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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

LIZ VAZQUEZ, CHRIS DUKE, RANDY
ELEDGE, STEVE STRAIT, and
KATHRYN WERDAHL,

Plaintiffs,

v.

LT. GOVERNOR KEVIN MEYER, in his
official capacity as Lt. Governor for the
State of Alaska, and GAIL FENUMIAI, in
her official capacity as Director of the
Division of Elections,

Defendants.

JENNIE ARMSTRONG,

Intervenor.

Case No. 3AN-22-09325 CI

PLAINTIFF'S TRIAL BRIEF

Liz Vazquez, Chris Duke, Randy Eledge, Steve Strait, and Kathryn Werdhal
("Plaintiffs"), by and through their counsel of record Holmes Weddle & Barcott, P.C.,
hereby file their brief in advance of trial on December 22, 2022.

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I. ISSUE TO BE TRIED

The primary issue to be heard at trial is whether Intervenor Jennie Armstrong is eligible to hold legislative office in Alaska pursuant to Art. II, § 2 of the Alaska Constitution. Therefore, this election contest was filed pursuant to AS 15.20.540(2) as Plaintiffs assert that Jennie Armstrong, the person certified as elected, is not qualified as required by law.

II. RELIEF REQUESTED

Plaintiffs seek an order declaring Jennie Armstrong ineligible to hold legislative Office in Alaska, and pursuant to AS 15.20.560 pronouncing the runner up, Liz Vazquez, as the official victor of the election.

III. FACTS AND PROCEDURE

Intervenor filed a declaration of candidacy to run as a candidate in the House District 16 election with Defendant Division of Elections on June 1, 2022.¹ On said declaration, Intervenor certified in that she had been a resident of Alaska since May 20, 2019.² By certifying that she became an Alaska resident on May 20, 2019, Intervenor certified information that was demonstrably false as it is entirely inconsistent with her own prior statements concerning when she moved to this state.³ Plaintiffs anticipate the evidence at trial will demonstrate that Intervenor failed to take any steps consistent with

¹ Exhibit 1013.

² Exhibit 1013.

³ Exhibit 1005.

becoming a resident of Alaska until at least June 8, 2019, but likely later in the summer of 2019.

Intervenor's contacts with this State began when she traveled to Alaska on May 10, 2019 to go on a 10-day road trip with Benjamin Kellie, who is now her husband.⁴ Thus when Intervenor arrived in Alaska on May 10, 2019, she had already purchased airline tickets to leave the state on May 20, 2019.⁵ Intervenor traveled around the State with Mr. Kellie as planned between May 10, 2019 and May 20, 2019.⁶ And as previously planned and scheduled, Intervenor left the state on May 20, 2019 at 4:00 AM on Alaska Airlines flight number 92.⁷ Intervenor did not return to Alaska until June 8, 2019 – a Saturday.⁸

Three days later, on June 11, 2019, Intervenor and Mr. Kellie traveled to Toronto, Ontario via Delta Airlines.⁹ And while in Toronto, on June 13, 2019, Intervenor posted to her Instagram account.¹⁰ Said post read as follows, “post-road trip adventures; nyc, eh, rhode island, nola, d.c., back to Alaska, oh and spoiler alert – I’m in Toronto with

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- ⁴ Exhibit 1019.
⁵ Exhibits 1015, 1019.
⁶ Exhibit 1019.
⁷ Exhibit 1015.
⁸ Exhibit 1017.
⁹ Exhibit 1018.
¹⁰ Exhibit 1005.

Ben right now, but last weekend I moved to Alaska.”¹¹ Intervenor and Mr. Kellie then returned to Alaska the next day, June 14, 2019, via Delta Airlines.¹²

As mentioned above, June 8, 2019 was a Saturday.¹³ Said Saturday was also the weekend immediately prior to Intervenor’s June 13, 2019 Instagram post from Toronto. Therefore, in her own words, Intervenor unequivocally stated that she moved to Alaska sometime on or between June 7, 2019 and June 9, 2019, which is consistent with the fact that she flew into Alaska on June 8, 2019.

