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SUPERIOR COURT, STATE OF WASHINGTON  
COUNTY OF SPOKANE

Christina Martin, Jason Longoria, Charles  
Arnold, John Sager, Darrel Nash, Erik  
Thomas, Darin Foster, and Luis Gonzalez  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

The State of Washington, the Washington  
State Patrol, Jeffrey DeVere, Jay  
Cabezuela, Timothy Winchell, and John  
Batiste,

Defendants.

Case No.: 14-2-00016-7

SECOND AMENDED COMPLAINT

"The Washington State Patrol has not awarded veterans' preference points in the past." November 14, 2012, 11:09 a.m. email from Lieutenant Timothy Winchell, Washington State Patrol, Human Resources Division.

Since 1949 the Washington Legislature has required state-government employers to give qualified military veterans additional points on entrance and promotional examinations. The

SECOND AMENDED COMPLAINT - 1

1 Washington State Patrol ("WSP") is well aware of this requirement: on December 26, 1951,<sup>1</sup> the  
2 Washington State Attorney General, in response to a request from the Chief of the WSP, made  
3 clear the law's requirements. Yet, in the following decades the WSP intentionally and knowingly  
4 disregarded the law, concealed the existence of the legislatively mandated veteran benefit from  
5 its employees, and refused to apply it when asked. In fact, as of the date of this complaint, the  
6 WSP continues to disregard the legislature's directives to give honorably discharged veterans  
7 preference in employment and promotion. This lawsuit seeks to remedy the WSP's knowing  
8 disregard of the law.

9 Plaintiffs Christina Martin, Jason Longoria, Charles Arnold, John Sager, Darrel Nash,  
10 Darin Foster, Erick Thomas, and Luis Gonzalez by their undersigned attorneys, for this class  
11 action complaint against Defendants State of Washington, WSP, and Jeff DeVere, Jay  
12 Cabezuela, Timothy Winchell, and John Batiste in their individual capacities, allege as follows:

### 13 PARTIES

14 1. Plaintiffs. Each of the named Plaintiffs, Christina Martin, Jason Longoria, Charles  
15 Arnold, John Sager, Darrel Nash, Darin Foster, Erick Thomas, and Luis Gonzalez is currently  
16 employed by the WSP, was employed by the WSP, or applied to work at the WSP at all relevant  
17 times hereto. Each of the named Plaintiffs resides within the State of Washington. Each named  
18 Plaintiff is an honorably discharged veteran of the Armed Services of the United States, is a  
19 veteran as defined under RCW 41.04.005 and/or RCW 41.04.007, has been entitled to veteran  
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23 <sup>1</sup> AGO 51-53, No. 198 (Dec. 26, 1951) *available at*  
24 <http://www.atg.wa.gov/AGOOpinions/opinion.aspx?section=topic&id=12834#.UsMg69OA3IV>  
25 (last visited May 19, 2014).

1 preference as mandated under RCW 41.04.010, but has been willfully denied use of that veteran  
2 preference by the Defendants in this case.

3 2. The State of Washington. The State of Washington is a state government of which  
4 the Washington State Patrol is one of its agencies. The State of Washington is named as a  
5 defendant in the class's Uniformed Services Employment and Reemployment Rights Act  
6 (USERRA) action.

7 3. The Washington State Patrol. The WSP is a state agency of the State Washington.  
8 WSP a 2,500—plus person organization. Its employees include both commissioned law  
9 enforcement officers and noncommissioned support employees. Of its 2,500 employees, over  
10 10 percent are veterans. The WSP law enforcement rank structure consists of entry-level  
11 employees called "Troopers". Mid-level management employees include "Sergeants" and  
12 "Lieutenants." The highest rank one can obtain in the WSP is "Captain." To join the WSP and  
13 become a "Trooper" an applicant must take a 100 point civil service test. To be promoted from  
14 "Trooper" to "Sergeant", and onward, an employee must take a 100 point promotional  
15 examination. Once an examination takes place the examinees are ranked from top to bottom  
16 based on their test score. This order of merit ranking drives the order by which the applicants  
17 are hired or promoted to the next higher rank and establishes seniority. Upon information and  
18 belief, there are no "Captains" in the WSP who are members of the reserve components of our  
19 Nation's military. The WSP is named as as a defendant in the class's USERRA action.

20 4. The Individual Defendants: John Batiste, Jay Cabezuala, Jeffrey DeVere, and  
21 Timothy Winchell ("Individual Defendants"). Mr. Batiste is the Chief of the WSP. Mr.  
22 Cabezuala is the head of the WSP's Homeland Security Division. Mr. DeVere is the head of the  
23 WSP's Human Resources Division. And Mr. Winchell is assigned to the WSP's Human  
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1 Resources Division. All of these Individual Defendants knew of the requirements of RCW  
2 41.04.010, knew that WSP applicants and employees are entitled to the veteran preference points  
3 mandated by RCW 41.04.010, but refused to apply those preference points in accord with  
4 Washington law and knowingly concealed the existence of the same to the veteran employees of  
5 the WSP. Their awareness of what the law requires but refusal to apply the law has no legal,  
6 factual, or moral justification. Mr. Batiste, Mr. Cabezuala, Mr. DeVere, and Mr. Winchell are  
7 being sued in their individual capacities.

#### 8 JURISDICTION AND VENUE

9 5. For the purposes of 38 U.S.C. § 4303(4) the State of Washington, the Washington  
10 State Patrol, Jeffrey DeVere, Jay Cabezuela, Timothy Winchell, and John Batiste controlled  
11 Plaintiffs' employment opportunities by exercising authority over the performance of  
12 employment-related responsibilities as an employer in the State of Washington.

13 6. The Superior Court, State of Washington, County of Spokane has personal and  
14 subject matter jurisdiction over this matter pursuant to 38 U.S.C. § 4323(b)(2) (USERRA) and  
15 venue is proper in the County of Spokane because Plaintiff, Charles Arnold, resides here and  
16 Defendants maintain a place of business within Spokane County, Washington.

17 7. The Superior Court, State of Washington, County of Spokane has subject matter  
18 jurisdiction over RCW 73.16.010 claims pursuant to RCW 73.16.015.

19 8. In the alternative, this action arises under the Constitution and laws of the United  
20 States, specifically the Fifth and Fourteenth Amendments, and 42 U.S.C. §1983. Jurisdiction  
21 and venue are proper within the Spokane County Superior Court to adjudicate the Constitutional  
22 claims.

## II. FACTS COMMON TO ALL CAUSES OF ACTION

9. Over the past several decades, the Washington State Patrol has knowingly refused to follow the Washington State law that guarantees that certain veterans of the U.S. Armed Forces shall receive a veteran preference in hiring or promotions when they apply for public offices, positions, or employment” with “the state, and all of its political subdivisions and all municipal corporations.” RCW 41.04.010(1)-(3) (“veteran preference law”). As the WSP is a state agency, it must follow the mandates of veteran preference law when it hires or promotes WSP employees.

10. Under the veteran preference law, the WSP has been required to provide a 10% preference in hiring to “a veteran who served during a period of war or in an armed conflict as defined in RCW 41.04.005 and does not receive military retirement,” which means that 10% must be added to the veteran’s “passing mark, grade, or rating” based on a 100 point scale for the position of employment. RCW 41.04.010(1).

11. Under the veteran preference law, the WSP has been required to provide a 5% preference in hiring “to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement,” which means that 5% must be added to the veteran’s “passing mark, grade, or rating” based on a 100 point scale for the position of employment. RCW 41.04.010(2).

12. Under the veteran preference law, the WSP has been required to provide a 5% preference in promotions “to a veteran who was called to active military service from employment with the state,” which means that 5% must be added to the veteran’s “passing mark, grade, or rating” for the relevant promotion based on a 100 point scale. RCW 41.04.010(3). This

1 5% preference applies to the "first promotion" following the veteran's military service that  
2 occurred during the veteran's employment with the state employer.

3 13. Despite the fact that the veteran preference law clearly applied to the WSP and  
4 mandated that the WSP provide the veteran preferences described above to applicants when it  
5 hires and promotes its employees, for the past several decades the WSP has engaged in a pattern  
6 or practice of refusing to follow the veteran preference law.

