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PIERCE COUNTY, WASHINGTON
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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,

Plaintiffs,

v.

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

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' SECOND AMENDED COMPLAINT FOR PERSONAL INJURIES AND DAMAGES IN TORT

3 SEP 24 2001

COME NOW the defendants, City of Tacoma, by and through their undersigned attorneys and by way of answer to plaintiffs' Second Amended Complaint for Personal Injuries and Damages in Tort, admit, deny and allege as follows:

DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT - 1

ORIGINAL

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I.

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2 In answer to paragraph 1 of plaintiffs' Second Amended Complaint, these
3 defendants are without knowledge or information sufficient to form a belief as to
4 the truth of the remaining allegations contained therein, and therefore, deny the
5 same.

II.

6
7 2.1 In answer to paragraph 2.1 of plaintiffs' Second Amended Complaint,
8 these defendants admit that the City of Tacoma is a municipal corporation duly
9 authorized under the laws of the State of Washington with its principal place of
10 business located in Pierce County, Washington.

11
12 2.2 In answer to paragraph 2.2 of plaintiffs' Second Amended Complaint,
13 these defendants admit that the Tacoma Police Department is a department of the
14 City of Tacoma.

15
16 2.3 In answer to paragraph 2.3 of plaintiffs' Second Amended Complaint,
17 these defendants admit that the City of Tacoma is the plaintiffs' employer and the
18 City of Tacoma employs more than eight people.

III.

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20 3.1 In answer to paragraph 3.1 of plaintiffs' Second Amended Complaint,
21 these defendants state that at all times herein, defendant Ray Corpuz, was acting
22 in his official capacity, and therefore deny the same.

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26 DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND
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1 deny the same. As to Ray Corpuz, the defendants deny any direct supervisory
2 authority over the plaintiff.

3 V.

4 5.1 In answer to paragraph 5.1 of plaintiffs' Second Amended Complaint,
5 these defendants admit that plaintiff, Joseph J. Kirby, was employed by the City of
6 Tacoma's Police Department from approximately January of 1983 through the
7 present.

8 5.2 In answer to paragraph 5.2 of plaintiffs' Second Amended Complaint,
9 these defendants deny the same.

10 5.3 In answer to paragraph 5.3 of plaintiffs' Second Amended Complaint,
11 these defendants deny the same.

12 VI.

13 In answer to paragraph 6 of plaintiffs' Second Amended Complaint, these
14 defendants deny the same.

15 VII.

16 In answer to paragraph 7 of plaintiffs' Second Amended Complaint, these
17 defendants deny the same.

18 VIII.

19 In answer to paragraph 8 of plaintiffs' Second Amended Complaint, these
20 defendants deny the same.

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DEFENDANTS' ANSWER TO
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IX.

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2 In answer to paragraph 9 of plaintiffs' Second Amended Complaint, these
3 defendants deny the same.

X.

4
5 In answer to paragraph 10 of plaintiffs' Second Amended Complaint, these
6 defendants deny the same.

XI.

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8 In answer to paragraph 11 of plaintiffs' Second Amended Complaint, these
9 defendants admit that a Claim for Damages was filed with the Division of Risk
10 Management on December 19, 1997; and are without knowledge and information
11 sufficient to form a belief as to the truth of the remaining allegations contained
12 therein, and therefore, deny the same.
13

XII.

14
15 In answer to paragraph 12 of plaintiffs' Second Amended Complaint, these
16 defendants deny the same.
17

XIII.

18
19 In answer to paragraph 13 of plaintiffs' Second Amended Complaint, these
20 defendants deny the same.
21

XIV.

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23 In answer to paragraph 14 of plaintiffs' Second Amended Complaint, these
24 defendants deny the same.
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DEFENDANTS' ANSWER TO
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XV.

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2 In answer to paragraph 15 of plaintiffs' Second Amended Complaint, these
3 defendants state that they do not believe that this paragraph requires an answer.

AFFIRMATIVE DEFENSES

XVI.

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6 16.1 FOR FURTHER ANSWER, AND BY WAY OF AN AFFIRMATIVE
7 DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT, these
8 defendants state that there is no causation between the acts alleged as against
9 these defendants and the damages claimed to have been sustained by the
10 plaintiffs.
11

12 16.2 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
13 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,
14 these defendants allege that plaintiffs have failed to state a claim upon which relief
15 can be granted.
16

17 16.3 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
18 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,
19 these defendants allege that plaintiffs' injuries, if any, were a proximate result of
20 the actions of the plaintiffs thereby barring and/or diminishing any award or
21 judgment against these defendants.

22 16.4 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
23 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,
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26 DEFENDANTS' ANSWER TO
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1 these defendants state that the plaintiffs lack standing to sue for some or all of the
2 relief sought therein.

3 16.5 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
4 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,
5 these defendants allege that if the plaintiffs suffered injury or damages, then the
6 risk of said injuries or damages was assumed by the plaintiffs.

7 16.6 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
8 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,
9 these defendants allege that they are immune from the instant suit pursuant to the
10 principles of discretionary immunity.
11

12 16.7 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
13 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,
14 these defendants allege that the plaintiffs' suit is subject to dismissal on the basis
15 that it contains only conclusory allegations and does not set forth facts necessary
16 to support a cause of action against the defendants, or to overcome immunity of
17 the defendants.
18

19 16.8 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL
20 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED
21 COMPLAINT, these defendants allege that the plaintiff has failed to exhaust his
22 administrative remedies, and further, has not utilized the procedures
23 Washington State provides for seeking remedies rendering the instant suit
24 premature under applicable federal/state decisional and statutory law.
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26 DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND
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1 16.9 FOR FURTHER ANSWER AND BY WAY OF AN ADDITIONAL
2 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED
3 COMPLAINT, these defendants state that they are immune from the instant suit
4 under the doctrine of qualified immunity, pursuant to state and/or federal
5 statutory and decisional law.

6 16.10 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
7 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,
8 these defendants reserve the right to add additional affirmative defenses, cross-
9 claims, counterclaims and third party defendants, as further information becomes
10 known and available.

11 16.11 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL
12 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED
13 COMPLAINT these defendants allege that the suit as against them is subject to
14 dismissal due to insufficiency of service of process on some or all of the parties.
15

16 WHEREFORE, having fully answered plaintiffs' Second Amended
17 Complaint, these defendants pray for judgment as follows:
18

19 1. For judgment ordering that plaintiffs' Second Amended Complaint
20 against these defendants be dismissed with prejudice and plaintiff take nothing
21 thereby.

22 2. For judgment awarding the defendants any and all relief, including,
23 but not limited to, their costs and reasonable attorney's fees.
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26 DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND
AMENDED COMPLAINT - 8

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3. For judgment awarding the defendants any and all relief, including, but not limited to, their costs and reasonable attorney's fees provided for in 42 USC § 1988, pertaining to the prevailing parties.

4. For such other and further relief as the Court deems just and equitable.

DATED this 11th day of September, 2001.

ROBIN S. JENKINSON, City Attorney
ELIZABETH A. PAULI, Ch. Asst. City Atty.

By: 
SHELLEY M. KERSLAKE, WSB #21820
Assistant City Attorney
Of Attorneys for Defendants

DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND
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