



99-2-13911-4 18693702 CLPP 04-01-03

COURT, STATE OF WASHINGTON

1 JOSEPH J. KIRBY & DEBORAH A. )  
2 KIRBY, HUSBAND & WIFE, )

3 Plaintiff, )

4 vs. )

5 THE CITY OF TACOMA, A MUNICIPAL )  
6 CORPORATION; RAY CORPUZ & JANE )  
7 DOE CORPUZ, HUSBAND & WIFE; )  
8 PHILIP ARREOLA & JANE DOE )  
9 ARREOLA, HUSBAND & WIFE; WILLIAM )  
10 WOODARD & CATHERINE WOODARD, )  
11 HUSBAND & WIFE; RAYMOND ROBERTS )  
12 & JANE DOE ROBERTS, HUSBAND & )  
13 WIFE; DAVID BRAME & JANE DOE )  
14 BRAME, HUSBAND & WIFE; & JAMES )  
15 HAIRSTON & JANE DOE HAIRSTON, )  
16 HUSBAND & WIFE, )

17 Defendant. )

April 1, 2003

NO. 99-2-13911-4

COURT OF APPEALS NO. 29963-1

CLERK'S PAPERS PER

REQUEST OF APPELLANT

TO THE COURT OF APPEALS

DIVISION II

IN COUNTY CLERK'S OFFICE

A.M. APR - 1 2003 P.M.

PIERCE COUNTY, WASHINGTON  
BY KEVIN STOCK, County Clerk  
STOLZ DEPUTY

HONORABLE KATHERINE M.

Trial Judge

18 JOHN L. MESSINA  
19 LAW OFFICES OF  
20 MESSINA BULZOMI  
21 5316 ORCHARD STREET WEST  
22 TACOMA, WA 98467-3633

ATTORNEY FOR APPELLANT

23 SHELLEY M. KERSLAKE  
24 TACOMA CITY ATTORNEY CIVIL DIVISION  
25 747 MARKET STREET, ROOM 1120  
26 TACOMA, WA 98402-3767

ATTORNEY FOR RESPONDENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PIERCE COUNTY SUPERIOR COURT, STATE OF WASHINGTON

JOSEPH J. KIRBY & DEBORAH A. )  
 KIRBY, HUSBAND & WIFE, )  
 Plaintiff, )  
 vs. )  
 THE CITY OF TACOMA, A MUNICIPAL )  
 CORPORATION; RAY CORPUZ & JANE )  
 DOE CORPUZ, HUSBAND & WIFE; )  
 PHILIP ARREOLA & JANE DOE )  
 ARREOLA, HUSBAND & WIFE; WILLIAM )  
 WOODARD & CATHERINE WOODARD, )  
 HUSBAND & WIFE; RAYMOND ROBERTS )  
 & JANE DOE ROBERTS, HUSBAND & )  
 WIFE; DAVID BRAME & JANE DOE )  
 BRAME, HUSBAND & WIFE; & JAMES )  
 HAIRSTON & JANE DOE HAIRSTON, )  
 HUSBAND & WIFE, )  
 Defendant. )

April 1, 2003  
 NO. 99-2-13911-4  
 COURT OF APPEALS NO. 29963-1  
 CLERK'S PAPERS PER  
 REQUEST OF APPELLANT  
 TO THE COURT OF APPEALS  
 DIVISION II

INDEX

PAGES

|   |           |
|---|-----------|
| AFFIDAVIT OF D.P. VAN BLAIRCOM,<br>filed December 9, 2002 . . . . .   | 276 - 288 |
| AFFIDAVIT OF MARY BROWN IN SUPPORT OF DEFENDANTS'<br>MOTION FOR PARTIAL SUMMARY JUDGMENT TO<br>DISMISS PHILIP ARREOLA, DAVID BRAME AND<br>RAYMOND ROBERTS,<br>filed November 14, 2002 . . . . . | 62 - 63   |
| AFFIDAVIT OF PAUL MIELBRECHT IN SUPPORT OF DEFENDANTS'<br>MOTION FOR PARTIAL SUMMARY JUDGMENT REGARDING<br>PLAINTIFF'S DISABILITY DISCRIMINATION CLAIM,<br>filed January 6, 2003 . . . . .      | 387 - 389 |
| AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT<br>OF DEFENDANTS' MOTION FOR PARTIAL<br>SUMMARY JUDGMENT TO DISMISS PLAINTIFFS'<br>AGE DISCRIMINATION CLAIM,<br>filed November 14, 2002 . . . . .   | 9 - 10    |
| AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT OF<br>REPLY MEMORANDUM FOR PARTIAL SUMMARY JUDGMENT<br>TO DISMISS PLAINTIFF'S AGE DISCRIMINATION CLAIM,<br>filed January 6, 2003 . . . . .          | 384 - 386 |

