

99-2-13911-4 3717966 DCLR 04-28-03

HON. KAREN STROMBOM

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**CERTIFICATION**

I hereby certify that on 10/23/01 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.

Yellie 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, )

No. 99 2 13911 4

vs. )

DECLARATION OF JOHN L. MESSINA

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. )

I, JOHN L. MESSINA, declare:

I am one of the attorneys for plaintiffs and make this declaration in opposition to defendant's motion to continue the

6 OCT 24 2001

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5316 Orchard St. W.  
Tacoma, WA 98467-3633  
(253) 472-6000

1 trial date. The deadline for motions to adjust the trial date  
2 was October 15, 2001. While this motion was filed before that  
3 date, it was not noted until October 19, 2001, beyond the  
4 deadline. It should be considered a motion for continuance.

5 Plaintiffs oppose this motion on two grounds:

6 **A. DELAY WOULD BE UNFAIR TO PLAINTIFFS.**

7 This case has a prolonged history in the courts. The  
8 sequence of events is as follows:

9 1. The case was filed in Superior Court on 12/20/99.  
10 A trial date of 12/18/00 was scheduled at that time.

11 2. Because federal claims were pleaded, Defendant  
12 removed action from State Court on 6/6/00. The trial date in  
13 state court was lost. The trial in U.S. District Court was set  
14 for 7/9/01.

15 3. Defendants' Motion to Continue Trial Date and Adjust  
16 Scheduling Order - noted for February 23, 2001 in U.S. District  
17 Court was denied.

18 4. The federal claims were dismissed by stipulation and  
19 the case was remanded to Pierce County Superior Court on  
20 3/14/01. A trial date of 1/7/02 was set.

21 Based on the above, the case should proceed to trial.  
22 Plaintiffs have already waited for two years for their day in  
23 court and that should not be postponed again. As will be shown  
24 below, the City has other persons in the office of the City  
25 Attorney who should be able to try the case.

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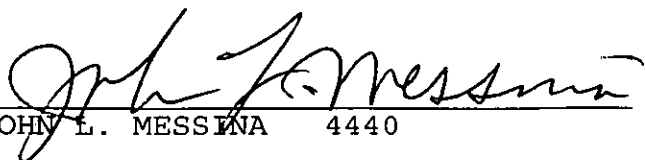
**B. AVAILABILITY OF COUNSEL**

1  
2 Ms. Kerslake states that there are only two litigators in  
3 the office of the city attorney, her and Jean Homan and Ms.  
4 Homan is disqualified due to a conflict of interest. However,  
5 we have dealt with at least two other assistant city attorneys  
6 in litigation, Heidi Horst and Elizabeth Pauli. In addition,  
7 a 2000 listing of members of the city's law firm lists these  
8 other additional names: Christopher Bacha, Cheryl Carlson, Lyle  
9 Crews, Robin Jennision, Douglas Mosich, Cathy Parker, Robert  
10 Porter, Harding Roe and Steve Victor.

11 Ms. Kerslake has not made a sufficient showing of  
12 unavailability of alternate counsel. Surely among the 11  
13 attorneys, other than Ms. Kerslake and Ms. Homan, there should  
14 be one able to try this case and finally conclude this long  
15 road to the courthouse.

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

18 DATED this 19 day of October 2001, at Tacoma,  
19 Washington.

20  
21   
22 JOHN L. MESSINA 4440

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