7 14. WSP's violation of the law was not a small or technical one, but instead was a  
8 complete, systematic failure to follow the law's most basic requirements. As a result, for decades  
9 hundreds to thousands of veterans have been denied the veteran preference that Washington State  
10 guarantees them and that constitutes a benefit of employment and a property right created by  
11 Washington State law.

12 15. By failing to follow the veteran preference law over the past decades, the WSP  
13 has caused massive amounts of harm to veterans who applied to work for the WSP and veterans  
14 who applied for promotions within the WSP, including through the denial employment, the delay  
15 in employment, and the delay in promotions to eligible veterans, which, in turn, caused veterans  
16 to receive reduced wages or pay, reduced seniority, and reduced employment benefits, including  
17 pension benefits and health benefits.

18 16. Each of the above named Plaintiffs is a veteran who was eligible to receive a  
19 veteran preference under RCW 41.04.010(1)-(3), as each named Plaintiff received an honorable  
20 discharge from the Uniformed Services and is a veteran as defined under RCW 41.04.005 and/or  
21 RCW 41.04.007. Each of the above named Plaintiffs was denied the right to receive the veteran  
22 preference required by Washington State law in hiring and/or promotion by the WSP.

23 17. In this action, the named Plaintiffs seek to represent all individuals who were  
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1 denied the right to receive the veteran preference by the WSP over the past 20 years, including  
2 similarly situated applicants and employees of the WSP. Similarly situated WSP applicants and  
3 employees, including Troopers, Sergeants, and Lieutenants, were subjected to the same pattern  
4 or practice of refusing to follow the veteran preference law, and harmed in the same manner as  
5 the named Plaintiffs.

6 18. As described below, the WSP's failure to provide eligible veterans with the  
7 veteran preference in hiring and promotion violates USERRA 38 U.S.C. §§ 4311, 4316, as it  
8 constitutes the denial of employment benefits and discrimination under USERRA. The WSP has  
9 also violated the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S.  
10 Constitution, as the WSP has denied the named Plaintiffs and similarly situated veterans of  
11 property rights that were created by Washington State law and clearly established for decades.

12 19. In addition to failing to follow the veteran preference law, the WSP has violated  
13 the rights of veterans with respect to their military service in other ways.

14 20. For example, as described in detail below, prior to September 2013, the WSP had  
15 and implemented a policy that deprived employees who took military leave from the WSP of the  
16 full 21 days of "paid military leave" per year that is guaranteed under Washington State law,  
17 RCW 38.40.060. The policy effectively mandates the use of unnecessary paid leave, and has the  
18 effect of eliminating or reducing the number of days of paid military leave that are available to  
19 WSP employees.

20 21. Rather than allowing employees to apply each of the 21 days of paid leave to an  
21 actual day of scheduled work that the employee missed, as the law requires, WSP employees  
22 who had a 4-day, 10 hour per day schedule each week were treated as if they instead had worked  
23 a 5-day, 8 hour per day schedule, even though they had not worked a 5-day schedule. By

1 applying this fictional schedule, each year the WSP forced its employees who took military leave  
2 to unnecessarily spend a number of their statutorily guaranteed paid military leave days. As a  
3 result of this policy, WSP employees who took military leave routinely exhausted all of their 21  
4 days of paid military leave before they would have if WSP had followed the law, and thus were  
5 forced to exhaust other employee benefits (such as paid vacation days) on days in which such  
6 employees should have been able to take paid military leave. By adopting and implementing  
7 this policy, the WSP has violated USERRA, 38 U.S.C. §§ 4311 and 4316, as the WSP has  
8 required the excessive use of leave days, the denial of pay and benefits of employment, and made  
9 the use of paid military leave mandatory.

10 22. Furthermore, as described herein, WSP has failed to treat certain veterans'  
11 military-related absence from work as continuous employment in violation of 38 U.S.C. § 4316,  
12 namely by extending the timeframe by which a WSP employee has to complete his or her  
13 probationary period. Due to this practice, veteran employees of the WSP have lost seniority, pay,  
14 and employment benefits.

15 23. The named Plaintiffs were affected by these unlawful policies in the manner  
16 described below.

17 **(Christina Martin)**

18 24. Christina Martin is a Sergeant in the WSP, a Major in the Washington Army  
19 National Guard and veteran of Operation Iraqi Freedom.

20 25. The WSP has employed Ms. Martin since 1999 and continues to employ Ms.  
21 Martin.

22 26. From 2004 to 2005 Ms. Martin deployed to Iraq with the Washington Army  
23 National Guard. Ms. Martin's deployment to Iraq exceeded 180 days, was pursuant to a  
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1 Presidential select reserve call up, and Ms. Martin received an honorable discharge following  
2 her service in Iraq. Ms. Martin's honorable service in Iraq qualified her as a veteran under RCW  
3 41.04.007(3), which, in turn, required the WSP to add five percent to the passing mark, grade,  
4 or rating of Ms. Martin's Sergeant promotional examination under RCW 41.04.010(3).

5 27. Ms. Martin returned to employment with Defendants in 2005.

6 **Martin's Application for Sergeant**

7 28. Ms. Martin tested for WSP Sergeant in 2009 but was denied the opportunity to  
8 apply the legislatively mandated veteran preference points in her selection for promotion to  
9 Sergeant. The WSP did not inform Ms. Martin that she was qualified for the five percent increase  
10 for her promotion to Sergeant, and did not apply the five percent increase to Ms. Martin's  
11 Sergeant's examination score.

12 29. Since the WSP did not apply the five percent increase to Ms. Martin's Sergeant's  
13 examination she was ranked lower then she should have been on the Sergeant's promotion list,  
14 which, in turn, delayed her promotion to the higher paying Sergeant's position and affected her  
15 employment benefits, seniority, and pay.

16 30. The WSP promoted Ms. Martin to Sergeant on October 16, 2010.

17 **Martin's Application for Lieutenant**

18 31. In May 2013 Ms. Martin learned that Washington law required that she be given  
19 a five percent increase to the passing score of one promotional examination. Ms. Martin did not  
20 learn of the five percent requirement through the WSP, but through discussions with WSP  
21 veteran employees, all of whom were trying to (unsuccessfully) get the WSP to follow the law  
22 regarding application of veteran preference points.

1        32.    On or about May 3, 2013, Ms. Martin requested to use the RCW 41.04.010(3)  
2 veteran preference points for her upcoming Lieutenant's promotional examination.

3        33.    On or about May 3, 2013, Ms. Martin requested that the RCW 41.04.010(3)  
4 promotion points be added to her 2009 score on the Sergeant's examination, as doing so would  
5 result in her Sergeant promotion date being adjusted from October 16, 2010 to March 16, 2010  
6 – the date Ms. Martin would been promoted had the WSP followed the law.

7        34.    On or about September 3, 2013, WSP's "Labor and Policy Advisor", with Captain  
8 DeVere and Captain Cabezuala's knowledge, consent, and authorization, rejected Ms. Martin's  
9 request, stating "[s]ince veterans' preference points are not a contractual (CBA) privilege, the  
10 actions alleged on [Ms. Martin's appeal of the WSP's decision to not apply the veteran preference  
11 points] are not properly the subject of the grievance."

12       35.    In denying Ms. Martin's request the WSP stated to Ms. Martin that it had never  
13 retroactively applied an employee's veteran preference points and back-dated an employee's  
14 promotion. The WSP's response to Ms. Martin was incorrect, deliberately misleading, arbitrary,  
15 and capricious. Months before denying Ms. Martin's request, the WSP retroactively applied the  
16 veteran preference points to qualified veteran employees Tod Surdam and Plaintiff Darin Foster.  
17 And months before denying her request, the WSP retroactively backdated Mr. Surdam's and Mr.  
18 Foster's promotions and gave both back pay. The WSP's retroactive promotion point application,  
19 promotion back-dating, and back pay issuance occurred only after Mr. Surdam filed a public  
20 record request and repeatedly complained to the state legislature and Mr. Foster filed a public  
21 record request – a request that risked publicly exposing the WSP's disregard of the law.

22       36.    Throughout 2013, Ms. Martin, Charles Arnold, and other similarly-situated  
23 veteran WSP employees asked to use the RCW 41.04.010(3) veteran preference points on future  
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1 Lieutenant's promotional examinations. On September 18, 2013, the WSP, by and through,  
2 Captain Jeffrey DeVere, denied those requests.

