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4

HON. FRED VAN SICKLE

5 UNITED STATES DISTRICT COURT
6 FOR THE EASTERN DISTRICT OF WASHINGTON

7 SHAWN HUSS, a single man, and)
8 others similarly situated,)

Case No.: CV-05-180-FVS

9 Plaintiffs,)

AMENDED COMPLAINT FOR
VIOLATIONS OF CIVIL RIGHTS

10 vs.)

CLASS ACTION

11 SPOKANE COUNTY, a municipal)
12 corporation,)

13 Defendants.)
14

15 **I. INTRODUCTION**

16 1. This class action seeks declaratory and injunctive relief and monetary damages
17 against Defendant SPOKANE COUNTY for violations of the Plaintiff's, and
18 others similarly situated, civil rights guaranteed under the Fifth and Fourteenth
19 Amendments through their jail intake booking fee policy pursuant to 28 U.S.C.
20 §§ 1983 and 1988. Spokane County's policy regarding the reimbursement of
21 jail intake fees is illegal in that it violates Mr. Huss's, and others similarly
22 situated clearly established constitutional rights under the Fifth and Fourteenth
23
24
25

1 Amendments (not to be deprived of property without due process of law).

2 Further, RCW 70.48.390 is facially unconstitutional.

3
4 **II. JURISDICTION & VENUE**

- 5 2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and
6 1361, 28 U.S.C. § 2201, and 5 U.S.C. § 702.
7
8 3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2), (e)(2)-(3).
9
10 4. This action is brought pursuant to the Fifth and Fourteenth Amendments to the
11 United States Constitution, RCW 70.48.390, 42 U.S.C. 1983, 1988.
12
13 5. All acts complained of herein occurred in Spokane County, Washington.

14 **III. PARTIES**

- 15 6. Plaintiff SHAWN HUSS is a single man residing in Spokane County, which is
16 within the Eastern District of Washington and he has been a resident of
17 Spokane County at all times relevant herein. He is a real party in interest in this
18 case.
19
20 7. Defendant SPOKANE COUNTY is a municipal corporation and is located
21 within the Eastern District of Washington.

22 **IV. FACTS**

- 23 8. On or about May 14, 1999 the Washington legislature passed RCW
24 70.48.390, amending RCW 70.48, which authorized city, county, and regional
25 jails to take a \$10.00 booking fee from the person of each individual booked.
(S.H.B. 1143, (1999)).

- 1 9. On or about May 7, 2003 the 58th legislature of Washington amended RCW
2 70.48.390 to allow counties to collect “jail’s actual booking costs or one
3 hundred dollars, whichever is less.” (S.H.B. No 1232 (2003)).
4
- 5 10. On or about November 19, 2003 Lt. Edee Hunt and Tim O’Brien, Deputy
6 Prosecuting Attorney, sent a memorandum to the Spokane Board of County
7 Commissioners regarding the collection of booking fees.
8
- 9 11. On or about February 24, 2004 the Spokane County Board of Commissioners
10 passed resolution 04-0160 authorizing the Spokane County Jail to develop and
11 implement a procedure to collect a booking fee from persons booked in the
12 Spokane County Jail in accordance with RCW 70.48.390.
13
- 14 12. The Spokane County Jail adopted a policy which authorizes the collection of an
15 intake fee. Federal inmates are charged the federal daily rate, while non-federal
16 inmates are charged the jail intake fee—\$89.12 as of August, 2004.
17
- 18 13. The official policy allows fees to be taken from the inmate’s person at the time
19 of booking. If the person does not have adequate fees on their person at the
20 time of booking, a charge is assessed to the person’s account.
21
- 22 14. Inmates booked for housing only, while in transit, or who are transferred
23 between facilities are not charged.
- 24 15. The policy does not provide for a pre-deprivation hearing, nor any other
25 opportunity for the inmate to contest the seizure of his/her money.

1 16.Spokane County adopted a reimbursement policy which places the burden on
2 the inmate to prove that criminal charges were dropped or that he was acquitted
3 in order to redeem his funds. Specifically, the policy states “*it is your*
4 *responsibility to provide the proof from the Courts that your charges have been*
5 *dismissed or you have been acquitted*” and that only upon an investigation by
6 the Spokane County Jail Staff may the individual receive his funds back.
7

8
9 17.Captain Collins announced the implementation of this official policy, as
10 described above, effective on or about May 5, 2004.

11 18.On or about October 31, 2004, the Plaintiff was arrested based on a frivolous
12 domestic violence complaint.
13

14 19.He was taken to the Spokane County Jail.

