



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. #170 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  
18 (N.D. Cal. Oct. 27, 2015) (striking contradictory errata, including changes from “no” to “yes”);  
19 *Azco Biotech Inc. v. Qiagen, N.V.*, No. 12-cv-2599-BEN (DHB), 2015 WL 350567, at \*5 (S.D.  
20 Cal. 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.*,  
 4 | No. CV 07-2498-FMC (RCx), 2008 WL 2491665, at \*3–4 (C.D. Cal. May 13, 2008) (denying  
 5 | motion to 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

15 | ROBERT W. FERGUSON  
 Attorney General

16 | *s/ Cristina Sepe*

17 | ANDREW R. W. HUGHES, WSBA No. 49515  
 18 | ERICA R. FRANKLIN, WSBA No. 43477  
 Assistant Attorneys General  
 800 Fifth Avenue, Suite 2000  
 Seattle, WA 98104  
 (206) 464-7744  
 andrew.hughes@atg.wa.gov  
 erica.franklin@atg.wa.gov

21 | CRISTINA SEPE, WSBA No. 53609  
 22 | Deputy Solicitor General  
 1125 Washington Street SE  
 PO Box 40100  
 Olympia, WA 98504-0100  
 (360) 753-6200  
 cristina.sepe@atg.wa.gov

25 | *Attorneys for Defendant State of Washington*

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

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**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