Then, on June 15, 2019, Intervenor applied for and received a single day non-resident fishing license (license number 9714111).¹⁴ On said application, Intervenor asserted that she was a resident of Louisiana and listed her permanent mailing address as 1625 N. Cumberland St. in Metairie, LA.¹⁵ Then, on June 23, 2019, Intervenor listed the same Louisiana address and again asserted that she was a resident of Louisiana on her annual non-resident fishing license (license number 9734965).¹⁶

The following year, on June 21, 2020, Intervenor applied for and received her first annual resident fishing license (license number 20735794).¹⁷ On said application, Intervenor stated that she was a resident for one year and zero months, meaning that her

¹¹ Exhibit 1005.

¹² Exhibit 1018.

¹³ *See*
<https://www.timeanddate.com/calendar/monthly.html?year=2019&month=6&country=US>.

¹⁴ Exhibit 1002.

¹⁵ Exhibit 1002.

¹⁶ Exhibit 1002.

¹⁷ Exhibit 1002.

Alaska residency began in June 2019.¹⁸ And on July 20, 2021, she asserted the same on another annual resident fishing license application (license 21898512), by stating that she had been an Alaska resident for two years and one month – since June 2019.¹⁹

As the summer of 2019 continued, Intervenor, filed articles of incorporation for her LLC, Wild Awake Creative, LLC, on June 30, 2019.²⁰ She then filed articles of incorporation for another LLC, Wild Awake Publishing, LLC, on July 24, 2019.²¹ However, Wild Awake Publishing had been previously incorporated in Louisiana, and Intervener did not dissolve the entity in Louisiana until July 30, 2019.²² And finally, on August 26, 2019, Intervenor registered to vote in Alaska. She obtained an Alaska driver's license that same day.²³

Intervenor also applied for a received an annual resident fishing license for 2022 – license 22928273 – on July 26, 2022, which was almost two months after she filed to run in the election that is the subject of this election contest.²⁴ On said application, she falsely indicated, for the first time on a fishing license application, that she became a resident of Alaska in May 2019.²⁵

¹⁸ Exhibit 1002.
¹⁹ Exhibit 1002.
²⁰ Exhibit 1019.
²¹ Exhibit 1019.
²² Exhibit 1019.
²³ Exhibit 1019.
²⁴ Exhibit 1002.
²⁵ Exhibit 1002.

IV. APPLICABLE LAW AND ARGUMENT

a. Standard for Election Contest

AS 15.2.540 sets forth the grounds for an election contest. A defeated candidate may contest the election of any person the grounds that “the person certified as elected . . . is not qualified as required by law.”

Four qualified voters and Liz Vazquez, the second-place candidate for House District 16, have contested the results of the election results certifying candidate Jennie Armstrong as the duly elected candidate per AS 15.20.540(2), because she lacked the qualifications necessary under the law.²⁶ Specifically, Plaintiffs can prove that Intervenor did not meet the durational residency requirement of Article II, § 2 of the Alaska Constitution because the available objective evidence overwhelmingly proves that she did not establish residency in Alaska until at least June 8, 2019.

While there have been many election contest cases in the State, this is a case of first impression. While there are several cases interpreting residency, particularly with regard to the residency within a House District, this is the first case where the court must decide whether or not the candidate Intervenor meets the residency qualifications as a resident of the State. Therefore, the court must consider the plain language as is set forth in the Alaska Constitution and statutes flowing therefrom. “Statutory interpretation begins with the plain meaning of the statutory text.”²⁷ The Court has stated that they

²⁶ AS 15.20.540.

²⁷ *Nelson v. Municipality of Anchorage*, 267 P.3d 636, 642 (Alaska 2011).

