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IN COUNTY CLERK'S OFFICE  
PIERCE COUNTY, WASHINGTON

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BOB DAN SOUCIE  
COUNTY CLERK  
BY: *[Signature]*

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

COME NOW the defendants, City of Tacoma, by and through their undersigned attorneys and by way of an amended 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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Civil Division  
747 Market Street, Room 1120  
Tacoma, Washington 98402-3767  
(253) 591-5885 / FAX 591-5755

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## I.

1  
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.

19  
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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24  
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26  
DEFENDANTS' ANSWER TO  
PLAINTIFFS' SECOND  
AMENDED COMPLAINT - 2

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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

13 VI.

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

16 VII.

17 In answer to paragraph 7 of plaintiffs' Second Amended Complaint, these  
18 defendants deny the same.  
19

20 VIII.

21 In answer to paragraph 8 of plaintiffs' Second Amended Complaint, these  
22 defendants deny the same.  
23  
24  
25

26 DEFENDANTS' ANSWER TO  
PLAINTIFFS' SECOND  
AMENDED COMPLAINT - 4

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## IX.

1  
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.

7  
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.

## XIV.

21  
22 In answer to paragraph 14 of plaintiffs' Second Amended Complaint, these  
23 defendants deny the same.  
24

25  
26  
DEFENDANTS' ANSWER TO  
PLAINTIFFS' SECOND  
AMENDED COMPLAINT - 5

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## XV.

1  
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.

4  
5  
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

23 16.4 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL  
24 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED COMPLAINT,  
25

26 DEFENDANTS' ANSWER TO  
PLAINTIFFS' SECOND  
AMENDED COMPLAINT - 6

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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.  
25

26 DEFENDANTS' ANSWER TO  
PLAINTIFFS' SECOND  
AMENDED COMPLAINT - 7

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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

12 16.11 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL  
 13 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED  
 14 COMPLAINT these defendants allege that the suit as against them is subject to  
 15 dismissal due to insufficiency of service of process on some or all of the parties.  
 16

17 16.12 FOR FURTHER ANSWER, AND BY WAY OF AN ADDITIONAL  
 18 AFFIRMATIVE DEFENSE TO PLAINTIFFS' SECOND AMENDED  
 19 COMPLAINT, these defendants allege that the plaintiff has failed to mitigate his  
 20 damages.

21 WHEREFORE, having fully answered plaintiffs' Second Amended  
 22 Complaint, these defendants pray for judgment as follows:  
 23  
 24  
 25

26 DEFENDANTS' ANSWER TO  
 PLAINTIFFS' SECOND  
 AMENDED COMPLAINT - 8

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

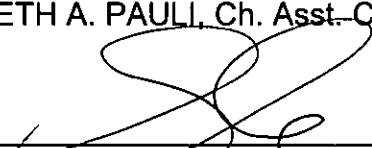
2. For judgment awarding the defendants any and all relief, including, but not limited to, their costs and reasonable attorney's fees.

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 31st day of October, 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