3 37. It is beyond dispute that the Defendants denied Ms. Martin and members of the  
4 class employment opportunities, including reduced employment benefits, seniority and pay,  
5 because of her military obligations and/or veteran status.

6 **(John Sager)**

7 38. John Sager is a Sergeant in the WSP, honorably discharged veteran of the 1991  
8 Persian Gulf War, and Soldier in the U.S. Army Reserve who is not receiving retirement benefits.  
9 Mr. Sager served on active duty in the United States Marine Corps from August 1987 to August  
10 1991, received an honorable discharge, and did not receive retirement benefits.

11 **Sager's Initial Hire**

12 39. Mr. Sager competitively tested for employment and was hired by the WSP on  
13 December 2, 1991. Mr. Sager's four-year active duty service required the WSP to add ten percent  
14 to his WSP entrance examination score, but the WSP did not add ten percent to his entrance  
15 examination score. The WSP did not inform Mr. Sager that state law, RCW 41.04.010(1),  
16 required ten percent to be added to Mr. Sager's entrance examination score.

17 40. The WSP's failure to add the ten percent to Mr. Sager's score resulted in Mr.  
18 Sager being hired later than he otherwise would have been, which, in turn, has adversely affected  
19 Mr. Sager's employment benefits, seniority, and pay.

20 **Sager's Applications to Sergeant**

21 41. On or about March 2003, Mr. Sager requested that veteran preference points be  
22 added to his promotional test to Sergeant. The WSP rejected that request. The WSP informed  
23 Mr. Sager that it "does not use veterans' preference."

1           42.     Mr. Sager tested for Sergeant in March 2003 and was promoted to Sergeant on  
2 July 15, 2004. The WSP did not add five percent to Mr. Sager's Sergeant examination score.

3           43.     The WSP's failure to add the five percent to Mr. Sager's score resulted in Mr.  
4 Sager being promoted to Sergeant later than he otherwise would have been, which, in turn, has  
5 adversely affected Mr. Sager's employment benefits, seniority, and pay.

6                                   **Sager's Application for Lieutenant**

7           44.     Mr. Sager tested for promotion to the rank of Lieutenant in March 2008. The  
8 WSP did not add five percent to Mr. Sager's Lieutenant promotional examination score, and did  
9 not inform Mr. Sager that state law, RCW 41.04.010(1), required five percent to be added to Mr.  
10 Sager's Lieutenant examination score.

11          45.     In late 2010, Mr. Sager informed his WSP Lieutenant of his intent to join the  
12 Army Reserve but was told by his WSP Lieutenant, in violation of federal and state law, that "I  
13 don't want you joining the reserves." When Mr. Sager, later, informed the same WSP Lieutenant  
14 of his successful accession in to the Army Reserves, the WSP Lieutenant angrily stated "I thought  
15 I told you not to do that."

16          46.     In 2010 and 2012, before seeking a promotion to Lieutenant, Mr. Sager took  
17 military leave from the WSP as a member of the Army Reserve.

18          47.     Mr. Sager tested for promotion to Lieutenant in March 2012. The WSP did not  
19 add five percent to Mr. Sager's Lieutenant promotion examination score, and did not inform Mr.  
20 Sager that state law, RCW 41.04.010(3), required five percent be added to Mr. Sager's Lieutenant  
21 examination score.

22          48.     The WSP's failure to add the five percent to Mr. Sager's score resulted in Mr. Sager  
23 not being promoted to Lieutenant in June 2013, which, in turn, has adversely affected Mr. Sager's  
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1 employment benefits, seniority, and pay.

2 49. On December 19, 2013, Mr. Sager sent a request to his supervisors and human  
3 resources requesting that the veteran preference be added to his 2012 Lieutenant's examination  
4 score, and that his promotion to Lieutenant be backdated to the appropriate date in June 2013.  
5 The WSP denied the request.

6 **The Denial of Paid Military Leave to Sager**

7 50. In 2013, Mr. Sager was assigned to work a four-day, ten-hour schedule, as is  
8 customary for patrol Troopers and Sergeants at the WSP.

9 51. On September 18, 2013, Mr. Sager requested military leave pursuant to RCW  
10 38.40.060.

11 52. RCW 38.40.060 provides for 21 days of paid military leave per year for  
12 Washington state public employees, which constitutes a benefit of employment under USERRA.

13 53. Upon information and belief, prior to September 2013, the WSP maintained and  
14 implemented a policy that was designed for, and applies only to, military service members who  
15 take paid military leave under RCW 38.40.060. The policy is believed to be identified as  
16 11.06.010, and states that employees who take military leave in excess of 15 days are *not* to be  
17 charged for the days they actually missed work based on their regularly assigned schedules, but  
18 rather the military service member is fictitiously assigned to a five-day, 8-hour work schedule.  
19 The purpose of this policy is to charge more leave days against the service member's available  
20 leave under RCW 38.04.060 than the service member actually missed from work. Thus, the  
21 policy mandates the use of unnecessary leave. This policy is intended to circumvent the rights  
22 provided under RCW 38.40.060 by charging more paid military leave days than are necessary,  
23 thereby eliminating or reducing the number of days of paid military leave available to WSP  
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1 employees and depriving those employees of paid military leave days and pay.

2 54. This policy is unlawful, and was unlawfully applied to Mr. Sager and other  
3 similarly situated persons.

4 55. On September 26, 2013, Mr. Sager was ordered to active duty. On November 27,  
5 2013, Mr. Sager returned from active duty, and thereafter returned to a four-day, ten-hour work  
6 schedule. Pursuant to the WSP's policy, during this two month period of military service, Mr.  
7 Sager was charged for his paid military leave days as if he had been previously scheduled to work  
8 a five-day, eight hour schedule, which caused Mr. Sager to expend his paid 21 military leave days  
9 faster than he should have based on his actual work schedule and required him to substitute other  
10 forms of paid leave for days that the WSP unlawfully charged him.

11 56. Moreover, on certain occasions when Mr. Sager took military leave in 2010 and  
12 2012, he expended his ordinary annual leave instead of his paid military leave, because he would  
13 be charged for fewer days if he expended ordinary annual leave (based on his actual 4-day, 10-  
14 hour shift) than if he expended paid military leave (based on the fictitious 5-day, 8-hour shift  
15 schedule the WSP applies for paid military leave).

16 **(Darrel Nash)**

17 57. Darrel Nash is a Trooper in the WSP, a Staff Sergeant in the U.S. Army Reserve,  
18 an honorably discharged veteran of Operation Enduring Freedom - Afghanistan, and does not  
19 receive military retirement benefits.

20 58. Before applying to work with the WSP Mr. Nash served on Active Duty with the  
21 U.S. Army, was honorably discharged following his four year active duty tour, and did not  
22 receive military retirement benefits. Mr. Nash's service was during a period of armed conflict,  
23 which entitled him to veteran preference points under RCW 41.04.010, and his honorable  
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1 completion of his initial active duty tour required the WSP to add 10 percent to his WSP  
2 "competitive" (read: entrance) examination score.

### 3 **Nash's Initial Hire**

4 59. Mr. Nash competitively tested for employment, and was hired at the WSP on July  
5 8, 1998. The WSP did not add ten percent to Mr. Nash's entrance examination, and did not  
6 inform him that state law, RCW 41.04.010(1), required ten percent to be added to Mr. Nash's  
7 entrance examination.

8 60. The WSP's failure to add the ten percent to Mr. Nash's score resulted in Mr. Nash  
9 being hired later than he otherwise would have been, which, in turn, has adversely affected Mr.  
10 Nash's employment benefits, seniority, and pay.

### 11 **The Denial of Paid Military Leave to Nash**

12 61. From August 20, 2010 to November 4, 2011 Mr. Nash deployed to Afghanistan  
13 with the U.S. Army Reserve. Upon information and belief, Mr. Nash was subjected to the same  
14 WSP paid military leave policy that is described above.

15 62. Mr. Nash was denied employment opportunities by Defendants based, in part,  
16 upon on his military obligations and/or veterans status.

### 17 **(Jason Longoria)**

18 63. Jason Longoria is a Sergeant in the WSP, a Major in the Air National Guard, and  
19 an honorably discharged veteran who has completed his initial military service obligation for  
20 which no retirement benefits were obtained.

