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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 ANDRE OPSAL, LIZ FLUGEL, DEBBIE KOEPP, KIMBERLY
13 JOHNSON, DARREL MOLLENHOUR, JOANNE RICE, STEPHEN
14 SERGI, JAMES SZPEK, MAXINE DUNKELMAN and PATRICIA
15 WOODWARD

16 *Plaintiffs,*

17 v.

18 WASHINGTON FEDERATION OF STATE EMPLOYEES,
19 AMERICAN FEDERATION OF STATE, COUNTY AND
20 MUNICIPAL EMPLOYEES INTERNATIONAL, AFL-CIO, an
21 unincorporated association; STEVE MCLAIN, Director,
22 Washington State Labor Relations Office; GARY WEEKS,
23 Director, Washington State Department of Labor and
24 Industries; DAVE STEWART, Assistant Director for Office of
25 Human Resources, Washington State Department of Labor
26 and Industries; ROBIN ARNOLD-WILLIAMS, Secretary,
27 Washington State Department of Social and Health
28 Services; BETTY RAMAGE, Director of Human Resources,
Washington State Department of Social and Health
Services; LIZ LUCE, Director, Washington State Department
of Licensing; ALAN HAIGHT, Assistant Director for
Administrative Services, Washington State Department of
Licensing; MARY C. SELECKY, Secretary, Washington State
Department of Health; JANICE ADAIR, Assistant Secretary,
Washington State Department of Health

26 *Defendants,*

27 MICHAEL J. MURPHY, Treasurer, State of Washington
28 *Rule 19(a) Defendant*

Civil
No. _____

PLAINTIFF
OPSAL, et al.'s
CLASS
ACTION
COMPLAINT

1 **COMPLAINT**

2

3 1. Plaintiffs Andre Opsal, Liz Flugel, Debbie Koepp, Kimberly Johnson,
4 Darrel Mollenhour, Joanne Rice, Stephen Sergi, James Szpek, Maxine Dunkelman
5 and Pat Woodward (hereinafter referred to as “Plaintiffs”), complain of the acts
6 and omissions done by the Washington Federation of State Employees, American
7 Federation of State, County and Municipal Employees, AFL-CIO (hereinafter
8 referred to as “WFSE”), as well as the acts done by Steve McLain, Director,
9 Washington State Labor Relations Office; Gary Weeks, Director, Washington
10 State Department of Labor and Industries; Dave Stewart, Assistant Director for the
11 Office of Human Resources of the Washington State Department of Labor and
12 Industries; Robin Arnold-Williams, Secretary, Washington Department of Social
13 and Health Services; Betty Ramage, Director of Human Resources, Washington
14 Department of Social and Health Services; Liz Luce, Director, Washington State
15 Department of Licensing; Alan Haight, Assistant Director for Administrative
16 Services, Washington State Department of Licensing; and Janice Adair, Assistant
17 Secretary, Washington State Department of Health (hereinafter referred to as
18 “Employer Defendants”) (Washington State Treasurer Michael J. Murphy is named
19 as a Rule 19(a) Defendant in order for complete relief to be accorded), and allege:

20

21 **NATURE OF THE CASE**

22 2. This is a civil rights class action pursuant to 42 U.S.C. §1983, seeking
23 equitable relief, including reinstatement with back pay and full benefits,
24 declaratory relief, nominal and compensatory damages and/or restitution and other
25 relief to prevent and/or redress the deprivation under color of Washington law of
26 Plaintiffs’ rights, privileges and immunities under the United States Constitution.

27 3. Upon instructions from Defendant WFSE and, on information and belief,
28 Steve McLain, Director of the Washington State Labor Relations Office, Alan

1 Haight, the Assistant Director of Administrative Services of the Washington State
2 Department of Licensing, notified Plaintiff Woodward via letter dated December 9,
3 2005, of her termination from employment with the Department of Licensing
4 effective December 9, 2005, for failure to comply with the compulsory unionism
5 clause in the collective bargaining agreement between WFSE and the State of
6 Washington (“CBA”). This termination was effectuated in a manner that violated
7 Plaintiff Woodward’s First and Fourteenth Amendment rights as set forth by the
8 United States Supreme Court in *Chicago Teachers Union v. Hudson*, 475 U.S. 292
9 (1986). It is therefore necessary for this Court to order her immediate
10 reinstatement with full back pay and benefits, as well as immediate injunctive
11 relief, along with nominal and compensatory damages in order to address the
12 violations of Plaintiff Woodward’s constitutional rights.

13 4. Upon instructions from Defendant WFSE and, on information and belief,
14 Steve McLain, Director of the Washington State Labor Relations Office, Janice
15 Adair, the Assistant Secretary of the Washington State Department of Health,
16 notified Plaintiff Dunkelman via letter dated December 19, 2005, of her
17 termination from employment with the Department of Health effective January 3,
18 2006, for failure to comply with the compulsory unionism clause in the CBA. This
19 termination was effectuated in a manner that violated Plaintiff Dunkelman’s First
20 and Fourteenth Amendment rights as set forth by the United States Supreme Court
21 in *Hudson*. It is therefore necessary for this Court to order her immediate
22 reinstatement with full back pay and benefits, as well as immediate injunctive
23 relief, along with nominal and compensatory damages in order to address the
24 violations of Plaintiff Dunkelman’s constitutional rights.

