, Washington. The remainder of this paragraph consists of legal conclusions and argument to which no response is required.

38. This paragraph states legal conclusions and argument to which no response is required. To the extent a further response is required, the State admits only that Secretary Hobbs is a state official performing his official duties in the Western District of Washington and that venue is proper in this judicial district.

THREE-JUDGE COURT

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2 39. This paragraph is a request for a three-judge court, to which no response is
3 required. To the extent a further response is required, 28 U.S.C. § 2284 and Intervenor-
4 Defendants’/Cross-Plaintiffs’ Crossclaim for Declaratory and Injunctive Relief speaks for
5 itself.

6 40. The State admits that Intervenor-Defendants/Cross-Plaintiffs purport to
7 challenge the apportionment of Legislative District 15 through their Crossclaim asserted under
8 the Fourteenth Amendment.

9 41. This paragraph states legal conclusions and argument to which no response is
10 required.

FACTS

Washington State Redistricting

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13 42. This paragraph states legal conclusions and argument to which no response is
14 required. To the extent a further response is required, the State admits only that the paragraph
15 accurately quotes a portion of the Washington State Constitution, which speaks for itself.

16 43. The State admits that the Commission was composed of five members, four of
17 whom were voting members, who selected a fifth, non-voting member to serve as the
18 Commission’s chair. The remaining allegations in this paragraph state legal conclusions to which
19 no response is required. To the extent a further response is required, the State admits only that
20 the paragraph accurately quotes a portion of the Washington State Constitution, which speaks
21 for itself.

22 44. This paragraph states legal conclusions and argument to which no response is
23 required. To the extent a further response is required, the State admits only that the paragraph
24 accurately quotes a portion of the Washington State Constitution, which speaks for itself.
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1 45. This paragraph states legal conclusions and argument to which no response is
2 required. To the extent a further response is required, the State admits only that the paragraph
3 accurately quotes a portion of the Washington State Constitution, which speaks for itself.

4 46. This paragraph states legal conclusions and argument to which no response is
5 required. To the extent a further response is required, the State admits only that the paragraph
6 accurately quotes a portion of the Revised Code of Washington, which speaks for itself.

7 47. This paragraph states legal conclusions and argument to which no response is
8 required. To the extent a further response is required, the State admits only that the paragraph
9 accurately quotes a portion of the Washington State Constitution, which speaks for itself.

10 48. This paragraph states legal conclusions and argument to which no response is
11 required. To the extent a further response is required, the State admits only that the paragraph
12 accurately quotes a portion of the Washington State Constitution, which speaks for itself.

13 49. This paragraph states legal conclusions and argument to which no response is
14 required. To the extent a further response is required, the State admits only that the paragraph
15 accurately quotes a portion of the Revised Code of Washington, which speaks for itself.

16 50. This paragraph states legal conclusions and argument to which no response is
17 required. To the extent a further response is required, the State admits only that the paragraph
18 accurately quotes a portion of the Revised Code of Washington, which speaks for itself.

19 51. This paragraph states legal conclusions and argument to which no response is
20 required. To the extent a further response is required, the State admits only that the paragraph
21 accurately quotes a portion of the Revised Code of Washington, which speaks for itself.

22 52. This paragraph states legal conclusions and argument to which no response is
23 required. To the extent a further response is required, the State admits only that the paragraph
24 accurately quotes a portion of the Revised Code of Washington, which speaks for itself.
25
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The History of Legislative District 15

53. The State admits that from 1931 to 1982 and from 2002 to 2021, Legislative District 15 contained a portion of Yakima County, and that from 1982 to 2001, it contained a portion of Yakima County as well as portions of neighboring counties but never Othello or Pasco. The State denies any remaining allegations in this paragraph.

54. The State admits that this paragraph includes an accurate representation of the 1931–1957 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE 1889–2019 (2019). The State further admits that the section of the image designated as Legislative District 15 contains only a portion of Yakima County.

55. The State admits that this paragraph includes an accurate representation of the 1957–1965 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE 1889–2019 (2019). The State further admits that the section of the image designated as Legislative District 15 contains only a portion of Yakima County.