21 64. From May 9, 1989 to May 8, 1993, a period during the Persian Gulf War, Mr.  
22 Longoria served on active duty with the United States Army. Mr. Longoria's service during that  
23 period constitutes fulfillment of his initial military service obligation and qualifies him as a  
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1 veteran under RCW 41.04.007(1). Mr. Longoria transferred into the Washington Air National  
2 Guard on May 9, 1993, after completing his initial U.S. Army active duty service obligation.

### 3 Longoria's Initial Hire

4 65. Mr. Longoria applied for a Trooper position at the WSP in the summer of 1994  
5 and took the competitive entrance examination. At that time, Mr. Longoria was not hired, and  
6 the WSP did not apply any veteran preference points to Mr. Longoria's competitive entrance  
7 examination or inform Mr. Longoria that state law afforded Mr. Longoria veteran preference  
8 points.

9 66. WSP hired Mr. Longoria in 1995, but did not apply any veteran preference points  
10 to Mr. Longoria's competitive entrance examination or inform Mr. Longoria that state law  
11 afforded Mr. Longoria veteran preference points.

12 67. Mr. Longoria applied for the WSP a second time in the Spring of 1995; was not  
13 offered veteran preference points, and was deemed ineligible to attend the WSP's 78<sup>th</sup> Academy  
14 class because, per WSP HR employee Keith Huntley, Mr. Longoria did not "score high enough."

15 68. Mr. Longoria ultimately attended the WSP's 79<sup>th</sup> Academy class in the later part  
16 of 1995.

17 69. Since the WSP did not apply the veteran preference increase to Mr. Longoria's  
18 Trooper examination, he was ranked lower than he should have been on the Trooper's hiring list,  
19 which, in turn, likely delayed his hiring by eight months and affected his employment benefits,  
20 seniority, and pay.

### 21 Longoria's Application for Sergeant

22 70. In the Spring of 2003 Mr. Longoria applied for Sergeant and was promoted to  
23 Sergeant in October 2004. The WSP did not apply the veteran preference points to Mr.  
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1 Longoria's Sergeant promotional examination or inform Mr. Longoria that state law mandated  
2 that such preference points be applied to his Sergeant promotional examination.

3 71. During the course of his WSP career at the WSP, Mr. Longoria has been routinely  
4 activated as part of the Air National Guard.

5 **Longoria's Application for Sergeant**

6 72. After his return from military service, Mr. Longoria successfully tested for the  
7 rank of Lieutenant.

8 73. In April 2012, Mr. Longoria requested that veteran preference points be added to  
9 his 2012 score for promotion to Lieutenant, but Defendants denied Mr. Longoria's request. Had  
10 Defendants not denied Mr. Longoria's request, his rank on the Lieutenant's promotion list would  
11 have resulted in promotion to Lieutenant in the mid-2013 timeframe.

12 74. The WSP promoted Mr. Longoria to Lieutenant in mid-February 2014 but  
13 without applying any veteran preference points.

14 75. The WSP subjected Mr. Longoria to the improper military leave policy (described  
15 above in the allegations relating to Mr. Sager) from, at least, June – July 2011, April – June 2012,  
16 and February - March 2013.

17 76. Longoria was denied employment opportunities by Defendants based, in part, on  
18 his military obligations and/or veterans status.

19 **(Charles Arnold)**

20 77. Charles Arnold is a Sergeant in the WSP, retired Major in the U.S. Army Reserve,  
21 and a two-tour Operation Iraqi Freedom veteran from which he was honorably discharged but  
22 received no retirement benefits.

78. From 1989 to 1994 Mr. Arnold served in the active duty Army and, following the honorable completion of his initial service obligation, transitioned to a U.S. Army reserve Civil Affairs unit. Mr. Arnold's active military service occurred during a "period of war," including the Persian Gulf War, as defined under RCW 41.04.005. Mr. Arnold was honorably discharged following that service. Mr. Arnold's military service qualified him as a veteran under RCW 41.04.005, which, in turn, required that the WSP add ten percent to his WSP entrance ("competitive") examination.

### Arnold's Initial Hire

79. The WSP did not add the ten percent to Mr. Arnold's entrance examination score, and did not inform Mr. Arnold that state law, RCW 41.04.010(1), required that ten percent be added to Mr. Arnold's competitive examination score. The WSP's failure to add the ten percent to the score delayed Mr. Arnold's accession in to the WSP for nearly two years: Mr. Arnold applied for the WSP in 1994 but was not hired until 1996. Mr. Arnold's delayed hiring caused Mr. Arnold lost benefits, wages, and seniority.

### Arnold's Application to Sergeant

80. From 2005 to 2006 Mr. Arnold was deployed to Iraq with the Army Reserves. Mr. Arnold's deployment exceeded 180 days, was pursuant to a Presidential call up of the selected reserve, and Mr. Arnold was honorably discharged following that deployment. Mr. Arnold's service in Iraq required the WSP add five percent to the passing score of one promotional examination pursuant to RCW 41.04.010(3).

81. In about March 2007 Mr. Arnold tested for WSP Sergeant, but the WSP did not inform him that he was entitled to the five percent veteran preference, and did not add five percent to Mr. Arnold's Sergeant promotional examination score.

1        82.     Mr. Arnold was promoted to Sergeant on August 16, 2007. The WSP's failure to  
2 add five percent to Mr. Arnold's Sergeant's examination score resulted in Mr. Arnold's promotion  
3 being delayed, which, in turn, caused Mr. Arnold (as with other members of the class) lost bid  
4 opportunities for location and position, benefits, seniority and pay.

5            **WSP Failed to Treat Arnold's Military Service as Continuous Employment**

6        83.     Permanent promotion to WSP Sergeant requires the completion of 12 months of  
7 probationary service in the rank of Sergeant.

8        84.     Mr. Arnold's probation for Sergeant commenced on August 16, 2007. From April  
9 2008 to October 2009, Mr. Arnold was called to serve in Iraq with the U.S. Army Reserve. Mr.  
10 Arnold served honorably and the Iraq deployment was pursuant to a Presidential call up of the  
11 select reserve.

12        85.     Upon Mr. Arnold's return to employment in October 2009 the WSP violated Mr.  
13 Arnold's rights under 38 U.S.C. § 4316(a) and 20 C.F.R. § 1002.210, by failing to treat Mr.  
14 Arnold's military-related absence from work as continuous employment. The WSP continued  
15 Mr. Arnold's probationary period from the date of his October 2009 reemployment to February  
16 2010 – an additional four (4) months.

17        86.     Despite Mr. Arnold's successful completion of a 12-month probationary period,  
18 the WSP continued to deny Mr. Arnold an escalator position, here the proper seniority date of  
19 August 16, 2008. The WSP failed to provide Mr. Arnold the same seniority and other rights and  
20 benefits determined by seniority that Mr. Arnold had on the date of the commencement of his  
21 service in the uniformed services plus the *reasonably certain* additional seniority and rights and  
22 benefits that Mr. Arnold would have attained if he had remained continuously employed; *i.e.*, an  
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1 effective date of August 16, 2008 (i.e. one year from the August 16, 2007, probationary start  
2 period) as the completion date Mr. Arnold's Sergeant probationary period.

3 87. The WSP's denial of Mr. Arnold's reemployment rights continues to this day.  
4 Because the effective date of Mr. Arnold's completion of Sergeant probation was never  
5 corrected, his score on the WSP Lieutenant examination will be negatively impacted as it will  
6 not be based on proper seniority for the number of years he has served as a WSP Sergeant.

7 **Arnold's Application to Lieutenant**

8 88. In September 2013, Mr. Arnold requested that Defendants apply the veteran  
9 preference in his test for promotion to Lieutenant, but Defendants denied him and all similarly  
10 situated Sergeants the opportunity to apply the veteran preference for selection or promotion to  
11 Lieutenant.

12 **(Erick Thomas)**

13 89. Erick Thomas is a Sergeant in the WSP, a Colonel in the United States Marine  
14 Corps, and an honorably discharged veteran who has completed his initial military service  
15 obligation for which no retirement benefits were obtained.