25 5. Furthermore, Defendant WFSE and Rule 19(a) Defendant Murphy have
26 demanded and/or remitted and accepted compulsory fees from the wages of
27 Plaintiff Opsal on or around July 15, 2005, from Plaintiff Flugel on or around
28 August 25, 2005, and from Plaintiff Szpek on or around February 10, 2006, as well

1 as from the wages of members of the class Plaintiffs seek to represent, in a manner
2 that violates Plaintiffs' and class members' First and Fourteenth Amendment rights
3 as set forth by the United States Supreme Court in *Hudson*. It is therefore
4 necessary for this Court to order immediate injunctive relief, along with nominal
5 and compensatory damages, in order to address WFSE's continuing violations of
6 Plaintiffs' and class members' constitutional rights by deducting compulsory fees
7 in the absence of full *Hudson* compliance, and include Rule 19(a) Defendant
8 Murphy for full injunctive relief.

9 6. Plaintiff Rice has filed a timely request for "non-association" based on bona
10 fide religious tenets after receiving notice of this option from WFSE, despite the
11 fact that WFSE has never provided Plaintiffs or class members with the procedural
12 safeguards that are constitutionally required under *Hudson*. Because the WFSE
13 has not granted this request for "non-association," Plaintiff Rice and other class
14 members who filed similar requests are in imminent danger of having their
15 employment terminated. It is therefore necessary for this Court to order immediate
16 injunctive relief in order to prevent Defendant WFSE from seeking the termination
17 of said Plaintiff and other members of the class.

18 7. Since on or about November 2005, Defendant WFSE and the Employer
19 Defendants have threatened to terminate Plaintiffs Koepp, Johnson, Mollenhour,
20 Sergi and Szpek, and other class members that they seek to represent, for failure to
21 pay fees to the WFSE, despite the fact that WFSE has never provided Plaintiffs or
22 class members with the procedural safeguards that are constitutionally required
23 under *Hudson*. Although WFSE has since rescinded these requests, except in
24 regards to Plaintiff Johnson, termination threats against Plaintiffs Johnson,
25 Mollenhour, Sergi and Szpek have not been rescinded by their employer, the
26 Washington State Department of Labor and Industries. It is therefore necessary for
27 this Court to order immediate injunctive relief in order to prevent the terminations
28 of Plaintiffs Johnson, Mollenhour, Sergi and other members of the class.

1 Additionally, along with all Plaintiffs and class members, Plaintiff Koepp seeks
2 nominal damages for the violation of her constitutional rights.

4 JURISDICTION

5 8. Plaintiffs' claims arise under the First and Fourteenth Amendments to the
6 United States Constitution. Therefore, this Court has jurisdiction pursuant to 28
7 U.S.C. 1331.

8 9. This claim also arises under the Federal Civil Rights Act of 1871, 42 U.S.C.
9 § 1983, to redress the deprivation, under color of State law, of rights, privileges
10 and immunities secured to Plaintiffs by the United States Constitution.

11 Accordingly, this Court has jurisdiction over this dispute pursuant to 28 U.S.C.
12 §1343, pursuant to which the Court may grant: a) reinstatement with full back pay
13 and benefits; b) damages or restitution for fees seized in violation of Plaintiffs'
14 First and Fourteenth Amendment rights; c) injunctive relief against the future
15 unlawful enforcement of the compulsory unionism clause of the collective
16 bargaining agreement by any means including, but not limited to, the collection of
17 said fees, the threats to terminate or actual termination of the nonmembers'
18 employment for failure to pay fees; d) nominal damages for the violation of
19 Plaintiffs' First and Fourteenth Amendment rights; and e) reasonable attorneys'
20 fees, pursuant to 42 U.S.C. § 1988.

21 10. This is also a case of actual controversy where Plaintiffs are seeking a
22 declaration of their rights under the Constitution of the United States. Under 28
23 U.S.C. §§2201 and 2202, this Court may declare the rights of Plaintiffs and the
24 requested class and grant further necessary and proper relief based thereon,
25 including preliminary and injunctive relief, pursuant to Federal Rule of Civil
26 Procedure 65.

28 VENUE

1 11. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) and (c) because
2 Defendants either reside and/or have offices and conduct their business in this
3 judicial district, and because a substantial part of the events or omissions giving
4 rise to Plaintiffs' claims occurred in this judicial district.

