

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

NO. 3:22-cv-5035-RSL  
  
DEFENDANT STATE OF  
WASHINGTON'S MOTION FOR  
INQUIRY CONCERNING  
POTENTIAL CONFLICTS OF  
INTEREST  
  
NOTE FOR MOTION CALENDAR:  
MARCH 3, 2023

**I. INTRODUCTION<sup>1</sup>**

The State of Washington respectfully requests that the Courts in both *Soto Palmer v. Hobbs*, No. 3:22-cv-5035-RSL, and *Garcia v. Hobbs*, No. 3:22-cv-05152-RSL-DGE-LJCV, conduct an inquiry into potential conflicts of interest that could affect the ability of counsel for Plaintiff Benancio Garcia and Intervenor-Defendants Ismael Campos, Jose Trevino, and Alex

<sup>1</sup> This identical motion is being filed concurrently in both *Soto Palmer v. Hobbs* and *Garcia v. Hobbs*.

1 Ybarra (the *Soto Palmer* Intervenors) to represent them in these cases. Mr. Garcia and the *Soto*  
 2 *Palmer* Intervenors are represented by the same counsel—Andrew Stokesbary and attorneys  
 3 with the law firm of Holtzman Vogel—and recent deposition testimony appears to confirm a  
 4 conflict between Mr. Garcia and the *Soto Palmer* Intervenors that either cannot be waived or, at  
 5 a minimum, has not been waived with informed consent.

6 Counsel for the State are filing this motion because it has an interest and an obligation to  
 7 ensure it represents its client, the State of Washington, competently (RPC 1.1) and diligently  
 8 (RPC 1.3). Those duties include raising potential conflicts with the Court as they arise and  
 9 involving the Court in the process of addressing a potential conflict before it undermines a  
 10 proceeding or confidence in the effective administration of justice. *Cf. Manhalt v. Reed*,  
 11 847 F.2d 576, 583-84 (9th Cir. 1988) (observing, after concluding that the defendant’s lawyer’s  
 12 conflict of interest adversely affected his lawyer’s performance, that prosecutors “had an ample  
 13 opportunity to bring the potential conflict to the trial judge’s attention and move for  
 14 disqualification if appropriate”).

15 The State does not take a position on whether disqualification is necessary or appropriate  
 16 here. But in light of the potential conflict, the State requests that the respective Courts exercise  
 17 their “inherent power to protect the integrity of their processes,” *FMC Techs., Inc. v.*  
 18 *Edwards*, 420 F. Supp. 2d 1153, 1156 (W.D. Wash. 2006) (cleaned up), and conduct an inquiry  
 19 to determine whether counsel must be disqualified from representing Mr. Garcia and/or the  
 20 *Soto Palmer* Intervenors.

## 21 II. BACKGROUND

### 22 A. The *Soto Palmer* and *Garcia* Lawsuits and the Potential for Conflict

23 The potential conflict of interest arises from two cases in which Mr. Garcia and the *Soto*  
 24 *Palmer* Intervenors appear to take opposing positions. In *Garcia v. Hobbs*, Mr. Garcia challenges  
 25 the constitutionality of Legislative District 15, as enacted in the 2021 redistricting cycle, as an  
 26 illegal racial gerrymander. *Garcia*, Case No. 3:22-cv-5152-RSL, Dkt. #14 at 1. Among other

1 remedies, Mr. Garcia requests injunctive relief barring Secretary Hobbs and the State from  
2 giving effect to the enacted boundaries of Legislative District 15 and ordering the creation of a  
3 revised Legislative District map. *Id.* at 18. In contrast, in *Soto Palmer v. Hobbs*, the *Soto Palmer*  
4 Intervenors ask the Court to dismiss the plaintiffs' Voting Rights Act challenge to Legislative  
5 District 15, which would have the effect of maintaining Legislative District 15 as enacted. *Soto*  
6 *Palmer*, No. 3:22-cv-5035-RSL (*Soto Palmer*), Dkt. #77 at 32.