16 90. Mr. Thomas enlisted in the United States Marine Corps on October 30, 1984 and  
17 has continued to serve in the United States Marine Corps and/or the United States Marine Corps  
18 Reserve since that time. Accordingly, Mr. Thomas' service includes a period during the Persian  
19 Gulf War of 1991, which, in turn, qualifies him as a veteran under RCW 41.04, which, in turn,  
20 required that the WSP add 10 percent to Mr. Thomas' WSP entrance examination.

**Thomas' Initial Hire**

91. On or about October 3, 1991, Mr. Thomas applied to the WSP. Defendants hired Mr. Thomas on January 21, 1992, but did not apply veteran preference points to his competitive entrance examination or inform him state law afforded him a veteran preference.

92. From his January 1992 hire to the present, Mr. Thomas served as an officer in the Marine Corps Reserves, and from time-to-time, has been mobilized for training and/or combat operations. For example, Mr. Thomas took military leave for periods in excess of 14 days from September 1995 to December 1995, during January 1996, and April to May 1996.

**Thomas' Application for Sergeant**

93. Mr. Thomas took the WSP Sergeant's examination in 1997, 1999, and 2001, but at no time did the WSP apply veteran preference points to any of Mr. Thomas' WSP Sergeant examinations or inform Mr. Thomas that he was eligible for those points.

94. From January 2003 to September 2005 Mr. Thomas was mobilized in support of Operation Iraqi Freedom. Before leaving for his military mobilization Mr. Thomas worked in the WSP's Labor and Industries (L&I) detachment.

95. In March 2003 Mr. Thomas took the WSP Sergeant examination. At the time of the WSP Sergeant examination Mr. Thomas was on active duty military orders in Camp Pendleton, California. The WSP would not allow Mr. Thomas to take the written WSP Sergeant's examination at Camp Pendleton. Instead the WSP required Mr. Thomas to fly (at his own expense) back to Washington State to take the test.

96. In March 2003, Mr. Thomas was promoted to Sergeant.

97. In 2005, Mr. Thomas, while still on military orders, interviewed for a recently vacated Sergeant supervisory position in the WSP's Labor and Industries (L&I) detachment. Mr.

1 Thomas participated in a telephonic interview for the position, was told he performed well in  
2 the position, but was denied the position because he did not have two years of evaluations with  
3 the WSP's L&I detachment. Mr. Thomas did not have two years of experience with the WSP's  
4 L&I detachment because he had been on military orders during the two prior years.

5 **Thomas' Application for Lieutenant**

6 98. Mr. Thomas took the WSP Lieutenant examinations in 2006, 2008, 2010, 2012,  
7 and 2014. At no time did the WSP apply veteran preference points to any of Mr. Thomas' WSP  
8 Lieutenant examinations nor inform Mr. Thomas that he was eligible for those points.

9 99. Mr. Thomas was mobilized on March 3, 2011, and that mobilization is set to run  
10 through September 30, 2014. Mr. Thomas remains on active duty with the U.S. Marines.

11 100. Upon information and belief, Mr. Thomas has been subjected to the same paid  
12 military leave policy of the WSP that is more fully set out above.

13 101. Thomas was denied employment opportunities by Defendants based, in part, upon  
14 on his military obligations and/or veterans status.

15 **(Darin Foster)**

16 102. Darin Foster is a Sergeant with the WSP and served on active duty in the U.S. Air  
17 Force from February 14, 1991, to June 30, 1997, and was honorably discharged from the U.S.  
18 Air Force. At no time has Mr. Foster received military retirement points. Mr. Foster's active  
19 military service occurred during an active period of military conflict, specifically the Persian  
20 Gulf War. Upon his honorable discharge from the U.S. Air Force Mr. Foster transferred to the  
21 Air Force Reserve.

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**Foster's Initial Hire**

103. In 1996, Mr. Foster applied for employment with the WSP, but the WSP did not hire him. When he applied in 1996, Defendants did not apply veteran preference points to Mr. Foster's competitive entrance examination and did not inform him that state law afforded him veteran preference points.

104. In 1997, Mr. Foster again applied for employment with the WSP, and was hired on July 7, 1998. When he applied in 1997, Defendants did not apply veteran preference points to his competitive entrance examination and did not inform him that state law afforded him veteran preference points.

**Foster's Applications for Sergeant**

105. Mr. Foster was activated for military service from, *inter alia*, March 7, 2004 to March 19, 2004; April 23, 2010 to June 15, 2010, and January 31, 2011 to February 11, 2011.

106. Mr. Foster tested for WSP Sergeant in 2003, 2005, 2007, 2009, and 2011, but at no time did Defendants apply veteran preference points to his application for a promotion or inform him that state law afforded him veteran preference points.

107. In April 2011, Mr. Foster sent a written request to Captain Jay Cabezulela and asked that his veteran preference points be applied to the forthcoming Sergeants examination. The 2011 WSP Sergeant's examination took place in April 2011, and in June 2011 the WSP published its "Sergeants List," on which Darin Foster was listed 27th.

108. Mr. Foster subsequently learned that his veteran preference points were not applied to the Sergeants examination. Concerned that he did not receive the veteran preference points to which he was entitled, Mr. Foster contacted WSP Captain Jay Cabezula, who, in turn, told Mr. Foster that he (Foster) was not a qualified veteran because Foster did not go overseas

1 for more than 180 days but, instead, was on duty for training. Mr. Foster subsequently tried to  
2 educate Capt Cabezuala on the veteran preference law's requirements and, when that failed, filed  
3 a public record request, which, in turn, shed light on Mr. Foster's legal justification for  
4 entitlement to the points and the WSP's knowing disregard for the same.

5 109. On or about August 16, 2012 Mr. Foster was promoted to Sergeant. Had the WSP  
6 applied the veteran preference points Mr. Foster would have been promoted in 2007, if not  
7 earlier, and would not have been adversely affected in terms of his employment benefits,  
8 seniority, and pay.

#### 9 **The Backdating of Foster's Promotion to Sergeant**

10 110. In April 2013, Captain DeVere of the WSP's Human Resources division orally  
11 admitted that Mr. Foster was entitled to the veteran preference points, back-dated Mr. Foster's  
12 August 16, 2012 promotion to December 1, 2011, and gave Mr. Foster \$5,000.00 in back pay.  
13 However, Captain DeVere refused to state, in writing, the WSP's reason for back-dating the  
14 promotion and supplying the back-pay. And Captian DeVere refused to back-date Mr. Foster's  
15 promotion any further, even though such back-dating was warranted at least to 2007. Mr. Foster  
16 has yet to be made whole as a result of the Defendants' acts and omissions.

17 111. Mr. Foster's union has declined to arbitrate or grieve any issue related to the  
18 WSP's failure to provide Mr. Foster veteran preference points. The WSP also has taken the  
19 position that denial of veteran preference points is not an issue covered by any agreement,  
20 including any Collective Bargaining Agreements between the WSP and member of this class or  
21 their representatives. Thus, veterans employed by the WSP have been denied an opportunity to  
22 vindicate their rights to the veteran preference through the grievance process between the union



1 that represents certain WSP employees and the WSP or receive any other due process with  
2 respect to their entitlement to a veteran preference.

3 112. Mr. Foster was denied employment opportunities by Defendants based, in part,  
4 upon on his military obligations and/or veterans status.

5 **(Luis Gonzalez)**

6 113. Luis Gonzalez is a Trooper in the WSP, an honorably discharged veteran of the  
7 1991 Persian Gulf War (Operation Desert Storm), and does not receive military retirement  
8 benefits.

9 114. Before applying to work with the WSP Mr. Gonzalez served on Active Duty with  
10 the U.S. Navy, was honorably discharged following his four year active duty tour, and did not  
11 receive military retirement benefits. Mr. Gonzalez's service was during a period of armed  
12 conflict, which entitled him to veteran preference points under RCW 41.04.010, and his  
13 honorable completion of his initial active duty tour required the WSP to add 10 percent to his  
14 WSP "competitive" (read: entrance) examination score.

15 115. Mr. Gonzalez also has a "ten percent" military service connected disability for  
16 which he receives benefits from the U.S. Department of Veterans Affairs (VA).

17 **Gonzalez's Application for Employment**

18 116. The US Navy honorably discharged Mr. Gonzalez on April 24, 1992. That same  
19 year (1992) Mr. Gonzalez applied for employment with the WSP and, in doing so, made clear  
20 on his 1992 application that he was a service-disabled veteran.