5
6 **PARTIES**

7 12. The Plaintiffs are Washington State employees and are all employed –
8 except for Plaintiffs Woodward and Dunkelman, who were terminated for failing
9 to comply with the compulsory unionism clause, even in the absence of full
10 *Hudson* compliance - in bargaining units which are represented for the purposes of
11 collective bargaining, by WFSE. Plaintiffs Johnson, Mollenhour, Sergi and Szpek
12 are employed by the Washington State Department of Labor and Industries.
13 Plaintiffs Opsal, Flugel and Koeppe are employed by the Washington State
14 Department of Social and Health Services. Plaintiff Rice is employed by the
15 Washington State Employment Security Department. Plaintiff Woodward was
16 employed by the Washington State Department of Licensing. Plaintiff Dunkelman
17 was employed by the Washington State Department of Health. As such, Plaintiffs
18 are “employees” within the meaning of RCW § 41.80.005. Plaintiffs are not
19 members of WFSE.

20 13. Defendant WFSE is an “employee organization” as defined by RCW §
21 41.80.005, and has been recognized as the monopoly bargaining representative for
22 Washington State employees in at least 33 different bargaining units throughout
23 the State. The WFSE conducts its business and operations throughout the State of
24 Washington, and is affiliated with various locals throughout the State, as well as
25 the American Federation of State, County and Municipal Employees (AFSCME).
26 Defendant WFSE is headquartered in Olympia, Washington.

27 14. As the Governor’s designee under RCW § 41.80.010, Employer Defendant
28 Steve McLain, Director of the Washington State Labor Relations Office, managed

1 the collective bargaining process that resulted in the adoption of the collective
2 bargaining agreement (“CBA”) between the State of Washington and the WFSE.
3 On information and belief, as Director of the Labor Relations Office, Mr. McLain
4 has the power to enforce, and has enforced, the CBA, including the compulsory
5 unionism clause in the agreement. Also, in his capacity as director of the Labor
6 Relations Office, Mr. McLain has the power to request the termination of State
7 employees for noncompliance with the terms of the CBA, as well as the power to
8 rescind these requests. He is sued in his official capacity.

9 15. Employer Defendants Gary Weeks, Robin Arnold-Williams, Liz Luce and
10 Mary Selecky are “Managers,” as defined in RCW § 41.06.022, of the Washington
11 State Department of Labor and Industries, the Washington State Department of
12 Social and Health Services, the Washington State Department of Licensing, and
13 the Washington State Department of Health, respectively. As such, they have
14 substantial authority that is not merely routine or clerical in nature with regard to
15 personnel administration and have the power to hire and terminate employees, as
16 well as the power to rescind such orders. They are sued in their official capacities.

17 16. Employer Defendants Dave Stewart and Betty Ramage are in charge of the
18 Human Resources divisions at the Washington State Department of Labor and
19 Industries and the Washington State Department of Social and Health Services,
20 respectively. Employer Defendant Alan Haight is in charge of the Administrative
21 Services Division at the Washington State Department of Licensing. Employer
22 Defendant Janice Adair is the Assistant Secretary at the Washington State
23 Department of Health. As such, Stewart, Ramage, Haight and Adair have
24 substantial authority and power to hire and terminate employees, as well as the
25 power to rescind such orders. They are sued in their official capacities.

26 17. Defendant Michael J. Murphy (hereinafter “Murphy”), named herein as a
27 Rule 19(a) defendant, is the Treasurer of the State of Washington. As such, he is
28 charged with the responsibility of issuing wages to employees of the State and/or

1 its Departments, including Plaintiffs and other members of the requested class, and
2 processing all deductions therefore, including for so-called “representation fees”
3 pursuant to compulsory unionism agreements, as authorized by RCW § 41.80.100.
4 He is sued in his official capacity. Defendant Murphy is named as a party pursuant
5 to Rule 19(a), FED.R.CIV.P., because, in his absence, complete injunctive relief
6 concerning the deduction of the compulsory fees cannot be accorded among those
7 already named as defendants.

8 9 **CLASS ACTION ALLEGATIONS**

10 18. This is a class action brought by Plaintiffs on their own behalf and on behalf
11 of all other similarly situated employees, pursuant to Federal Rule of Civil
12 Procedure 23(b)(1)(A) and (b)(2), and, alternatively, 23(b)(3). The class that
13 Plaintiffs seek to represent consists of all State employees, who at the time since
14 July 1, 2005, work in bargaining units which were, are, have been, or will be
15 represented exclusively for purposes of collective bargaining by WFSE, and were,
16 are, and/or will nevertheless be required to pay nonmember “agency shop” fees to
17 WFSE as a mandatory condition of employment.

18 19. The number of persons in this class is believed to number in the thousands.
19 Since these persons are so numerous, joinder of all class members is therefore
20 impractical.

21 20. There are questions of law and fact common to all members of the class, to
22 wit, whether Defendants have remitted and seized fees from nonmembers, and/or
23 threatened to terminate or actually have terminated nonmembers, or otherwise
24 taken “adverse action” against nonmembers, prior to providing them with all of the
25 notice and procedural safeguards required by the First and Fourteenth Amendments
26 of the United States Constitution as prerequisites to the seizure of compulsory
27 agency fees from the wages of nonmember State employees.