“disfavor statutory constructions that reach absurd results.”²⁸ And here, the text of the statute could not be clearer. Plaintiffs are entitled to relief, as anything less would result in an absurd result.

b. Ms. Armstrong was ineligible for candidacy because she did not meet the durational residency requirements as defined by law

Art. II, § 2 of the Alaska Constitution requires that a candidate for the Alaska legislature must have been a resident in the State for a period of three years prior to the filing deadline, and that the candidate be a resident of the district in which they are running for office for one year prior to the filing deadline.²⁹ The Court emphasized the importance of this durational residency requirement in *Gilbert v. State*, finding a compelling State interest in ensuring that candidates have sufficient time in Alaska so as to better understand the State’s history and diversity:

The asserted interest of the state in assuring that those who govern are acquainted with the conditions, problems, and needs of those who are governed cannot be questioned. Because Alaska is unique in its geography, the ethnic diversity of its peoples and the character of its economy, this interest may well assume even greater importance here than in many other states. A legislator is required to consider and vote upon matters which affect many parts of the state and involve many segments of its economy and its peoples.³⁰

There are several relevant statutes that define residency that are applicable to candidates for state office. The first, AS 01.10.055, provides in pertinent part:

- (a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

²⁸ *State v. Estate of Jean R.*, 371 P.3d 614, 620 (Alaska 2016) (internal citations omitted).

²⁹ Alaska Const., art. II, §. 2.

³⁰ 526 P.2d 1131, 1135 (Alaska 1974).

- (b) A person demonstrates the intent required under (a) of this section
- (1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; **and**
 - (2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

AS 01.10.020 requires that AS 01.10.055 “shall be observed in the construction of the laws of the state unless the construction would be inconsistent with the manifest intent of the legislature.”³¹ Indeed, the definition of residency in AS 01.10.055 has been referred to and read in conjunction with other statutes that define residency—domestic relations matters, PFD eligibility, and sport fishing license eligibility.³²

Here, AS 15.05.020 defines residency as it pertains to voting eligibility: stating that “[a] change of residence is made only by the act of removal joined with the intent to remain in another place . . . [t]here can only be one residence.” AS 15.25.043—which discusses how residency within a *house district* for a voter is determined—incorporates Art. II, § 2 of the Alaska constitution and AS 15.05.020 for voter eligibility, but expressly narrows the context to voter registration within a particular house district, not

³¹ AS 1.10.020 (outlining the applicability of AS 01.10.040 through 01.10.090).

³² *Mouritsen v. Mouritsen*, 459 P.3d 476 (Alaska 2020) (reading UCCJEA term “presently resides” in conjunction with AS 01.10.055); *Harrod v. State*, 255 P.3d 991 (Alaska 2011) (recognizing authority of PFD to regulate eligibility requirements that exceed AS 01.10.055); AS 16.05.415 (incorporating a standard of presence in the state with the intent to remain indefinitely into standards for obtaining residential fish and game licenses).

within the State as a whole. Regardless, the statutes in Title 15 are consistent with AS 1.10.050 and Art. II § 2.

While the issue of whether a candidate for the Alaska legislature meets the durational residency requirement in Art. II § 2 of the Alaska Constitution or as residency is defined in AS 01.10.055 has not yet been analyzed in this context in Alaska, this matter presents a case of first impression. However, whether a voter meets the durational residency requirement in AS 15.05.020 has been analyzed.

AS 15.05.020 lays out several rules governing a voter's "place of residence:"

(1) A person may not be considered to have gained a residence solely by reason of presence nor may a person lose it solely by reason of absence while in the civil or military service of this state or of the United States or of absence because of marriage to a person engaged in the civil or military service of this state or the United States, while a student at an institution of learning, while in an institution or asylum at public expense, while confined in public prison, while engaged in the navigation of waters of this state or the United States or of the high seas, while residing upon an Indian or military reservation, or while residing in the Alaska Pioneers' Home or the Alaska Veterans' Home.

(2) The residence of a person is that place in which the person's habitation is fixed, and to which, whenever absent, the person has the intention to return. If a person resides in one place, but does business in another, the former is the person's place of residence. Temporary work sites do not constitute a dwelling place.

(3) A change of residence is made only by the act of removal joined with the intent to remain in another place. There can only be one residence.

(4) A person does not lose residence if the person leaves home and goes to another country, state, or place in this state for temporary purposes only and with the intent of returning.