21 117. Mr. Gonzales competitively tested for employment, proceeded through all phases  
22 of the applicant screening process, but was not offered employment with the WSP.

1 118. The WSP did not add 10 percent to Mr. Gonzalez's competitive entrance  
2 examination score regarding the 1992 application.

3 119. In 1994 Mr. Gonzalez again applied for employment with the WSP and, in doing  
4 so, made clear on his 1994 application that he was a service-disabled veteran.

5 120. Mr. Gonzalez competitively tested for employment in 1994, proceed through all  
6 phases of the applicant screening process, but was not offered employment with the WSP.

7 121. The WSP did not add 10 percent to Mr. Gonzalez's competitive entrance  
8 examination score regarding the 1994 application.

9 **Gonzalez's Initial Hire**

10 122. Mr. Gonzalez competitively tested for employment with the WSP and was hired  
11 at the WSP in 1999. In that application Mr. Gonzalez also made clear that he was a service-  
12 disabled veteran.

13 123. At no time did the WSP add ten percent to Mr. Gonzalez's entrance examination,  
14 and did not inform him that state law, RCW 41.04.010(1), required ten percent to be added to  
15 Mr. Gonzalez's entrance examination.

16 124. Within days of being hired with the WSP informed Mr. Gonzalez that the people  
17 hired days before Mr. Gonzalez went straight to the "arming class", an act that allowed said  
18 individuals to progress through training significantly faster than Mr. Gonzalez.

19 125. Indeed, Mr. Gonzalez spent an additional six months as a "radio cadet" (charged  
20 with answering 911 calls) and an additional year as an "armed cadet" at the weight scales  
21 (charged with weighing and inspecting trucks) before Mr. Gonzalez attended the trooper basic  
22 class.

1 126. Upon information and belief, the WSP's failure to apply the 10 percent veteran's  
2 preference to Mr. Gonzalez as part of his 1999 application had the effect of placing Mr. Gonzalez  
3 an additional 1.5 years behind his peers who were called only days before Mr. Gonzalez was  
4 hired.

5 127. The WSP's failure to add the ten percent to Mr. Gonzalez's score resulted in Mr.  
6 Gonzalez being hired over eight years later than he otherwise would have been, which, in turn,  
7 has adversely affected Mr. Gonzalez's employment benefits, seniority, and pay.

8 **(The WSP Conceals the Veteran Preference Benefit and Only**  
9 **Applies the Benefit when its Employees File Public Record Requests)**

10 128. Defendants have known since 1951 that Washington State law requires veteran  
11 preference points to be added to public employment and promotional examination scores, yet  
12 concealed (and continues to conceal) those requirements from applicants for employment and  
13 for promotion.

14 129. On or about April 21, 2011, Trooper Tod Surdam, a qualified veteran, requested  
15 that the WSP apply the five percent RCW 41.04.010 preference to his Sergeant promotional  
16 examination. The WSP did not apply the veteran preference points to Mr. Surdam's April 2011  
17 examination (or to his initial entry examination into the WSP).

18 130. On October 9, 2012, Mr. Surdam, through his union, filed a grievance against the  
19 WSP for its failure to apply the veteran preference points. In or around that same time Mr.  
20 Surdam filed a public record request relating to the WSP's application (or lack thereof) of the  
21 State's veteran preference statutes.

22 131. On October 21, 2012, Mr. Surdam requested written justification, from the WSP,  
23 as to why he did not receive the five percent increase.

24 132. On November 8, 2012, Mr. Surdam requested, from the WSP, information as to  
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1 whether the WSP gave him veteran preference points when Mr. Surdam applied for the position  
2 of Sergeant at the WSP.

3 133. On November 14, 2012, at 11:09 a.m. WSP Lieutenant Timothy Winchell, in an  
4 email responsive to Mr. Surdam's public record request, stated "the Washington State Patrol has  
5 not awarded veterans' preference points in the past." And on November 21, 2012, the WSP again  
6 denied Mr. Surdam's request for the five percent veteran preference. Mr. Surdam's union did not  
7 assist Mr. Surdam further because the veteran preference issue was not covered by the collective  
8 bargaining agreement.

9 134. In the January 2013 timeframe, Mr. Surdam attended a legislative session in  
10 Olympia, Washington and, in a meeting with certain legislative representatives, informed the  
11 same representatives of the WSP's failure to follow the veteran preference law.

12 135. On or about January 27, 2013, Mr. Surdam contacted the Washington State  
13 Attorney General's office and requested that the Attorney General's office investigate the WSP's  
14 failure to follow the veteran preference law. Upon information and belief, Mr. Surdam received  
15 no response from the Attorney General's office.

16 136. In the April 2013 timeframe, the WSP, without written explanation, backdated  
17 Mr. Surdam's promotion to Sergeant.

18 137. Upon information and belief, certain WSP managerial officials deemed Mr.  
19 Surdam's assertion of his veteran preference rights as tantamount to placing "a black eye on the  
20 WSP" and have implied that Mr. Surdam's move was a career ending act.

21 **CLASS ACTION ALLEGATIONS**

22 138. Pursuant to Civil Rule 23, the above named Plaintiffs bring this case as a class  
23 action on behalf of all persons who  
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1 (1) applied for a position of employment with the Washington  
2 State Patrol, including the position of Trooper, or applied for a  
3 promotion to a higher ranking position of employment, including  
4 the rank of Sergeant, Lieutenant, or Captain;

5 (2) were eligible to receive a veteran preference pursuant to RCW  
6 41.04.010(1)-(3) with respect to such application for a position of  
7 employment or application for a promotion to a higher ranking  
8 position of employment; and

9 (3) on one or more occasion did not receive such veteran  
10 preference in connection with such application for a position of  
11 employment or for a promotion.

12 139. Excluded from the Class are the Defendants, the Defendants' legal  
13 representatives, assignees, and successors, the judge to whom this case is assigned, any member  
14 of the judge's immediate family, and any person who has settled the same claims as set forth in  
15 this Complaint..

16 140. This action is properly maintainable as a class action because the requirements of  
17 Civil Rules 23(a) and Rule 23(b)(1),(2), and (3) are met as follows:

18 141. Impracticability of Joinder. The Class is each so numerous that joinder of all  
19 members is impracticable. Upon information and belief, the Class has more than 300 members  
20 thus joinder of those class members would be, at a minimum, extremely difficult and  
21 inconvenient as the class members hail from across the State of Washington. Additionally, the  
22 small size of the individual claims, the limited financial resources of the class members, and the  
23 inability of the claimants to institute individual actions favors resolution of this case through the  
24 class action device. Moreover, the disposition of the claims of the Class in a single action will  
25 provide substantial benefits to all parties and the Court by resolving the issues concerning the  
WSP's application of the veteran preference statutes in one forum thus preserving judicial  
economy.

1           142. Commonality. Defendants engaged in a common course of conduct toward  
2 Plaintiffs and members of the Class by denying them the veteran preference to which they are  
3 entitled pursuant to RCW § 41.04.010. There are questions of law and fact common to Plaintiffs  
4 and members of the Class. These common questions of law and fact include, but are not limited  
5 to, the following:

6           (a) Whether Defendants and/or other persons or entities acting on  
7 Defendants' behalf violated 38 U.S.C. § 4311.

8           (b) Whether Defendants and/or other persons or entities acting on  
9 Defendants' behalf violated 38 U.S.C. § 4316.

10           (c) Whether Defendants and/or other persons or entities acting on  
11 Defendants' behalf violated the Fifth and Fourteenth Amendments of the  
12 Constitution by depriving the class of the procedural and substantive rights  
13 guaranteed therein, and whether 42 U.S.C. § 1983 is the mechanism by which  
14 the class's rights may be vindicated.

15           (d) Whether Defendants and/or other persons or entities acting on  
16 Defendants' behalf should be enjoined from violating the Fifth and Fourteenth  
17 Amendments of the Constitution, 42 U.S.C. § 1983, USERRA, 38 U.S.C. §§  
18 4311, 4316, and/or RCW 41.04.010 in the future.

19           (e) How Defendants' violations of the law impacted members of the  
20 proposed Class, including the loss of seniority, pay, and benefits of employment,  
21 including reduced pension benefits.

