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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT KETCHIKAN

MARION RIDER, HOWARD RIDER,)
BRAD RIDER, EILEEN CASEY, et)
al.,)

Plaintiff(s),)

v.)

MICHAEL J. DUNLEAVY et al.,)

Defendant(s).

FILED in the Trial Courts
State of Alaska First District
at Ketchikan

DEC 23 2019

Clerk of the Trial Courts

By _____ Deputy

Case No. 1KE-19-00453 CI

DEFENDANTS' ANSWER

Defendants Michael J. Dunleavy, in his official capacity as Governor of the State of Alaska, Adam Crum, in his official capacity as Commissioner of the Alaska Department of Health and Social Services ("DHSS"), Clinton Lasley, in his official capacity as Director of the Division of Alaska Pioneer Homes ("APH"), and the State of Alaska, by and through the Office of the Attorney General, together answer the complaint in this action as follows.

INTRODUCTION

1. This paragraph states a legal argument or conclusion to which no response is required. To the extent that the paragraph contains factual allegations, including that any resident had an increase in monthly rates of 140%, they are denied.

2. This paragraph states a legal argument or conclusion to which no response is required.

JURISDICTION

3. Defendants admit this paragraph.

Emailed
Filed to Judge's J.A.
on 12/23/19 By CF # Pages 12

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4. Defendants admit this paragraph.

PARTIES

5. Defendants admit this paragraph.

6. To the best of Defendants' knowledge, they admit this paragraph.

7. To the best of Defendants' knowledge, they admit this paragraph.

8. Defendants admit this paragraph.

9. Defendants admit this paragraph.

10. Defendants admit this paragraph.

11. Defendants admit this paragraph.

CLASS ALLEGATIONS

12. This paragraph states a legal argument or conclusion to which no response is required.

13. This paragraph states a legal argument or conclusion to which no response is required.

14. This paragraph states a legal argument or conclusion to which no response is required. To the extent that it contains factual allegations, they are denied.

STATUTORY AND REGULATORY SCHEME

15. Defendants admit this paragraph.

16. Defendants admit that the Sitka Pioneer Home was established in approximately 1913. Defendants admit that the current version of AS 47.55.010(a) states that "except as otherwise provided in this subsection, the state shall maintain and

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1 operate facilities known as the Alaska Pioneer Home at Sitka, Anchorage, Fairbanks,
2 Juneau, Ketchikan, Palmer, and other sites designated by the commissioner of health
3 and social services.” The remainder of this paragraph is denied or states a legal
4 argument or conclusion to which no response is required.
5

6 17. Defendants admit this paragraph.

7 18. Defendants admit that AS 47.55.010(c)(3) states that DHSS shall “adopt
8 ~~regulations necessary to conduct business and to carry out the provisions of” AS 47.55.~~

9 The remainder of this paragraph is denied or states a legal argument or conclusion to
10 which no response is required.

11 19. Defendants admit this paragraph.

12 20. Defendants admit that the quoted language is an excerpt from AS
13 47.55.020(a) and includes part of the criteria for admission to the Alaska Pioneer
14 Homes or the Alaska Veterans’ Home. The remainder of this paragraph is denied or
15 states a legal argument or conclusion to which no response is required.
16

17 21. Defendants admit this paragraph.

18 22. Defendants admit that this paragraph paraphrases the requirement in AS
19 47.55.030(a) that individuals must agree to pay the regulatory rate for care and support
20 before admission to the Alaska Pioneer Homes or the Alaska Veterans’ Home.
21

22 23. Defendants admit that AS 47.55.020(d) states in part that “a resident of a
23 home whose income and assets, and other resources are insufficient to pay the monthly
24 rate set under AS 47.55.030(b), and who does not have private insurance to cover the
25

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1 cost of care, qualifies for payment assistance if the resident is otherwise in compliance
2 with requirements under this chapter.” The remainder of this paragraph is denied or
3 states a legal argument or conclusion to which no response is required.

4 24. Defendants admit this paragraph.

5 25. Defendants admit this paragraph.¹

6 26. Defendants admit this paragraph.

7 27. Defendants admit this paragraph.

8 28. Defendants admit this paragraph.

9 29. Defendants admit this paragraph.

10 **FACTUAL ALLEGATIONS**

11 30. Defendants admit this paragraph.

12 31. Defendants admit this paragraph.

13 32. Defendants admit that this paragraph contains a quotation from the
14 minutes of the January 11, 2019, Alaska Pioneer Homes Advisory Board Meeting. Deny
15 that this is a direct quote from Director Lasley.

16 33. Defendants admit that this paragraph contains a quotation from the
17 minutes of the January 11, 2019, Alaska Pioneer Homes Advisory Board Meeting. Deny
18 that this is a direct quote from Director Lasley.