|    |   |           |
|----|---|-----------|
| 1  | AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT OF  |           |
| 2  | DEFENDANTS' REPLY MEMORANDUM FOR PARTIAL        |           |
| 3  | SUMMARY JUDGMENT TO DISMISS PHILIP ARREOLA,     |           |
|    | DAVID BRAME AND RAYMOND ROBERTS,                |           |
|    | filed January 6, 2003 . . . . .                 | 350 - 352 |
| 4  | AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT OF  |           |
| 5  | DEFENDANTS' REPLY MEMORANDUM FOR PARTIAL        |           |
| 6  | SUMMARY JUDGMENT REGARDING PLAINTIFF'S          |           |
|    | DISABILITY DISCRIMINATION CLAIM,                |           |
|    | filed January 6, 2003 . . . . .                 | 390 - 392 |
| 7  | AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT OF  |           |
| 8  | DEFENDANTS' MOTION FOR PARTIAL SUMMARY          |           |
| 9  | JUDGMENT REGARDING PLAINTIFF'S CLAIM OF         |           |
|    | RETALIATION FOR PROTECTED UNION ACTIVITY,       |           |
|    | filed November 20, 2002 . . . . .               | 116 - 118 |
| 10 | AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT OF  |           |
| 11 | DEFENDANTS' MOTION FOR SUMMARY JUDGMENT         |           |
| 12 | REGARDING PLAINTIFF'S CLAIM OF INTENTIONAL      |           |
|    | INFLICTION OF EMOTIONAL DISTRESS,               |           |
|    | filed December 3, 2002 . . . . .                | 147 - 148 |
| 13 | AFFIDAVIT OF SHELLEY M. KERSLAKE IN SUPPORT OF  |           |
| 14 | DEFENDANTS' MOTION FOR PARTIAL SUMMARY          |           |
| 15 | JUDGMENT REGARDING PLAINTIFF'S DISABILITY       |           |
|    | DISCRIMINATION CLAIM,                           |           |
|    | filed December 3, 2002 . . . . .                | 122 - 123 |
| 16 | DECLARATION OF JOHN L. MESSINA RE: CIVIL RIGHTS |           |
| 17 | CLAIM, filed January 7, 2003 . . . . .          | 473 - 480 |
| 18 | DECLARATION OF JOHN L. MESSINA,                 |           |
|    | filed December 9, 2002 . . . . .                | 208 - 226 |
| 19 | DECLARATION OF JOHN L. MESSINA IN SUPPORT OF    |           |
| 20 | PLAINTIFFS' MOTION FOR RECONSIDERATION,         |           |
|    | filed January 15, 2003 . . . . .                | 489 - 494 |
| 21 | DECLARATION OF JOSEPH J. KIRBY,                 |           |
| 22 | filed December 9, 2002 . . . . .                | 227 - 233 |
| 23 | DECLARATION OF PHILIP G. LINDSAY, M.D.,         |           |
|    | filed December 9, 2002 . . . . .                | 234 - 244 |
| 24 | DECLARATION OF WILLIAM WOODARD IN SUPPORT OF    |           |
| 25 | DEFENDANTS' MOTION FOR PARTIAL SUMMARY          |           |
| 26 | JUDGMENT REGARDING PLAINTIFF'S DISABILITY       |           |
|    | DISCRIMINATION CLAIM,                           |           |
|    | filed December 3, 2002 . . . . .                | 119 - 121 |
| 27 | DEFENDANTS' COST BILL STATEMENT OF COSTS AND    |           |
| 28 | DISBURSEMENTS TO BE TAXED AGAINST PLAINTIFFS',  |           |
|    | filed January 24, 2003 . . . . .                | 570 - 571 |