22           (f) Whether Plaintiffs are entitled to statutory, compensatory, exemplary,  
23 liquidated, and/or punitive damages for Defendants' violations of the law.

24           (g) Whether Plaintiffs were entitled to receive a veteran preference under  
25 RCW 41.04.010 when they applied for a position of employment at WSP or  
applied for a promotion to a higher ranking position of employment as WSP.

143. The above-referenced legal and factual questions relate to all of the class members  
and those legal questions are substantially related to resolving this litigation. Put differently,  
Defendants' course of conduct in refusing to apply Washington's veteran preference statute to its

1 qualified veteran members affects all class members and the elements of the afore-mentioned  
2 causes of action are shared by all class members.

3 144. Typicality. Plaintiffs' claims are typical of the claims of the Class. Plaintiffs'  
4 claims, like the claims of the Class, arise out of the same common course of conduct by  
5 Defendants and are based on the same legal and remedial theories.

6 145. Adequacy. Plaintiffs will fairly and adequately protect the interests of the Class.  
7 Plaintiffs have retained competent and capable attorneys with experience in class action  
8 litigation, including veterans benefits and related class action litigation. Plaintiffs and counsel  
9 are committed to prosecuting this action vigorously on behalf of the Class, and neither have  
10 interests that are contrary to, or that conflict with, those of the proposed Class.

11 146. CR 23(b)(1). This action is properly maintainable as a class action under CR  
12 23(b)(1) because the prosecution of separate actions by, or against, members of the class would  
13 create a risk of inconsistent adjudications regarding individual class members that would  
14 establish incompatible standards of conduct for the WSP, the party opposing the class.

15 147. CR 23(b)(2). This action is also properly maintainable as a class action under  
16 CR 23(b)(2). Defendants acted on grounds generally applicable to the Class, thereby making  
17 final injunctive relief and corresponding declaratory relief with respect to the Class appropriate  
18 on a class-wide basis. Defendants have maintained a uniform policy of knowingly not following  
19 RCW 41.04.010 by denying WSP employees their veteran preference benefits and have applied  
20 that uniform policy to all members of the Class. As such, Defendants have acted or refused to  
21 act on grounds that apply generally to the Class. Thus, final declaratory relief is appropriate  
22 respecting the Class as a whole. The monetary relief Plaintiffs seek either flows from and/or is

1 incidental to the declaratory relief sought, as it flows directly from the ordering of such  
2 declaratory relief and can be calculated in a simple, objective, and mechanical manner.

3 148. CR 23(b)(3). This action is also properly maintainable as a class action under CR  
4 23(b)(3). The questions of law and fact common to members of the class predominate over  
5 questions affecting only individual members and a class action is superior to other available  
6 methods for the fair and efficient resolution of this controversy.

7 149. Defendants engaged in a common course of conduct toward Plaintiffs and  
8 members of the Class. The common issues arising from this conduct that affect Plaintiffs and  
9 members of the Class predominate over any individual issues. Adjudication of these common  
10 issues in a single action has important and desirable advantages of judicial economy. By  
11 resolving the common issues described above in a single class proceeding, each member of the  
12 proposed class will receive a determination of whether the WSP violated his or her rights under  
13 USERRA and, alternatively, whether the WSP violated his or her property rights under the Fifth  
14 and/or Fourteenth Amendments, and whether a remedy should be provided under USERRA, or,  
15 alternatively, through 42 U.S.C. § 1983. Further, by resolving the dominant, central, and  
16 overriding issues as to whether the WSP has violated the Class members' USERRA and/or §  
17 Fifth and/or Fourteenth Amendment rights, the WSP will not have to be faced with multiple  
18 claims relating to the issue.

19 150. A class action is the superior method for the fair and efficient adjudication of this  
20 controversy. Class-wide adjudication is a superior manner of compelling Defendants to comply  
21 with the benefits of employment afforded to Plaintiffs and members of the Class by virtue of  
22 their service in the United States Uniformed Services and honorably discharged veteran status.  
23 The interest of individual members of the Class in individually controlling the prosecution of  
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1 separate claims against Defendant is small, as the denial of veteran preference is a common  
2 problem that affects all veteran employees and a common resolution of the WSP's violations of  
3 the law will result in far greater certainty for WSP veteran employee.

4 151. Management of these claims in a Class is likely to present significantly fewer  
5 difficulties than are presented in many individual class claims because the relief requires uniform  
6 treatment between prevailing Plaintiffs. Class treatment is superior to multiple individual suits  
7 or piecemeal litigation because it conserves judicial resources, promotes consistency and  
8 efficiency of adjudication, provides a forum for small claimants, and deters illegal activities.  
9 There will be no significant difficulty in the management of this case as a class action.

10 152. Upon information and belief, there is no other existing lawsuit begun by members  
11 of the Class raising these allegations prior to the time that this Complaint was filed.

12 **FIRST CAUSE OF ACTION**

13 **(USERRA 38 U.S.C. § 4311(a)-(b))**  
14 **Veterans' Preference Discrimination - all Defendants)**

15 153. Plaintiffs re-allege the above paragraphs.

16 154. To plead a *prima facie* case of discrimination or retaliation under USERRA, 38  
17 U.S.C. § 4311(a)-(b), a plaintiff must establish that: (A) their status or activity (*i.e.* exercise of a  
18 right under USERRA or action to enforce a right under USERRA) was protected under § 4311;  
19 (B) that the employer took an adverse action against the plaintiff by denying the plaintiff a benefit  
20 of employment; and, (C) that the plaintiff's status or activity, was a motivating factor for the  
21 defendant's adverse action.

22 155. In this action, each class member served in the uniformed services of the United  
23 States Armed Forces and is a veteran entitled to a veteran preference mandated in RCW  
24 41.04.010 or RCW 73.16.010. WSP took adverse action against each class member by denying  
25

1 the service member the benefit of the legislatively mandated veteran preference under RCW  
2 41.04.010 and RCW 73.16.010. Such benefits arise in public employment and promotions in  
3 Washington State and are benefits of employment as defined in 38 U.S.C. § 4303(2). And the  
4 class members' protected status was a motivating factor in the decision by Defendants to refuse  
5 to follow the law and deny the class members veterans' preference at initial hiring and subsequent  
6 promotions.

7 156. Defendants took adverse action against each of the named Plaintiffs and those  
8 similarly situated by denying them the RCW 41.04.010 veteran benefits, and basing that denial,  
9 in part, on said individuals', and similarly situated individuals', service in the armed services,  
10 and/or actions said individuals', and similarly situated individuals, took to protect their rights  
11 under the law.

12 157. Defendants further violated 38 U.S.C. § 4311 by denying John Sager, and those  
13 similarly situated, the rights and benefits of employment provided to public employees under  
14 Washington State law, including, but not limited to, the benefits of RCW 38.40.060, by requiring  
15 them to use excessive paid military leave days, the denial of pay and benefits of employment,  
16 and making the use of paid military leave mandatory.

17 158. Defendants' violations of § 4311 was willful within the meaning of 38 U.S.C. §  
18 4323(d)(1)(C).

19 159. Defendants' actions illustrate why an injunction is necessary to protect Plaintiffs  
20 and other uniformed service members from similar harm.

21 **SECOND CAUSE OF ACTION**

22 **(USERRA 38 U.S.C. § 4316(a) and (d),**  
23 **Denial of Benefits of Employment - all Defendants)**

24 160. Plaintiffs re-allege the above paragraphs.  
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1 161. Defendants knowingly violated the rights of the named Plaintiffs and the  
2 members of the Class by denying each of them the rights under 38 U.S.C. § 4316(a); 20 C.F.R.  
3 § 1002.210, to have their military related absence from work treated as continuous employment.

4 162. Defendants knowingly selectively granted seniority and rights and benefits of  
5 employment (retroactively to promotions) of persons deprived of benefits following military  
6 related absences, but at the same time continue to deny those same seniority and rights and  
7 benefits of employment to each of the named Plaintiffs and those similarly situated.

8 163. Defendants violated 38 U.S.C. § 4316(d) by requiring John Sager and similarly  
9 situated employees to use paid military leave that was provided under Washington State law.