28 21. Plaintiffs’ claims are typical of other members of the class who are subject

1 to the same deprivations of their rights by Defendants’ enforcement of the
2 compulsory unionism clause of the collective bargaining agreement including, but
3 not limited to, “adverse action” taken against nonmembers, which includes threats
4 to terminate or actual termination of their employment, as well as the seizure of
5 compulsory fees in the absence of the constitutionally-required notice and
6 procedural safeguards, as hereinafter alleged.

7 22. The named Plaintiffs can adequately represent the interests of the class.
8 Plaintiffs have no interests antagonistic to the other members of the class related to
9 the subject matter of this lawsuit. Plaintiffs and other members of the class are
10 entitled to notice and the procedures and safeguards required by the Constitution as
11 interpreted by the Supreme Court in *Hudson*, 475 U.S. at 306.

12 23. Plaintiffs’ attorneys are provided by a national charitable legal aid
13 organization and are experienced in representing employees in litigation, including
14 class actions, involving issues identical or similar to those raised in this action.
15 Plaintiffs’ attorneys are well-qualified to be appointed class counsel by the Court.

16 24. Because the Defendants’ duty under *Hudson* to provide notice and
17 procedural protections adequate to protect the First and Fourteenth Amendment
18 rights of nonunion employees applies equally to all class members, the prosecution
19 of separate actions by individual class members would create a risk of inconsistent
20 or varying adjudications which would establish incompatible standards of conduct
21 for Defendants.

22 25. Defendants have acted and threaten to continue to act on grounds generally
23 applicable to all, thereby making appropriate declaratory, injunctive and other
24 equitable relief with regard to the class as a whole.

25 26. The questions of law or fact common to the members of the class
26 predominate over questions affecting only individual members, and a class action
27 is superior to other available methods for the fair and efficient adjudication of the
28 controversy, because the individual class members are deprived of the same rights

1 by Defendants' actions and threatened actions, and differ only in non-material
2 aspects of their factual situation.

4 **FACTS**

5 27. Acting in concert under color of State law – to-wit, Revised Code of
6 Washington §§ 41.80.010 and 41.80.100 – the State of Washington and its
7 numerous departments have recognized the WFSE as the exclusive bargaining
8 representative for Plaintiffs and other members of the class. Pursuant to RCW §
9 41.80.100, the State of Washington and the WFSE have entered into a collective
10 bargaining agreement which contains a forced unionism clause, Article 40.3.
11 Pursuant to this clause, Plaintiffs and other members of the class are required as a
12 condition of employment to either become members of the union and pay
13 membership dues, or remain nonmembers and pay an “agency shop” fee equal to
14 the amount required to be a member in good standing of the union. According to
15 the contract, if an employee does not comply with the forced unionism clause, “the
16 Union will notify the Employer and inform the employee that his or her
17 employment may be terminated.”

18 28. Pursuant to Article 40.1 “Union Dues,” of the CBA, the employer is
19 required, upon written authorization of the employee, to remit the compulsory fees
20 to the WFSE.

21 29. On or about May 10, 2005, the WFSE mailed a notice to all employees in
22 the represented bargaining units which described the process by which it intended
23 to collect this fee from Plaintiffs and all other nonmembers.

24 30. Included in this notice was (1) a one page introductory section; (2) a one
25 page instruction form which described four different ways in which the recipient
26 could satisfy the forced unionism obligations; (3) a one page bulleted outline of the
27 four different types of fees that an employee could pay under the forced unionism
28 clause; (4) a one page form entitled “Representation Fee Request”; (5) a payroll

1 deduction authorization; and (6) a document entitled, “Notice to All Employees in
2 Bargaining Units Covered by a Contract Between the WFSE, Council 28 as
3 Certified Bargaining Representative and Their Employer Which Contains Union
4 Security.”

5 31. This notice, particularly the document mentioned in ¶ 30(6) above, failed to
6 provide constitutionally-adequate safeguards of Plaintiffs’ and class members’
7 rights which are required by the Supreme Court’s decision in *Hudson*, including,
8 but not limited to, the following:

- 9 a. WFSE has not provided Plaintiffs and class members with an
10 independently verified audit of its financial records nor audited
11 financial disclosure of its affiliates that receive a portion of Plaintiffs’
12 agency fee;
- 13 b. WFSE has not provided Plaintiffs and class members with an
14 adequate explanation for the basis of the portions of Plaintiffs’ fees
15 which go to WFSE affiliated locals;
- 16 c. WFSE unlawfully required that nonmember employees who wished to
17 object to funding ideological and other non-bargaining activities sign
18 an automatic payroll deduction form;
- 19 d. WSFE unlawfully required nonmember fee payers who wished to
20 challenge the union’s calculation of the fee to state their “reason for
21 the challenge,” and also required challengers to participate in the
22 hearing before an arbitrator.

