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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION and LOCAL 21,
INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION,

Plaintiffs,

v.

MARK S. NELSON, the Sherriff of Cowlitz
County in his official and individual capacity;
JIM DUSCHA, a City of Longview Police
Chief in his official and individual capacity;
COWLITZ COUNTY, a county of the State of
Washington; CITY OF LONGVIEW, a
municipal corporation; and DOES 1-100.

Defendants.

Case No.

**COMPLAINT FOR VIOLATIONS
OF CIVIL RIGHTS**

JURY TRIAL DEMANDED

COMES NOW the Plaintiffs International Longshore and Warehouse Union (“ILWU
International”) and Local 21, International Longshore and Warehouse Union (“Local 21”),
through their attorneys of record, and hereby present the following claims:

INTRODUCTION

1
2 1. The ILWU International and Local 21 (collectively, "ILWU"), their respective
3 officers, members and supporters have engaged in peaceful picketing and targeted acts of
4 lawful, constitutionally protected, public demonstrations and also civil disobedience to
5 protest the broken promises of a foreign multi-national grain conglomerate, Export Grain
6 Transport ("EGT"), in the Port of Longview to employ Local 21 longshore workers and to
7 protect the ILWU's almost eighty-year history of jurisdiction over grain handling work in the
8 ports of the Pacific Northwest. In response to the ILWU's and its members' largely peaceful
9 exercise of their speech and associational rights, Cowlitz County, its Sherriff Mark S.
10 Nelson, the City of Longview and its Police Chief Jim Duscha have initiated a campaign of
11 harassment, assault and intimidation against the ILWU, its officers and members in an effort
12 to terrorize them and their supporters into silence, to retaliate against their public actions, to
13 improperly support and aid EGT in its labor dispute with ILWU, for personal retribution, and
14 to impose Defendants' own measure of punishment (by means of excessive and unwarranted
15 brutal arrest procedures) for perceived "crimes" without due process of law. This campaign
16 has included, among other things, arresting members for non-violent misdemeanors in brutal
17 and aggressive public displays of force, physically assaulting members, refusing to permit
18 ILWU members to present themselves to be arrested peacefully and harassing, and
19 intimidating, members due to nothing more than their association with ILWU. The ILWU
20 brings this action in order to try to remedy these abuses and deter any future such police
21 misconduct.
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JURISDICTION AND VENUE

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2 2. This action arises under 42 U.S.C. §1983. Jurisdiction is based on 28 U.S.C. §1331
3 and §1343. The court has supplemental jurisdiction over state law claims under 28 U.S.C.
4 §1367.

5
6 3. Venue is proper in this jurisdiction under 28 U.S.C. § 1391(b) because a substantial
7 number of the events that support the Plaintiffs’ allegations occurred in this judicial district
8 and because the Defendants reside in this judicial district.

PARTIES

9
10 4. Plaintiff ILWU International is an unincorporated association and labor union whose
11 members perform longshore work in all commercial ports on the West Coast, including the
12 Port of Longview, under several collective bargaining agreements. The ILWU International,
13 along with its locals and individual members, has economic and legal interests concerning
14 the safety and welfare of its membership as victims of excessive and wrongful police conduct
15 by Defendants related to the membership’s actions as ILWU members and their association
16 with the ILWU. The ILWU International sues on its own behalf and in its representative
17 capacity on behalf of its affected members.
18

19 5. Plaintiff Local 21 is an unincorporated association and labor union affiliated with the
20 ILWU International and whose members perform longshore work in the Port of Longview.
21 Local 21, along with its officers and individual members, has economic and legal interests
22 concerning the safety and welfare of its membership as victims of excessive and wrongful
23 police conduct by Defendants related to the membership’s actions as ILWU members and
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1 their association with the ILWU. Local 21 sues on its own behalf and in its representative
2 capacity on behalf of its members.

3 6. Defendant Cowlitz County is, and at all times herein mentioned was, a county duly
4 organized and existing under the laws of the State of Washington.