7 Mr. Stokesbary represents both Mr. Garcia and the *Soto Palmer* Intervenors. *Garcia*  
8 Dkt. #14; *Soto Palmer* Dkt. #77. Attorneys from the law firm Holtzman Vogel Baran Torchinsky  
9 & Josefiak PLLC have appeared in *Soto Palmer* on behalf of *Soto Palmer* Intervenors. *See*  
10 *Soto Palmer* Dkts. ##86, 88, 90, 96, & 119. Holtzman Vogel attorneys have not appeared in the  
11 *Garcia* matter, but on February 2, 2023, Phil Gordon of Holtzman Vogel informed the State that  
12 Holtzman Vogel was also representing Mr. Garcia and that a motion for admission *pro hac vice*  
13 in that matter would be forthcoming. Declaration of Andrew Hughes (Hughes Decl.), Ex. 1. Mr.  
14 Garcia has confirmed this representation. *Id.*, Ex. 2 at 57:14-59:11.

15 The issue of a potential conflict was previously brought to the attention of the *Soto*  
16 *Palmer* Court when *Soto Palmer* Intervenors first sought to intervene in this litigation. In  
17 opposing intervention, *Soto Palmer* Plaintiffs pointed out that Mr. Stokesbary's representation  
18 of Mr. Garcia, "a party seeking to challenge LD 15[,] and [Intervenors'] apparent desire here to  
19 defend it at least raises questions as to whether their participation as intervenors is appropriate."  
20 *Soto Palmer*, Dkt. #64 at 12. In response, *Soto Palmer* Intervenors' Counsel argued that "while  
21 Intervenors share counsel with the plaintiff in *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash.  
22 filed March 15, 2022) (challenging Legislative District 15 under the Fourteenth Amendment),  
23 there is no conflict to argue that a district is an unconstitutional racial gerrymander under the  
24 Equal Protection Clause but is not also covered by section 2 of the VRA." *Soto Palmer*, Dkt. #67  
25 at 7. In that early posture, the *Soto Palmer* Court concluded that "[a]t present," it did "not  
26 perceive an insurmountable conflict between the claims set forth in *Garcia v. Hobbs*, C22-

1 5152RSL, and intervenors' opposition to plaintiffs' Section 2 claim." *Soto Palmer*, Dkt. #69 at 9  
2 But the Court continued: "If it turns out that counsel's representation gives rise to a conflict  
3 under the Rules of Professional Conduct . . . , those issues can be heard and determined through  
4 motions practice as the case proceeds." *Id.* at 9-10.

5 Recent discovery, including the February 3, 2023, deposition of Mr. Garcia, appears to  
6 confirm the *Soto Palmer* Plaintiffs' concerns about an insurmountable conflict of interest.

7 **B. The Potential Conflict Emerges**

8 The potential conflict came into sharper focus when two of *Soto Palmer* Intervenors, Jose  
9 Trevino and Alex Ybarra (*Soto Palmer* Intervenor-Plaintiffs), sought to amend their Answer to  
10 include a crossclaim for declaratory and injunctive relief identical to Mr. Garcia's claim  
11 attacking the constitutionality of Legislative District 15 as an illegal racial gerrymander. *Soto*  
12 *Palmer*, Dkt. #103. In a subsequent court filing, Mr. Stokesbary, as counsel for both *Soto Palmer*  
13 Intervenors and Mr. Garcia, represented to the Court that Mr. Garcia would dismiss his action  
14 should the Court permit the crossclaim in the *Soto Palmer* matter to proceed. *Soto Palmer*, Dkt.  
15 #109 at 2. As detailed below, Mr. Stokesbary appears to have failed to seek authority from his  
16 client before making that representation to the Court, and this representation was in fact contrary  
17 to the directional wishes of Mr. Garcia as to how his case should proceed.

18 Although Mr. Trevino and Mr. Ybarra had sought to add a crossclaim challenging the  
19 constitutionality of Legislative District 15 and had requested injunctive relief barring the  
20 enforcement of Legislative District 15 and requiring the creation of a new map, both litigants  
21 later testified that they were satisfied with Legislative District 15 as enacted and had no desire  
22 to modify the enacted boundaries. *Soto Palmer*, Dkt. #127 at 1-2; Dkt. #127-1 at 111:10-12; Dkt.  
23 #127-2 at 21:1-11.

24 The Court denied the *Soto Palmer* Intervenor-Plaintiffs' request to amend their answer  
25 to add a crossclaim for declaratory and injunctive relief. Dkt. #136.