23 32. According to Article 49 of the CBA, the agreement itself went into effect on
24 July 1, 2005. The agreement covers the employees of at least 33 different
25 bargaining units throughout the State until June 30, 2007. On or about July 15,
26 2005, and continuing thereafter, Defendant Murphy began processing
27 representation fee deductions from Plaintiffs Opsal, Flugel (deductions began on or
28 about August 25, 2005), Szpek (deductions began on or about February 10, 2006),

1 and other class members who were required as a condition of employment to
2 authorize such deductions, and remitting said fees to the WFSE, even though
3 proper notice regarding the collection of these fees has not been provided.
4 (Plaintiffs Koepf, Johnson, Mollenhour, Rice, Sergi, Dunkelman, Woodward, and
5 other class members have not authorized such deductions and therefore have not
6 paid any fees at this time.) At the time the deductions started, the WFSE had not,
7 and still has not, provided Plaintiffs and class members with the procedural
8 safeguards described in ¶ 31 above.

9 33. Even though WFSE failed to provide nonmembers with sufficient
10 information to enable them to determine intelligently whether or not to object to
11 and/or challenge the calculation of the amount of the agency fee, Plaintiffs Opsal
12 and Flugel and other class members filled out the appropriate WFSE forms in the
13 Summer of 2005 in response to WFSE's May notice, which affirmed their desires
14 to object - as is their right under the Constitution as interpreted by the United
15 States Supreme Court in *Abood v. Detroit Board of Education*, 431 U.S. 209
16 (1977), and *Hudson*, 475 U.S. 292 - to the WFSE's use of their fees to fund
17 ideological and other non-bargaining activities.

18 34. Plaintiff Spzek and, on information and belief, other class members,
19 "agreed" to pay to WFSE an "agency fee", which includes *no* reduction for the
20 amount that WFSE spends on ideological and other non-bargaining activities,
21 under threat of termination of his position at the Department of Labor and
22 Industries. Though Plaintiff Spzek, requested to pay the "representation fee"
23 amount, which excludes costs that are not related to collective bargaining, he was
24 informed by WFSE officials that it was too late for him to make this request, and
25 that he would either have to become a union member, remain a nonmember and
26 pay the full amount, or be terminated.

27 35. Because the notices provided by WFSE did not include the information
28 specified in ¶ 31, nonmembers were not able to determine intelligently whether or

1 not to challenge WFSE's calculation of the amount of the representation fee.

2 36. On information and belief, Defendant Murphy has remitted, and continues to
3 remit, to WFSE the fees deducted from the wages of Plaintiffs Opsal, Flugel,
4 Szpek and other class members.

5 37. On information and belief, sometime in November, 2005, the WFSE sent the
6 names of State employees who were not in compliance with the collective
7 bargaining agreement to the Labor Relations Office. The Labor Relations Office
8 then notified the individual employing agencies to initiate termination proceedings
9 against these employees.

10 38. On information and belief, WFSE also notified the employer of Plaintiff
11 Woodward - the Washington State Department of Licensing - that Plaintiff
12 Woodward was not in compliance with the CBA, and requested the employer to
13 begin termination proceedings against said Plaintiff. The WFSE made these
14 requests notwithstanding the fact that it has never complied with the procedural
15 requirements of *Hudson*, 475 U.S. 292.

16 39. As a result, the Washington State Department of Licensing sent a letter dated
17 November 17, 2005, signed by Employer Defendant Alan Haight, to Plaintiff
18 Woodward, which threatened her with termination if she did not comply with the
19 compulsory unionism clause. The Washington State Department of Licensing
20 made this threat notwithstanding the fact that the procedural requirements of
21 *Hudson* were not met.

22 40. Plaintiff Woodward responded to the November 17, 2005 letter in a letter
23 dated November 25, 2005. In the letter, Plaintiff Woodward expressed her
24 frustration with the procedures WFSE had taken in order to collect compulsory
25 fees from her and other nonmembers. She asked that future any correspondence be
26 made in writing.

27 41. By letter dated December 9, 2005, Employer Defendant Alan Haight
28 informed Plaintiff Woodward that she was terminated from her position with the

1 Department of Licensing effective immediately. This “adverse action” which
2 resulted in the termination of Plaintiff Woodward, was carried out notwithstanding
3 the fact that the procedural requirements of *Hudson* were not met.

4 42. On information and belief, WFSE also notified the employer of Plaintiff
5 Dunkelman - the Washington State Department of Health - that Plaintiff
6 Dunkelman was not in compliance with the CBA, and requested the employer to
7 begin termination proceedings against said Plaintiff. The WFSE made these
8 requests notwithstanding the fact that it has never complied with the procedural
9 requirements of *Hudson*, 475 U.S. 292.

10 43. As a result, the Washington State Department of Health sent a letter dated
11 December 6, 2005, signed by Employer Defendant Janice Adair, to Plaintiff
12 Dunkelman, which threatened her with termination if she did not comply with the
13 compulsory unionism clause. This “adverse action” resulted in a subsequent “pre-
14 disciplinary” hearing in which this threat was re-emphasized. The Washington
15 State Department of Health made this threat notwithstanding the fact that the
16 procedural requirements of *Hudson* were not met.