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25 ¹ The quoted language from AS 47.55.030(c) includes an extraneous quotation
26 mark between “department” and “may” in the third sentence.

1 34. Defendants admit that this paragraph contains a quotation from the
2 minutes of the January 11, 2019, Alaska Pioneer Homes Advisory Board Meeting. Deny
3 that this is a direct quote from Director Lasley.
4

5 35. Defendants deny that the second sentence in this paragraph was Director
6 Lasley's response to the question described in the first sentence of this paragraph.
7 Defendants admit that this paragraph includes excerpted quotes from the minutes of the
8 ~~January 11, 2019, Alaska Pioneer Homes Advisory Board Meeting, but deny that they~~
9 are direct quotes.
10

11 36. Defendants admit the first sentence and deny the second sentence. The
12 proposed FY 2020 budget for the Pioneer Home system was relatively unchanged from
13 FY 2019, but the source of about \$12.3 million was shifted from general fund to
14 revenue collection.
15

16 37. Defendants admit this paragraph.
17

18 38. Defendants admit this paragraph.
19

20 39. Defendants admit this paragraph; however, the quotation misplaces the
21 word "other." The correct quotation is: "...when added to other income and assets of the
22 resident..."
23

24 40. Defendants admit this paragraph.
25

26 41. Defendants admit that on March 15, 2019, eight members of the Alaska
House of Representatives introduced HB 96, "an Act relating to Alaska Pioneers' Home
and Alaska Veterans' Home rates and services." The text of the bill speaks for itself.

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1 The remainder of this paragraph is denied or states a legal argument or conclusion to
2 which no response is required.

3 42. Defendants admit this paragraph, except that the letter has seventeen
4 signatories, not sixteen. Also the quotations contain minor, nonsubstantive, deviations
5 from the original text of the letter.
6

7 43. Defendants admit this paragraph.

8 44. Defendants admit that an undated letter was posted to the Division of
9 Alaska Pioneer Homes website which stated new regulations had been adopted and
10 would be effective August 30, 2019. This letter speaks for itself and included the new
11 rates for residents and descriptions of the new service levels. The remainder of this
12 paragraph is denied or states a legal argument or conclusion to which no response is
13 required.
14

15 45. Defendants admit that this paragraph correctly states the monthly rates
16 prior to the regulations that became effective on August 30, 2019, and the rates for
17 service Level IV and V. Defendants deny that these regulations were adopted on
18 August 30, 2019.
19

20 46. Defendants admit that the monthly rate in regulation was increased by
21 approximately 5% in July 1, 2009; approximately 8.5% in February 2016; and
22 approximately 1.5% in April of 2017. Defendants admit that this is a cumulative
23 increase of approximately 15% over an approximately eight-year period.
24

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1 47. Defendants admit this paragraph, although the percentage increases stated
2 are approximate, not exact.

3 48. Defendants deny this paragraph. No Pioneer Home is currently able to
4 offer Level V care, so no resident has been or imminently will be elevated to that
5 service level.
6

7 **FACTS OF INDIVIDUAL NAMED PLAINTIFFS**

8 49. Defendants admit this paragraph.

9 50. Defendants admit that Brad Rider has a Power of Attorney for Howard
10 and Marion Rider. Defendants have insufficient knowledge to admit or deny the
11 remainder of this paragraph.
12

13 51. Defendants have insufficient knowledge to admit or deny this paragraph.

14 52. Defendants have insufficient knowledge to admit or deny this paragraph.

15 53. Defendants admit this paragraph.

16 54. Defendants have insufficient knowledge to admit or deny this paragraph.
17

18 55. Defendants have insufficient knowledge to admit or deny the first
19 sentence of this paragraph. Defendants admit the second sentence.

20 56. Defendants admit this paragraph.

21 57. Defendants admit this paragraph, although the percentages stated are
22 approximate not exact.

23 58. Defendants have insufficient knowledge to admit or deny this paragraph.
24

25 59. Defendants admit this paragraph.
26

1 60. Defendants have insufficient knowledge to admit or deny this paragraph.

2 61. Defendants admit that Ms. Casey became a resident of the Ketchikan
3 Pioneer Home in November of 2017 as a Level II resident. At that time her monthly rate
4 was \$4,692. Defendants have insufficient knowledge to admit or deny the remainder of
5 this paragraph.
6

7 62. Defendants deny this paragraph. Ms. Casey was moved to a Level III level
8 of care on September 1, 2019, at a rate of \$11,185 per month.

9 63. Defendants admit this paragraph, although the percentages stated are
10 approximate not exact.
11

12 64. Defendants have insufficient knowledge to admit or deny this paragraph.

