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HON. KAREN STROMBOM

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CERTIFICATION

I hereby certify that on 9/20/01 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.

Yvonne A. De Franco
Messina Law Firm

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A.M. SEP 20 2001 P.M.
PIERCE COUNTY, WASHINGTON
TED RUTT, 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,)
)
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' OPPOSITION
TO DEFENDANTS' MOTION
FOR PROTECTIVE ORDER
RE: REQUESTS FOR
ADMISSION

I. RELIEF REQUESTED

Plaintiffs, by and through their attorneys, respectfully request this Court deny defendants' motion for protective order

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2 SEP 20 2001

1 Regarding the requests for admission directed to Ray Corpuz as
2 the information is relevant and discoverable. Plaintiffs
3 request this Court deny the defendants' motion because the
4 information regarding the Safeco Insurance fraud is relevant to
5 the claims of disparate treatment and discrimination against
6 Lt. Joseph Kirby.

7 II. STATEMENT OF FACTS

8 JEFFREY H. SADLER declares as follows:

9 I am one of the attorneys of record for the plaintiffs in
10 the above-captioned matter. I make this declaration based upon
11 my own personal knowledge and belief. I am over the age of
12 eighteen and competent to testify in a court of law.

13 This case arises from the disparate, discriminatory, and
14 outrageous behavior of the management at the Tacoma Police
15 Department with regard to a fellow officer, Lt. Joseph Kirby.
16 Lt. Kirby is a 17-year-veteran of the Tacoma Police Department
17 (TPD). Lt. Kirby worked his way up through the ranks of the
18 department in a rapid and steady fashion. All of his
19 commendations and advancements came to a screeching halt when
20 the Tacoma Police Department hired Phillip Arreola as police
21 chief. Since that time, Lt. Kirby has been subjected to
22 disparate disciplinary treatment, harassment, and promotional
23 pass-overs.

24 In order to understand plaintiffs' claims, it is
25 necessary to step into the past and work forward. As

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1 | mentioned, Lt. Kirby progressed rapidly through the ranks of
2 | the TPD. During this progression, he received commendation
3 | after commendation for his bravery, police work, leadership and
4 | training. Then, Chief Arreola was hired from Milwaukee. He
5 | brought an attitude of dissent and distaste for the rank and
6 | file officers and their Union.

7 | During the Arreola years, Lt. Kirby sat as an executive
8 | board member on the TPD Police Union, Local 6. As a board
9 | executive, he was charged with the advocacy of the Union
10 | members. During this time, Lt. Kirby adequately and vigorously
11 | represented the Union interests. This representation was not
12 | well taken by Arreola. Arreola began a pattern of backlash,
13 | retaliation, discrimination and disparate treatment towards Lt.
14 | Kirby stemming from his protected Union activity. This
15 | attitude and treatment sped to other offenders in the police
16 | department and was passed on to the new Chief of Police after
17 | Arreola's departure.

18 | Throughout the Arreola years and to the present, Lt.
19 | Kirby has also been subjected to repeated harassment and
20 | discrimination with regard to his age. The comments have gone
21 | so far as to say, "we need to get rid of all the grey hairs
22 | here", by Chief Arreola.

23 | Since the Arreola reign, Lt. Kirby has been living a
24 | living hell. He is continually subjected to unnecessary
25 | disciplinary investigations and adverse employment decisions.

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1 As prime examples, plaintiff calls attention to two situations.
2 First, Lt. Kirby was investigated for personal use of his
3 office email. His entire email account was seized and
4 searched. What was found? A one-line email telling a co-
5 worker he knew of a good place to get cedar wood. This was the
6 only personal email that was sent. While at the same time, it
7 is common knowledge that employees sometimes include personal
8 (non-work related) issues on email. Lt. Kirby was forced
9 through formal investigation and written discipline for this
10 instance.

11 Second, and the most egregious example of this disparate,
12 retaliatory, and discriminatory treatment deals with promo-
13 tional pass-overs. Lt. Kirby placed in the number one position
14 on the civil service captain's examination. This examination
15 ranks all lieutenants in order of top score. While Lt. Kirby
16 was number one on the list, a temporary captain's position
17 opened up. As is standard procedure, Lt. Kirby was appointed
18 to that position. Even while in that capacity, he continued to
19 receive unwarranted disciplinary investigations. When the
20 permanent captain's position became available, Lt. Kirby was
21 passed up. This was the first time in the history of the
22 department (a minimum 30 years) that a lieutenant in the number
23 one position was passed up for Captain. The treatment does not
24 end there. A few months later, another captain retired. This
25 created a position for a temporary captain. The lieutenant in

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1 the number one spot fills this position. However, the TPD
2 elected to leave the position unfilled rather than place Lt.
3 Kirby there. Then, when the position came up for permanent
4 appointment, Lt. Kirby was again passed over despite being
5 number one on the captain's list. The mistreatment, discrimi-
6 nation, and retaliation go on and on. The evidence establishes
7 that the basis for this treatment was retaliation for protected
8 union activity and age and disability discrimination.