|    |   |           |
|----|---|-----------|
| 1  | DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION       |           |
| 2  | FOR PARTIAL SUMMARY JUDGMENT TO DISMISS           |           |
| 3  | PHILIP ARREOLA, DAVID BRAME AND                   |           |
|    | RAYMOND ROBERTS,                                  |           |
|    | filed November 14, 2002 . . . . .                 | 24 - 61   |
| 4  | DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION       |           |
| 5  | FOR PARTIAL SUMMARY JUDGMENT TO DISMISS           |           |
| 6  | PLAINTIFFS' AGE DISCRIMINATION CLAIM,             |           |
|    | filed November 14, 2002 . . . . .                 | 11 - 21   |
| 7  | DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT   |           |
| 8  | REGARDING PLAINTIFF'S CLAIM OF RETALIATION        |           |
|    | FOR PROTECTED UNION ACTIVITY,                     |           |
|    | filed November 20, 2002 . . . . .                 | 66 - 67   |
| 9  | DEFENDANTS' MOTION FOR PARTIAL SUMMARY            |           |
| 10 | JUDGMENT REGARDING PLAINTIFF'S DISABILITY         |           |
| 11 | DISCRIMINATION CLAIM,                             |           |
|    | filed December 3, 2002 . . . . .                  | 145 - 146 |
| 12 | DEFENDANTS' MOTION FOR PARTIAL SUMMARY            |           |
| 13 | JUDGMENT TO DISMISS PLAINTIFF'S AGE               |           |
|    | DISCRIMINATION CLAIM,                             |           |
|    | filed November 14, 2002 . . . . .                 | 22 - 23   |
| 14 | DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT   |           |
| 15 | TO DISMISS PHILIP ARREOLA, DAVID BRAME AND        |           |
| 16 | RAYMOND ROBERTS,                                  |           |
|    | filed November 14, 2002 . . . . .                 | 64 - 65   |
| 17 | DEFENDANTS' MOTION FOR SUMMARY JUDGMENT REGARDING |           |
| 18 | PLAINTIFF'S CLAIM OF INTENTIONAL INFLECTION OF    |           |
|    | EMOTIONAL DISTRESS,                               |           |
|    | filed December 3, 2002 . . . . .                  | 173 - 174 |
| 19 | DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR    |           |
| 20 | RECONSIDERATION OF COURT'S SUMMARY JUDGMENT       |           |
| 21 | RULING AND ORDER GRANTING SUMMARY JUDGMENT        |           |
|    | AND BRIEF IN SUPPORT OF MOTION,                   |           |
|    | filed January 22, 2003 . . . . .                  | 561 - 566 |
| 22 | DEFENDANT'S NOTICE OF INTENT TO OFFER DOCUMENTS   |           |
| 23 | UNDER EVIDENCE RULE 904,                          |           |
|    | filed January 3, 2003 . . . . .                   | 341 - 349 |
| 24 | JUDGMENT FOR DEFENDANT'S,                         |           |
| 25 | filed January 24, 2003 . . . . .                  | 572 - 574 |
| 26 | MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR   |           |
| 27 | PARTIAL SUMMARY JUDGMENT REGARDING PLAINTIFFS'    |           |
|    | CLAIM OF RETALIATION FOR PROTECTED UNION          |           |
|    | ACTIVITY, filed November 20, 2002 . . . . .       | 68 - 115  |

