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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KITTITAS COUNTY

JEFFREY BEST, DANIEL CAMPOS, and
GARY DALE HUTT, on behalf of
themselves and all others similarly situated;
and GREG HANSEN,

Plaintiffs,

v.

GRANT COUNTY, a Washington county,

Defendant.

NO. 04-2-00189-0

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Plaintiffs Jeffrey Best, Daniel Campos, Gary Dale Hutt, and Greg Hansen ("Plaintiffs"), by and through their respective undersigned counsel, upon knowledge with respect to their own acts and circumstances, and on information and belief as to other matters, allege as follows:

I. INTRODUCTION

1. The Sixth and Fourteenth Amendments to the United States Constitution and Sections 3 (due process), 12 (equal protection), and 22 (right to counsel) of Article I of the Washington State Constitution guarantee indigent persons charged with felony crimes the

1 right to effective assistance of counsel. This right is fundamental and is essential to a fair
2 trial. *See Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).

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5 2. Defendant Grant County has a constitutional duty to operate a public defense
6 system that provides indigent persons charged with felony crimes with the effective
7 assistance of counsel. The Grant County Board of Commissioners (the "Board") is the
8 executive authority of defendant Grant County. The members of the Board are LeRoy C.
9 Allison, Deborah Kay Moore, and Tim Snead. The Board is responsible for establishing,
10 implementing, and maintaining the Grant County public defense system.

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17 3. Defendant Grant County, under the direction of the Board, has breached its
18 constitutional duties by operating a public defense system that regularly and systematically
19 deprives indigent persons of the effective assistance of counsel. Among other things,
20 defendant Grant County, acting at the direction and under the control of the Board, has
21 failed to ensure that public defenders are qualified, has failed to impose reasonable caseload
22 limits on public defenders, has failed to monitor and oversee the public defense system, has
23 failed to provide adequate funds for public defense, has failed to provide representation at all
24 critical stages of prosecutions, and has failed to protect the independence of public
25 defenders.
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35 4. The Board and other employees of defendant Grant County have known of
36 the constitutional deficiencies in the Grant County public defense system for many years.
37 Between 1996 and the present, at least four courts have overturned felony convictions
38 because Grant County public defenders failed to provide effective assistance of counsel.
39 The Washington State Bar Association, moreover, has recommended that two Grant County
40 public defenders be disbarred. This includes Tom Earl, until recently the exclusive holder of
41 the 2000-2005 Grant County public defense contract. In each case, the WSBA found that
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1 the public defender engaged in misconduct in connection with representing indigent
2 defendants in Grant County.
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5 5. Despite knowing of the deficiencies in the Grant County public defense
6 system, defendant Grant County has failed to take reasonable steps to protect the
7 constitutional rights of indigent persons. Indeed, even after the WSBA recommended in
8 June 2003 that Tom Earl be disbarred for misconduct as a public defender, defendant Grant
9 County refused to terminate Earl as the public defender and refused to terminate his
10 exclusive public defense contract with Grant County. Defendant Grant County allowed Earl
11 to remain in this position until finally, in February 2004, the Washington Supreme Court
12 suspended Earl from the practice of law pending the determination of the appeal of his
13 disbarment.
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23 6. Even then, defendant Grant County failed to take reasonable action to protect
24 the rights of indigent persons. Although Earl's suspension had long been a possibility,
25 defendant Grant County failed to make reasonable preparations for the suspension. The
26 Board has, instead, allowed the public defense system to descend into chaos. Things have
27 become so bad that the judges of the Grant County Superior Court recently had to issue a
28 plan that calls for the conscription of attorneys, some with no criminal defense experience,
29 to represent indigent persons charged with felonies.
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37 7. Indigent persons have suffered and continue to suffer harm as a result of
38 these violations by defendant Grant County. Among other things, indigent persons are
39 deprived of adequate consultation and communication with their attorneys; indigent persons
40 must make decisions about their rights or contest issues without adequate factual or legal
41 investigation by their attorneys; indigent persons are deprived of meaningful opportunities to
42 present defenses; the rights of indigent persons are waived without proper consultation and
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1 advice; indigent persons are deprived of the services of investigators and expert witnesses;
2 indigent persons' cases are not properly prepared for trial; and indigent persons do not
3 receive meaningful benefits in exchange for guilty pleas.
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6 8. Pursuant to 42 U.S.C. § 1983, the Sixth and Fourteenth Amendments to the
7 United States Constitution, and Sections 3, 12, and 22 of Article I of the Washington State
8 Constitution, the Plaintiffs bring this class action and taxpayer lawsuit to ask this Court for
9 injunctive and declaratory relief to prevent further violations and to protect the constitutional
10 rights of all indigent persons charged with felony crimes in Grant County.
11