15 20.Upon being booked, his wallet was seized as personal property to be returned to
16 him upon release. Unbeknownst to Mr. Huss, Spokane County seized \$37.00
17 from Mr. Huss’s wallet for the County’s use and benefit.
18

19 21.At the time of the property seizure, Spokane County did not inform Mr. Huss
20 that it was charging him a booking fee, that the statute mandated return of the
21 fee upon dismissal of charges, nor did they explain to him the process for
22 obtaining a refund.
23

24 22.While in jail Mr. Huss was informed by other inmates that he should not expect
25 to get any money back from his wallet back when he was released.

1 23.Mr. Huss was subsequently released from the Spokane County Jail and all
2 charges were dropped.

3
4 24.Upon release, his funds were not returned to him.

5 25.At the time of his release, Mr. Huss was not provided with Spokane County
6 Jail's Reimbursement Form or any other means to get his funds back.

7 26.Mr. Huss lives on a limited income and was dependant on the \$37.00 taken
8 from his wallet to feed and provide for his family until his next paycheck.

9
10 27.Pursuant to Spokane County's reimbursement policy, Mr. Huss must waive his
11 rights to any due process in order to redeem his property.

12 28.Only after being served with Plaintiff's notice of claim letter outlining
13 the violations of his federal rights did Spokane County refund Mr. Huss's
14 \$37.00.

15
16 29.To date, Defendant Spokane County has not refunded the interest on Mr. Huss's
17 seized money, nor has it compensated him for the consequences of leaving him
18 without sufficient funds to support himself after his release from jail.

19
20 30.Upon belief, since May 5, 2004 Spokane County has seized thousands of
21 dollars from hundreds of inmates at the Spokane County Jail under the same
22 procedures used with Mr. Huss; including failure to provide adequate notice
23 and an adequate pre-deprivation hearing.
24
25

1 31. Upon belief, dozens, if not hundreds, of those inmates were entitled to receive
2 reimbursement of their seized monies after the criminal proceedings against
3 them were terminated in their favor.
4

5 32. All actions taken in regard to the seizure and collection of cash described in the
6 foregoing paragraphs were undertaken according to official County practice and
7 policy as approved by the County Commissioners and other policy makers.
8

9 **V. CLASS ACTION ALLEGATIONS**

10 33. Mr. Huss brings this action on behalf of himself, and all others similarly
11 situated, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), (3). The Plaintiff
12 provisionally proposes the following class definition:
13

14 All individuals who have been charged an intake fee by
15 the Spokane County Jail without an adequate notice
16 and/or hearing, in violation of their due process rights
17 under the law.

18 34. This is an appropriate class action because the proposed class is so numerous
19 that joinder of all members is impracticable.

20 35. There are questions of law and fact common to the class, including whether
21 Defendant's actions violate Plaintiff's due process rights under the Fifth and
22 Fourteenth Amendments of the U.S. Constitution.

23 36. The claims of the Plaintiff are typical of the claims of the class.

24 37. The named Plaintiff will fairly and adequately protect the interest of the class.
25

1 38. The named Plaintiff has available competent counsel with experience in civil
2 rights and prisoners' rights who is willing and able to protect the interests of the
3 class.
4

5 39. The Defendants have acted or refused to act on grounds generally applicable to
6 the class, thereby making appropriate final declaratory and injunctive relief and
7 monetary damages with respect to the class as a whole.
8

9 **VI. CAUSES OF ACTION**

10 **A. CIVIL RIGHTS — VIOLATION OF FIFTH AND**
11 **FOURTEENTH AMENDMENT**

12 40. Plaintiff realleges all matters set forth in paragraphs 9 through 39, above.

13 41. The actions of defendant Spokane County, complained of above in paragraphs 8
14 through 39, were taken under color of state law. These actions constitute clearly
15 established violations of the Fifth and Fourteenth Amendments right to be free
16 of unlawful takings of property without due process of law.
17

18 42. The Defendant's official intake fee collection policy violates Plaintiff's rights
19 under the Fifth and Fourteenth Amendment of the U.S. Constitution for several
20 reasons:
21

- 22 1) It does not provide him with adequate notice of the seizure of his
23 property and his attendant rights;
24
25

- 1 2) It does not provide an opportunity to object to the taking of his property,
- 2 and to assert a reason, such as indigent status or exempt source of funds,
- 3 that may prevent the County from taking his money;
- 4
- 5 3) It does not provide any type of hearing prior to taking the property; and
- 6 4) It impermissibly places the burden on Mr. Huss to get his money back.