(5) A person does not gain residence in any place to which the person comes without the present intention to establish a permanent dwelling at that place.

(6) A person loses residence in this state if the person votes in another state's election, either in person or by absentee ballot, and will not be eligible to vote in this state until again qualifying under AS 15.05.010.

(7) The term of residence is computed by including the day on which the person's residence begins and excluding the day of election.

(8) The address of a voter as it appears on the official voter registration record is presumptive evidence of the person's voting residence. This presumption is negated only if the voter notifies the director in writing of a change of voting residence.

As an initial matter, Intervenor was not registered to vote in the State until August 26, 2019, and therefore does not benefit from the presumption of residency. If anything, her residency was presumed to be in Louisiana until August 26, 2019 when she registered in Alaska. This is the presumption of residency as addressed in *Dodge v. Meyer*.³³ In *Dodge*, several questioned ballots were challenged during a recount based on information from other sources that could have indicated a change of address.³⁴ The court found that the challenger had not overcome the presumption of residency as listed on each voter's registration.³⁵

The court also analyzed the residency rules in *Lake & Peninsula Borough Assembly v. Oberlatz*, where several ballots in a 2011 local election were rejected by the

Borough Canvassing Committee because the voters had mailed in their ballots from addresses outside of the Borough.³⁶ The Court affirmed the trial court's analysis, weighing subjective intent with "sufficient indicia of residency," and citing to "ample objective evidence supporting the court's findings regarding the voters' intents."³⁷ Thus, the court found that two things must be present in order to support a finding of residency: subjective intent *and* ample objective evidence.

Oberlitz is distinguishable from the instant case, as in that case each voter had already established residency in some way prior to casting their vote in the election. Voter Oberlitz had registered to vote in the Borough in 1995 and purchased a parcel of land in the Borough shortly before trial to build a family home.³⁸ Voter Holman also had a house in the Borough and was involved in the Borough's civic community.³⁹ Voter Petersen registered to vote in the Borough around 1998, and lived in the Borough six months out of each year after spending significant time in the Borough as a child.⁴⁰ Voter Robert Gillam built a home in the Borough in 1984, and voter John Gillam maintained a room and his personal affects in his family home in the Borough.⁴¹ As such, the Court was able to point to ample *objective* evidence of the voters' residency.

³⁶ 329 P.3d 214 (Alaska 2014).

³⁷ *Lake & Peninsula Borough Assembly v. Oberlitz*, 329 P.3d 214, at 222-223.

³⁸ *Id.* at 224.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

Oberlatz is instructive and demonstrates that the court must evaluate the objective evidence in this case, not just Intervenor’s subjective belief of the date of her residency.

While AS 15.05.020 pertains specifically to voter registration, it can be read in harmony with the state residency factors set forth in Title 1. The factors in the statute and the requirement of objective evidence of intent as set forth in *Oberlatz* are relevant and persuasive here.

In this case, the objective evidence does not support sufficient indicia of Intervenor’s intent to remain in Alaska as of the date stated in her declaration of candidacy. Instead, the object evidence proves that Intervenor did not establish her residency in Alaska until at least June 8, 2019. Unlike the voters in *Oberlatz*, Intervenor had not purchased or leased a home, registered to vote, or spent significant time in the state prior to June 8, 2019 when she returned to Alaska on a one-way plane ticket. And, unlike the voters in *Dodge*, Intervenor does not enjoy a presumption of residency in Alaska because she was registered to vote in Louisiana and had never even been to Alaska prior to her visit in May 2019.

During her deposition, Intervenor indicated that she had lived in states other than Louisiana.⁴² For example, Intervenor stated that she had spent significant time in the State of Texas.⁴³ However, she stated that she “never claimed residency” in Texas.⁴⁴ She then referred to the fact that she never registered to vote there as evidence that she

⁴² Exhibit 1000.

⁴³ Exhibit 1000.

