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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MICHAEL A. WAGENBLAST, et al.,

Plaintiffs,

v.

JAY R. INSLEE, et al.,

Defendants.

CASE NO. C15-5407 BHS

ORDER DENYING  
DEFENDANT’S MOTION FOR  
SUMMARY JUDGMENT AND  
PLAINTIFFS’ MOTION FOR A  
PRELIMINARY INJUNCTION

This matter comes before the Court on Defendant Teamsters Local Union 117’s (“Local 117”) motion for summary judgment (Dkt. 25) and Plaintiffs Gabriel K. Forrest, Arthur Henderson, Joshua Lenss, William M. McLaughlin, and Michael A. Wagenblast’s (“Plaintiffs”) motion for preliminary injunction (Dkt. 27). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby denies the motions for the reasons stated herein.

**I. PROCEDURAL HISTORY**

On June 15, 2015, Plaintiffs filed a civil rights complaint against Jay Inslee, Governor of the state of Washington; Bernard Warner, Secretary of Washington Department of Corrections (“DOC”); Marcos Rodriguez, Director of Human Resources for the DOC (collectively “State Defendants”) and Local 117. Dkt. 1. Plaintiffs assert that requiring union dues as a condition of their employment violates their constitutional

1 rights and that Local 117 “failed to provide adequate procedural safeguards  
2 constitutionally required under the United States Supreme Court’s decision in [*Teachers*  
3 *Local No. 1 v. Hudson*, 475 U.S. 292, 310 (1986)].” *Id.* Relevant to the instant motions,  
4 Plaintiffs request declaratory and equitable relief as follows:

5 For equitable relief, a preliminary and permanent injunction  
6 prohibiting Defendants from taking any action to enforce the “Union  
7 Security” provision of the State/Local 117 collective bargaining agreement,  
8 until a constitutional agency fee notice and procedure approved by this  
9 Court is established and operating;

10 For issuance of a declaratory judgment, pursuant to 28 U.S.C. §  
11 2201, declaring:

12 1. that Defendants have failed to comply with *Hudson*,  
13 *supra*, and thus, that the “Union Security” section of the  
14 State/Local 117 collective bargaining agreement is null and  
15 void on its face and/or as applied to Plaintiffs, because they  
16 violate the First, Fifth, and Fourteenth Amendment to the  
17 Constitution of the United States and 42 U.S.C. § 1983; and

18 2. that Plaintiffs are not liable to pay any monies to  
19 Defendant Local 117, and/or any of their affiliates, until and  
20 for after such time as they provide a notice and procedure  
21 which satisfies “the constitutional requirements for the . . .  
22 collection of agency fees,” 475 U.S. at 310.

*Id.* at 14–15.

15 On July 23, 2015, Local 117 filed a motion to dismiss. Dkt. 9. On August 4,  
16 2015, the State Defendants filed a motion to dismiss. Dkt. 14. On September 30, 2015,  
17 the Court granted the motion, dismissed Plaintiffs’ first cause of action, and dismissed the  
18 State Defendants. Dkt. 23.

19 On October 14, 2015, Local 117 filed a motion for summary judgment. Dkt. 25.  
20 On November 2, 2015, Plaintiffs responded. Dkt. 28. On November 6, 2015, Local 117  
21 replied. Dkt. 30.  
22

1 On November 2, 2015, Plaintiffs filed a motion for preliminary injunction. Dkt.  
2 27. On November 30, 2015, Local 117 responded (Dkt. 31) and the State Defendants  
3 moved to strike Plaintiffs' request for injunctive relief against the State Defendants  
4 because they have been dismissed from this lawsuit (Dkt. 32). On December 4, 2015,  
5 Plaintiffs replied. Dkt. 33.

## 6 II. DISCUSSION

### 7 A. Summary Judgment

8 Local 117 moves for summary judgment on Plaintiffs' requests for declaratory and  
9 injunctive relief. Dkt. 25. Local 117 argues that there is no case or controversy because  
10 Plaintiffs fail to assert a legal injury. *Id.* Plaintiffs counter that the motion should be  
11 denied or, in the alternative, the Court should grant a continuance so that Plaintiffs may  
12 conduct additional discovery. Dkt. 28.

#### 13 1. Standard

14 Summary judgment is proper only if the pleadings, the discovery and disclosure  
15 materials on file, and any affidavits show that there is no genuine issue as to any material  
16 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
17 The moving party is entitled to judgment as a matter of law when the nonmoving party  
18 fails to make a sufficient showing on an essential element of a claim in the case on which  
19 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
20 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,  
21 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*  
22 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must

1 present specific, significant probative evidence, not simply “some metaphysical doubt”).  
2 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists  
3 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or  
4 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477  
5 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d  
6 626, 630 (9th Cir. 1987).

7         The determination of the existence of a material fact is often a close question. The  
8 Court must consider the substantive evidentiary burden that the nonmoving party must  
9 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477  
10 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual  
11 issues of controversy in favor of the nonmoving party only when the facts specifically  
12 attested by that party contradict facts specifically attested by the moving party. The  
13 nonmoving party may not merely state that it will discredit the moving party’s evidence  
14 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*  
15 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,  
16 nonspecific statements in affidavits are not sufficient, and missing facts will not be  
17 presumed. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

## 18         **2. Injury**

19         For an Article III court to have jurisdiction, “an actual controversy must be extant  
20 at all stages of review, not merely at the time the complaint is filed.” *Steffel v.*  
21 *Thompson*, 415 U.S. 452, 459 n. 10 (1974). “When an actual controversy ceases to be  
22

1 present, a case is moot, and it is properly dismissed for lack of jurisdiction.” *Gator.com*  
2 *Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1134 (9th Cir. 2005).