5 7. Defendant Mark S. Nelson is and at all times was, the Sheriff for Cowlitz County.
6 Defendant Nelson was the policy-maker for the Cowlitz County on the matters alleged herein
7 related to the customs, policies, practices, of the Cowlitz County Sherriff's Department
8 ("CCSD"), including, but not limited to, customs, policies and practices related to policing of
9 First Amendment activities; the training, supervision, hiring, discipline, assignment and
10 control of law enforcement officers; and the management and supervision of CCSD.
11

12 8. Defendant City of Longview is, and at all times herein mentioned was, a municipal
13 corporation duly organized and existing under the laws of the State of Washington.

14 9. Defendant Jim Duscha is, and at all times herein mentioned was, the Chief of Police
15 for the City of Longview. Defendant Duscha was the policy-maker for the City of Longview
16 on the matters alleged herein related to the customs, policies, practices, of the Longview
17 Police Department ("LPD"), including, but not limited to, customs, policies and practices
18 related to policing of First Amendment activities; the training, supervision, hiring, discipline,
19 assignment and control of police officers; and the management and supervision of LPD.
20

21 10. All of the above individual Defendants are sued in their individual and official
22 capacities.
23

24 11. Plaintiffs are ignorant of the true names and/or capacities of Defendants sued herein
25 as DOES 1 through 100, inclusive, and therefore sue said Defendants by such fictitious
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1 names. Plaintiffs will amend this complaint to allege their true names and capacities when
2 ascertained. Plaintiffs are informed and believe and therefore allege that each of the Doe
3 Defendants is legally responsible and liable for the incident, injuries and damages hereinafter
4 set forth, and that each of said Defendants proximately caused said incidents, injuries and
5 damages by reason of their negligence, breach of duty, negligent supervision, management or
6 control, violation of constitutional and legal rights, or by reason of other personal, vicarious
7 or imputed negligence, fault, or breach of duty, whether severally or jointly, or whether based
8 upon agency, employment, or control or upon any other act or omission. Plaintiffs will ask
9 leave to amend this complaint to insert further charging allegations when such facts are
10 ascertained.
11

12 12. Each of the Defendants, including Defendants DOES 1 through 100, caused, and is
13 responsible for, the below-described unlawful conduct and resulting injuries by, among other
14 things, personally participating in the unlawful conduct or acting jointly or conspiring with
15 others who did so; by authorizing, acquiescing in or setting in motion policies, plans or
16 actions that led to the unlawful conduct; by failing to take action to prevent the unlawful
17 conduct; by failing and refusing with deliberate indifference to Plaintiffs' rights to initiate and
18 maintain adequate training and supervision; and by ratifying the unlawful conduct that
19 occurred by agents and officers under their direction and control, including failing to take
20 remedial or disciplinary action.
21

22 13. In doing the acts alleged herein, Defendants, and each of them, acted within the
23 course and scope of their employment for the City of Longview and/or Cowlitz County.
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1 14. In doing the acts and/or omissions alleged herein, Defendants, and each of them,
2 acted under color of authority and/or under color of law.

3 15. In doing the acts and/or omissions alleged herein, Defendants, and each of them,
4 acted as the agent, servant, employee and/or in concert with each of said other Defendants.
5

6 **FACTS**

7 16. Since the spring of 2011, Local 21 has been engaged in a labor dispute with EGT
8 over employment of ILWU Local 21 members at EGT's new facility in the Port of Longview
9 (hereinafter called, the "Labor Dispute)." The ILWU, their respective officers, members and
10 supporters, and the members and officers of other locals affiliated with the ILWU
11 International have conducted community rallies and demonstrations in Portland at EGT's
12 corporate office and placed advertisements in the local newspapers concerning the Labor
13 Dispute. Local 21 and its supporters, including members of other locals, have also, in
14 furtherance of the Labor Dispute, picketed EGT's facility, which sits on property that EGT
15 leases from the Port of Longview.
16

17 17. On or about July 26, 2011, Local 21 and the Port of Longview entered into an
18 agreement whereby the Port expressly agreed to permit picketing subject to certain
19 limitations.
20

21 18. On information and belief, Defendants gathered, maintained and disseminated
22 documents, information and intelligence concerning the ILWU, their officers and members,
23 other affiliate locals of the ILWU International, their lawful protest activities and their
24 personal beliefs and positions regarding EGT, including, but not limited to, information
25 about the constitutionally protected speech and associational activities of individuals and
26