12 **II. JURISDICTION AND VENUE**

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14 9. The Court has jurisdiction over this action pursuant to 42 U.S.C. § 1983 in
15 that this is an action for deprivation of rights, privileges and immunities secured by the
16 United States Constitution.
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19 10. The Court has jurisdiction over this action pursuant to Article IV, Section 6
20 of the Washington State Constitution and RCW 2.08.010 in that this is a case in equity.
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23 11. The Court has jurisdiction over this action pursuant to Article IV, Section 6
24 of the Washington State Constitution and RCW 2.08.010 in that exclusive jurisdiction over
25 this matter has not been vested in some other court.
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28 12. Venue is proper in this Court pursuant to RCW 36.01.050 in that this court is
29 located in one of the two nearest judicial districts to defendant Grant County, as determined
30 by the office of the administrator of the courts. *See* [http://www.courts.wa.gov/court_dir/
31 ?fa=court_dir.filingvenue](http://www.courts.wa.gov/court_dir/?fa=court_dir.filingvenue).
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III. THE PARTIES

13. Plaintiff Jeffrey Best is an indigent person who has been charged with felony crimes in Grant County Superior Court. Best was assigned an attorney. Best's case is currently pending.

14. Plaintiff Daniel Campos is an indigent person who has been charged with felony crimes in Grant County Superior Court. Campos was assigned an attorney. Campos' case is currently pending.

15. Plaintiff Gary Dale Hutt is an indigent person who has been charged with felony crimes in Grant County Superior Court. Hutt was assigned an attorney. Hutt's case is currently pending.

16. Plaintiff Greg Hansen (the "Taxpayer Plaintiff") is a taxpaying resident of Grant County. Hansen is interested in ensuring that constitutionally adequate public defense is provided to indigent persons in Grant County and that public defense funds are properly expended.

17. Defendant Grant County is a county of the State of Washington established pursuant to RCW 36.04.130.

IV. CLASS ACTION ALLEGATIONS

18. Plaintiffs Best, Campos, and Hutt (collectively, the "Class Plaintiffs") bring this action pursuant to Civil Rule 23(a) and (b)(2) on behalf of themselves and all others similarly situated (collectively the "Class Members") as members of the following proposed plaintiff class (the "Class"):

All indigent persons who have or will have criminal felony cases pending in Grant County Superior Court, who are appointed an attorney, and who have not entered into a plea agreement or been convicted.

1 "given [the plaintiffs'] readiness to file suit and your request for an expedited response, we
2 will, without undertaking further legal analysis or inquiry, simply decline to initiate a
3 taxpayer action."
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6 **VI. FACTS ENTITLING PLAINTIFFS TO RELIEF**

7 **A. Grant County's Duty to Provide Effective Assistance of Counsel for** 8 **Indigent Persons Charged with Felony Crimes**

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12 27. The Sixth and Fourteenth Amendments to the United States Constitution and
13 Sections 3, 12, and 22 of Article I of the Washington State Constitution guarantee to every
14 indigent person charged with a felony crime the right to effective assistance of counsel.
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18 28. Defendant Grant County has a constitutional duty to provide every indigent
19 person charged with a felony crime in Grant County Superior Court with effective assistance
20 of counsel.
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24 29. The Washington State Legislature has specifically found that effective legal
25 representation should be provided for all indigent persons where the right to counsel
26 attaches. RCW 10.101.005 ("The legislature finds that effective legal representation should
27 be provided for indigent persons and persons who are indigent and able to contribute,
28 consistent with the constitutional requirements of fairness, equal protection, and due process
29 in all cases where the right to counsel attaches.").

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32 30. Washington law requires counties to adopt specific standards for the delivery
33 of public defense services and provides that "the standards endorsed by the Washington
34 State Bar Association for the provision of public defense services may serve as guidelines to
35 contracting authorities." RCW 10.101.030. A copy of the standards endorsed by the
36 Washington State Bar Association for the provision of public defense services (the "WSBA
37 Standards") is attached hereto as Exhibit A.
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1 31. Defendant Grant County has failed to comply with RCW 10.101.030.
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3 Instead, Grant County, by and through the Board, has adopted a resolution that falls short of
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5 the requirements of RCW 10.101.030 and deviates in important respects from the WSBA
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7 Standards. A copy of the Grant County Resolution is attached hereto as Exhibit B.
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9 **B. Overview of the Grant County Public Defense System**

