

The Honorable Robert S. Lasnik  
The Honorable David G. Estudillo  
The Honorable Lawrence Van Dyke

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

BENANCIO GARCIA III,  
  
Plaintiff,  
  
v.  
  
STEVEN HOBBS, in his official capacity  
as Secretary of State of Washington, and  
STATE OF WASHINGTON,  
  
Defendants.

NO. 3:22-cv-5152-RSL-DGE-LJCV  
  
DEFENDANT STATE OF  
WASHINGTON’S REPLY ISO  
MOTION TO STRIKE NOTICE OF  
ERRATA CORRECTIONS FOR  
DEPOSITION OF  
BENANCIO GARCIA III  
(DKT. 38-1)  
  
NOTE FOR MOTION CALENDAR:  
MARCH 24, 2023

Under Federal Rule of Civil Procedure 30(e), an errata sheet “is to be used for corrective, and not contradictory, changes.” *Hambleton Bros. Lumber Co. v. Balkin Enterprises, Inc.*, 397 F.3d 1217, 1226 (9th Cir. 2005). Mr. Garcia’s errata sheet violates this tenet—it is peppered with paradigmatic examples of contradictory changes (e.g., changing “no” to “yes”), see Dkt. #43 at 2–9, and those contradictions should be stricken from the record. To the extent Mr. Garcia needs to change his testimony and explain the basis for the changes in this testimony, he can do so at trial—not through his filed errata.

1 Counsel for Mr. Garcia essentially argue that because *Hambleton* arose in the summary  
2 judgment context and analogized the corrections at issue to a sham affidavit, the ability to strike  
3 errata that contradict deposition testimony should be limited to the context of a summary  
4 judgment motion. Dkt. #49 at 4–6. But many courts within this Circuit have declined to restrict  
5 the remedy of striking errata to the context of “sham” testimony submitted to avoid summary  
6 judgment. Instead, consistent with *Hambleton*, courts have stricken portions of errata that are  
7 contradictory changes beyond motions for summary judgment, and this Court should too. *See*  
8 *Karpenski v. Am. Gen. Life Companies, LLC*, 999 F. Supp. 2d 1218, 1224 (W.D. Wash. 2014)  
9 (“Even where a court finds that errata are not shams, the court may still strike portions that  
10 constitute contradictory rather than corrective changes.”); *Alvarez v. XPO Logistics Cartage,*  
11 *LLC*, No. CV 18-3736-RGK(EX), 2020 WL 11563057, at \*3–4 (C.D. Cal. Aug. 17, 2020)  
12 (striking errata where none of the changed answers purported to correct transcription errors), *id.*  
13 at \*2–3 (identifying different schools of thought and collecting cases); *Young v. Cree, Inc.*,  
14 No. 17CV06252YGRTSH, 2019 WL 260853, at \*4 (N.D. Cal. Jan. 18, 2019) (striking  
15 corrections to testimony that were “mostly to the opposite of what [the deponent] said” where  
16 the “context d[id] not suggest the revised testimony [wa]s what he meant to say”); *Lee v. The*  
17 *Pep Boys-Manny Moe & Jack of Cal.*, No. 12-CV-05064-JSC, 2015 WL 6471186, at \*1 (N.D.  
18 Cal. Oct. 27, 2015) (striking contradictory errata, including changes from “no” to “yes”); *Azco*  
19 *Biotech Inc. v. Qiagen, N.V.*, No. 12-cv-2599-BEN (DHB), 2015 WL 350567, at \*5 (S.D. Cal.  
20 Jan. 23, 2015) (striking deposition errata from record); *Mformation Techs., Inc. v. Rsch. in*  
21 *Motion Ltd.*, No. C08-04990 JW HRL, 2011 WL 2940289, at \*1 (N.D. Cal. July 20, 2011)  
22 (striking errata based on contradictory testimony of corporate designee); *Tourgeman v. Collins*  
23 *Fin. Servs., Inc.*, No. 08-CV-1392 JLS NLS, 2010 WL 4817990, at \*3–4 (S.D. Cal. Nov. 22,  
24 2010) (finding “troubling” certain changes that “directly contradict [the deponent’s] sworn  
25 deposition testimony,” deeming deposition errata “inadmissible for all further proceedings,” and  
26 noting that “[c]ourts strike errata sheets in contexts beyond summary judgment”); *Lewis v. The*

1 *CCPOA Benefit Tr. Fund*, No. C-08-03228-VRW DMR, 2010 WL 3398521, at \*3–4 (N.D. Cal.  
2 Aug. 27, 2010) (finding submission of errata did not amount to a sham but striking errata with  
3 “about-face reversals” as contradictory); *but see Paige v. Consumer Programs, Inc.*, No. CV 07-  
4 2498-FMC (RCx), 2008 WL 2491665, at \*3–4 (C.D. Cal. May 13, 2008) (denying motion to  
5 strike errata).

6 Mr. Garcia’s requested relief—for the Court to do nothing—would have this Court bless  
7 this misuse of Fed. R. Civ. P. 30(e). Imposing no remedy at all for this misuse “would render  
8 null Rule 30(e)’s procedural and substantive requirements.” *Tourgeman*, 2010 WL 4817990,  
9 at \*3.

10 Mr. Garcia’s errata that improperly contradicts his prior sworn testimony should be  
11 stricken from the record. To the extent Mr. Garcia needs to clarify or change his testimony, he  
12 and his counsel may do so at trial.

13 DATED this 24th day of March, 2023

14  
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16 Attorney General

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I certify that this memorandum contains 621 words, in compliance with the Local Civil Rules.

**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 24th day of March, 2023 at Tacoma, Washington

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

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