7 Furthermore, there are no procedural safeguards guaranteeing that Mr. Huss's
8 property (or anyone else's) will be returned in the event that he is not charged, or if
9 he is acquitted. Therefore, Spokane County has violated Mr. Huss's due process
10 rights.
11

12 43. The Defendant's actions constitute an unlawful taking in violation of Mr. Huss's
13 Fifth Amendment Rights. Mr. Huss has a clear property right to his personal
14 money. The taking and keeping of his personal property without a hearing
15 violates his right to be free from unlawful government takings and subjects the
16 Defendant to a higher level of scrutiny in order to justify its actions.
17

18 44. Plaintiff is entitled to declaratory relief pursuant to 28 U.S.C. § 2201 that
19 Defendant's Resolution 04-0160 and RCW 70.48.390 are unconstitutional.
20

21 45. Plaintiff is entitled to a preliminary and permanent injunction under the
22 traditional equitable criteria: 1) there is a strong likelihood that Plaintiff will
23 succeed on the merits, 2) there is a possibility of irreparable injury to the
24 plaintiff, and others similarly situated, if injunctive relief is not granted, and 3)
25

1 the hardship placed on the Plaintiff by Defendant's Resolution 04-0160 and
2 RCW 70.48.390 outweigh the public interest of maintaining the Defendant's
3 policy.
4

5 46. Defendants acted intentionally, knowingly, and/or with reckless or careless
6 disregard and/or deliberate indifference to Plaintiff's constitutional rights.

7 47. Defendants are liable for damages, punitive damages, costs and attorneys' fees
8 under 42 U.S.C. §§ 1983, 1988.
9

10 **B. MUNICIPAL LIABILITY**

- 11 1. Plaintiff realleges all matters set forth in paragraphs 8 through 47, above.
- 12 2. Defendant Spokane County explicitly adopted and implemented a policy,
13 custom, or practice permitting its employees to collect booking fees from the
14 person of individuals at the time they are booked without a pre-deprivation
15 hearing pursuant to Spokane County Resolution 04-0160 and RCW 70.48.390.
16 These policies, customs, or practices explicitly allow, condone, ratify, and
17 afford the reckless, careless, and erroneous field decisions by its personnel so as
18 to make mistakes or act willfully, wantonly and/or recklessly.
19
- 20 3. Defendant Spokane County, individually or through its agencies, is a "person"
21 within the meaning of 42 U.S.C. § 1983. All actions taken by Spokane County
22 in relation to the Plaintiff were taken under the color of law.
23
24
25

1 4. In violation of the Fifth and Fourteenth Amendments to the United States
2 Constitution, Defendant Spokane County's illegal actions have deprived
3 Plaintiff of his Constitutionally-protected rights against:
4

5 a. Taking Property without due process of law; and

6 b. Taking Property without just compensation.
7

8 5. By its conduct as described herein, Spokane County proximately caused the
9 constitutional violations described above.
10

11 6. By this conduct, Spokane County violated Plaintiff's federal constitutional and
12 statutory rights under 42 U.S.C. § 1983.

13 **DAMAGES**

14 48. Spokane County's illegal seizure of money from Mr. Huss and other class
15 members proximately caused special damages in the amount of money taken,
16 pre-judgment interest in an amount to be proven at trial, consequential damages
17 in an amount to be proven at trial, and nominal damages.
18

19 **VII. REQUEST FOR RELIEF**

20
21 WHEREFORE, the Plaintiff asks this Court to grant the following relief:

22 49. Certify this case as a class action under FRCP 23(b)(2), (3);

23 50. Issue a declaratory judgment, declaring that Defendant's Resolution 04-0160
24 and RCW 70.48.390 violate Plaintiff's due process and equal protection rights
25 under the Fifth and Fourteenth Amendments and is unconstitutional;

1 51. Issue preliminary and permanent injunctions prohibiting the collection of
2 inmate booking fees at the Spokane County Jail pursuant to either Spokane
3 County Resolution 04-0160 or RCW 70.48.390;
4

5 52. Award Plaintiff all special and general damages resulting directly and
6 proximately from Defendant's conduct, as set forth above, in an amount to be
7 determined at trial;
8

9 53. For all prejudgment and post judgment interest as allowed by law;

10 54. Award Plaintiff all reasonable costs and attorney's fees incurred in connection
11 with this lawsuit, pursuant to 42 U.S.C. § 1988, or any other applicable law; and
12

13 55. For any further or additional relief which the Court finds equitable, appropriate,
14 or just.

15 Respectfully submitted this 14th day of July, 2005.

16 CENTER FOR JUSTICE

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21 E-Mail: Breean@cforjustice.org

22 Attorney for Plaintiff Shawn Huss
23
24
25

CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2005, I presented the foregoing Amended Complaint to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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