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

**BENJAMIN NAGEAK, ROB
ELKINS, ROBIN D. ELKINS, LAURA
WELLES and LUKE WELLES,**

Plaintiffs,

v.

**LT. GOVERNOR BYRON
MALLOTT, in his official capacity as
Lt. Governor for the State of Alaska,
and JOSEPHINE BAHNKE, in her
official capacity as Director of the
Division of Elections,**

Defendants.

Case No.: 3AN-16-09015 CI

STATE OF ALASKA
JUDICIAL DISTRICT
ANCHORAGE
SEP 21 PM 4:11
DEPUTY CLERK

DEFENDANTS' INITIAL DISCLOSURES

Defendants, Lieutenant Governor Byron Mallot and Director of Elections Josephine Bahnke ("the State"), make the following initial disclosures pursuant to Alaska Rule of Civil Procedure 26(a)(1):

A. THE FACTUAL BASIS OF EACH DEFENSE

These disclosures are being provided on an expedited basis—before the State has filed an answer to the complaint. The following facts are provided in response to the allegations of the complaint. The State does not hereby waive any defenses or admit any facts not expressly contained herein.

The plaintiffs have failed to state a claim upon which relief may be granted because their factual allegations do not allege malconduct by election officials sufficient to change the outcome of the election, as required by AS 15.20.540(a).

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL
ANCHORAGE BRANCH
1031 W. FOURTH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 269-5100

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Count I: The plaintiffs are incorrect that only one election worker was present in the District 40 Precinct of Point Lay during the 2016 Primary Election. *See* SOA Bates 40. Moreover, the plaintiffs have not alleged—nor is the State aware of—any facts indicating that the presence of “only one election worker” at a precinct affected the outcome of the election.

Count II: Division records show that all but one of the special needs ballots cast in Buckland were properly dated by the representative. *See* SOA Bates 23-34. Division records show that of the eleven Buckland voters who voted special needs ballots in the primary election, all were registered Democrats who were only entitled to vote the combined party ballot. *See* SOA Bates 22.

Count III: The Division is unaware of any information suggesting that Republican voters wishing to vote the combined party ballot were denied the right to vote even a questioned ballot or that any questioned ballots were not counted for reasons inconsistent with state law. Voters who were mistakenly required to vote questioned ballots were not disenfranchised. In the precinct of Browerville, seven voters had questioned ballots; of these, five were counted. The two questioned ballots that were not counted were cast by voters who were either not registered at all or who registered too late to vote in the primary election.

Count IV: Ballots designated “full count” are those that the regional absentee and questioned ballot review has already determined to be legitimately voted ballots that should be counted. At the regional absentee and questioned ballot review in Nome, four

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full-count absentee ballots were mistakenly placed in an envelope containing full-count questioned ballots. Election officials discovered this because the full-count questioned ballot envelope contained four more ballots than it should have contained. To correct the issue, officials took four of the ballots from the full-count questioned ballot envelope and placed them with the full-count absentee ballots so that each group of ballots—full-count questioned and full-count absentee—would contain the correct total number of ballots. But because all of the ballots in both groups were full-count ballots—i.e., ballots that officials had already decided were cast by qualified voters and would be fully counted—the transfer of ballots from one group to the other had no effect on the vote totals in any race. No ballots were counted that had not already been determined to be valid, full-count ballots.

Count V: In Shungnak and Kivalina, all voters who received two ballots were entitled to vote the combined party ballot. The election workers who gave these voters both primary ballots did not commit malconduct and their actions were not sufficient to change the result of the election.

B. PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION

Josephine Bahnke (Attorney/Client Privilege)
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Bahnke may have information about the conduct of the 2016 primary election, the ballot counting process and the recount.

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Angelique Horton (**Attorney/Client Privilege**)
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Horton may have information about the conduct of the 2016 primary election, the ballot counting process and the recount.

Lauri Wilson (**Attorney/Client Privilege**)
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Wilson may have information about the conduct of the 2016 primary election, the ballot counting process and the recount.

Kari Spencer (**Attorney/Client Privilege**)
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Spencer may have information about the conduct of the 2016 primary election, the ballot counting process and the recount.