56. The State admits that this paragraph includes an accurate representation of a portion of the 1965–1972 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE 1889–2019 (2019). The State further admits that the section of the image designated as Legislative District 15 contains only a portion of Yakima County.

57. The State admits that this paragraph includes an accurate representation of a portion of the 1972–1981 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE 1889–2019 (2019). The State further admits that the section of the image designated as Legislative District 15 contains only a portion of Yakima County.

58. The State admits that this paragraph includes an accurate representation of a portion of the 1982–1991 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE 1889–2019 (2019). The State further admits that the section of the image designated as Legislative District 15 contains portions of Yakima and Benton Counties.

1 59. The State admits that this paragraph includes an accurate representation of a
2 portion of the 1991–2001 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE
3 1889–2019 (2019). The State further admits that the section of the image designated as
4 Legislative District 15 contains portions of Yakima, Benton, Klickitat, and Skamania Counties.

5 60. The State admits that this paragraph includes an accurate representation of a
6 portion of the 2002–2011 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE
7 1889–2019 (2019). The State further admits that the section of the image designated as
8 Legislative District 15 contains portions of Yakima, Klickitat, Skamania, and Clark Counties.

9 61. The State admits that this paragraph includes an accurate representation of a
10 portion of the 2012–2021 district map in STATE OF WASH., MEMBERS OF THE LEGISLATURE
11 1889–2019 (2019). The State further admits that the section of the image designated as
12 Legislative District 15 contains only a portion of Yakima County. The State denies that this is
13 the “current version” of Legislative District 15.

14 62. Admitted.

15 63. Admitted.

16 64. Admitted.

17 65. Admitted.

18 66. Admitted.

19 67. Admitted.

20 68. The State admits only that none of the Commissioner-proposed maps released on
21 September 21, 2021 included the cities of Othello or Pasco in Legislative District 15. The State
22 is without information sufficient to form a belief as to the truth of the remaining allegations in
23 this paragraph and therefore denies them.

24 69. The State admits that the image in this paragraph appears to be a partial
25 reproduction of the map proposed by Commissioner Sims, which speaks for itself. The State
26 further admits that this paragraph accurately quotes portions of Commissioner Sims’ statement

1 on her proposal, which speaks for itself. To the extent a further response is required, the State
2 denies the allegations in this paragraph.

3 70. The State admits that the image in this paragraph appears to be a partial
4 reproduction of the map proposed by Commissioner Walkinshaw, which speaks for itself. The
5 State further admits that this paragraph accurately quotes portions of Commissioner
6 Walkinshaw's statement on his proposal, which speaks for itself. To the extent a further response
7 is required, the State denies the allegations in this paragraph.

8 71. The State admits that the image in this paragraph appears to be a partial
9 reproduction of the map proposed by Commissioner Fain, which speaks for itself. The State
10 further admits that this paragraph accurately quotes portions of Commissioner Fain's statement
11 on his proposal, which speaks for itself. To the extent a further response is required, the State
12 denies the allegations in this paragraph.

13 72. The State admits that the image in this paragraph appears to be a partial
14 reproduction of the map proposed by Commissioner Graves, which speaks for itself. The State
15 further admits that this paragraph accurately quotes portions of Commissioner Graves' statement
16 on his proposal, which speaks for itself. To the extent a further response is required, the State
17 denies the allegations in this paragraph.

18 73. The State admits that the hyperlink in this paragraph leads to the cited
19 presentation, which speaks for itself. The State is without information sufficient to form a belief
20 as to the truth of the remaining allegations in this paragraph and therefore denies them.

21 74. Admitted.

22 75. The presentation referenced in this paragraph speaks for itself, and no further
23 response is required.

24 76. The presentation referenced in this paragraph speaks for itself, and no further
25 response is required.
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1 77. The presentation referenced in this paragraph speaks for itself, and no further
2 response is required.

3 78. The presentation referenced in this paragraph speaks for itself, and no further
4 response is required.

5 79. The presentation referenced in this paragraph speaks for itself, and no further
6 response is required.

7 80. The State admits only that the paragraph accurately quotes the October 21, 2021
8 statement of Commissioner Walkinshaw posted on the website cited in this paragraph, and that
9 statement speaks for itself. To the extent a further response is required, the State denies the
10 remaining allegations in this paragraph.