13 65. Defendants admit that Ms. Casey owed the Pioneer Home \$95,266.81 as
14 of October 1, 2019. Defendants admit that due to a long-standing failure of Ms. Casey
15 to consistently pay her monthly rate or submit a complete application for payment
16 assistance, the Ketchikan Pioneer Home has threatened to evict Ms. Casey. The Pioneer
17 Home has no desire or intention to evict currently, but if she continues to fail to pay her
18 monthly rate or apply her available resources toward the amount owed to the Pioneer
19 Home for her care, the Division cannot provide assurances to Ms. Casey that she will be
20 permitted to remain at the Ketchikan Pioneer Home.
21

22 **STATEMENT OF CLAIMS**

23 66. Defendants incorporate by reference all of their responses to each of the
24 preceding paragraphs.
25

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COUNT I. VIOLATION OF AS 47.55.030

67. This paragraph states a legal argument or conclusion to which no response is required. To the extent it contains factual allegations, they are denied.

COUNT II. VIOLATION OF DUE PROCESS

68. This paragraph states a legal argument or conclusion to which no response is required.

69. This paragraph states a legal argument or conclusion to which no response is required.

70. This paragraph states a legal argument or conclusion to which no response is required.

71. This paragraph states a legal argument or conclusion to which no response is required. To the extent it contains factual allegations, they are denied.

COUNT III: VIOLATION OF AS 47.55.020 AND 7 AAC 74.075

72. This paragraph states a legal argument or conclusion to which no response is required.

73. This paragraph states a legal argument or conclusion to which no response is required. To the extent it contains factual allegations, they are denied.

74. This paragraph states a legal argument or conclusion to which no response is required. To the extent it contains factual allegations, they are denied.

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COUNT IV: EQUITABLE ESTOPPEL

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2 75. This paragraph states a legal argument or conclusion to which no response
3 is required.

4
5 76. This paragraph states a legal argument or conclusion to which no response
6 is required.

7 77. This paragraph states a legal argument or conclusion to which no response
8 is required. To the extent it contains factual allegations, they are denied.

9
10 78. This paragraph states a legal argument or conclusion to which no response
11 is required. To the extent it contains factual allegations, they are denied.

12 79. This paragraph states a legal argument or conclusion to which no response
13 is required. To the extent it contains factual allegations, they are denied.

14 80. Defendants have insufficient knowledge to admit or deny this paragraph,
15 although, as expressed in Director Lasley's February 25, 2019 letter, Defendants
16 acknowledge and have empathy for the effects of these rate changes on the finances of
17 Pioneer Homes residents.

18
19 81. Defendants admit that the Pioneer Homes provide one option for assisted
20 living to meet the needs of aged and disabled Alaska residents. Defendants have
21 insufficient knowledge to admit or deny the remainder of this paragraph.

22 82. This paragraph states a legal argument or conclusion to which no response
23 is required. To the extent it contains factual allegations, they are denied.
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1 83. This paragraph states a legal argument or conclusion to which no response
 2 is required. To the extent it contains factual allegations, they are denied.
 3

4 84. This paragraph states a legal argument or conclusion to which no response
 5 is required. To the extent it contains factual allegations, they are denied.
 6

7 **AFFIRMATIVE DEFENSES**

8 1. Plaintiffs have failed to state claims upon which relief can be granted.
 9

10 2. Plaintiff Brad Rider lacks standing to bring these claims.
 11

12 3. Plaintiff Eileen Casey lacks standing to bring these claims.
 13

14 4. Plaintiffs have failed to exhaust administrative remedies.
 15

16 5. Some or all of the plaintiffs' claims are barred by the doctrines of
 17 sovereign, discretionary, and/or official immunity.
 18

19 6. Some or all of plaintiffs' claims are barred by laches.
 20

21 7. Some or all of plaintiffs' claims are barred by release.
 22

23 8. Some or all of plaintiffs' claims are barred by waiver.
 24

25 9. Some or all of plaintiffs' claims are barred by collateral estoppel.
 26

10 10. Some or all of plaintiffs' claims are not ripe.

11 11. Plaintiffs are prevented by reasons of equity or unclean hands from
 12 bringing these claims.
 13

14 **PRAYER FOR RELIEF**

15 Defendants seek the following relief:

16 1. The Complaint be dismissed with prejudice.

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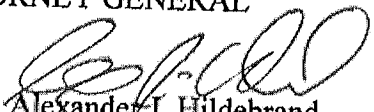
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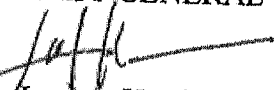
2. All items requested in Plaintiffs Prayer for Relief be denied.
3. Final judgment be entered in favor of Defendants.
4. An award of costs and attorneys' fees incurred defending in this lawsuit.
5. Any other relief to which Defendants are legally entitled and as may be just and equitable under the circumstances.

DATED: December 23, 2019.

KEVIN G. CLARKSON
ATTORNEY GENERAL

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