1 **C. Mr. Garcia's Deposition Appears to Confirm a Conflict of Interest**

2 Troubling testimony pointing to potential conflicts came to light during Mr. Garcia's  
3 February 3, 2023 deposition. Mr. Garcia testified that he had been unaware of the *Soto Palmer*  
4 litigation prior to receiving a copy of a subpoena the previous week. Hughes Decl., Ex. 2 at  
5 46:7-10. He further testified that he had never agreed to dismiss his lawsuit if the *Soto Palmer*  
6 Intervenor-Plaintiffs had been allowed to bring their racial gerrymandering claim in that lawsuit,  
7 nor had he authorized Mr. Stokesbary to represent to the Court that he had agreed to do so. *Id.*  
8 at 47:8-12 & 50:2-17. He testified that he was "not pleased" that Mr. Stokesbary had made this  
9 representation to the Court on his behalf and was also displeased to be hearing about it for the  
10 first time at his deposition. *Id.* at 60:4-18.

11 Mr. Garcia also testified that prior to his deposition, he had been unaware that his  
12 attorneys also represented the *Soto Palmer* Interveners, who wanted Legislative District 15 to  
13 remain unchanged. *Id.* at 59:12-61:1. He testified that he found it problematic that his counsel  
14 was representing clients with positions that conflicted with his. *Id.* at 61:7-14. He also testified  
15 that he had never signed a conflict waiver. *Id.* at 96:15-17.

16 Mr. Garcia also stated that prior to his deposition, he had not been aware that Mr.  
17 Stokesbary served in the Washington State Legislature and had voted in favor of the enacted  
18 Legislative District 15. *Id.* at 65:18-25. He testified that he found this revelation upsetting as  
19 well. *Id.* at 65:18-66:7. When asked whether he was concerned about what he had learned in the  
20 deposition with respect to his counsel, he answered in the affirmative. *Id.* at 66:20-67:3.

21 Mr. Garcia also testified to a lack of communication with his counsel. Specifically, he  
22 testified that he did not receive copies of his subpoenas from counsel and instead, first learned  
23 of the subpoenas' existence when a process server came to his house a week and a half after they  
24 had been served on his counsel. *Id.* at 88:13-25; Hughes Decl., Ex 3. He further testified that  
25 after filing his Complaint in spring of 2022, he did not speak with Mr. Stokesbary again until the  
26 last week of January 2023, when he reached out to Mr. Stokesbary to discuss the subpoenas he

1 had just received. Hughes Decl., Ex. 2 at 98:4-16. The only other communication with his  
 2 counsel that he could recall was a letter he had received five or six months before the deposition.  
 3 *Id.* at 104:5-14. Mr. Garcia also testified that he did not know that he had an expert, had not  
 4 reviewed the expert's report, and did not know about the approaching trial date in his case.  
 5 *Id.* at 105:5-106:4.

6 Mr. Garcia further testified that while he was aware that a third party was funding his  
 7 lawsuit, he did not know the identity of the third party. *Id.* at 103:6-13.

### 8 III. ARGUMENT

#### 9 A. Legal Standard

10 "The primary responsibility for controlling the conduct of lawyers practicing before the  
 11 district court rests with that court." *Trone v. Smith*, 621 F.2d 994, 999 (9th Cir.1980). Thus, "this  
 12 Court has a duty to examine charges of conflict of interest." *FMC Techs.*, 420 F. Supp. 2d at  
 13 1157 (citing *U.S. for Use & Benefit of Lord Elec. Co., Inc. v. Titan Pac. Const. Corp.*, 637 F.  
 14 Supp. 1556, 1562 (W.D. Wash. 1986)).

15 To determine whether a lawyer's representation violated his or her ethical duties, "the  
 16 Court first refers to the local rules regulating the conduct of members of its bar." *Lord Elec.*  
 17 *Co.*, 637 F. Supp. at 1560. Lawyers appearing in the Western District of Washington must be  
 18 familiar with and comply with the Washington Rules of Professional Conduct "[i]n order to  
 19 maintain the effective administration of justice and the integrity of the [C]ourt." LCR 83.3(a);  
 20 *see In re Celcyte Genetic Corp. Sec. Litig.*, No. C08-47RSL, 2008 WL 5000156, at \*2 (W.D.  
 21 Wash. Nov. 20, 2008).