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11 32. At all relevant times prior to February 12, 2004, defendant Grant County, by
12
13 and through the Board, maintained a contract system of providing for the defense of indigent
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15 persons charged with felony crimes in Grant County Superior Court.
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17 33. Under that system, defendant Grant County, by and through the Board,
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19 contracted with one attorney or law firm to provide all indigent defense services in Grant
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21 County Superior Court. This included representation in connection with pre-charging
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23 activities, pre-trial hearings, plea negotiations, trial, post-trial motions, filing notices of
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25 appeal, probation revocation hearings, certain civil proceedings, and material witness
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27 proceedings.
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29 34. The contracting attorney or firm was permitted to delegate cases to other
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31 attorneys.
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33 35. Between January 1996 and December 31, 2000, the Board caused defendant
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35 Grant County to contract with Earl & Earl, P.S. to provide all public defense services to
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37 indigent persons charged with felony crimes in Grant County.
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39 36. Earl & Earl delegated many of those cases to Thomas Earl and Guillermo
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41 Romero, as well as other attorneys.
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43 37. In December 2000, the Board caused defendant Grant County to enter into an
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45 exclusive five-year contract with Thomas Earl to provide all public defense services to
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1 indigent persons charged with felony crimes in Grant County (the "2000-2005 Public
2 Defense Contract").
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4 38. Under the 2000-2005 Public Defense Contract, defendant Grant County
5 agreed to pay Earl a flat fee for the representation of all indigent persons in connection with
6 felony criminal matters in Grant County, regardless of the number of cases, the complexity
7 of the cases, or the actual costs incurred in the defense of the cases.
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10 39. The flat fee paid to Earl had to cover attorneys' fees, expert witness fees,
11 private investigator fees, and all other costs of mounting an effective defense in cases
12 handled by all assigned counsel (with the exception of a very limited number of
13 "extraordinary cases").
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16 40. Earl had virtually unfettered discretion over the administration of the Grant
17 County public defense system, including the assignment of cases.
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20 41. Earl delegated some of the cases assigned under the 2000-2005 Public
21 Defense Contract to other attorneys, including Guillermo Romero.
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25 **C. The Judicial Findings of Ineffective Assistance of Counsel, and the**
26 **Disbarment Recommendations for Earl and Romero**
27

28 42. At least four state and federal courts have found that Earl (two cases) or
29 Romero (two cases) failed to provide indigent persons charged with felonies with effective
30 assistance of counsel. Copies of these decisions are attached hereto as Exhibits C-F.
31
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33 43. Although the Board and other Grant County employees were aware of these
34 judicial findings of serious constitutional violations by Grant County public defenders,
35 defendant Grant County failed to take reasonable steps to protect indigent persons and
36 secure their constitutional rights. Among other things, defendant Grant County did not
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1 terminate the 2000-2005 Public Defense Contract and permitted Earl to continue to serve as
2 public defender.
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4 44. On or about June 28, 2001, the Washington State Bar Association charged
5 Guillermo Romero with violating the Rules of Professional Conduct in connection, in part,
6 with his conduct as a Grant County public defender.
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10 45. On or about July 13, 2001, the Washington State Bar Association charged
11 Thomas Earl, the exclusive holder of the 2000-2005 Public Defense Contract, with violating
12 the Rules of Professional Conduct in connection with his conduct as a Grant County public
13 defender.
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18 46. On or about November 15, 2002, a Washington State Bar Association hearing
19 officer found that Romero had committed multiple violations of the Rules of Professional
20 Conduct and recommended that Romero be disbarred. *Washington State Bar Association v.*
21 *Guillermo Romero*, Findings of Fact, Conclusions of Law and Hearing Officer's
22 Recommendation (November 15, 2002), attached hereto as Exhibit G. The Washington
23 State Bar Association Disciplinary Board affirmed, and the recommendation is now on
24 appeal to the Washington Supreme Court.
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32 47. On June 17, 2003, a Washington State Bar Association hearing officer found
33 that Earl had committed multiple violations of the Rules of Professional Conduct and
34 recommended that Earl be disbarred. The officer found that Earl engaged in conduct
35 involving dishonesty, fraud and deceit causing serious injury to indigent clients in the Grant
36 County public defense system. *See Washington State Bar Association v. Thomas Earl*,
37 Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation ¶¶ 6.4-6.7
38 (June 17, 2003), attached hereto as Exhibit H. The Washington State Bar Association
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1 Disciplinary Board affirmed the disbarment recommendation on about November 24, 2003.

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3 That recommendation is now on appeal to the Washington Supreme Court.

