

99-2-13911-4 18248056 DCLR 01-08-03

HON. KATHERINE M. STOLZ

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FILED
IN COUNTY CLERK'S OFFICE
A.M. JAN - 7 2003 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

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

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. 99 2 13911 4

vs.)

DECLARATION OF JOHN L.
MESSINA RE: CIVIL
RIGHTS CLAIM

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)
Defendants.)

I, JOHN L. MESSINA, declare:

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5316 Orchard St. W.
Tacoma, WA 98467-3633
(253) 472-6000

1 I am one of the attorneys for plaintiffs and make this
2 declaration regarding defendants' very recent claim that they
3 did not have notice of plaintiff's first amendment claims.

4 Defendants' first notice of these claims came when Mr.
5 Kirby first filed his administrative claims nearly two years
6 ago. See Exhibit "A" hereto.

7 In the filed complaint the administrative claim was
8 referenced in the complaint. See Exhibit "B" hereto.
9 Unfortunately, the Claim for Damages was not incorporated into
10 the complaint by reference.

11 The complaint referenced that the adverse actions
12 inflicted on plaintiff resulted from, among other things, his
13 "participation in protected union activities."

14 Realizing that the complaint should have incorporated the
15 administrative claims, the plaintiffs wanted to explicitly give
16 defendants "fair notice of what the claim is and the [legal]
17 ground upon which it rests." Reply Memorandum in Support of
18 Defendants' Motion for Partial Summary Judgment regarding
19 Plaintiff's Claim of Retaliation for Protected Union Activity,
20 page 3. That was done by Exhibit "D," which was filed in this
21 court on July 29, 2002.

22 The discovery deadline in this case was December 16,
23 2002. Despite receiving clear notice of the constitutional
24 claims, defendants have done nothing to become informed of
25 those claims. Now they claim surprise and lack of notice. It

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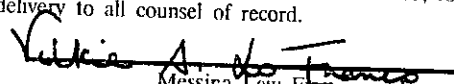
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1 is obvious that this is a classic case of sandbagging or lying
2 in the weeds. They had "fair notice" of the claim and chose to
3 gamble that the court would not allow it. They should not be
4 allowed to do so.

5 I certify under penalty of perjury under the laws of the
6 State of Washington that the foregoing is true and correct.

7 DATED this 7 day of January 2003, at Tacoma,
8 Washington.

9
10 
11 JOHN L. MESSINA 4440

12 CERTIFICATION
13 I hereby certify that on 1/7/03 I deposited
14 in the mails of the United States of America and/or
15 placed with Legal Messengers and/or faxed a copy of the
16 document to which this certificate is attached, for
17 delivery to all counsel of record.
18 
19 Messina Law Firm
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25

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X.

EXHIBIT# B

1
2 The actions of the defendants and defendants' agents and/or
3 employees constitute intentional infliction of emotional distress
4 against plaintiff Joseph Kirby.

XI.

5
6 A Claim for Damages has been duly filed with the Division
7 of Risk Management of the City of Tacoma, for the injuries and
8 damages sustained by Joseph J. Kirby. Said claim has neither
9 been admitted nor denied.

XII.

10
11 As a direct and proximate result of the negligent and
12 unlawful conduct of the defendants, plaintiff Joseph J. Kirby
13 sustained personal injuries, both physical and mental, which will
14 continue for an indefinite period of time in the future; he has
15 suffered mental pain and psychological disability, together with
16 a loss of earnings; plaintiff has further been rendered highly
17 susceptible to further injury in the future, which susceptibility
18 will persist for an indefinite period of time, if not perma-
19 nently.

XIII.

20
21 As a direct and proximate result of the defendants'
22 negligence and other unlawful conduct, plaintiff Deborah A. Kirby
23 has lost and continues to lose the services and consortium of
24 plaintiff Joseph J. Kirby, her husband, to her damage in such sum
25

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EXHIBIT#

C

1 3.6 At all times material hereto, ~~defendants James~~
 2 Hairston and "Jane Doe" Hairston were husband and wife, and
 3 residents of Pierce County, Washington. All actions hereinafter
 4 alleged to have been performed by defendant James Hairston, were
 5 done for and on his own behalf and for and on the behalf of the
 6 marital community consisting of James Hairston and "Jane Doe"
 7 Hairston.

8 IV.

9 The individual defendants mentioned hereinabove were
 10 employees of defendant The City of Tacoma and held supervisory
 11 authority over the plaintiff Joseph J. Kirby, during his
 12 employment with The City of Tacoma.

13 V.

14 5.1 Plaintiff, Joseph J. Kirby, was employed by The City
 15 of Tacoma's Police Department from approximately January of 1983
 16 through the present.

17 5.2 During said employment, plaintiff was subjected to
 18 continued harassment and discrimination, including discriminatory
 19 remarks, offensive language, disparate treatment, adverse
 20 employment decisions and unjustified disciplinary actions, by the
 21 individual defendants named above.

22 5.3 Further, this harassment and discrimination was
 23 targeted at plaintiff because of his age, known disability and
 24 participation in protected union activities.
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EXHIBIT#

D

IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON
A.M. JUL 29 2002 P.M.
BOB SAN JUAN
COUNTY CLERK
BY DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.)
KIRBY, husband and wife,)
Plaintiffs,)

No. 99 2 13911 4

vs.)

NOTICE OF CLAIM

THE CITY OF TACOMA, a municipal)
corporation; RAY CORPUZ and)
"JANE DOE" CORPUZ, husband and)
wife; PHILIP ARREOLA and "JANE)
DOE" ARREOLA, husband and)
wife; WILLIAM WOODARD and)
CATHERINE WOODARD, husband and)
wife; RAYMOND ROBERTS and "JANE)
DOE" ROBERTS, husband and wife;)
DAVID BRAME and "JANE DOE")
BRAME, husband and wife; and)
JAMES HAIRSTON and "JANE DOE")
HAIRSTON, husband and wife,)

Defendants.)

RECEIVED
JUL 30 2002
MESSINA LAW FIRM

To the defendant City of Tacoma:

As stated in the following interrogatory answers,
plaintiffs intend to assert constitutional tort claims under

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1 both the Washington State and Federal Constitutions. Please
2 refer to Amended Answers to Defendant City's First Interrogato-
3 ries to Plaintiff Nos. 2, 4, and 5.

4 DATED this 26 day of July 2002.

5 MESSINA BULZOMI

6
7 By John L. Messina
JOHN L. MESSINA 4440
8 Attorneys for Plaintiffs

9
10 CERTIFICATION

11 I hereby certify that on 7/26/02 I deposited
12 in the mails of the United States of America and/or
placed with Legal Messengers and/or faxed a copy of the
document to which this certificate is attached, for
delivery to all counsel of record.

William A. Romano

Messina Law Firm

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