

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, et al.,  
*Defendants,*  
  
and  
  
JOSE TREVINO et al.,  
*Intervenor-Defendants.*

Case No.: 3:22-cv-5035-RSL

**INTERVENOR-DEFENDANTS’ AND  
CROSS-PLAINTIFFS’ OPPOSITION TO  
PLAINTIFFS’ NOTICE OF  
SUPPLEMENTAL AUTHORITY**

**ARGUMENT**

Intervenor-Defendants and Cross-Plaintiffs (“Intervenors”) file this Opposition to Plaintiffs’ Notice of Supplemental Authority (the “Notice”) filed on January 10, 2023 (*see* Dkt. # 127) and request that the Court strike it from the record. Plaintiffs’ Notice does not contain “authority” and it impermissibly includes legal argument.

The local rules of this Court allow for a party to file a Notice of Supplemental Authority to a pending motion, but state:

Before the court rules on a pending motion, a party may bring to the court’s attention relevant *authority* issued after the date the party’s last brief was filed by

1 serving and filing a Notice of Supplemental Authority that attaches the  
2 supplemental authority *without argument*.

3 Local Rules W.D. Wash. LCR 7(n) (emphasis added). The Court should strike the Notice  
4 for two primary reasons: (1) the Notice contains argument; and (2) depositions are not “authority.”

5 First, by including selected portions and commentary of the attached deposition transcripts,  
6 Plaintiffs impermissibly included argument in violation of LCR 7(n). Second, depositions are not  
7 authority for purposes of filing “supplemental authority.” Simply seeking to supplement the record  
8 with new evidence, such as deposition transcripts, via a “supplemental authority” filing is  
9 improper, and such a filing should not be considered. *See e.g., Cerner Middle E. Ltd. v. Beldadi*  
10 *Enters., LLC (In re Orland Ltd.)*, 2022 Bankr. LEXIS 764, at \*2 n.1 (B.A.P. 9th Cir. 2022); *Manley*  
11 *v. Rowley*, 847 F.3d 705, 710 n.2 (9th Cir. 2017) (quoting *Trans-Sterling, Inc. v. Bible*, 804 F.2d  
12 525, 528 (9th Cir. 1986)) (Rules allowing for filings of supplemental authority are intended to  
13 “permit[] a party to bring new authorities to the attention of the court; it is not designed to bring  
14 new evidence through the back door.”). Some of the deposition transcripts have yet to be reviewed  
15 and signed by the deponent, contain blatant hearsay and other evidentiary concerns, and are cherry-  
16 picked by Plaintiffs to improve their position. Such gamesmanship should not be allowed. There  
17 will be a time for Plaintiffs to seek to admit such evidence, but such time is not through a notice  
18 of supplemental authority.

### 19 CONCLUSION

20 Intervenor are opposed to Plaintiffs’ Notice, and, pursuant to Local Rules W.D. Wash.  
21 LCR 7(g), hereby respectfully request that the Court strike the Notice from the record.  
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DATED this 12<sup>th</sup> day of January, 2023.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day I electronically filed the foregoing document with the Clerk of the Court of the United States District Court for the Western District of Washington through the Court’s CM/ECF System, which will serve a copy of this document upon all counsel of record.

DATED this 12<sup>th</sup> day of January, 2023.

Respectfully submitted,  
  
s/ Andrew R. Stokesbary  
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