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5 48. The Hearing Officer in the Earl disciplinary proceedings expressly found that
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7 the Grant County public defense system was deficient in several respects. Among other
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9 things, the Hearing Officer found that the Grant County system "created an environment in
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11 which the potential for conflicts of interest and abuse were exacerbated," and that the
12
13 delivery of public defense services in Grant County fell short of the WSBA standards with
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15 respect to compensation, caseload limits, and inadequate limits on private practice. Id.
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17 §§ 3.18-3.19.

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19 49. Although the Board and other Grant County employees were aware of these
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21 findings that Earl and Romero had committed numerous violations in connection with their
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23 work as public defenders, defendant Grant County failed to take reasonable steps to protect
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25 indigent persons and secure their constitutional rights. Among other things, defendant Grant
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27 County did not terminate the 2000-2005 Public Defense Contract and permitted Earl to
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29 continue to serve as a public defender.

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31 **D. The Public Defense System Is In Chaos**

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33 50. Earl continued to hold the exclusive public defense contract with Grant
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35 County and to serve as a public defender at all times between the disbarment
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37 recommendation on June 17, 2003 and February 12, 2004. On that date, the Washington
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39 Supreme Court ordered that Earl be immediately suspended pending the determination of his
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41 appeal of the WSBA disbarment recommendation.

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43 51. Despite the suspension order, Earl continued to appear in Grant County
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45 Superior Court as late as February 17, 2004.

1 52. Although the disciplinary proceedings against Earl had been pending for
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3 more than 2½ years, defendant Grant County failed to make reasonable provision for
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5 indigent defense services in the event of Earl's suspension.
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7 53. As a result of defendant Grant County's acts and omissions, the Grant County
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9 indigent defense system has been thrown into chaos.
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11 54. Defendant Grant County has not implemented any effective system for
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13 hiring, retaining, supervising or paying attorneys to represent indigent persons charged with
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15 felonies, and attorneys with public defense experience are being compelled to handle far
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17 more cases than they can defend effectively.
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19 55. Matters have gotten so bad that judges on the Grant County Superior Court
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21 have issued a plan to conscript attorneys—including trusts and estates attorneys, business
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23 attorneys, and others with no criminal defense experience—to represent indigent persons in
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25 felony matters. The only "qualification" for this compulsory service is that the attorney's
26
27 place of work not be located too far from the courthouse. *See* Memorandum from the
28
29 Honorable Evan E. Sperline, dated March 12, 2004, attached hereto as Exhibit I.
30

31 56. Most recently, the Board has proposed to enter into separate contracts with a
32
33 number of individual attorneys to provide public defense services. The separate contract
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35 system proposed by the Board, however, is at least as flawed as the prior system and fails to
36
37 secure the constitutional rights of indigent persons. *See* Proposed Contract, attached hereto
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39 as Exhibit J. Among other things, the proposed contracts fail to implement effective
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41 monitoring and supervision, fail to ensure that public defenders are fully qualified, and
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43 continue to underfund public defense.
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1 **E. Defendant Grant County, By and Through the Board, Has Failed to**
2 **Establish a Public Defense System that Provides Effective Assistance of**
3 **Counsel to All Indigent Persons Charged With Felony Crimes**
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5 57. Throughout the relevant time, defendant Grant County, by and through the
6 Board, has breached its constitutional duties by establishing and perpetuating a public
7 defense system that routinely deprives indigent persons of their constitutional rights to the
8 effective assistance of counsel.
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13 **(i) Defendant Grant County Has Failed To Ensure That All Public**
14 **Defenders Meet Professional Qualifications**
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16 58. Defendant Grant County has failed to ensure that all public defenders meet
17 minimum professional qualifications.
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20 59. Prior to February 2004, the Board knowingly caused Grant County to enter
21 into and maintain a contract with a public defender, Tom Earl, who failed to meet minimum
22 professional qualifications and who demonstrated that he did not provide effective assistance
23 of counsel to indigent persons.
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28 60. Defendant Grant County, moreover, permitted Earl to delegate cases to other
29 public defenders without demonstrating that they met accepted professional standards for the
30 provision of public defense services.
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34 61. Since February 2004, defendant Grant County has failed to ensure that public
35 defenders meet professional qualifications.
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38 62. The current plan to conscript all members of the bar to defend indigent
39 persons charged with felony crimes – regardless of their experience in criminal law –
40 virtually assures that indigent persons will be represented by unqualified attorneys and will
41 be deprived of effective assistance of counsel.
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1 (ii) **Defendant Grant County Has Failed to Impose Reasonable**
2 **Caseload Limits**

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4 63. Defendant Grant County has failed to impose reasonable caseload limits on
5 public defenders and others providing public defense services.

