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May 5, 2022

VIA EMAIL and US MAIL

Geoffrey Thomas
Chief of Staff
Snohomish County Council
Snohomish County
Everett, WA 98201

Re: *Civil Survival Project, et al. v. State of Washington, et al.*, King County Superior Court, Cause No. 21-2-03266-1 SEA

Benton County, et al. v. State of Washington, King County Superior Court, Cause No. 21-2-12147-7 SEA

Dear Geoffrey:

We are forwarding to you this letter at the request of Chief Civil Deputy, Jason Cummings, and requesting Snohomish County to consent to the waiver of a concurrent conflict of interest involving our representation of Snohomish County.

As way of background, we currently represent Snohomish County in two separate but related matters:

- *Civil Survival Project, et al. v. State of Washington, et al.*, King County Superior Court, Cause No. 21-2-03266-1 SEA (“CSP lawsuit”). The CSP lawsuit is a putative class action in which plaintiffs contend that the State of Washington, Snohomish County, and King County are liable for “legal financial obligations” paid by plaintiffs and the putative class based on convictions now rendered void by *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021) (“Blake”). Snohomish County previously tendered its defense of the CSP lawsuit to the State.
- *Benton County, et al. v. State of Washington*, King County Superior Court, Cause No. 21-2-12147-7 SEA (“Benton County”). The *Benton County* action is a lawsuit in which Snohomish County and others seek indemnification from the State for fees and expenses that Snohomish County and others have incurred in responding to the CSP lawsuit and as a consequence of the *Blake* decision.

We have been asked by Cami L. Feek, the Commissioner for the Washington Employment Security Department, and the Washington Employment Security Department (collectively “the Department”) to potentially represent the Department in a matter recently filed in the U.S. District Court for the Western District of Washington with the caption *Sterling, et. al. v. Feek*, W.D. Wash. Case No. 22-5250-cv (*Sterling*). The *Sterling* matter is a putative class action in which the plaintiffs contend that the Department violated plaintiffs’ civil rights based on the manner that the Department retroactively denied unemployment benefits or assessed overpayment charges. The *Sterling* lawsuit involves an unrelated subject matter from the cases in which we currently represent Snohomish County. We are enclosing a copy of the Complaint filed in the *Sterling* lawsuit.

Under RPC 1.7, we are prohibited from representing a client if the representation involves a concurrent conflict of interest, such as representing one client directly adverse to another client. Notwithstanding a concurrent conflict of interest, we are able to represent a client if we reasonably believe that we will be able to provide competent and diligent representation to each affected client, the representation is not prohibited by law, does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal, and each affected client gives informed consent, confirmed in writing.

Based on our review of the Complaint and understanding of the *Sterling* lawsuit we believe we will be able to provide competent and diligent representation to both Snohomish County and the Department in the various matters, that our representation is not prohibited by the law, and that the matters do not involve the assertion of a claim by one client against another client represented by us in the same litigation. As such, we seek Snohomish County’s consent to allow us to represent the Department in the *Sterling* lawsuit.

In deciding whether or not to consent, Snohomish County should consider how our representation of the Department in the *Sterling* lawsuit could or might affect Snohomish County. For example, clients that are asked to waive or consent to conflicts typically should consider whether there is any material risk that their attorney will be less zealous or eager on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidences or secrets will be used adversely to them due to the conflict. In the present case, we do not believe that there is a material risk of either type because of the unrelated nature of the work for the two clients. Nevertheless, these are issues that Snohomish County should consider for itself.

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We will be pleased to answer any questions you may have concerning this representation or this requested consent. If Snohomish County does wish to consent, please sign the enclosed extra copy of this letter and either return it to us in the enclosed envelope or via email.

Very truly yours,

HARRIGAN LEYH FARMER & THOMSEN LLP



Timothy G. Leyh

TGL:rtt

Enclosure

cc: Jason Cummings, Chief Civil Deputy, Snohomish County PAO
Bridget Casey, DPA, Snohomish County PAO

I hereby consent to the concurrent representation of Snohomish County and the Department as described above.

Dated this 9th day of May, 2022.



Authorized Representative
Snohomish County