11 81. The State admits only that quoted language is attributed to Commissioner
12 Walkinshaw and appears on the website cited and hyperlinked in this paragraph. That quotation
13 speaks for itself, and no further response is required.

14 82. The State admits only that on October 25, 2021, Commissioners Sims and
15 Walkinshaw released revised proposed legislative maps, which speak for themselves. The State
16 is without information sufficient to form a belief as to the truth of the remaining allegations in
17 this paragraph and therefore denies them.

18 83. The State admits only that the quoted language in this paragraph appears in the
19 news release cited and hyperlinked in this paragraph. The news release speaks for itself, and no
20 further response is required.

21 **Legislative District 15 under the 2021 Plan**

22 84. The State admits only that the quoted language appears in the cited Washington
23 Supreme Court Order, which speaks for itself.

24 85. The State admits only that the quoted language appears in the cited Washington
25 Supreme Court Order, which speaks for itself.

26 86. Admitted.

1 87. This paragraph states legal conclusions to which no response is required. To the
2 extent a further response is required, the State admits these allegations.

3 88. The State admits that the image in this paragraph appears to be a reproduction of
4 the map of the new Legislative District 15 as defined by the Commission’s approved plan. The
5 remainder of the allegations in this paragraph state legal conclusions and argument to which no
6 response is required. To the extent a further response is required, the State denies the allegations
7 in this paragraph.

8 89. This paragraph states legal conclusions and argument to which no response is
9 required. To the extent a further response is required, the State admits only that Legislative
10 District 15 includes portions of Yakima and Pasco and extends to Mattawa and Othello. Insofar
11 as Intervenor–Defendants’/Cross–Plaintiffs’ allegations seek to characterize Legislative District
12 15, the map speaks for itself. The State is without information sufficient to form a belief as to
13 the truth of the allegation that “the central portion of the district is sparsely populated,” and
14 therefore denies it. The State denies the remaining allegations in this paragraph.

15 90. This paragraph states legal conclusions and argument to which no response is
16 required. To the extent a response is required, the State admits only that Legislative District 15
17 includes portions of five counties but no complete county. Insofar as Intervenor–
18 Defendants/Cross–Plaintiffs’ allegations seek to characterize Legislative District 15, the map
19 speaks for itself. The State denies the remaining allegations in this paragraph.

20 91. This paragraph states legal conclusions and argument to which no response is
21 required. To the extent a response is required, the State admits only that Legislative District 15
22 bifurcates Yakima, Pasco, Grandview, and Moxee and that Pasco, Othello, and the Hanford
23 Nuclear Site have not previously been in the same legislative district as the City or County of
24 Yakima based on the maps Intervenor–Defendants/Cross–Plaintiffs excerpted in their
25 Crossclaim. Insofar as Intervenor–Defendants/Cross–Plaintiffs’ allegations seek to characterize
26

1 Legislative District 15, the map speaks for itself. The State denies the remaining allegations in
2 this paragraph.

3 92. The State admits only that the boundaries of the new Legislative District 15
4 approved by the Commission are different in certain respects from prior Legislative District 15
5 boundaries and those of publicly proposed districts by the Commissioners during the 2021
6 redistricting process. To the extent a further response is required, the State denies the allegations
7 in this paragraph.

8 93. Admitted.

9 94. The State is without information sufficient to form a belief as to the truth of the
10 allegations in this paragraph and therefore denies them.

11 95. This paragraph states legal conclusions and argument to which no response is
12 required. To the extent a further response is required, the State the State denies the allegations
13 in this paragraph.

14 96. This paragraph states legal conclusions and argument to which no response is
15 required. To the extent a further response is required, the State denies the allegations in this
16 paragraph.

17 97. This paragraph states legal conclusions and argument to which no response is
18 required. To the extent a further response is required, the State denies the allegations in this
19 paragraph.

20 98. This paragraph states legal conclusions and argument to which no response is
21 required. To the extent a further response is required, the State denies the allegations in this
22 paragraph.