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8 64. Prior to February 2004, defendant Grant County regularly permitted
9 caseloads to exceed the Washington State Bar Association's recommended ceiling of 150
10 felony cases per year for defense attorneys who devote 100% of their time to public defense.

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13 65. Tom Earl, the primary public defender, during some periods handled more
14 than 300 new public defense cases per year, plus private cases.

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17 66. Judges in the Grant County Superior Court have recognized that this system
18 resulted in some lawyers having an excessive caseload.

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21 67. Although the judges of the Grant County Superior Court imposed some
22 caseload limits in 2003, those limits did not comply with the Washington State Bar
23 Association standards, and the chief judge of the Grant County Superior Court has candidly
24 acknowledged that caseloads remained "too high under applicable standards."

25
26
27 68. Under the current chaos, there are no caseload limits, and, according to the
28 chief judge of the Grant County Superior Court, some attorneys have been receiving new
29 cases at a rate of 28 cases per month (336 per year), double the maximum recommended by
30 the WSBA.

31
32 69. Although the single attorney contracts proposed by defendant Grant County
33 purport to limit caseloads to 150 felonies per year, those limits are illusory. They do not
34 prohibit attorneys from taking private cases – a major element of the Washington State Bar
35 Association guidelines. Moreover, they do not limit many types of matters that contracting
36 attorneys would be required to handle.

1 **(iii) Defendant Grant County Has Failed to Monitor or Oversee the**
2 **Public Defense System**

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4 70. Defendant Grant County has failed properly to monitor or oversee the public
5 defense system.
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8 71. Defendant Grant County has failed to implement effective mechanisms for
9 monitoring the performance of public defenders.
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11 72. Defendant Grant County has failed to adopt meaningful publicized criteria
12 for evaluating public defenders.
13

14 73. Defendant Grant County has failed to obtain even rudimentary information
15 about the administration and operation of the public defense system, much less the robust
16 and meaningful information essential to fulfilling its constitutional duties.
17

18 74. Defendant Grant County has failed to establish any system for monitoring
19 and overseeing the assignment or reassignment of cases. As a result, cases have often been
20 assigned late, assigned to attorneys without adequate experience or time, or reassigned to the
21 detriment of the indigent client.
22

23 75. Defendant Grant County has not established any system for ensuring that
24 public defenders investigate cases, prepare for trial, and communicate timely and adequately
25 with clients.
26

27 76. Defendant Grant County has failed to take reasonable steps to ensure that the
28 private practices of attorneys providing public defense does not impair the public defense
29 system.
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31 77. Defendant Grant County has failed to establish an effective system for
32 preventing conflicts of interest.
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1 **(iv) Defendant Grant County Has Failed to Provide Adequate Funds**
2 **for Public Defense**

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4 78. Defendant Grant County, by and through the Board, is responsible for
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6 providing funding for the Grant County public defense system.

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8 79. Defendant Grant County has consistently failed to fund indigent defense at a
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10 level that is sufficient to ensure constitutionally adequate representation.

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12 80. Under the 2000-2005 Public Defense Contract, the total amount of funds
13
14 available to pay for all aspects of indigent defense in Grant County Superior Court was fixed
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16 at \$500,000 per year.

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18 81. This amount was required to cover attorneys' fees, investigation costs, expert
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20 witness fees, and all other costs for virtually all felony prosecutions, pre-charging
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22 representation, the representation of material witnesses, fugitive proceedings, extradition
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24 proceedings, probation violation hearings, reference hearings, and civil matters in which
25
26 indigent persons were entitled to court-appointed counsel.

27
28 82. That amount was not sufficient to ensure constitutionally adequate
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30 representation in the system then in place.

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32 83. Currently, defendant Grant County has failed to make adequate provision for
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34 the defense of indigent persons charged with felony crimes. The Superior Court judges in
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36 Grant County have been forced to conscript attorneys to provide indigent defense services
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38 without telling them how they will be compensated.

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40 84. The draft contracts proposed by defendant Grant County would not remedy
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42 this deficiency in that they do not provide enough funding to secure effective assistance of
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44 counsel to all indigent defendants.

1 (v) **Defendant Grant County Has Failed to Provide Adequate Funds**
2 **to Pay Necessary Costs of Defense**

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4 85. Defendant Grant County has failed to provide funds to hire investigators and
5
6 expert witnesses, or to provide other essential services.

