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HON. KAREN STROMBOM
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CERTIFICATION
I hereby certify that on 5/15/01 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.
Kelcie 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

PLAINTIFFS' MOTION
TO AMEND COMPLAINT

DATE OF HEARING: 5/25/01

3 MAY 16 2001

I. RELIEF REQUESTED

Plaintiffs request that this Court enter an order
allowing them to amend their complaint to add a claim for

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1 intentional infliction of emotional distress. A proposed
2 complaint is attached.

3 II. STATEMENT OF FACTS

4 I, Jeffrey H. Sadler, declare as follows:

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

7 I am one of the attorneys of record for plaintiffs in the
8 above matter. I make this declaration in support of plain-
9 tiffs' motion to amend their complaint.

10 Plaintiff Joseph J. Kirby was employed by the City of
11 Tacoma's Police Department from approximately January 1983
12 through the present. During his employment plaintiff was
13 subjected to continued harassment and discrimination, including
14 discriminatory remarks, offensive language, disparate
15 treatment, adverse employment decisions and unjustified
16 disciplinary actions, by the named defendants. Many of these
17 actions indicate an intent to inflict emotional damage to the
18 plaintiff.

19 Through the discovery process the plaintiff ascertained
20 that there was a viable claim for the intentional infliction of
21 emotional distress.

22 I certify under penalty of perjury under the laws of the
23
24
25

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1 State of Washington that the foregoing is true and correct.

2 DATED this 14th day of May 2001, at
3 Tacoma, Washington.

4
5 
6 JEFEREY H. SADLER 27136

7 III. AUTHORITY

8 This Court is empowered to grant plaintiffs' motion
9 pursuant to CR 15.

10 CR 15(a) provides that a party may amend his pleading
11 once as a matter of course. "Otherwise, a party may amend his
12 pleading only by leave of court or by stipulation of the
13 adverse party; and leave shall be freely given when justice so
14 requires." CR 15(a).

15 A motion for amendment is addressed to the sound
16 discretion of the trial court. *Lincoln v. Transamerica Inv.*
17 *Corp.*, 89 Wn. 2d 571, 573 (1978). Leave to amend shall be
18 freely given when justice so requires. CR 15(a). This mandate
19 is to be heeded. *Tagliani v. Colwell*, 10 Wn. App. 227, 233
20 (1973), quoting *Forman v. Davis*, 371 U.S. 178, 182 (1962). In
21 the absence of any apparent injustice - such as undue delay,
22 bad faith or dilatory motive - the leave sought should be
23 freely given. *Id.*

24 Amendment under Rule 15(a) is to be freely given when
25 justice so requires. The principal factor in determining

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1 | whether amendment will be granted is the presence or absence of
2 | prejudice to the nonmoving party. *Del Guzzi Construction Co.*
3 | *v. Global Northwest, LTD.*, 105 Wn.2d 878, 88, 719 P.2d 120
4 | (1986). As a result, the fact that the added material or
5 | claims could have been included in the original pleading will
6 | not preclude amendment in the absence of prejudice to the
7 | nonmoving party. *Herron v. Tribune Publishing Co.*, 108 Wn.2d
8 | 878,88, 719 P.2d 249 (1987). Similarly, mere delay if not
9 | accompanied by prejudice to the nonmoving party, is insuffi-
10 | cient to justify denial. *Caruso v. Local Union No. 690*, 100
11 | Wn.2d 343, 350-51, 670 P.2d 240 (1983). Indeed, it is
12 | reversible error to deny the amendment on this basis alone.
13 | *Id.*

14 | The plaintiff became aware of the intentional infliction
15 | of emotional distress claim only after the discovery process
16 | began. The defendant will not be prejudiced by the addition of
17 | this claim, because they will have plenty of time to prepare
18 | for it before the trial begins. Justice requires that the
19 | motion to amend be granted. Only if the plaintiff is allowed
20 | to add an intentional infliction of emotional distress claim,
21 | can the plaintiff be made whole again.