10 164. Upon information and belief, Defendants violated 38 U.S.C. § 4316(d) by  
11 denying WSP employee-service members military leave requests for days which immediately  
12 preceded the service member's military obligations as described in 20 C.F.R. § 1002.74.

13 165. Defendants' violations of § 4316 was willful within the meaning of 38 U.S.C. §  
14 4323(d)(1)(C).

15 166. To the extent the Defendants allege that the application of any State law, local  
16 law or ordinance, contract, agreement, policy, plan practice, or other matter constitutes any  
17 limitation on Plaintiffs' rights under USERRA, it is illegal, inapplicable, null, void and has no  
18 force or effect pursuant to 38 U.S.C. § 4302.

19 **THIRD CAUSE OF ACTION**

20 (42 U.S.C. § 1983 - Defendants Winchell, Cabezuala, Batiste, and DeVere)

21 167. Plaintiffs re-allege the above paragraphs.

22 168. Plaintiffs plead their (and the Class's) § 1983 claim as an alternative to Plaintiffs'  
23 and the Class's USERRA veteran preference claim.

1 169. Plaintiffs are public employees of the State of Washington.

2 170. Plaintiffs are veterans as defined in RCW 41.04.005 and RCW 41.04.007.

3 171. Plaintiffs have had a property interest in the veteran preference employment  
4 provisions of RCW 41.04.010, which states the mandatory obligations of the WSP to provide a  
5 veteran preference to individuals who qualify for a veteran preference in hiring or promotions  
6 under RCW 41.04.010, and leaves no discretion to the WSP to determine who qualifies for a  
7 veteran preference under RCW 41.04.010. The Fifth Amendment of the United States  
8 Constitution prohibits the governmental deprivation of a citizen's property rights. This  
9 prohibition is extended to state actors by the Fourteenth Amendment, and applies to property  
10 rights that a state through its own laws and/or regulations.

11 172. Defendants Cabezuala, DeVere, Winchell and Batiste, in their individual  
12 capacities while acting under the color of state law, denied each Plaintiff (and the Class) their  
13 property interests by depriving each Plaintiff the right to RCW 41.04.010 veteran preferences in  
14 accession into the WSP and/or promotion within the WSP.

15 173. Defendants Cabezuala, DeVere, Winchell and Batiste's actions violated clearly  
16 established constitutional rights that have existed in the State of Washington since 1949. The  
17 constitutional property rights of which Defendants Cabezuala, DeVere, Winchell and Batiste  
18 deprived Plaintiffs and the Class have been the subject of numerous Washington State Attorney  
19 General Opinions, various federal court decisions, and state laws that identified the mandatory  
20 and clear obligations of the WSP to provide the veteran preferences to eligible individuals.  
21 Accordingly, the constitutional property rights were clearly established at the time Messrs.  
22 Cabezuala, DeVere, Winchell and Cabezuala deprived the Plaintiffs and Class of said rights.  
23 And Defendants Cabezuala, DeVere, Winchell and Batiste subjected, or caused others, to subject

1 the Plaintiffs and the Class to be deprived of substantive and procedural constitutional rights  
2 described more fully herein.

3 174. Defendants Cabezuala, DeVere, Winchell and Batiste knew that their denial of  
4 veteran preference points violated the law because, when pressed, Messrs. Cabezuala, DeVere,  
5 Winchell and Batiste retroactively (albeit not fully and covertly) applied the law to Tod Surdam  
6 and Darin Foster.

7 175. Yet, although Defendants Cabezuala, DeVere, Winchell and Batiste belatedly and  
8 after much protest, applied the law to Mr. Surdam and Mr. Foster, defendants Cabezuala,  
9 DeVere, Winchell and Batiste continue to deprive plaintiffs and the class of the same property  
10 rights.

11 176. Accordingly, Defendants Cabezuala, DeVere, Winchell and Batiste's conduct is  
12 arbitrary, capricious, irrational, grossly negligent, and deliberately indifferent; it fails to serve  
13 any legitimate purpose; and, it is tainted by improper motive, as shown by Defendants Cabezuala,  
14 DeVere, Winchell and Batiste's continued discriminatory animus toward the military  
15 reserve/veteran members of the WSP and/or the knowing ratification thereof.

16 177. Defendants Cabezuala, DeVere, Winchell and Batiste's conduct is not objectively  
17 reasonable given the clearly established law (including AGO No. 51-53, No. 198), and in light  
18 of the clearly established law, the willful, wanton, and outrageous conduct of defendants  
19 Cabezuala, DeVere, Winchell and Batiste is apparent. Indeed, a reasonable official would have  
20 known that his or her acts were violating a clearly established constitutional right. But instead,  
21 Defendants Cabezuala, DeVere, Winchell and Batiste set in motion a series of acts, which at  
22 times were performed by others, that said individuals knew, or reasonably should have known,  
23 caused the infliction of a constitutional injury.

1 178. Given the conduct described above, Plaintiffs' and the Class's rights to substantive  
2 due process (here Plaintiffs' and the Class' Fifth and/or Fourteenth Amendment rights to receive  
3 the RCW 41.04.010 veteran preference points/property right benefits) were violated by  
4 Defendants Cabezuala, DeVere, Winchell and Batiste who, in turn, were acting under the color  
5 of state law.

6 179. Given the conduct described above, Plaintiffs' and the Class's rights to procedural  
7 due process (without limitation, a means by which Plaintiffs and the Class could receive  
8 sufficient notice, the right to an impartial arbiter, the right to give testimony and admit relevant  
9 evidence at hearings regarding the WSP's application of the veteran preference statutes) were  
10 violated by Defendants Cabezuala, DeVere, Winchell and Batiste who, in turn, were acting under  
11 the color of state law.

12 **VII. PRAYER FOR RELIEF**

13 1. Plaintiffs on their own behalf and on behalf of the members of the Class, pray for  
14 judgment against Defendants as follows:

- 15 a) Certification of the proposed Class;
- 16 b) Appointment of the Named Plaintiffs as representatives of the Class;
- 17 c) Appointment of the undersigned counsel as counsel for the Class;
- 18 d) A declaration that Defendants' actions, described fully above, violate 38  
19 U.S.C. §§ 4311, 4316, the Fifth and Fourteenth Amendments of the United States  
20 Constitution, 42 U.S.C. § 1983, RCW 41.04.010, and and RCW 73.16.010;
- 21 e) An order enjoining Defendants and/or related entities, as provided by law,  
22 from engaging in the unlawful conduct set forth herein;
- 23
- 24
- 25

1 f) An award to Plaintiffs' Class of back pay, front pay, lost benefits of  
2 employment, pre- and post-judgment interest, statutory damages, compensatory  
3 damages, exemplary damages, liquidated damages, attorneys' fees, costs, and  
4 litigation expenses, and punitive damages, as allowed by law, including 38 U.S.C.  
5 § 4323(d) and/or § 1983;


6 g) An order requiring Defendants to back date seniority and retroactively  
7 promote Plaintiffs who would have been eligible for a promotion prior to the date  
8 of a final judgment but for the WSP's violation of RCW 41.04.010, to hire back  
9 date seniority for any applicants who were denied the veteran preference under  
10 RCW 41.04.010(1)-(2) and would have been eligible for employment by WSP prior  
11 to the date of a final judgment in this action but for the WSP's violation of RCW  
12 41.04.010.

13 h) Leave to amend this Complaint to conform to the evidence presented at trial;  
14 and

15 i) Orders granting such other and further relief as the Court deems necessary,  
16 just, and proper; and

17 j) For such other and further relief as this Court deems just and equitable.

18  
19 DATED this 9 day of January, 2015.

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21   
22 MATTHEW Z. CROTTY, WSBA #39284  
23 Crotty & Son Law Firm, PLLC  
24 421 West Riverside, Suite 1005  
25 Spokane, WA 99201  
Telephone: 509.850.7011



THOMAS G. JARRARD, WSBA #39774  
The Law Office of Thomas G. Jarrard, PLLC  
1020 N. Washington  
Spokane, WA 99201  
Telephone: 425.239.7290

R. Joseph Barton, *pro hac vice*  
Peter Romer-Friedman, *pro hac vice*  
COHEN MILSTEIN SELLERS & TOLL PLLC  
1100 New York Avenue, NW, Suite 500  
Washington, D.C. 20005  
Telephone: (202) 408-4600

Attorneys for Plaintiffs