

II. STATEMENT OF FACTS

I, Jeffrey H. Sadler, declare as follows:

I am over the age of 18 years and am competent to make this declaration.


I am one of the attorneys of record for plaintiffs in the above matter. I make this declaration in support of plaintiffs' motion to amend their complaint.

Plaintiff Joseph J. Kirby was employed by the City of Tacoma's Police Department from approximately January 1983 through the present. During his employment plaintiff was subjected to continued harassment and discrimination, including discriminatory remarks, offensive language, disparate treatment, adverse employment decisions and unjustified disciplinary actions, by the named defendants.

During the course of initial discovery, it has come to plaintiffs' attention that some of the disparate and discriminatory practice is based on plaintiff Joe Kirby's race.

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

DATED this 13th day of April, 2000, at Tacoma, Washington.


JEFFREY H. SADLER 27136

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III. AUTHORITY

1
2 This Court is empowered to grant plaintiffs' motion
3 pursuant to CR 15.

4 CR 15(a) provides that a party may amend his pleading once
5 as a matter of course. "Otherwise, a party may amend his
6 pleading only by leave of court or by stipulation of the adverse
7 party; and leave shall be freely given when justice so requires."
8 CR 15(a).

9 A motion for amendment is addressed to the sound discretion
10 of the trial court. *Lincoln v. Transamerica Inv. Corp.*, 89 Wn.
11 2d 571, 573 (1978). Leave to amend shall be freely given when
12 justice so requires. CR 15(a). This mandate is to be heeded.
13 *Tagliani v. Colwell*, 10 Wn. App. 227, 233 (1973), quoting *Forman*
14 *v. Davis*, 371 U.S. 178, 182 (1962). In the absence of any
15 apparent injustice - such as undue delay, bad faith or dilatory
16 motive - the leave sought should be freely given. *Id.*

17 Amendment under Rule 15(a) is to be freely given when
18 justice so requires. The principal factor in determining whether
19 amendment will be granted is the presence or absence of prejudice
20 to the nonmoving party. *Del Guzzi Construction Co. v. Global*
21 *Northwest, LTD.*, 105 Wn.2d 878, 88, 719 P.2d 120 (1986). As a
22 result, the fact that the added material or claims could have
23 been included in the original pleading will not preclude
24 amendment in the absence of prejudice to the nonmoving party.
25 *Herron v. Tribune Publishing Co.*, 108 Wn.2d 878, 88, 719 P.2d 249

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1 (1987). Similarly, mere delay if not accompanied by prejudice to
2 the nonmoving party, is insufficient to justify denial. *Caruso*
3 *v. Local Union No. 690*, 100 Wn.2d 343, 350-51, 670 P.2d 240
4 (1983). Indeed, it is reversible error to deny the amendment on
5 this basis alone. *Id.*

6 The plaintiff became aware of the claim under 42 U.S.C.
7 sec. 1983 after the discovery process began. The defendant will
8 not be prejudiced by the addition of this claim, because they
9 will have plenty of time to prepare for it before the trial
10 begins. In addition, no depositions have been taken yet.
11 Discovery thus far has been limited to written interrogatories
12 and requests for production.

13 The longstanding policy behind Civil Rules 15 is judicial
14 economy--to avoid multiplicity of suits. Therefore, when
15 possible, all issues should be resolved in one action. *Roberts*
16 *v. Port of Seattle*, 46 Wn. 2d 509 (1955).

17 Sound policies such as judicial economy, efficiency, and
18 fairness are all furthered should this Court grant the
19 plaintiffs' motion to amend their complaint to add the claim
20 under 42 U.S.C. §1983.

21 IV. CONCLUSION

22 Plaintiffs respectfully request that this Court grant their
23 motion to amend their complaint to add a claim for a Section 1983
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25

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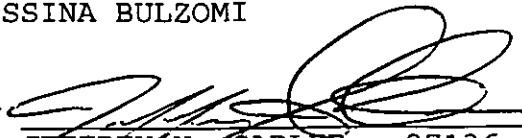
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action.

DATED this 13th day of April 2000.

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By 
JEFFREY H. SADLER 27136
Attorneys for Plaintiffs

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HON. KAREN L. STROMBOM

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CERTIFICATION

I hereby certify that on 4-10-03 I deposited
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.

Yukie A. DeFrances
Messina Law Firm

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,)

vs.)

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.)

No. 99 2 13911 4

AMENDED
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES IN
TORT

PLAINTIFFS ALLEGE:

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I.

Plaintiffs Joseph J. Kirby and Deborah A. Kirby were, at all times material hereto, husband and wife and residents of Pierce County, Washington.

II.

2.1 Defendant, The City of Tacoma, is a municipal corporation duly authorized under the laws of the State of Washington with its principal place of business located in Pierce County, Washington.

2.2 The Tacoma Police Department is a department of The City of Tacoma.

2.3 Defendant, The City of Tacoma, stood in the relationship of employer of plaintiff and employed a work force of a nature and extent to make it subject to the provisions of RCW 49.60.

III.