22 "[C]ourts must consider the overarching question of whether a violation of such rules  
 23 will undermine, or seriously threaten to undermine, the integrity of judicial proceedings." *M.O.*  
 24 *by C.O. v. Fairfax Cnty. Sch. Bd.*, No. 121CV00769RDAJFA, 2022 WL 264456, at \*2 (E.D. Va.  
 25 Jan. 27, 2022) (cleaned up).  
 26

1 **B. Potential Conflicts of Interest Under RPC 1.7**

2 Washington Rule of Professional Conduct 1.7, governing conflicts of interest with  
3 current clients, provides:

4 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the  
5 representation involves a concurrent conflict of interest. A concurrent conflict of  
6 interest exists if:

7 (1) the representation of one client will be directly adverse to another  
8 client; or

9 (2) there is a significant risk that the representation of one or more clients  
10 will be materially limited by the lawyer's responsibilities to another client, a  
11 former client or a third person or by a personal interest of the lawyer.

12 (b) Notwithstanding the existence of a concurrent conflict of interest under  
13 paragraph (a), a lawyer may represent a client if:

14 (1) the lawyer reasonably believes that the lawyer will be able to provide  
15 competent and diligent representation to each affected client;

16 (2) the representation is not prohibited by law;

17 (3) the representation does not involve the assertion of a claim by one  
18 client against another client represented by the lawyer in the same litigation or  
19 other proceeding before a tribunal; and

20 (4) each affected client gives informed consent, confirmed in writing  
21 (following authorization from the other client to make any required disclosures).

22 Paragraph (b)(3) of RPC 1.7 strictly “prohibits representation of opposing parties in the  
23 same litigation, regardless of the clients’ consent.” RPC 1.7, Cmt. 23. “On the other hand,  
24 simultaneous representation of parties whose interests in litigation *may* conflict . . . is governed  
25 by paragraph (a)(2).” *Id.* (emphasis added). “A conflict may exist by reason of substantial  
26 discrepancy in the parties’ testimony [or] incompatibility in positions in relation to an opposing  
party[.]” *Id.*

Where a conflict exists and there is no *per se* bar to waiving it, the Court must determine  
whether a “lawyer reasonably believes that [they] will be able to provide competent and diligent  
representation to each affected client.” This analysis includes both objective and subjective  
components. *In re Celleyte*, 2008 WL 5000156, at \*2 (citing RPC 1.0(h) & (i)RPC 1.0(h) & (i)).

1 If, and only if, a conflict is waivable, “each affected client” must “give[] informed  
2 consent.” RPC 1.7(b)(4). “Informed consent requires that each affected client be aware of the  
3 relevant circumstances and of the material and reasonably foreseeable ways that the conflict  
4 could have adverse effects on the interests of that client.” RPC 1.7, Cmt. 18. “When  
5 representation of multiple clients in a single matter is undertaken, the information must include  
6 the implications of the common representation, including possible effects on loyalty,  
7 confidentiality and the attorney-client privilege and the advantages and risks involved.” *Id.*

8 “In resolving motions to disqualify based on a lawyer's conflict of interest, courts in this  
9 district typically place the burden on the firm whose disqualification is sought to show that no  
10 conflict exists.” *United States Fire Ins. Co. v. Icicle Seafoods, Inc.*, 523 F. Supp. 3d 1262, 1268-  
11 69 (W.D. Wash. 2021).

12 Mr. Stokesbary’s and Holtzman Vogel’s simultaneous representation of clients with  
13 conflicting objectives appears to present a conflict of interest. Specifically, while Mr. Garcia  
14 has asked the Court to invalidate the current Legislative District map, *Garcia*, Dkt. #14 at 18,  
15 Mr. Trevino and Mr. Ybarra have expressed a desire to keep the current map in place. *Soto*  
16 *Palmer* Dkt. #127 at 1-2.

17 Given the patent adversity between Mr. Garcia and the *Soto Palmer* Intervenor-Plaintiffs  
18 in directly related matters, RPC 1.7(b)(3) may constitute a *per se* bar to counsel’s simultaneous  
19 representation of parties in both suits. *See* RPC 1.7, Cmt. 23 (explaining that paragraph (b)(3) of  
20 RPC 1.7 strictly “prohibits representation of opposing parties in the same litigation, regardless  
21 of the clients’ consent.”).