17 44. By letter dated December 19, 2005, Employer Defendant Janice Adair
18 informed Plaintiff Dunkelman that she was terminated effective January 3, 2006.
19 This “adverse action” which resulted in the termination of Plaintiff Dunkelman,
20 was carried out notwithstanding the fact that the procedural requirements of
21 *Hudson* were not met.

22 45. On information and belief, WFSE also notified the employer of Plaintiffs
23 Johnson, Mollenhour, Sergi, Spzek and other class members - the Washington
24 State Department of Labor and Industries - that said Plaintiffs and other class
25 members were not in compliance with the CBA, and requested the employer to
26 begin termination proceedings against said Plaintiffs and other class members. The
27 WFSE made these requests notwithstanding the fact that it has never complied with
28 the procedural requirements of *Hudson*, 475 U.S. 292.

1 46. As a result, the Washington State Department of Labor and Industries sent
2 letters sometime in November 2005, signed by Employer Defendant Dave Stewart,
3 with courtesy copies sent to Employer Defendant Gary Weeks, to Plaintiffs
4 Johnson, Mollenhour, Sergi and Spzek, and other class members, which threatened
5 them with termination if they did not comply with the compulsory unionism
6 clause. This “adverse action” resulted in subsequent “pre-disciplinary” hearings in
7 which this threat was re-emphasized. The Washington State Department of Labor
8 and Industries made these threats notwithstanding the fact that the procedural
9 requirements of *Hudson* were not met.

10 47. In late 2005 and early 2006, Plaintiffs Sergi and Mollenhour filed requests
11 for “non-association” and in January, 2006, Plaintiff Szpek signed a payroll
12 deduction form. As a result, WFSE has since sent requests to the Washington State
13 Department of Labor and Industries rescinding its demand to initiate termination
14 proceedings against these three Plaintiffs. On information and belief, the
15 Department has not formally rescinded its threats of termination of Plaintiffs
16 Mollenhour, Sergi, and Szpek, and there has been no guarantee of protection
17 against any future adverse employment action being taken.

18 48. Plaintiff Johnson has not been able to come to an agreement with Defendant
19 WFSE, and is consequently still in imminent danger of having her employment
20 terminated.

21 49. On information and belief, WFSE notified the employer of Plaintiff Koepf
22 and other class members - the Washington State Department of Social and Health
23 Services - that she and other class members were not in compliance with the
24 collective bargaining agreement, and requested the employer to begin termination
25 proceedings against said Plaintiff and class members. The WFSE made this
26 request notwithstanding the fact that it has never complied with the procedural
27 requirements of *Hudson*.

28 50. As a result, in the beginning of December, 2005, the Washington State

1 Department of Social and Health Services sent letters to Plaintiff Koepf and other
2 class members which threatened them with termination if they did not comply with
3 the compulsory unionism clause. This “adverse action” resulted in a subsequent
4 “pre-disciplinary” hearing in which this threat was re-emphasized. The
5 Washington State Department of Social and Health Services made these threats
6 notwithstanding the fact that the procedural requirements of *Hudson* were not met.

7 51. Plaintiff Koepf filed a request for “non-association” with WFSE, which has
8 since sent a request to the Washington State Department of Social and Health
9 Services rescinding its demand to initiate termination proceedings against said
10 Plaintiffs. The Department has now rescinded its threat of termination.

11 52. Plaintiff Rice and other class members have filed timely requests for “non-
12 association” based on bona fide religious tenets after receiving notice of this option
13 from WFSE, despite the fact that WFSE has never provided Plaintiffs or class
14 members with the procedural safeguards that are constitutionally required under
15 *Hudson*. Because the WFSE has not granted this request for “non-association,”
16 Plaintiff Rice and other class members who filed similar requests, are in imminent
17 danger of having their employment terminated.

18 53. On information and belief, the WFSE has also notified, and will continue to
19 notify, the State employers of other class members of their noncompliance with the
20 CBA, and other Washington State employees have been terminated, or threatened
21 with termination, or will be threatened or actually terminated, for failure to comply
22 with the forced unionism clause in the collective bargaining agreement. These
23 adverse employment actions have all occurred despite the fact that the WFSE has
24 never complied with the procedural requirements of *Hudson*.

25 54. On information and belief, the Washington State Labor Relations Office will
26 continue to direct other Washington State departments to threaten or actually
27 terminate other State employees who have not complied with the compulsory
28 unionism clause.

1 55. On information and belief, WFSE has not attempted to correct the
2 deficiencies of the May notice, and unless enjoined by this Court, Defendant
3 Murphy will continue deducting representation fees from the wages of the
4 Plaintiffs and class members – except those Plaintiffs who have not authorized
5 such deductions as described in ¶ 32 - and will remit those deductions to WFSE
6 without correcting the deficiencies in the May notice. Furthermore, unless
7 enjoined by this Court, the WFSE and the Employer Defendants will continue to
8 threaten, or actually terminate, nonmembers who have not complied with the CBA.
9

10 **CLAIM FOR RELIEF**

11 (Violation of 42 U.S.C. § 1983 and
12 the Constitution of the United States)
13

14 56. Plaintiff and class members reassert the foregoing and further allege:

15 57. These acts and omissions, on the part of Defendant WFSE and the Employer
16 Defendants, have resulted in the unlawful threats of termination, actual
17 terminations, and/or seizure of fees which violate the First and Fourteenth
18 Amendments to the United States Constitution as interpreted by the United States
19 Supreme Court in *Hudson*, 475 U.S. 292, and its progeny. This seizure began on
20 or about July 15, 2005 and subsequent seizures have occurred and will continue to
21 occur in the future. The more specific threats of termination began around
22 November, 2005, and the actual terminations began to occur around December,
23 2005, and will continue to occur in the future.