Brian Jackson (**Attorney/Client Privilege**)
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Mr. Jackson may have information about the conduct of the 2016 primary election, the ballot counting process and the recount.

Sharon Forest (**Attorney/Client Privilege**)
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Forest may have information about the conduct of the 2016 primary election, the ballot counting process and the recount.

Sheila Burke, Barrow Borough clerk
(907) 852-0362

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Ms. Burke may have information about the conduct of the 2016 primary election in Barrow.

Diana Adams
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Adams may have information about the conduct of the absentee and questioned ballot review board in Nome after the primary election.

Shirley Tisdale
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Tisdale may have information about the conduct of the absentee and questioned ballot review board in Nome after the primary election.

Evelyn Omiak
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Omiak may have information about the conduct of the absentee and questioned ballot review board in Nome after the primary election.

Kalynna Booshu
c/o Margaret Paton-Walsh, Assistant Attorney General
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

Ms. Booshu may have information about the conduct of the absentee and questioned ballot review board in Nome after the primary election.

The following persons who acted as election workers may have information about the conduct of the 2016 primary election:

- In Bettles: Hazel Pagkalinawan; Cheryl Poor; Sonya Knight; Jason Freeman; and Eun Lim.

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- In Browerville: Ethel Taalak; Charlotte Ahsogeak; and Christina Aiken.
- In Buckland: Alice Melton-Barr; Bessie Barger; Eva Foxglove; and Krystal Hadley.
- In Kivalina: Bertha Adams; Lucy Adams; Alice Adams; Alice Swan; and Lucy Swan.
- In Point Lay: Gertrude Curtis; Mary Curts; and Nora Itta.
- In Shungnak: Evelyn Woods; Lizzie Commack; Alfred Cleveland; and Irvin Douglas.

In addition, the following voters may have information about their experience voting and their voting intentions:

- In Kivalina: Austin Swan, Albert Norton, Shirley Adams, Lucy Swan, Alice Adams, Henrietta Adams, and Gloria Adams.
- In Shungnak: Robert A. Barr; Ernest N. Berry; Matilda Cleveland; Gregory Commack; James Commack; Lizzie L. Commack; Denise V. Douglas; Henry A. Douglas (U); Irvin Douglas; George M. Goldy, Sr.; Beverly J. Griest; Flora R. Griest; Aretha L. Lee; Billy A. Lee; Brittany S. Mitchell; Anthony M. Norris; Leslie T. Sheldon; Cheryl S. Sun; Andrew W. Tickett; Johanna M. Tickett; Beverly K. Woods; Maynard G. Woods; Nellie B. Woods; Tommy P. Woods; and Valera V. Woods.

All witnesses required to authenticate documents.

All witnesses identified by the plaintiffs.

Any witnesses identified during the discovery process.

C. PERSONS WHO HAVE GIVEN STATEMENTS

At this time, the State is not aware of any statements that are not included in the attached documents.

D. RELEVANT DOCUMENTS

Please see attached documents Bates stamped SOA 1-758.

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2 **E. RELEVANT PHOTOGRAPHS, DIAGRAMS, AND VIDEOTAPES**

3 The State is not aware of any photographs, diagrams or videotapes that are
4 relevant to the disputed facts alleged with particularity in the pleadings but will
5 supplement this response if any are located during discovery.

6 **F. INSURANCE AGREEMENTS**

7 The State is unaware of any insurance agreement under which any person
8 carrying on an insurance business may be liable to satisfy part or all of any judgment
9 that may be entered in this action or to indemnify or reimburse for payments made to
10 satisfy the judgment.
11

12 **G. CATEGORIES OF DAMAGES CLAIMED**

13 If it prevails in this matter, the State will seek to recoup costs and attorney's fees
14 as allowed by statute and rules of procedure.
15

16 DATED: September 21, 2016.

17 JAHNA LINDEMUTH
18 ATTORNEY GENERAL

19 By: 

20 Margaret Paton Walsh (0411074)
21 Elizabeth M. Bakalar (0606036)
22 Assistant Attorneys General
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