3.1 At all times material hereto, defendants Ray Corpuz and "Jane Doe" Corpuz were husband and wife, and residents of Pierce County, Washington. All actions hereinafter alleged to have been performed by defendant Ray Corpuz, were done for and on his own behalf and for and on the behalf of the marital community consisting of Ray Corpuz and "Jane Doe" Corpuz.

3.2 At all times material hereto, defendants Philip Arreola and "Jane Doe" Arreola were husband and wife, and residents of Pierce County, Washington. All actions hereinafter

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1 | alleged to have been performed by defendant Philip Arreola, were
2 | done for and on his own behalf and for and on the behalf of the
3 | marital community consisting of Philip Arreola and "Jane Doe"
4 | Arreola.

5 | 3.3 At all times material hereto, defendants William
6 | Woodard and Catherine Woodard were husband and wife, and
7 | residents of Pierce County, Washington. All actions hereinafter
8 | alleged to have been performed by either William Woodard or
9 | Catherine Woodard were done for and on each defendant's own
10 | behalf and for and on the behalf of the marital community
11 | consisting of William Woodard and Catherine Woodard.

12 | 3.4 At all times material hereto, defendants Raymond
13 | Roberts and "Jane Doe" Roberts were husband and wife, and
14 | residents of Pierce County, Washington. All actions hereinafter
15 | alleged to have been performed by defendant Raymond Roberts, were
16 | done for and on his own behalf and for and on the behalf of the
17 | marital community consisting of Raymond Roberts and "Jane Doe"
18 | Roberts.

19 | 3.5 At all times material hereto, defendants David Brame
20 | and "Jane Doe" Brame were husband and wife, and residents of
21 | Pierce County, Washington. All actions hereinafter alleged to
22 | have been performed by defendant David Brame, were done for and
23 | on his own behalf and for and on the behalf of the marital
24 | community consisting of David Brame and "Jane Doe" Brame.
25 |

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1 VI.

2 For a cause of action against the defendants, plaintiff
3 Joseph J. Kirby claims that he was harassed and discriminated
4 against by the employees of defendant, The City of Tacoma, at
5 which time defendant's employees had authority over him and that
6 such harassment and discrimination were condoned by defendant The
7 City of Tacoma, which wrongfully and negligently failed to act to
8 protect plaintiff and to prevent further abuse. Said harassment
9 and discrimination made plaintiff's work environment hostile,
10 unpleasant and unbearable, and violated his rights.

11 VII.

12 For another cause of action against defendants, plaintiff
13 claims that said defendants retaliated against him for exercising
14 his rights under RCW 49.60.

15 VIII.

16 For another cause of action against defendants, plaintiff
17 claims that said defendant The City of Tacoma was negligent in
18 the hiring, retention and supervision of the above-named
19 individual defendants.

20 IX.

21 For another cause of action against defendants, plaintiff
22 claims that said defendants violated his rights under 42 U.S.C.
23 §1983, by discriminating against him based on his race.
24
25

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1 X.

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

6 XI.

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

16 XII.

17 As a direct and proximate result of the defendants'
18 negligence and other unlawful conduct, plaintiff Deborah A. Kirby
19 has lost and continues to lose the services and consortium of
20 plaintiff Joseph J. Kirby, her husband, to her damage in such sum
21 of money as will reasonably compensate her for such loss, past,
22 present, and future.

23 XIII.

24 As a direct and proximate result of the negligence and
25 unlawful conduct of defendants, plaintiffs have been specially

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1 and generally damaged in an amount to be fully proven at the time
2 of trial.

3 XIV.

4 Under the provisions of RCW 49.60, plaintiffs are entitled
5 upon prevailing, to an award of reasonable attorneys' fees, and
6 request the same in an amount to be determined at the conclusion
7 of the trial.

8 WHEREFORE, plaintiffs pray for judgment against the defen-
9 dants, for such sums of money as will reasonably and justly
10 compensate them for their damages sustained as hereinbefore
11 alleged, together with their costs and disbursements herein to be
12 taxed, and for prejudgment interest.

13 MESSINA BULZOMI

14
15 DATED: 4-13-00

16 BY 
JOHN L. MESSINA 4440

17 BY 
JEFFREY H. SADLER 27136
18 Attorneys for Plaintiffs

19
20 STATE OF WASHINGTON)
21 County of Pierce) : ss.


22 JOSEPH KIRBY, being first duly sworn upon oath, deposes and
23 says:

24 That he is one of the plaintiffs above-named; that he has
25 read the foregoing Amended Complaint for Personal Injuries and

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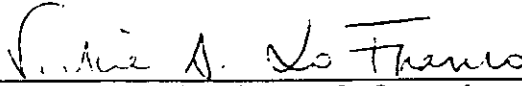
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Damages in Tort, knows the contents thereof and believes the same to be true.



JOSEPH KIRBY

Signed and sworn to before me on the 14th day of April, 2000, by Joseph Kirby.



Notary Public in and for the State of Washington, residing at Tacoma.
My appointment expires 4-15-01.

**THE PLAINTIFF WILL NOT
ACCEPT SERVICE OF PLEADINGS
OR MOTIONS VIA FAX.**

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