24 58. Plaintiffs' and class members' decisions not to join and pay dues to WFSE
25 and its affiliates are exercises of their rights to freedom of speech, association,
26 petition, belief, and thought guaranteed against state action by the First and
27 Fourteenth Amendments to the United States Constitution. The actions of WFSE
28 and Murphy acting in concert to remit and accept from Plaintiffs and class

1 members agency fees to WFSE and its affiliates, even for their costs of exclusive
2 representation on behalf of Plaintiffs' and class members' bargaining units,
3 infringe upon those fundamental rights. Similarly, the actions of WFSE, Employer
4 Defendants, and other State departments, acting in concert to threaten Plaintiffs
5 and other class members with termination or actually terminating them for failure
6 to comply with the compulsory unionism clause violate those fundamental rights.

7 59. The First and Fourteenth Amendments to the United States Constitution
8 require that the procedures for the collection of compelled agency fees be carefully
9 tailored to limit the infringement on the fundamental rights of nonunion employees
10 to serve the compelling state interest that justifies such fees in the manner least
11 restrictive of the nonunion employees' freedoms of speech, association, petition,
12 belief, thought, and due process, and to facilitate the nonunion employees' ability
13 to protect those rights.

14 60. These procedural safeguards include:

- 15 a. notice to nonmembers, before agency fees are collected, that
16 adequately explains the basis for the amount of the fee, including an
17 allocation of major categories of expenses between lawfully
18 chargeable and nonchargeable activities, verified by an independent
19 auditor;
- 20 b. a reduction in the amount of the agency fee for objectors based on the
21 audited financial disclosure, instead of a rebate; and
- 22 c. a reasonably prompt opportunity to challenge the amount of the fee
23 before an impartial decisionmaker without burdensome challenge
24 requirements.

25 61. Plaintiffs claim their constitutional rights, as enunciated by the Supreme
26 Court in *Hudson*, on behalf of themselves and the class that they seek to represent,
27 to be provided with *all* of the precollection safeguards and procedures that will
28 facilitate their ability to protect these constitutional rights and ensure that none of

1 their wages are either collected or spent for improper purposes.

2 62. The Defendants' requests for termination, threats of termination, actual
3 terminations, and the seizure of representation fees from the wages of Plaintiff and
4 class members violate the First and Fourteenth Amendments to the United States
5 Constitution and 42 U.S.C. § 1983, because the May notice provided by WFSE:

- 6 a. did not provide an independently verified audit of its financial records
7 nor audited financial disclosure of its affiliates that receive a portion
8 of Plaintiffs' agency fee;
- 9 b. did not provide an adequate explanation for the basis of the portions
10 of Plaintiffs' fees which go to WFSE affiliated locals; and
- 11 c. unlawfully required that nonmember employees who wished to object
12 to funding ideological activity sign an automatic payroll deduction
13 form;
- 14 d. unlawfully required nonmember fee payers who wished to challenge
15 the union's calculation of the fee to state their "reason for the
16 challenge," and also required challengers to participate in the hearing
17 before an arbitrator.

18 63. Defendant WFSE and the other employer Defendants have deprived, and
19 threaten to continue to deprive, Plaintiffs and class members of their First and
20 Fourteenth Amendment rights, as enunciated and specified in *Hudson*, 475 U.S.
21 292, to be provided the appropriate safeguards and procedural protections prior to,
22 and during, enforcement of the compulsory unionism clause, including requests of
23 termination, threats of termination and actual terminations, as well as the collection
24 of any representation fees by the Rule 19(a) Defendant Murphy.

25
26
27 **PRAYER FOR RELIEF**

28 64. Unless immediately restrained by this Court, WFSE's and Rule 19(a)

1 Defendant Murphy’s acceptance and remittance of fees from the named Plaintiffs’
2 and class members’ wages has directly caused, and will continue to cause,
3 Plaintiffs and the class members they represent to suffer the irreparable injury that
4 is inherent in the violation of First Amendment rights and for which there is no
5 adequate remedy at law and has deprived and will continue to deprive them of
6 portions of their wages without due process of law.

7 65. Unless immediately restrained by this Court, WFSE and Employer
8 Defendants may continue to request, threaten and actually terminate Plaintiffs
9 Rice, Johnson, Mollenhour, Sergi and other members of the class, despite the fact
10 that WFSE has not complied with the procedural safeguards set forth in *Hudson*.
11 Similarly, other Employer Defendants and other State departments may threaten or
12 actually terminate other nonmember employees who have not paid fees under the
13 compulsory unionism clause.