7
8 86. For many years prior to February 2004, costs for expert witnesses,
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10 investigators and similar expenses were required to be paid out of the same limited funds
11 available to pay attorneys, rather than by Grant County in response to a separate request.
12 (The sole exception was for "extraordinary cases.") This created a conflict of interest for
13 attorneys required to choose between their own income and retaining an expert or
14 investigator for a client, and often deprived indigent persons of essential services, such as
15 investigators and experts.
16

17
18 87. Currently, defendant Grant County has failed to make reasonable provision
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20 for funding necessary costs of indigent defense, such as hiring investigators and expert
21 witnesses. Investigators, experts, and others have no assurance that their fees and other
22 expenses will be paid. Attorneys who advance fees and other expenses have no assurance
23 that they will be reimbursed.
24

25
26 88. The draft contracts proposed by defendant Grant County do not fix these
27
28 flaws. The only way to obtain funding for necessary defense costs under the proposed
29 contracts is through a court order, available only after notice to the prosecution. Not only is
30 this method uncertain, it requires the defense to disclose its strategy to the court and the
31 prosecution, permits the prosecution to interfere with the defense, and would erect
32 inappropriate barriers to obtaining necessary defense services.
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1 **(vi) Defendant Grant County Has Failed to Provide Representation**
2 **At All Critical Stages of Prosecution**

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4 89. Defendant Grant County has a constitutional duty to provide indigent persons
5 with effective representation of counsel at all critical stages of a prosecution.
6

7
8 90. Defendant Grant County has routinely failed to provide any representation at
9 initial appearances.
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12 91. In many instances, indigent persons must face the court and the prosecution
13 in their first appearances without any counsel.
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16 92. As a result, indigent persons often make statements that are used against them
17 in subsequent proceedings, and indigent persons are required to post excessive bail,
18 requiring them to spend time in jail unnecessarily.
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22 **(vii) Defendant Grant County Has Undermined the Independence of**
23 **Public Defenders**

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25 93. Defendant Grant County has failed to protect the independence of public
26 defenders and the public defense system, and, in fact, has undermined that independence.
27

28
29 94. Defendant Grant County has allowed the Grant County Prosecuting Attorney
30 to assist in negotiating contracts for public defense and to advise the Board regarding the
31 public defense system. This creates a conflict of interest and serves as a deterrent to
32 vigorous representation by public defenders who are directly or indirectly dependent on
33 contracts with Grant County.
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39 **F. Defendant Grant County, By and Through the Board, has Failed to**
40 **Provide Effective Assistance of Counsel to Class Plaintiffs**

41
42 **(i) Jeffrey Gregg Best**

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44 95. On January 29, 2004, Jeffrey Gregg Best was charged with Burglary in the
45 Second Degree, Theft of Anhydrous Ammonia, Unlawful Storage of Anhydrous Ammonia,
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1 and Theft in the Second Degree, under information number 04-1-00101-6. On February 10,
2
3 2004, Best was charged with Burglary in the Second Degree and Theft of Anhydrous
4
5 Ammonia, under information number 04-1-00142-3. Best was assigned an attorney to
6
7 represent him on these charges.

8
9 96. Best has been deprived of his rights to the effective assistance of counsel in
10
11 the following ways, among others:

12 a. Best was not represented by counsel at his initial appearances.

13
14 b. Best has only met with his attorney on three occasions. None of these
15
16 meetings lasted longer than 10 minutes, and one of the meetings was not planned, but
17
18 occurred when Best saw his attorney in the jail as he was returning to his cell. During the
19
20 course of these meetings, Best has not had sufficient opportunity to discuss the facts relating
21
22 to the charges against him, substantive legal issues, or important litigation strategy.

23
24 c. Best has been unable to contact his attorney. Best made several
25
26 attempts to contact his attorney, including filing kites (requests to speak with an attorney
27
28 filed with the Grant County Jail and forwarded to defense counsel) and writing letters. His
29
30 attorney acknowledged receiving the kites and letters, but did not respond in substance to
31
32 them.

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34 d. Best's attorney has not advised Best of his rights with respect to
35
36 important pre-trial hearings, including suppression hearings under Criminal Rules 3.5 and
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38 3.6. These hearings were stricken in one of Best's cases. Best's attorney, however, has
39
40 never explained the rationale for not proceeding with the hearings.

