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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.

Valerie A. DeFranco
Messina Law Firm

FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

A.M. OCT 23 2001 P.M.

BOB SAM SOUCIE
COUNTY CLERK
BY [Signature] 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,)

No. 99 2 13911 4

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' RESPONSE TO
DEFENDANTS' MOTION
FOR ORDER ADJUSTING
TRIAL DATE AND CIVIL
CASE SCHEDULE

I. RELIEF REQUESTED

Plaintiffs respectfully request that this Court DENY defendants' motion for an adjustment for the following reasons.

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OCT 24 2001

II. STATEMENT OF FACTS

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

6 Plaintiffs oppose this motion on two grounds:

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

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

15 III. EVIDENCE RELIED UPON

- 16 A. Declaration of John L. Messina, attached hereto.
17 B. Declaration of Joseph Kirby, attached hereto.

18 IV. AUTHORITY

19 A. **Plaintiffs Object to Defendants' Motion for Continuance 20 Due to Non-Conformance with Local Rules.**

21 PCLR 40(g)(2)(b) states in part as follows:

22 If an attorney moves for a continuance of the
23 trial date under this subsection, the motion will
24 not be considered unless it is signed by both the
25 attorney and the client or contains an explanation
of why it was impracticable for the client to sign
the motion and a certification that a copy of the
motion has been mailed or otherwise delivered to
the client.

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1 The City of Tacoma and the other individually-named
2 defendants are the parties moving for a postponement of the
3 trial date; however, none of the defendants' signatures appear
4 on any of the moving papers. Neither is there an explanation
5 for why it is impracticable for any of the defendants to sign
6 the motion or a certification that the motion has been
7 delivered to the defendants. Because the defendants' counsel
8 has not complied with the requirements of the local rules
9 governing this matter, this Court should not consider this
10 motion.

11 **B. Defendants Have Not Shown Good Cause or Extraordi-**
12 **nary Circumstances Justifying an Adjustment or**
13 **Continuance.**

14 A motion for a continuance is addressed to the sound
15 discretion of the trial court. *MacKay v. MacKay*, 55 Wn. 2d
16 344, 348 (1959); *Northern State Construction Co. v. Banchemo*,
17 63 Wn. 2d 245, 247 (1963); *In re Detention of G.V.*, 124 Wn. 2d
18 288, 295 (1994); *Balandzich v. Demeroto*, 10 Wn. App. 718, 720
19 (1974).

20 In exercising its discretion, the court may
21 properly consider the necessity of **reasonably**
22 **prompt disposition of the litigation**; the needs of
23 the moving party; the possible **prejudice to the**
24 **adverse party**; the prior history of the litiga-
25 tion, including **prior continuances previously**
granted; and any other matters that have a
material bearing upon the exercise of the discre-
tion vested in the court.

Balandzich, 10 Wn. App. 720 (emphasis added).

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1 There are many factors here that allow this Court the
2 discretion to deny defendant's motion for a continuance.

3 First, there is necessity for reasonably prompt
4 disposition of this litigation due to the sensitive nature of
5 the parties' relationship. Mr. Kirby is still employed by the
6 City of Tacoma and works with the individuals named as
7 defendants. The quicker this matter is resolved, the quicker
8 the parties can "move on" and function normally again.
9 Further, Mr. Kirby has testified that he will be out of the
10 country for the last three months of 2002; thus, it would be
11 even more inconvenient for all those concerned to postpone the
12 trial date and have to look for another date on this Court's
13 already busy calendar. *See Declaration of Joseph Kirby.*

14 Second, as Mr. Messina's declaration demonstrates, the
15 prior case history militates against another continuance. *See*
16 *Declaration of John L. Messina.* This case was first instituted
17 on December 20, 1999 and originally set for trial on December
18 18, 2000. *Id.* After being bounced back and forth between
19 State and Federal courts, plaintiffs' case finally came to rest
20 back in this Court and received another trial date of January
21 7, 2002, a date more than one year from the initial trial date.
22 *See Id.* This case has already been delayed numerous times, and
23 another continuance would be prejudicial to plaintiffs.

24 Finally, defendants have not made a sufficient showing of
25 unavailability of other counsel. Defendants have not explained

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1 | why the City attorney's office, which employs approximately 11
2 | attorneys, cannot accommodate this trial in January of next
3 | year. Absent sufficient explanation to this Court, a
4 | continuance or adjustment should not be granted.

5 | Plaintiffs do not want their trial date to be postponed
6 | any further. They already have had to endure several
7 | postponements in this matter due to no fault of their own.
8 | Justice requires that this trial remain on January 7, 2002.

9 | V. CONCLUSION

10 | In light of the foregoing, plaintiffs respectfully
11 | request that this Court deny defendants' motion to adjust the
12 | trial date and case schedule.

13 | DATED this 23 day of October 2001.

14 | MESSINA BULZOMI

15 | By 

16 | JOHN L. MESSINA 4440
17 | Attorneys for Plaintiffs

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