⁴⁴ Exhibit 1000.

did not “claim residency” in that state.⁴⁵ At the end of said deposition, Intervenor stated that she established residency in Alaska by “showing up and putting her head down on a pillow.”⁴⁶

Even if Intervenor subjectively believes that she established residency in Alaska on the last day of her trip on May 20, 2019, there is no objective evidence of her intent to remain indefinitely in Alaska as of that date under any interpretation of Alaska law. This is because she did not have a principal place of abode in Alaska as of May 20, 2019 because she left as originally planned, nor had she engaged in the act of removal from Louisiana. At best, that clock began on June 8, 2019 when she returned to Alaska.

Notwithstanding that provision, her own contemporaneous public admissions and logistical preparations for her move in 2019 do not provide objective evidence of her intent to remain. According to her Instagram post on June 13, 2019, she did not move to Alaska until at least June 7, 2019.⁴⁷ And her Instagram post was consistent with her several applications for fishing licenses – non-resident and resident – in which she certified that she had been a resident of Alaska since June of 2019.⁴⁸ She did not incorporate her consulting company in Alaska until June 30, 2019.⁴⁹

It was not until her 2022 fishing application that she engaged in revisionist history and backdated her residency. But even if that were true, she was still not a resident on

⁴⁵ See Exhibit 1000.

⁴⁶ Exhibit 1000.

⁴⁷ Exhibit 1005.

⁴⁸ Exhibit 1002.

⁴⁹ Exhibit 1019.

or before May 1, 2019. Additionally, she cannot provide a date that she forwarded her mail from Louisiana to Alaska, instead asserting that she doesn't receive mail generally and can't recall if she ever forwarded her mailing address to anyone, let alone the United States Postal Service.⁵⁰ Although she carried personal affects with her on her trip to Alaska to visit in May of 2019, the rest of her belongings were shipped at a later date.⁵¹ She did not purchase a vehicle or register her vehicle until December 7, 2019.⁵² She did not obtain an Alaska driver's license until August 26, 2019.⁵³

Lastly, Intervenor arrived in Alaska with the intention to visit for a 10-day road trip, and indeed left 10 days later on May 20, 2022. Intervenor did not return until June 8, 2019, and only stayed in the state at that time until June 14, 2019, when she left for a trip with her now husband; and again, this is not in dispute. Therefore, she did not objectively demonstrate the intent to remain indefinitely in Alaska until at least June 8, 2019.

Applying the provisions of AS 15.05.020, Intervenor would need to have removed herself from Louisiana with the intent to remain in Alaska in order to establish residency. But she did not do so before June 1, 2019. Rather, her aforementioned Instagram post and fishing license applications reveal that she maintained a residence in Louisiana at least through most of June of 2019, and that she asserted to the State of

⁵⁰ Exhibits 1000, 1019.

⁵¹ Exhibits 1000, 1019.

⁵² Exhibit 1019.

⁵³ Exhibits 1000, 1014, 1019.

Alaska that she still had a home mailing address within the State of Louisiana on June 23, 2022.⁵⁴

The law is clear that “there can only be one residence.” It is a legal impossibility for Armstrong to have simultaneously been a resident of Alaska and of Louisiana. And by her own certified statement on June 23, 2022, Armstrong had a home mailing address within the State of Louisiana; therefore, she could not legally have been a resident of Alaska on that day.

Should the court interpret Alaska law to mean that one must only “show up and put your head down on a pillow,” any tourist who in Alaska could go to sleep on a cruise ship or in a hotel and just decide to be a resident in that moment. This is a far-reaching interpretation of the law and is inconsistent with case law interpreting residency, particularly as it has been applied in other election law cases. Subjective intent must be corroborated by objective evidence. Under that correct analysis, Intervenor failed to establish residency as defined by relevant law early enough to be constitutionally eligible to run in the 2022 House District 16 election, and therefore, the runner up must be declared the winner of the House District 16 election pursuant to AS 15.20.560.

c. The Court should order the Division to de-certify the results of the House District 16 and re-certify them with candidate Vazquez

Pursuant to AS 15.20.560, “[t]he judge shall pronounce judgment on which candidate was elected. . . [and] [t]he director shall issue a new election certificate to correctly reflect the judgment of the court.” As discussed above, Armstrong is

⁵⁴ Exhibit 1002.

constitutionally ineligible to be a member of the State House. Therefore, Armstrong was ineligible to *run* for a seat in the State House. Accordingly, this court must declare Liz Vazquez the winner of the election at issue here because she received the most votes out of the constitutionally eligible candidates.