41
42 e. Best's attorney has not adequately explained the sentencing range
43
44 applicable to his case if he is convicted.
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1 f. Best's attorney has an excessive caseload. His attorney has informed
2 Best that his caseload has "doubled" since Thomas Earl was suspended and that he had
3 recently been assigned a juvenile defendant charged in Superior Court with first degree
4 murder. As a result of the increased workload, Best's attorney candidly admitted that he has
5 not been able to "do the things that should be done" with regard to Best's case.
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11 **(ii) Daniel Rene Campos**

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13 97. On August 22, 2003, Daniel Rene Campos was charged with two counts of
14 Stalking and two counts of Driving With Suspended License, under information number
15 03-1-00750-4 (the "2003 Charge"). On February 9, 2004, Campos was charged with
16 Malicious Mischief in the Second Degree, under information number 04-1-00134-2. On
17 March 29, 2004, the information was amended to include a second count of Malicious
18 Mischief in the Second Degree and Harassment (the "2004 Charge"). Campos was assigned
19 an attorney.
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27 98. Campos has been deprived of his rights to the effective assistance of counsel
28 in the following ways, among others:
29

30
31 a. Campos was not represented by counsel at his initial appearance on
32 the 2003 Charge.
33

34
35 b. During his representation of Campos on the 2003 Charge, Campos's
36 attorney only met with him immediately before court dates. At these meetings, Campos had
37 an inadequate opportunity to discuss defending the charges against him.
38
39

40
41 c. After having been represented by the assigned attorney on the 2003
42 Charge for approximately five months, Campos was assigned to a new attorney. When he
43 asked for an explanation, Campos was told that he was provided a new lawyer because of an
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1 unidentified conflict of interest. His new attorney assumed responsibility for Campos's
2 defense under both the 2003 and 2004 Charges.
3

4
5 d. At a pre-trial hearing regarding the 2003 Charge, Campos's previous
6 attorney indicated that there were several witnesses that had not been identified or developed
7 by the State. Although his previous attorney indicated that these witnesses would need to be
8 interviewed, no interviews took place.
9
10

11
12 e. Although Campos provided his new attorney with contact information
13 for potentially exculpatory witnesses regarding the 2003 Charge, his attorney has failed to
14 advise Campos that the witnesses have been interviewed. Prior to receiving the names of
15 potentially exculpatory witnesses from Campos, his attorney had already filed a list of
16 witnesses for the 2003 Charge. That list only reserved the right to call Campos and the
17 witnesses reserved by the State (two police officers).
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25 f. Campos's new attorney had Campos sign a Stipulation to the
26 Admissibility of Defendant's Statements made regarding the 2003 Charge without fully
27 advising Campos concerning the contents of those statements, the circumstances under
28 which the statements were made, or the impact of the Stipulation on his defense.
29
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33 g. Campos's new attorney has not met with Campos for a sufficient
34 amount of time to discuss the facts relating to the charges against him, substantive legal
35 issues, and important litigation strategy.
36
37

38
39 **(iii) Gary Dale Hutt**

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41 99. On January 12, 2004, Gary Dale Hutt was charged with Conspiracy to
42 Deliver Methamphetamine and Attempted Introducing Contraband in the Second Degree,
43 under information number 04-1-00022-2. On February 24, 2004, the information was
44 amended to include charges of Possession of Methamphetamine with Intent to Deliver,
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1 Possession of Cocaine with Intent to Deliver, Possession of Marijuana with Intent to
2 Deliver, Conspiracy to Deliver Cocaine, Conspiracy to Delivery Marijuana, and Assault in
3 the Second Degree. Hutt was assigned an attorney.
4

5
6 100. Hutt has been deprived of his rights to the effective assistance of counsel in
7 the following ways, among others:
8

9
10 a. Hutt was not represented by counsel at his initial appearance on the
11 above charges.
12

13
14 b. Hutt has been detained during the pendency of the proceedings
15 against him. Hutt has met with his attorney on only three occasions. None of these
16 meetings lasted longer than 15 minutes.
17

18
19 c. Hutt's attorney has not adequately discussed the facts relating to the
20 charges against Hutt, substantive legal issues, or important litigation strategy. Hutt's
21 attorney's caseload is excessive.
22

23
24 d. Hutt's attorney has not adequately reviewed the discovery with him.
25

26
27 e. Hutt's attorney has not interviewed important witnesses in the case.
28

29
30
31 **G. The Plaintiffs Face a Continuing Risk that their Constitutional Rights**
32 **Will Be Violated**
33

34 101. As a result of defendant Grant County's acts and omissions, including the
35 policies, practices and procedures maintained and countenanced by defendant Grant County
36 and the Board, indigent persons charged with felony crimes in Grant County have suffered
37 or are at imminent and serious risk of suffering harm. Among other things, indigent persons
38 are deprived of adequate consultation and communication with their attorneys. Indigent
39 persons must make decisions about their rights or contest issues without adequate factual or
40 legal investigation by their attorneys. Indigent persons are deprived of meaningful
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1 opportunities to present defenses. The rights of indigent persons are waived without proper
2 consultation and advice. Indigent persons are deprived of the services of investigators and
3 expert witnesses. Indigent persons' cases are not properly prepared for trial. Indigent
4 persons do not receive meaningful benefits in exchange for guilty pleas.
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9 102. There is a substantial risk that defendant Grant County's violations will
10 continue and will deprive the Class Plaintiffs and other Class Members of their rights.
11