1 organizations including the ILWU International, Local 21, other affiliate locals of the ILWU
2 International and their officers and members. Defendants' actions in gathering, maintaining
3 and disseminating documents, information and intelligence concerning the constitutionally
4 protected speech and associational activities of Plaintiffs was overbroad, unnecessary and
5 unjustified by any legitimate law enforcement purpose.
6

7 19. On information and belief, at various times, Defendants held meetings and
8 discussions with employees, attorneys, agents and representatives of EGT regarding the law
9 enforcement response to the ILWU's picketing and protest activities.

10 20. Defendants have engaged in a campaign to harass and intimidate the Plaintiffs, their
11 officers, members and supporters into silence, including trying to intimidate them into
12 ceasing peaceful and lawful picketing protected by federal law and treating them with
13 excessive force due to their association with the ILWU. This campaign has included:
14 arresting and jailing members for non-violent misdemeanor citations that ordinarily do not
15 merit arrest let alone jail; acting with aggression, brutality and force when arresting members
16 for non-violent misdemeanors without probable cause for such force and without having a
17 reasonable suspicion that the members or supporters posed an immediate or credible threat or
18 injury to law enforcement or any other person; refusing to arrest members when they
19 voluntarily presented themselves for arrest and instead insisting on arresting them in surprise
20 visits to their homes or in "made-for-television" style scenes; engaging in almost constant
21 open and obvious surveillance of the Local 21 union hall; following and roughing up
22 individuals wearing clothes bearing the ILWU name or logo and/or driving vehicles marked
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1 with the ILWU name or logo; shining bright lights into union members' homes for hours at a
2 time late at night; following and surveilling union members and officials in their homes.

3 21. Plaintiffs are informed and believe that Defendants have engaged and are engaging in
4 these actions against the Unions, their members and officials for the purpose of interfering
5 with their First Amendment rights. Plaintiffs are further informed and believe that
6 Defendants' actions are motivated by Defendants' hostility and animus for the ILWU.
7 Plaintiffs are further informed and believe that Defendants' actions are motivated by the
8 content, message and viewpoint of the ILWU International and Local 21, including their
9 opposition to the actions of EGT. Plaintiffs are further informed and believe that Defendants
10 actions are in retaliation against Plaintiffs and their members' lawful, public protests, to
11 improperly support and aid EGT in its labor dispute with ILWU, for Defendants' personal
12 retribution, and to impose Defendants' own measure of punishment (by means of excessive
13 and unwarranted brutal arrest procedures) for perceived "crimes" without due process of law.
14 The following are a few examples of members' treatment by Defendants.
15

16
17 22. On or about September 11, after hearing that several Local 21 members and officers
18 had been cited by the CCSD and/or LPD in connection with the civil disobedience on the
19 afternoon September 7, a Local 21 officer contacted Defendants to propose that they work
20 with Local 21 to arrange for members with outstanding warrants to present themselves to be
21 peacefully taken into custody. Defendants never responded.
22

23 23. On September 12, a Local 21 member and former union official, was leaving her
24 home when she was surrounded by approximately ten law enforcement officers from LPD
25 and/ or CCSF. She had been cited for two non-violent misdemeanors (trespass and delaying
26

1 or blocking a train) in connection with the civil disobedience on September 7. Without
2 probable cause or a reasonable suspicion that they faced an immediate threat of credible
3 injury, two officers grabbed her, threw her down onto her stomach, shoved her onto the hood
4 of her car and handcuffed her with her hands behind her back. Then, before putting her into
5 the police car, two officers proceeded to slam her body onto the side of her car and then onto
6 a wooden fence even though she was already handcuffed. Defendants took her into custody
7 and held her in jail until she was able to post bail.
8

9 24. On September 12, Defendants attempted to halt all peaceful picketing by Local 21
10 and to arrest peaceful picketers on Port of Longview property despite the fact that the Port of
11 Longview had given them permission to be there and supported their ability to engage in
12 their peaceful protest activities on public Port land.
13