As the court is aware, Plaintiffs originally sought to enjoin Defendants from certifying the election for House District 16 to prevent a vacancy that would require a gubernatorial appointment.⁵⁵ But Defendants, joined by Intervenor, argued that Plaintiffs misunderstood the law and were incorrect in their assertion that a vacancy could be declared and the residents of House District 16 would be forced to endure appointed representation.⁵⁶

Plaintiffs concede AS 15.20.560 gives the court wide discretion to fashion a remedy after a successful election contest.⁵⁷ But it would be disingenuous and possibly a fraud upon the court for Defendants to seek a declared vacancy as a remedy here given their posture in Case No. 3AN-22-08794CI.⁵⁸ Additionally, if the court ordered a special election in which Intervenor Armstrong would be eligible to run, the court in essence grant her an unprecedented mulligan that would not serve the interests of justice nor the

⁵⁵ See Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, Case No. 3AN-22-08794CI.

⁵⁶ See Defendants' Opposition to Plaintiff's [sic] Motion for Preliminary Injunction and Cross Motion to Dismiss, Case No. 3AN-22-22-08794CI.

⁵⁷ See *Boucher v. Bomhoff*, 495 P.2d 77 (Alaska 1972) (holding that the court has the power to order a new election).

⁵⁸ It should be noted that it would also be disingenuous for Intervenor to take a contrary position now given that she joined said motion to dismiss without reservation. See Intervenor's Opposition to Motion for Preliminary Injunction and Joinder in Defendants' Cross Motion to Dismiss.

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voters of House District 16 given the language set forth in the Constitution. Because the evidence will demonstrate that Intervenor is ineligible due to her lack of residency prior to filing, the court should find that Plaintiff Vazquez effectively ran in the election unopposed.

Accordingly, the court should declare Plaintiff Vazquez the winner.

DATED this 19th day of December, 2022, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Counsel for Plaintiffs

By: /s/ Stacey C. Stone

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Alaska Bar No. 1005030
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Alaska Bar No. 1305037

CERTIFICATE OF SERVICE

The undersigned certifies that on this 19th day of December, 2022, a true and correct copy of the foregoing document was served via Email to:

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
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LT. GOVERNOR KEVIN MEYER, in his
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Intervenor.

Case No. 3AN-22-09325 CI

FILED in the TRIAL COURTS
STATE OF ALASKA, THIRD DISTRICT
DEC 20 2022
Clerk of the Trial Courts
By _____ Deputy

PLAINTIFFS' WITNESS LIST

Liz Vazquez, Chris Duke, Randy Eledge, Steve Strait, and Kathryn Werdhal
("Plaintiffs"), by and through their counsel of record Holmes Weddle & Barcott, P.C., hereby
submit their witness list as follows:

1. Jennifer "Jennie" Armstrong
c/o Cashion Gilmore & Lindemuth
510 L Street, Suite 601
Anchorage, Alaska 99501
(907) 222-7932

Attorney-client privilege applies

Ms. Armstrong is the Intervenor in this action. She is expected to testify to the pertinent facts concerning her residency in Alaska.

2. Benjamin Kellie
3001 Iliamna Avenue
Anchorage Alaska 99517
(907) 252-8661

Mr. Kellie is Intervenor Armstrong's husband. He is expected to testify to the pertinent facts concerning Intervenor Armstrong's residency in Alaska.

3. Any witnesses called by other parties.
4. Any witnesses necessary to lay foundation.
5. Any witnesses necessary for rebuttal.

DATED this 19th day of December 2022, at Anchorage, Alaska.

HOLMES WEDDLE & BARCOTT, P.C.
Counsel for Plaintiffs

By: /s/ Stacey C. Stone

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