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

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1 Sound policies such as judicial economy, efficiency, and
2 fairness are all furthered should this Court grant the
3 plaintiffs' motion to amend their complaint to add a claim for
4 intentional infliction of emotional distress.

5 **IV. CONCLUSION**

6 Plaintiffs respectfully request that this Court grant
7 their motion to amend their complaint to add a claim for
8 intentional infliction of emotional distress.

9 DATED this 14th day of May 2001.

10 MESSINA BULZOMI

11 By 
12 JEFFREY H. SABLER 27136
13 Attorneys for Plaintiffs

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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,)

No. 99 2 13911 4

Plaintiffs,)

SECOND AMENDED
COMPLAINT FOR PERSONAL
INJURIES AND DAMAGES IN
TORT

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.)

PLAINTIFFS ALLEGE:

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1 I.

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

5 II.

6 2.1 Defendant, The City of Tacoma, is a municipal
7 corporation duly authorized under the laws of the State of
8 Washington with its principal place of business located in Pierce
9 County, Washington.

10 2.2 The Tacoma Police Department is a department of The
11 City of Tacoma.

12 2.3 Defendant, The City of Tacoma, stood in the
13 relationship of employer of plaintiff and employed a work force
14 of a nature and extent to make it subject to the provisions of
15 RCW 49.60.

16 III.

17 3.1 At all times material hereto, defendants Ray Corpuz
18 and "Jane Doe" Corpuz were husband and wife, and residents of
19 Pierce County, Washington. All actions hereinafter alleged to
20 have been performed by defendant Ray Corpuz, were done for and on
21 his own behalf and for and on the behalf of the marital community
22 consisting of Ray Corpuz and "Jane Doe" Corpuz.

23 3.2 At all times material hereto, defendants Philip
24 Arreola and "Jane Doe" Arreola were husband and wife, and
25 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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VI.

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

VII.

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

VIII.

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

IX.

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

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1 X.

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

5 XI.

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.

10 XII.

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.

20 XIII.

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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1 of money as will reasonably compensate her for such loss, past,
2 present, and future.

3 XIV.

4 As a direct and proximate result of the negligence and
5 unlawful conduct of defendants, plaintiffs have been specially
6 and generally damaged in an amount to be fully proven at the time
7 of trial.

8 XV.

9 Under the provisions of RCW 49.60, plaintiffs are entitled
10 upon prevailing, to an award of reasonable attorneys' fees, and
11 request the same in an amount to be determined at the conclusion
12 of the trial.

13 WHEREFORE, plaintiffs pray for judgment against the defen-
14 dants, for such sums of money as will reasonably and justly
15 compensate them for their damages sustained as hereinbefore
16 alleged, together with their costs and disbursements herein to be
17 taxed, and for prejudgment interest.

18 MESSINA BULZOMI

19
20 DATED: 5/14/01

20 BY [Signature] 27136 Fax
JOHN L. MESSINA 4440

21
22 BY [Signature]
JEFFREY H. SADLER 27136
23 Attorneys for Plaintiffs

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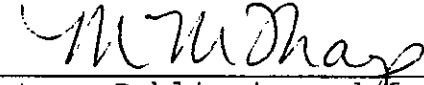
1 STATE OF WASHINGTON)
2 : ss.
3 County of Pierce)

4 JOSEPH KIRBY, being first duly sworn upon oath, deposes and
5 says:

6 That he is one of the plaintiffs above-named; that he has
7 read the foregoing Amended Complaint for Personal Injuries and
8 Damages in Tort, knows the contents thereof and believes the same
9 to be true.

10 
11 _____
12 JOSEPH KIRBY

13 Signed and sworn to before me on the 15 day of May
14 2001, by Joseph Kirby.

15 
16 _____
17 Notary Public in and for the State of
18 Washington, residing at Tacoma.
19 My appointment expires 5/29/03

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



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