22 Even if RPC 1.7(b)(3) does not categorically bar simultaneous representation here, it  
23 appears that the conflict may be unwaivable under RPC 1.7(b)(1), which permits concurrent  
24 representation only where “the lawyer reasonably believes that the lawyer will be able to provide  
25 competent and diligent representation to each affected client.” It is difficult to imagine how  
26 counsel could vigorously pursue Mr. Garcia’s interest in *striking down* the maps as an illegal

1 racial gerrymander, *Garcia*, Dkt. #14 at 18, while simultaneously pursuing Mr. Trevino and  
2 Mr. Ybarra’s interest in *preserving* the maps that both have testified they do not believe are racial  
3 gerrymanders. *Soto Palmer*, Dkt. #127 at 1-2. As this Court has previously explained, an  
4 unwaivable conflict exists where counsel has “an obvious temptation . . . to ‘soft pedal’” its  
5 representation of “its own clients to further the interest of other clients, or its own interest in  
6 continuing the multiple representation.” *In re Celcyte*, 2008 WL 5000156, at \*3. And [t]he  
7 conflict is even more apparent” in a case like this “because the matters are related.” *Id.*

8  
9 However, even if the conflict here were waivable, Mr. Garcia’s deposition testimony  
10 makes clear that there was no informed consent to any waiver. Indeed, Mr. Garcia did not learn  
11 *until his deposition* that the *Soto Palmer* litigation even existed, let alone that his attorneys were  
12 representing parties with conflicting interests and objectives. Hughes Decl., Ex. 2 at 46:7-10;  
13 59:12-61:1. He further testified that he never signed a conflict waiver. *Id.* at 96:15-17. Likewise,  
14 nothing in the record indicates that the *Soto Palmer* Intervenors consented to their counsel’s  
15 simultaneous representation of Mr. Garcia.

16 Accordingly, the State respectfully requests that the Courts in each of these related  
17 matters conduct an inquiry to determine whether Mr. Stokesbary’s and Holtzman Vogel’s  
18 concurrent representation of Mr. Garcia and the *Soto Palmer* Intervenors presents a waivable  
19 conflict and if so, whether each affected client provided the requisite informed consent to this  
20 representation.

21 **C. Potential Conflict Regarding Undisclosed Third-Party Payments Under RPC 1.8**

22 The State respectfully moves the Court to additionally conduct an inquiry to assure itself  
23 that counsel for Mr. Garcia and the *Soto Palmer* Intervenors are in compliance with RPC 1.8(f).

24 RPC 1.8(f) provides that “[a] lawyer shall not accept compensation for representing a  
25 client from one other than the client” unless the following three conditions are met:  
26

- 1 (1) the client gives informed consent;
- 2 (2) there is no interference with the lawyer's independence of professional
- 3 judgment or with the client-lawyer relationship; and
- 4 (3) information relating to representation of a client is protected as required by
- 5 Rule 1.6.

6 Comment 11 to the Rule acknowledges that “[l]awyers are frequently asked to represent a client  
7 under circumstances in which a third person will compensate the lawyer[.]” But because “third-  
8 party payers frequently have interests that differ from those of the client, including interests in  
9 minimizing the amount spent on the representation and in learning how the representation is  
10 progressing,” lawyers must not accept or continue representation “unless the lawyer determines  
11 that there will be no interference with the lawyer’s independent professional judgment and there  
12 is informed consent from the client.” RPC 1.8, Cmt. 11.

13 During Mr. Garcia’s deposition, he was directly asked about the fee arrangement in his  
14 case. Mr. Garcia testified that he himself was not paying attorney fees and believed that another  
15 entity is, though he could not testify who. Hughes Decl., Ex. 2 at 103:6-104:23. This line of  
16 testimony highlights a potential violation of RPC 1.8, which requires counsel for Mr. Garcia to  
17 obtain their client’s informed consent if third parties are paying their fees.