12 Among other things:
13

14 a. Defendant Grant County has persisted in its wrongful course of
15 conduct for many years.
16
17

18 b. Defendant Grant County has persisted in its wrongful course of
19 conduct despite the fact that it knew or should have known that indigent persons were being
20 deprived of their rights.
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23 c. Defendant Grant County has failed to take prompt action to fix the
24 public defense system.
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27 d. Defendant Grant County has allowed the Grant County public defense
28 system to descend into chaos.
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31 e. Defendant Grant County has refused to discuss the foregoing
32 violations with counsel for the Plaintiffs. Plaintiffs' counsel have written twice to the Board
33 seeking such a meeting. *See Exhibits K and L.* The Board refused to meet with Plaintiffs'
34 counsel. *See Exhibit M.*
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VII. CAUSES OF ACTION

**COUNT ONE
VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)**

103. The allegations of paragraphs 1 through 102 above are incorporated herein.

104. Acting under color of state law, defendant Grant County has violated and caused violations of the Class Plaintiffs' rights to the effective assistance of counsel pursuant to the 6th and 14th Amendments to the United States Constitution.

105. Unless enjoined by the Court, defendant Grant County will continue to violate and cause the violation of the constitutional rights of the Class Plaintiffs and the Class Members.

**COUNT TWO
VIOLATION OF ART. I, §§ 3, 12 AND 22 OF THE
WASHINGTON STATE CONSTITUTION**

106. The allegations of paragraphs 1 through 105 above are incorporated herein.

107. Acting under color of state law, defendant Grant County has violated and caused violations of the Class Plaintiffs' rights to the effective assistance of counsel pursuant to Article I, Sections 3, 12, and 22 of the Washington State Constitution.

108. Unless enjoined by the Court, defendant Grant County will continue to violate and cause the violation of the constitutional rights of the Class Plaintiffs and the Class Members.

**COUNT THREE
TAXPAYER CLAIMS**

109. The allegations of paragraphs 1 through 108 above are incorporated herein.

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1 110. Defendant Grant County's expenditure of funds to perpetuate a public defense
2 system that deprives indigent persons of their constitutional rights constitutes a misuse of
3 taxpayer funds.
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6 111. Unless enjoined by the Court, defendant Grant County will continue to
7 misuse taxpayer funds. Defendant Grant County's misuse of taxpayer funds is resulting, or
8 will result, in actual and substantial injury to the public, to taxpayers, to the Class Plaintiffs
9 and to other Class Members.
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14 **VIII. PRAYER FOR RELIEF**

15 WHEREFORE, the Plaintiffs pray for relief as follows:
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17 A. For certification of a class as defined above;
18

19 B. For a declaration that defendant Grant County is depriving Class Members of
20 their rights to the effective assistance of counsel pursuant to the Sixth and Fourteenth
21 Amendments to the United States Constitution and Sections 3, 12, and 22 of Article I of the
22 Washington State Constitution;
23

24 C. For the issuance of preliminary and permanent injunctions restraining
25 defendant Grant County from violating the Sixth and Fourteenth Amendments to the United
26 States Constitution and Sections 3, 12, and 22 of Article I of the Washington State
27 Constitution in the provision of indigent defense services in Grant County;
28

29 D. For a preliminary and permanent injunction enjoining defendant Grant
30 County from making expenditures of County funds on indigent defense services likely to
31 result in constitutional violations;
32

33 E. For an award of plaintiffs' costs and attorneys' fees; and
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35 F. For such other and further relief as the Court may deem just and proper.
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1 DATED: December 21, 2004.
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3
4

5 **COLUMBIA LEGAL SERVICES**

6 **AMERICAN CIVIL LIBERTIES UNION**
7 **OF WASHINGTON**

8 By _____
9 Pat Arthur, WSBA #13769
10 Joe Morrison, WSBA #23094
11

By _____
Nancy Talner, WSBA #11196

12 **GARVEY SCHUBERT BARER**

13 **PERKINS COIE LLP**

14
15 By _____
16 Lori Salzarulo, WSBA #17294
17 Don Scaramastra, WSBA #21416
18 Justin Dolan, WSBA #33000
19

By _____
David F. Taylor, WSBA #25689
Breena M. Roos, WSBA #34501

20 On behalf of the American Civil Liberties
21 Union of Washington
22

23 Attorneys for Plaintiffs Jeffrey Best and
24 Daniel Campos
25

Attorneys for Plaintiffs Gary Dale Hutt and
Greg Hansen