|    |  |           |
|----|--|-----------|
| 1  | MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION          |           |
| 2  | FOR PARTIAL SUMMARY JUDGMENT REGARDING               |           |
| 3  | PLAINTIFF'S DISABILITY DISCRIMINATION                |           |
|    | CLAIM, filed December 3, 2002 . . . . .              | 124 - 144 |
| 4  | MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR      |           |
| 5  | SUMMARY JUDGMENT REGARDING PLAINTIFF'S CLAIM         |           |
| 6  | OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS,     |           |
| 7  | filed December 3, 2002 . . . . .                     | 149 - 172 |
| 8  | MOTION FOR RECONSIDERATION OF COURT'S SUMMARY        |           |
| 9  | JUDGMENT RULING AND ORDER GRANTING SUMMARY           |           |
| 10 | JUDGMENT AND BRIEF IN SUPPORT OF MOTION,             |           |
| 11 | filed January 15, 2003 . . . . .                     | 495 - 560 |
| 12 | NOTICE OF CLAIM,                                     |           |
| 13 | filed July 29, 2002 . . . . .                        | 7 - 8     |
| 14 | ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION |           |
| 15 | OF COURT'S SUMMARY JUDGMENT RULING AND ORDER         |           |
| 16 | GRANTING SUMMARY JUDGMENT AND BRIEF IN SUPPORT       |           |
| 17 | OF MOTION, filed January 24, 2003 . . . . .          | 567 - 569 |
| 18 | ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY        |           |
| 19 | JUDGMENT, filed January 13, 2003 . . . . .           | 483 - 488 |
| 20 | PLAINTIFFS' DISCLOSURE OF PRIMARY WITNESSES,         |           |
| 21 | filed July 29, 2002 . . . . .                        | 1 - 6     |
| 22 | PLAINTIFFS' NOTICE OF INTENT TO OFFER DOCUMENTS      |           |
| 23 | TO BE DEEMED AUTHENTIC AND ADMISSIBLE,               |           |
| 24 | filed January 3, 2003 . . . . .                      | 308 - 321 |
| 25 | PLAINTIFFS' OBJECTIONS TO DEFENDANTS ER 904(B)       |           |
| 26 | SUBMISSIONS, filed January 8, 2003 . . . . .         | 481 - 482 |
| 27 | PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR     |           |
| 28 | PARTIAL SUMMARY JUDGMENT TO DISMISS,                 |           |
|    | filed December 9, 2002 . . . . .                     | 175 - 207 |
| 29 | PLAINTIFFS' SUBMISSION OF ADDITIONAL AUTHORITY       |           |
| 30 | RE: MOTIONS FOR SUMMARY JUDGMENT,                    |           |
| 31 | filed January 2, 2003 . . . . .                      | 289 - 307 |
| 32 | PLAINTIFFS' WITNESS AND EXHIBIT LIST,                |           |
| 33 | filed January 3, 2003 . . . . .                      | 322 - 329 |
| 34 | REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS'           |           |
| 35 | MOTION FOR SUMMARY JUDGMENT REGARDING                |           |
| 36 | PLAINTIFF'S CLAIM OF INTENTIONAL INFLICTION          |           |
| 37 | OF EMOTIONAL DISTRESS,                               |           |
| 38 | filed January 3, 2003 . . . . .                      | 330 - 340 |

|    |   |           |
|----|---|-----------|
| 1  | REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION |           |
| 2  | FOR PARTIAL SUMMARY JUDGMENT TO DISMISS           |           |
| 3  | PHILIP ARREOLA, DAVID BRAME AND RAYMOND ROBERTS,  |           |
|    | filed January 6, 2003 . . . . .                   | 353 - 383 |
| 4  | REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION |           |
| 5  | FOR PARTIAL SUMMARY JUDGMENT TO DISMISS           |           |
| 6  | PLAINTIFF'S AGE DISCRIMINATION CLAIM,             |           |
| 7  | filed January 6, 2003 . . . . .                   | 393 - 453 |
| 8  | REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION |           |
| 9  | FOR PARTIAL SUMMARY JUDGMENT REGARDING            |           |
| 10 | PLAINTIFF'S DISABILITY DISCRIMINATION CLAIM,      |           |
| 11 | filed January 6, 2003 . . . . .                   | 454 - 469 |
| 12 | STIPULATION AND ORDER OF DISMISSAL OF PLAINTIFF'S |           |
| 13 | NEGLIGENT RETENTION SUPERVISION CLAIM AND         |           |
| 14 | RAY E. CORPUZ, JR.,                               |           |
| 15 | filed January 6, 2003 . . . . .                   | 470 - 472 |
| 16 | SUPPLEMENTAL DECLARATION OF JOHN L. MESSINA,      |           |
| 17 | filed December 9, 2002 . . . . .                  | 245 - 275 |
| 18 | DESIGNATION OF CLERK'S PAPERS,                    |           |
| 19 | filed March 21, 2003 . . . . .                    | 575 - 581 |
| 20 |   |           |
| 21 |   |           |
| 22 |   |           |
| 23 |   |           |
| 24 |   |           |
| 25 |   |           |
| 26 |   |           |
| 27 |   |           |
| 28 |   |           |