23 99. This paragraph states legal conclusions and argument to which no response is
24 required. To the extent a further response is required, the State denies the allegations in this
25 paragraph.

1 100. This paragraph states legal conclusions and argument to which no response is
2 required. To the extent a further response is required, the State denies the allegations in this
3 paragraph.

4 **CROSSCLAIM**

5 **(The Violation of the Equal Protection Clause of the United States Constitution)**

6 101. The State restates and incorporates by reference, as if fully set forth herein, its
7 responses to the allegations in the paragraphs above.

8 102. This paragraph states legal conclusions and argument to which no response is
9 required. To the extent a further response is required, the State admits only that this paragraph
10 accurately quotes a portion of Section 1 of the Fourteenth Amendment to the U.S. Constitution,
11 which speaks for itself.

12 103. This paragraph states legal conclusions and argument to which no response is
13 required. To the extent a further response is required, the State is without information sufficient
14 to form a belief as to the truth of the allegations in this paragraph and therefore denies them.

15 104. This paragraph states legal conclusions and argument to which no response is
16 required. To the extent a further response is required, the State denies the allegations in this
17 paragraph.

18 105. This paragraph states legal conclusions and argument to which no response is
19 required. To the extent a further response is required, the State denies the allegations in this
20 paragraph.

21 106. This paragraph states legal conclusions and argument to which no response is
22 required. To the extent a further response is required, the State denies the allegations in this
23 paragraph.

24 107. This paragraph states legal conclusions and argument to which no response is
25 required. To the extent a further response is required, the State denies the allegations in this
26 paragraph.

1 108. This paragraph states legal conclusions and argument to which no response is
2 required. To the extent a further response is required, the State denies the allegations in this
3 paragraph.

4 109. This paragraph states legal conclusions and argument to which no response is
5 required. To the extent a further response is required, the State denies the allegations in this
6 paragraph.

7 110. This paragraph states legal conclusions and argument to which no response is
8 required. To the extent a further response is required, the State denies the allegations in this
9 paragraph.

10 111. This paragraph states legal conclusions and argument to which no response is
11 required. To the extent a further response is required, the State denies the allegations in this
12 paragraph.

13 **INTERVENOR-DEFENDANTS'/CROSS-PLAINTIFFS' PRAYER FOR RELIEF**

14 This section of the Crossclaim asserts Intervenor-Defendants/Cross-Plaintiffs' requests
15 for relief, to which no response is required. To the extent a response is required, the State denies
16 that Intervenor-Defendants/Cross-Plaintiffs are entitled to the relief requested with respect to
17 the State of Washington.

18 **AFFIRMATIVE DEFENSES**

19 The State's affirmative defenses to Intervenor-Defendants'/Cross-Plaintiffs' Crossclaim
20 are set forth below. By setting forth the following defenses, the State does not assume the burden
21 of proof for matter other than those for which it has the burden of proof as a matter of law. The
22 State reserves the right to supplement these defenses.

- 23 1. Intervenor-Defendants'/Cross-Plaintiffs' Crossclaim is non-justiciable.
24 2. Intervenor-Defendants/Cross-Plaintiffs sued the wrong parties.
25 3. Intervenor-Defendants/Cross-Plaintiffs have failed to join all necessary parties.
26

1 4. Intervenor–Defendants//Cross–Plaintiffs have failed to allege sufficient facts that
2 would entitle them to relief.

3 **STATE OF WASHINGTON’S REQUEST FOR RELIEF**

4 Wherefore, the State prays that the Court:

- 5 1. Dismiss Intervenor–Defendants’/Cross–Plaintiffs’ Crossclaim with prejudice;
6 2. Deny all relief that Intervenor–Defendants/Cross–Plaintiffs request; and
7 3. Grant the State such other and further relief as the Court may deem just and
8 proper.

9 DATED this 23rd day of November, 2022.

10 ROBERT W. FERGUSON
11 Attorney General

12 s/ Cristina Sepe

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*Attorneys for Defendant/Cross–Defendant
State of Washington*

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court’s CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 23rd day of November 2022, at Seattle, Washington.

s/ Cristina Sepe
CRISTINA SEPE, WSBA No. 53609
Deputy Solicitor General

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