14 25. Another union official was leaving the Local 21 union hall on September 13 when he
15 was pulled over by a LPD officer. He had been cited for the same two non-violent
16 misdemeanors (trespass and delaying or blocking a train) in connection with the civil
17 disobedience on September 7. Without probable cause or a reasonable suspicion that he
18 faced an immediate threat of credible injury, the officer attempted to pull the union official
19 out of his car by his hair and then pushed the union official's face into the pavement. Five
20 officers from LPD and CCSD surrounded the union official and stood on his arms and the
21 middle of his back, pinning his body to the ground before cuffing and arresting him, taking
22 him into custody and jailing him until he was able to post bail.
23

24 26. In another effort to try to cooperate with law enforcement and stop the forcible
25 arrests, on or about September 13, a representative of Local 21 again contacted Defendants
26

1 and asked that they work with Local 21 to arrange for members with outstanding warrants to
2 present themselves peacefully taken to be into custody. Local 21 received no response.

3 27. Defendants issued the same two misdemeanor citations described above to another
4 Local 21 official. On September 14, he was leaving his home when he was met by
5 approximately ten police cars from CCSD and/or LPD and approximately sixteen law
6 enforcement officers. He raised his arms above his head in a sign of surrender. Without
7 probable cause or a reasonable suspicion that they faced an immediate threat of credible
8 injury, approximately ten officers surrounded him, told him to put his hands on his head and
9 pushed him to his knees where he was handcuffed. They took into custody and jailed him
10 until he was able to post bail.
11

12 28. On or about September 14, a representative of Local 21 contacted Defendants again
13 and made the same request that they cooperate with Local 21 to facilitate members' turning
14 themselves in peacefully. By email the next day, acting on behalf of all Defendants, Sheriff
15 Nelson refused Local 21's offer, defended the policies and practices described herein and
16 declared that such policies and practices would continue, which, in fact, has occurred.
17

18 29. On or about September 15, three law enforcement officers employed by Defendants
19 approached a minister who is also Local 21 supporter and member of a local affiliated with
20 the ILWU International. The minister was at his home. One of the officers brandished a
21 semi-automatic weapon and ordered the minister to come with them. They took him to a
22 crowded school parking lot where his daughter was just getting out of school. Two more
23 vehicles from CCSD arrived and there the officers arrested him again and handcuffed him in
24 front of his wife, children and other families. The minister had been cited for the same two
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1 non-violent misdemeanors identified above and the officers had no legitimate reason to
2 transport him to the school to be publicly arrested a second time and no probable cause or a
3 reasonable suspicion that they faced an immediate threat of credible injury.

4 30. On or about September 15, a representative of Local 21 contacted the District
5 Attorney and asked that she encourage law enforcement to work with Local 21 to arrange for
6 members with outstanding warrants to present themselves peacefully for arrest and police
7 custody. The District Attorney never responded.

9 31. On or about September 16, in an effort to try to end the campaign of intimidation and
10 to show their good will, members of Local 21 went to the County Sherriff's Department and
11 presented themselves to be arrested peacefully. They stood silently outside the county
12 building for approximately half-an-hour with their families, children, grandparents and
13 friends looking on.

14 32. Defendants refused to arrest them. While Defendants claimed that they did not arrest
15 them because they did not have the law enforcement officers available to do so, this was
16 false. Rather than make even a single peaceful arrest, Defendants assembled approximately
17 30 law enforcement officers in full riot gear inside the county building where they stood at
18 the ready watching the Local 21 members' peaceful attempt to turn themselves in.

19 33. Approximately two hours after voluntarily presenting himself to be arrested at the
20 county building to no avail, another Local 21 official was in the parking lot of a church with
21 his girlfriend picking up their children from daycare when three LPD and CCSD vehicles
22 raced toward him across four lanes of traffic nearly causing an accident and surrounded him.
23 This union official had been cited for the same two non-violent misdemeanors as the other
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1 individuals described above. Without probable cause or a reasonable suspicion that they
2 faced an immediate threat of credible injury, the officers jumped out of their cars, threw
3 another longshoremen present against his truck and handcuffed him and took the union
4 official into police custody in front of his girlfriend and children. The union official was
5 jailed until he was able to post bail.
6