14 66. Wherefore, the Plaintiffs pray that the Court provide relief in the following
15 manner:

- 16 a. Enter an order, as soon as practical, certifying this case as a class
17 action consisting of the class of all former, current, and future State of
18 Washington employees who are, have been, or will be represented
19 exclusively for purposes of collective bargaining by WFSE, but who
20 are not, or will not be members of WFSE, and were, are, and/or will
21 nevertheless be required to pay nonmember “agency shop” fees to
22 WFSE as a mandatory condition of employment.
- 23 b. Issue a temporary, preliminary, and permanent order enjoining the
24 WFSE and Rule 19(a) Defendant Murphy, and their agents and
25 employees, from collecting agency fees from the Plaintiffs and other
26 nonmembers unless and until WFSE amends its collection procedures
27 so that they are constitutionally adequate under *Hudson*.
- 28 c. Issue a temporary, preliminary, and permanent order enjoining the

1 WFSE and the Employer Defendants, including their agents and
2 employees, from requesting or threatening enforcement of, or actually
3 enforcing, the termination provision of the forced unionism clause in
4 the collective bargaining agreement against Plaintiffs and class
5 members who have not authorized the deduction of fees from their
6 pay unless and until WFSE amends its collection procedures so that
7 they are constitutionally adequate under *Hudson*.

8 d. Order that Employer Defendants McLain, Luce, Haight, Selecky and
9 Adair reinstate Plaintiffs Woodward and Dunkelman to their previous
10 positions with their respective former Washington State employers,
11 along with back pay, full benefits, and any attendant damages which
12 directly resulted from the violations of their constitutional rights.

13 e. Order that Employer Defendant McLain, in his role as Director of the
14 Washington State Labor Relations Office - as well as Employer
15 Defendants Weeks, Arnold-Williams, Luce and Selecky - order the
16 reinstatement of other unlawfully terminated class members to their
17 previous positions with their former Washington State employers,
18 along with back pay, full benefits, and any attendant damages which
19 directly resulted from the violations of their constitutional rights.

20 f. Issue a declaratory judgment that:

21 i. Employer Defendants McLain, Luce, Haight, Selecky and
22 Adair have taken “adverse action” against Plaintiffs Woodward,
23 Dunkelman and other nonmembers by terminating them for
24 failure to comply with the collective bargaining agreement
25 despite the fact that said Plaintiffs were not provided with their
26 procedural rights as required by *Hudson*, and as such, have
27 violated §1983 as well as the constitutional rights of Plaintiffs
28 and other nonmembers.

- 1 ii. Defendant WFSE has violated §1983 and the Plaintiffs’ and
2 other nonmembers’ constitutional rights as interpreted by
3 *Hudson* and its progeny, by enforcing the compulsory unionism
4 provision, and because fees were unlawfully seized without
5 providing to Plaintiffs and other nonmembers (i) any
6 independently audited financial disclosure, and (ii) an adequate
7 explanation for the basis of the portions of Plaintiffs’ and other
8 nonmembers’ fees which go to WFSE affiliated locals.
- 9 iii. Employer Defendants have taken “adverse action” against
10 Plaintiffs Koepf, Johnson, Mollenhour, Sergi, Szpek and other
11 class members, by threatening them with termination for failure
12 to comply with the collective bargaining agreement despite the
13 fact that said Plaintiffs and other nonmembers were not
14 provided with their procedural rights as required by *Hudson*,
15 and as such, have violated §1983 as well as the constitutional
16 rights of Plaintiffs and other nonmembers.
- 17 iv. Defendant WFSE has violated §1983 and the Plaintiffs’ and
18 other nonmembers’ constitutional rights by requiring that
19 nonmember employees who wished to object to funding
20 ideological and other non-bargaining activities sign an
21 automatic payroll deduction form.
- 22 v. Defendant WFSE has violated §1983 and the Plaintiffs and
23 other nonmembers’ constitutional rights by requiring that
24 nonmember employees who wished to challenge the union’s
25 calculation of the compulsory fee to state their “reason for the
26 challenge,” and by requiring challengers to participate in the
27 hearing before an arbitrator.
- 28 vi. The United States Constitution prohibits the WFSE and the

1 Employer Defendants from enforcing the forced unionism
2 clause by collecting fees from Plaintiffs and other nonmembers,
3 requesting or threatening employees with termination, and
4 actually terminating employees, without establishing the proper
5 procedural safeguards set forth in *Hudson* and its progeny.

- 6 g. Issue an order requiring Defendant WFSE to pay nominal damages for
7 each Constitutional violation which occurred by each seizure of fees,
8 each request for termination and each threat of termination, where the
9 procedural safeguards established in *Hudson* were not followed;
10 h. Award reasonable attorney's fees pursuant to 42 U.S.C. §1988; and
11 i. Order any further legal or equitable relief as the Court deems just and
12 proper.

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15 Dated this 15th Day of March, 2006.

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17
18 Respectfully submitted,

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