18 Concerns about potential violations of RPC 1.8 also exist in *Soto Palmer*. For example,  
19 at the deposition of Intervenor-Defendant Alex Ybarra, Mr. Ybarra testified that he had “no idea”  
20 about who is paying for his representation. *Id.*, Ex. 4 at 116:4-12. The same for Intervenor Ismael  
21 Campos, who likewise testified at his deposition that he was not paying for his attorneys and did  
22 not know who was. *See id.*, Ex. 5 at 84:25-85:15.

23 For these reasons, the State respectfully request that the Courts conduct an inquiry into  
24 whether Mr. Stokesbary and/or Holtzman Vogel have a conflict that precludes them from  
25 continuing to represent their clients in both matters. To determine whether a lawyer is in  
26 compliance with RPC 1.8(e)’s strict requirements, the Courts may need to review the third-party  
fee-arrangement agreement(s) or conduct a colloquy with lawyers and/or clients regarding fee

1 arrangements and to confirm whether fully informed consent was given. *See, e.g., United States*  
 2 *v. Fazio*, No. 11-cr-157, 2011 WL 6140746, at \*3 (E.D. La. Dec. 9, 2011) (reviewing the fee  
 3 arrangement agreement in a criminal case and concluding that it produced conflicts).

4 **D. Other Potential Issues Under RPCs 1.2 and 1.4 Related to Counsel’s Representation**

5 “The purpose of the rule against concurrent representation is based ‘on the duty of  
 6 undivided loyalty an attorney owes a client.’” *In re Celcyte*, 2008 WL 5000156, at \*3 (quoting  
 7 *Smiley v. Office of Workers Comp. Programs*, 984 F.2d 278, 282 (9th Cir. 1993). In conducting  
 8 any inquiries, then, the respective Courts may also wish to consider three additional issues  
 9 regarding counsel’s conduct with respect to Mr. Garcia and the *Soto Palmer* Intervenors. The  
 10 first is counsel’s apparently unauthorized representation that Mr. Garcia was willing to dismiss  
 11 his suit if Intervenors were permitted to add their crossclaim. The second is counsel’s attempt to  
 12 plead a gerrymandering crossclaim on behalf of the *Soto Palmer* Intervenors that the Intervenors  
 13 testified they did not support. The third is counsel’s evident lack of communication with Mr.  
 14 Garcia. These are discussed briefly in turn.

15 **1. Counsel’s representations regarding dismissal of *Garcia v. Hobbs***

16 RPC 1.2 provides that “a lawyer shall abide by a client's decisions concerning the  
 17 objectives of representation and, as required by Rule 1.4 [governing a lawyer’s duty to  
 18 communicate with their client], shall consult with the client as to the means by which they are  
 19 to be pursued.” RPC 1.2<sup>2</sup>; *see also* RPC 1.4(a)(2) (“A lawyer shall . . . reasonably consult with  
 20 the client about the means by which the client's objectives are to be accomplished.”).

21 Notwithstanding this obligation to abide by their client’s wishes, it appears that counsel  
 22 made unauthorized representations to the *Soto Palmer* Court that Mr. Garcia was willing to  
 23 dismiss his lawsuit if the Court permitted Intervenor-Plaintiffs to add their crossclaim.

24  
 25 <sup>2</sup> RPC 1.2 is “[s]ubject to” limitations in paragraph (c) and (d), neither of which appear to apply here. *See*  
 26 RPC 1.2(c) (providing that a lawyer may expressly limit the scope of representation, with the client’s informed  
 consent) and (d) (“A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer  
 knows is criminal or fraudulent[.]”).

1 Specifically, in opposition to *Soto Palmer* Plaintiffs’ Motion to Bifurcate and Transfer, Strike,  
 2 and/or Dismiss Intervenor’s Crossclaim, Intervenor’s counsel explicitly “represent[ed] that  
 3 plaintiff in *Garcia v. Hobbs*, No. 3:22-cv-5152 (W.D. Wash.), will dismiss that action should  
 4 Intervenor’s Crossclaim go forward.” *Soto Palmer*, Dkt. #109 at 2; *see also id.* at 4 (“Intervenor’s  
 5 counsel represents that *Garcia* will be voluntarily dismissed once it is clear that this Court will  
 6 allow Intervenor’s Fourteenth Amendment Crossclaim to proceed in this case.”); *id.* at 6  
 7 (“Intervenor’s counsel reiterates its representation that *Garcia* will be voluntarily dismissed once  
 8 it is clear that the Court will allow Intervenor’s Fourteenth Amendment Crossclaim to  
 9 proceed.”). That pleading was signed by Mr. Stokesbary. *Id.* at 7.