9 Many of the witnesses who have testified in support of
10 the above-mentioned treatment of Lt. Kirby are current
11 employees of the Tacoma Police Department. For example,
12 Captain Charles Meinema clearly testified against the TPD and
13 in favor of Lt. Kirby's allegations. In addition, several
14 recently retired Captains have testified in support of Lt.
15 Kirby's allegations.

16 Hand in hand with the disparate treatment that Lt. Kirby
17 has received from the TPD is the continued investigation of
18 petty matters while the TPD fails to investigate potential
19 criminal conduct of other similarly situated individuals. This
20 is how the Corpuz Safeco matter comes into play.

21 Ray Corpuz, the City Manager, has significant influence
22 on the hiring and firing procedures at the TPD. The requests
23 for admission are in regard to an insurance fraud that happened
24 in the Corpuz household. Ray Corpuz signed the fraudulent
25 claim form. He was investigated by the Kitsap County

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1 | Prosecutor. His wife was charged with the fraud. The
2 | significance in regard to this case is that during the initial
3 | allegations, Police Chief Phillip Arreola went to Corpuz and
4 | warned him of the investigation. Arreola hindered the
5 | investigation in an attempt to protect Corpuz. Arreola was
6 | never investigated or disciplined for this clear violation of
7 | police policy, warning a suspect of a pending investigation.
8 | This type of preemptive warning should never occur. Deposition
9 | of Mike Darland, pp. 42-43; Deposition of William Woodard, pp.
10 | 47-48.

11 | Despite the gravity of such an offense and failure to
12 | discipline, Lt. Kirby gets routinely harassed through
13 | disciplinary investigations for such petty things as tossing a
14 | tablet of paper on the floor. This is disparate treatment.

15 | Plaintiffs should be allowed to conduct discovery and
16 | inquire into the nature and extent of Corpuz's involvement in
17 | the fraud as well as the acts and conduct of Arreola in the
18 | warning and concealing in the investigation of the fraud.

19 | This information is calculated to lead to admissible
20 | evidence that is directly at issue in this claim.

21 | Attached hereto as Exhibit 1 is a true and correct copy
22 | of excerpts from the deposition of Mike Darland, pages 42-43
23 | and Deposition of William Woodard, pages 47-48.

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

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1 DATED this 20 day of September 2001, at Tacoma,
 2 Washington.

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 5 _____
 6 JEFFREY H. SADLER 27136

7 III. AUTHORITY

8 The purpose of discovery is to provide litigants with a
 9 means of accessing the evidence necessary to effectively pursue
 10 their claims. *Bushman v. New Holland Div.*, 83 Wn.2d 429
 11 (1974). Discovery is permissible as to any matter which is or
 12 may become relevant to the action as long as the matter sought
 13 is reasonably calculated to lead to the discovery of admissible
 14 evidence. *Id.* The rules of discovery are to be liberally
 15 construed. *Id.*

16 In the case at hand, the defendants attempt to seek a
 17 protective order regarding requests for admission and
 18 interrogatories that have been served. As explained above, the
 19 circumstances surrounding the Safeco Insurance fraud will
 20 likely lead to admissible evidence of disparate treatment
 21 against Lt. Kirby in the TPD. Individuals involved in the
 22 Safeco incident are key players in the ongoing harassment and
 23 discrimination. This Court should not limit the scope of
 24 discovery simply because the information sought is damaging to
 25 the defendants. Plaintiffs should be allowed to fully
 investigate and inquire on their theories of the case.

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IV. CONCLUSION

1
2 For the above stated reasons, plaintiffs respectfully
3 request this Court deny defendants' motion for protective order
4 regarding the Corpuz-Arreola-Safeco Insurance fraud matter.
5 Discovery into these circumstances is reasonably calculated to
6 lead to admissible evidence and is not to harass or embarrass.