7 34. On or about September 21, approximately ten Local 21 officers, members and
8 supporters were engaging in a peaceful demonstration on the railroad tracks outside of EGT's
9 facility. A train approached. Without giving the demonstrators any warning or instruction to
10 move, dozens of law enforcement officers, acting under the direction, authority and control
11 of one or more of the Defendants, swarmed the protestors and began physically restraining,
12 handcuffing and arresting them. Approximately eighty officers in total, dressed in full riot
13 gear, with face shields and helmets and carrying rifles, among other weaponry, stood
14 watching. One protestor, an elderly woman, had difficulty moving off the tracks. Officers
15 grabbed her and twisted her arm behind her back, injuring her shoulder and requiring
16 hospitalization. Two other Local 21 members approached and told the officers not to treat
17 her so roughly. These members were immediately restrained, pushed to the ground, and
18 handcuffed. Even after these two members were on the ground, handcuffed and fully
19 restrained, officers proceeded to repeatedly shove their faces into the gravel and pull their
20 eyelids back while repeatedly spraying mace directly into their eyes.
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23 35. The incidents described above are a non-inclusive list and are part of the Defendants'
24 campaign and policy of harassment, intimidation and wrongful acts against the ILWU, their
25 respective officers and members. Plaintiffs are informed and believe that the violations of
26

1 the Plaintiffs' constitutional and lawful rights complained of herein were caused by customs,
2 policies, directives, practices, acts and omissions of authorized policy makers of the
3 defendant Cowlitz County and/or City of Longview, including Defendants Nelson, Duscha
4 and other supervisory officials of the CCSD and/or LPD, which encouraged, authorized,
5 directed, condoned, and ratified the unconstitutional and unlawful conduct complained of
6 herein.
7

8 36. As a direct and proximate result of the conduct of Defendants described herein, the
9 Plaintiffs have been denied their constitutional, statutory and legal rights as stated below, and
10 have suffered, continue to suffer and will in the future suffer general and special damages.

11 37. Defendants' acts were willful, wanton, malicious and oppressive and done with
12 conscious disregard and deliberate indifference for Plaintiffs' rights.
13

14 38. Defendants' campaign of excessive force and intimidation against the ILWU, and
15 their respective officers and members, continues unabated. Defendants' policies, practices,
16 customs, conduct and acts alleged herein have resulted and will continue to result in
17 irreparable injury to Plaintiffs, including but not limited to violations of their constitutional
18 and commons law rights. Plaintiffs have no plain, adequate or complete remedy at law to
19 address the wrongs described herein. Plaintiffs and their members intend in the future to
20 exercise their constitutional rights of freedom of speech and association by engaging in union
21 activities, including demonstrations and expressive activities in public places in the City of
22 Longview, Cowlitz County and other locations. Defendants' conduct described herein has
23 also created fear, anxiety and uncertainty among members and officers of Plaintiffs with
24 respect to their exercise of their and their members' and officers' associational and
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1 organizational activities and with the right to work and move freely about the public streets,
2 with their physical security and safety and without being subject to excessive force,
3 harassment and intimidation by the CCSD and LPD. Plaintiffs therefore seek injunctive
4 relief from this court, to ensure that Plaintiffs and persons similarly situated will not suffer
5 violations of their rights from Defendants' illegal and unconstitutional policies, customs and
6 practices as described herein.
7

8 39. An actual controversy exists between Plaintiffs and Defendants in that Plaintiffs
9 contend that the policies, practices and conduct of Defendants alleged herein are unlawful
10 and unconstitutional, whereas Plaintiffs are informed and believe that Defendants contend
11 that said policies, practices and conduct are lawful and constitutional. Plaintiffs seek a
12 declaration of rights with respect to this controversy.
13

14 **FIRST CLAIM FOR RELIEF**

15 **Violation Of First And Fourteenth Amendments To The United States Constitution**
16 **(42 U.S.C. § 1983)**

17 40. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 39 of this
18 complaint.
19

20 41. Defendants' above-described conduct violated and continues to violate Plaintiffs'
21 rights to freedom of speech and association under the First and Fourteenth Amendments to
22 the United States Constitution.