10 But in his deposition Mr. Garcia flatly denied authorizing his counsel to make these  
 11 representations. Hughes Decl., Ex. 2 [Garcia Excerpts] at 47:8-12; 50:2-17. To the contrary, Mr.  
 12 Garcia testified that it was extremely important to him to see this lawsuit to completion. *Id.* at  
 13 47:16-48:2, 50:12-14. Counsel’s representations regarding voluntary dismissal of Mr. Garcia’s  
 14 suit without Mr. Garcia’s consent further highlight the potential conflict between Mr. Garcia and  
 15 his counsel and merit further inquiry by the respective courts.

16 **2. Counsel’s efforts to plead a crossclaim against the wishes of the *Soto Palmer***  
 17 **Intervenor**

18 It appears that Mr. Stokesbary and Holtzman Vogel also failed to abide by their clients’  
 19 wishes when they attempted to advance the crossclaim in the *Soto Palmer* matter identical to  
 20 Mr. Garcia’s claims in the *Garcia* matter. *See* RPC 1.2 (“[A] lawyer shall abide by a client’s  
 21 decisions concerning the objectives of representation and, as required by Rule 1.4 [governing a  
 22 lawyer’s duty to communicate with their client], shall consult with the client as to the means by  
 23 which they are to be pursued.”). The proposed crossclaim was contrary to the stated objectives  
 24 of the *Soto Palmer* Intervenor-Plaintiffs, both of whom testified that they had no desire to modify  
 25 the enacted map. *Compare Soto Palmer* Dkt. #103 (Amended Complaint with Proposed  
 26

1 Crossclaim) *with Soto Palmer* Dkt. #127 at 1-2; Dkt. #127-1 at 111:10-12; Dkt. #127-2 at  
2 21:1-11 (intervenors' deposition testimony).

3 Counsel's misplaced attempt to reconcile their clients' disparate positions by advancing  
4 identical claims in both lawsuits only underscores the potentially irreconcilable conflict  
5 between their clients.

### 6 **3. Lack of communication with Mr. Garcia**

7 Finally, RPC 1.4 governs a lawyer's obligations to communicate with their client. Among  
8 other things, it requires a lawyer to "(1) promptly inform the client of any decision or  
9 circumstance with respect to which the client's informed consent . . . is required by these Rules;  
10 (2) reasonably consult with the client about the means by which the client's objectives are to be  
11 accomplished; [and] (3) keep the client reasonably informed about the status of the matter." RPC  
12 1.4(a)(1)-(3). As Comment 1 succinctly explains: "Reasonable communication between the  
13 lawyer and the client is necessary for the client effectively to participate in the representation."

14 According to Mr. Garcia's deposition, between filing his Complaint in the Spring of 2022  
15 and receiving a subpoena from the *Soto Palmer* Plaintiffs approximately a week before his  
16 deposition, Mr. Garcia had not spoken to Mr. Stokesbary, with the possible exception of a single  
17 letter five or six months prior. Hughes Decl., Ex. 2 at 97:20-98:7; 103:25-104:14. As a result of  
18 this lack of communication, Mr. Garcia did not know that he had an expert, had not reviewed  
19 the expert's report, and did not even know about the approaching trial date in his case. *Id.* at  
20 105:5-106:4. This lack of communication is another factor the respective Courts may want to  
21 consider in evaluating whether counsel is able adequately to represent the interests of Mr. Garcia  
22 and the *Soto Palmer* Intervenors in this litigation.

## 23 **IV. CONCLUSION**

24 The government therefore respectfully requests that, at the Courts' earliest convenience,  
25 the Courts conduct inquiries to assure that counsel are in compliance with the Washington Rules  
26 of Professional Conduct.

1 DATED this 14th day of February, 2023.

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21 I certify that this memorandum contains 4,189  
22 words, in compliance with the Local Civil  
23 Rules.  
24  
25  
26

**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 14th day of February, 2023 at Seattle, Washington.

s/ Andrew R.W. Hughes  
ANDREW R.W. HUGHES, WSBA No. 49515  
Assistant Attorney General

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