7 DATED this 20 day of September 2001.

8 MESSINA BULZOMI

9
10 By 
11 JEFFREY H. SADLER 27136
12 Attorneys for Plaintiffs
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1 Q Is it common practice for a chief to inform Ray Corpuz
2 about every criminal investigation that comes in to the
3 police department?

4 A It's common practice for the chief to keep the city
5 manager informed about investigations, cases, incidents
6 that are -- can be -- have some notoriety or if it
7 involves a city employee.

8 It's -- you know, on a daily or weekly basis, is
9 it normal to notify the city manager about every
10 investigation that's going on? No, it's not.

11 Q Do you feel that Chief Arreola's actions in disclosing
12 this information further alienated the union?

13 MS. KERSLAKE: Objection. Lack of
14 foundation.

15 A I don't know specifically it did the union. I know it
16 made a lot of people who were in the union unhappy.

17 Q You mentioned earlier some of the captains or some of
18 the individuals that had recently retired. My
19 understanding is that's Dave Olsen, Lieutenant Chuck
20 Howard, and Lieutenant Gary Weigand [sic].

21 A Weigand.

22 Q Do you know the reasons why those individuals retired?

23 A Well, I know that Weigand retired on stress and Chuck
24 Howard retired on stress.

25 I know Weigand expressed that he just, you know,

1 Safeco Insurance fraud with Ray Corpuz?

2 A Just kind of peripherally. I wasn't directly involved
3 in that.

4 Q What is your understanding of what occurred?

5 A Well, I know the department was contacted by, I believe
6 it was, Safeco Insurance, concerned about a claim that
7 had been filed by Linda Corpuz. And the detectives
8 notified their chain of command, and it came to the
9 chief, and the department was taking a look at that.
10 And there was some concern within the department,
11 because Chief Arreola notified his boss, which was Ray
12 Corpuz, Linda Corpuz's husband.

13 Q Do you recall the general consensus among the officers
14 regarding Chief Arreola's disclosure of the allegations
15 to his boss, which in term was a suspect?

16 A At the time, I don't believe that, you know, the way it
17 came across was that Ray Corpuz was a suspect. The
18 focus at that time was on Linda Corpuz.

19 The feeling of the department was that it was ill
20 advised to notify the potential suspect's husband that
21 there was an investigation going on, that it would just
22 create kind of a conflict for the manager.

23 The chief felt that it was his boss and it
24 wasn't -- it didn't directly involve him and so it was
25 okay to tell him.

1 members to get information to support the case.

2 Q Have you, in your experience as a police officer in the
3 33 years, I believe you mentioned, ever investigated
4 any allegations of criminal fraud?

5 A Personally?

6 Q Yes.

7 A I'm sure that I have. I couldn't give you the dates,
8 the names of the victims, or the case numbers, but I
9 know I probably have.

10 Q Have you ever investigated any instances of insurance
11 claim fraud that you recall?

12 A I know I've been involved with those investigations in
13 managerial and supervisor roles. It's been a long time
14 since I was an officer, so I can't say for certain that
15 I have.

16 Q In general, in those investigations, is it general
17 police work that you don't divulge suspicions to
18 potential suspects?

19 MS. KERSLAKE: Objection. Relevance.

20 Q You can go ahead and answer.

21 A No. In many cases of fraud, the person that you're --
22 the only person who really knows and has the
23 information and the records is the person that you're
24 going to talk to. So you may schedule a preliminary
25 interview and show that person information and say, can

1 Q Let's --

2 A In any event, our response to the insurance company was
3 that we wouldn't handle the investigation; it wouldn't
4 be proper for us to handle the investigation.

5 Q Let me give you a hypothetical situation here.

6 If you were brought information that a murder had
7 occurred and one of the suspects was Mrs. John Doe, do
8 you think it's proper police procedure to inform
9 Mr. John Doe that the wife may be a potential suspect?

10 MS. KERSLAKE: Object to the form of the
11 question.

12 You can answer.

13 A We know we have -- clearly have a homicide? It's a
14 criminal event?

15 Q Yes.

16 A Yeah, police procedure in most instances would be not
17 to divulge information to people who are suspects or
18 allies of possible suspects. But there have been
19 occasions when family members are the ones who tell us
20 that the murder has occurred or name suspects for us or
21 provide firsthand information or point us in the
22 direction of evidence. So I wouldn't say that in every
23 instance you would never speak to a spouse about a
24 potential crime. In many crimes involving children and
25 domestic violence, we speak with the spouse or family