3 In this case, Local 117 contends that “none of the individual plaintiffs are  
4 experiencing, or plausibly will experience at any time in the future, any legal injury of the  
5 type they assert, such as might entitle them now to a declaratory judgment.” Dkt. 25 at 9.  
6 This contention is based on Local 117’s reading of the complaint in which it asserts  
7 Plaintiffs’ only remaining claim is infringement of Plaintiffs’ rights to “become *Hudson*  
8 objectors.” *Id.* at 5. Because Plaintiffs are currently *Hudson* objectors and only pay an  
9 agency fee, they “are not currently victims of any [*Hudson* procedural] inadequacy.”  
10 Dkt. 30 at 9. *Hudson*, however, provides more protections than the right to pay only an  
11 agency fee. The Court stated that

12 the constitutional requirements for the Union’s collection of agency fees  
13 include an adequate explanation of the basis for the fee, a reasonably  
14 prompt opportunity to challenge the amount of the fee before an impartial  
15 decisionmaker, and an escrow for the amounts reasonably in dispute while  
16 such challenges are pending.

17 *Hudson*, 475 U.S. at 310. These protections go well beyond the mere right to pay the  
18 reduced agency fee as a *Hudson* objector. Therefore, Local 117 has failed to show that  
19 the Court is precluded from entering a declaratory judgment that Local 117 may not  
20 collect fees until they meet certain constitutional requirements.

21 Furthermore, the Ninth Circuit has upheld preliminary and permanent injunctions  
22 based on violations of the *Hudson* protections. *Prescott v. Cty. of El Dorado*, 177 F.3d  
1102 (9th Cir. 1999) *cert. granted, judgment vacated*, 528 U.S. 1111 (2000), *and opinion*  
*reinstated in part*, 204 F.3d 984 (9th Cir. 2000). In *Prescott*, the district court “entered a

1 preliminary injunction prohibiting the collection of fees until the procedures were  
2 corrected” and then made the injunction permanent. 177 F.3d at 1105. While the  
3 propriety of an injunction is a separate issue, the possibility of such relief is apparent.  
4 Therefore, the Court denies Local 117’s motion for summary judgment.

5 **B. Preliminary Injunction**

6 A plaintiff seeking a preliminary injunction must establish that he is likely to  
7 succeed on the merits, that he is likely to suffer irreparable harm in the absence of  
8 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in  
9 the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

10 In this case, Plaintiffs fail to show that they are likely to suffer irreparable harm in  
11 the absence of preliminary relief. While Local 117 charges Plaintiffs \$43.07 per month  
12 in individual agency fees (Dkt. 26 at 30), Plaintiffs have failed to submit any evidence of  
13 an objection to this fee. Lacking such evidence, Plaintiffs have failed to show any  
14 immediate harm. While the Court declines to directly address Plaintiffs’ likelihood of  
15 success on the merits, it may be that Local 117 has failed to provide Plaintiffs sufficient  
16 information to assess the basis for Local 117’s agency fee. *Hudson*, 475 U.S. at 310  
17 (union must “include an adequate explanation of the basis for the fee”). For example,  
18 Local 117 informed Plaintiffs that they each had a right to be given sufficient information  
19 to determine whether they objected to the amount of the agency fee. Dkt. 26 at 27–28.  
20 Local 117, however, requires a potential objector to submit a written request for such  
21 information within a certain time frame. *Id.* In the absence of actual accounting  
22 information, Plaintiffs could be unable to assess what portion of the fee is objectionable.

1 Furthermore, Plaintiffs have failed to show that the State, which apparently  
2 collects the fee, objects to placing these fees in escrow pending a final determination of  
3 Plaintiffs' claims. Although Plaintiffs seek an injunction against the State Defendants,  
4 the Court has dismissed these defendants. If these are indispensable parties to Plaintiffs'  
5 second claim for relief, then Plaintiffs should properly move to amend their complaint to  
6 correct the deficiencies. Moreover, Local 117 concedes that any challenged amount will  
7 be placed in an interest-bearing escrow account while an impartial arbitrator considers the  
8 dispute. Dkt. 26 at 28. This concession appears to be consistent with *Hudson* and  
9 undermines Plaintiffs' argument that they will suffer immediate, irreparable harm.  
10 Therefore, Plaintiffs have failed to meet their burden, and the Court denies their motion  
11 for a preliminary injunction.<sup>1</sup>

### 12 III. ORDER

13 Therefore, it is hereby **ORDERED** that Local 117's motion for summary  
14 judgment (Dkt. 25) and Plaintiffs' motion for preliminary injunction (Dkt. 27) are  
15 **DENIED**.

16 Dated this 8th day of December, 2015.

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19 BENJAMIN H. SETTLE  
United States District Judge

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22 <sup>1</sup> The State Defendants' motion to strike is denied as moot.