23 **SECOND CLAIM FOR RELIEF**

24 **Violation Of Fourth And Fourteenth Amendments To United States Constitution**
25 **(42 U.S.C. § 1983)**

26 42. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 41 of this
complaint.

1 43. Defendants' above-described conduct violated and continues to violate Plaintiffs'
2 rights to be free from unreasonable seizures and excessive and/or arbitrary force under the
3 Fourth and Fourteenth Amendments to the United States Constitution.

4 **THIRD CLAIM FOR RELIEF**

5 **Violation Of Fourteenth Amendment To United States Constitution**
6 **(42 U.S.C. § 1983)**

7 44. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 43 of this
8 complaint.

9 45. Defendants' above-described conduct violated and continues to violate Plaintiffs'
10 right to not be deprived of liberty without due process of law under the Fourteenth
11 Amendment to the United States Constitution.

12 **FOURTH CLAIM FOR RELIEF**

13 **Violation Of Fourteenth Amendment To United States Constitution**
14 **(42 U.S.C. § 1983)**

15 46. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 45 of this
16 complaint.

17 47. Defendants' above-described conduct violated and continues to violate Plaintiffs'
18 rights to equal protection of the laws under the Fourteenth Amendment to the United States
19 Constitution.

20 **FIFTH CLAIM FOR RELIEF**

21 **Unlawful Interference in Private Sector Labor Dispute, 29 U.S.C. §151, et Seq.**
22 **(42 U.S.C. § 1983)**

23 48. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 47 of this
24 complaint.
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1 49. Defendants' above-described conduct violated and continues to violate Plaintiffs'
2 rights to be free from interference and from the exercise of police and regulatory powers by
3 public entities and public officials, such as Defendants, which have the intent or effect of
4 influencing the outcome of the Labor Dispute, which, as to EGT, is exclusively governed by
5 the Labor Management Relations Act (LMRA), 29 U.S.C. § 151, et seq, and its federal
6 policy of preempting and precluding such interference and actions by Defendants.
7

8 **SIXTH CLAIM FOR RELIEF**

9 **Violation Of Freedom Of Speech And Due Process**
10 **(Washington Constitution, Article I, Sections 5 and 8)**

11 50. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 49 of this
12 complaint.

13 51. Defendants' above-described conduct violated and continues to violate Plaintiffs'
14 rights Plaintiffs' free speech rights and rights of assembly under the Washington Constitution
15 Article I, §§ 4 and 5.

16 **SEVENTH CLAIM FOR RELIEF**

17 **Violation of the No Special Privileges and Equal Protection Clause**
18 **(Washington State Constitution, Article I, Section 12)**

19 52. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 51 of this
20 complaint.

21 53. Defendants' above-described conduct violated and continues to violate Plaintiffs'
22 rights to equal protection of the laws under the under the Washington Constitution Article I,
23 § 12.
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1 **EIGHTH CLAIM FOR RELIEF**

2 **Common Law Claims**

3 54. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 53 of this
4 complaint.

5 55. As a result of the allegations contained herein, the individual Defendants are liable to
6 Plaintiffs for common law torts under Washington law, including assault, battery, and
7 negligence.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
11 follows:

- 12 1. For preliminary and permanent injunctive relief restraining Defendants from
13 engaging in the unlawful and unconstitutional actions complained of above;
14
15 2. For a declaratory judgment that Defendants' conduct complained of herein was a
16 violation of Plaintiffs' and their respective officers and members' rights under the
17 Constitution and laws of the United States and Washington;
18
19 3. For general and compensatory damages to be determined according to proof only as
20 to the named Plaintiffs;
21
22 4. For punitive and exemplary damages in amounts to be determined according to proof
23 as to the individual Defendants;
24
25 5. For attorneys' fees pursuant to 42 U.S.C. § 1988;
26
6. For costs of suit;
7. For pre- and post-judgment interest as permitted by law;

1 8. For such other and further relief as the Court may deem just and proper.

2 **JURY TRIAL DEMAND**

3 Plaintiffs hereby demand a jury trial.

4
5
6 Respectfully submitted,

7 DATED: September 22, 2011

8
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