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11 **IN THE UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ALASKA AT JUNEAU**
13

14 DONALD GILLINGHAM and PATRICIA
15 GILLINGHAM,

16 Plaintiff,

17 v.

18 KETCHIKAN GATEWAY BOROUGH D/B/A
19 THE KETCHIKAN GATEWAY BOROUGH
20 TRANSIT SYSTEM,

21 Defendants.

Case No.

COMPLAINT

Plaintiffs, DONALD GILLINGHAM and PATRICIA GILLINGHAM, by and through
their counsel, Choate Law Firm LLC, allege against the above-named Defendant as follows:

NATURE OF THE ACTION

1. This action arises from the negligent conduct of Ketchikan Gateway Borough,
operating as the Ketchikan Gateway Borough Transit System, resulting in severe injuries to
Plaintiff Donald Gillingham when his electric mobility scooter tipped over on a bus due to the
absence of any policy or requirement to secure mobility devices.

1 **PARTIES**

2 2. At all relevant times, Plaintiffs Donald Gillingham and Patricia Gillingham, both
3 individuals, were residents of Heron, Montana. They bring this action individually and on
4 behalf of themselves.

5 3. Defendant Ketchikan Gateway Borough, doing business as the Ketchikan
6 Gateway Borough Transit System, is a municipal entity located in Ketchikan, Alaska, engaged
7 in the operation of a public transit system.

8 **JURISDICTION AND VENUE**

9 4. Jurisdiction is conferred upon this Court pursuant to 28 U.S.C. § 1332, as the
10 matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and
11 is between citizens of different States.

12 5. Venue is proper in this District under 28 U.S.C. § 1391 because the Defendant is
13 domiciled in Alaska, and a substantial part of the events giving rise to the claim occurred in this
14 District.

15 **FACTUAL ALLEGATIONS**

16 6. Plaintiffs Donald and Patricia Gillingham were passengers on a cruise that made
17 a stop in Ketchikan, Alaska on September 9, 2023.

18 7. Due to mobility issues, Mr. Gillingham, who was 91 years old at the time, rented
19 a motorized scooter to facilitate their movement and exploration of the town.

20 8. Upon disembarking in Ketchikan, the Gillinghams utilized Bus # P20, operated
21 by the Ketchikan Gateway Borough as part of the Ketchikan Public Transit System, to continue
their exploration.

1 9. The Ketchikan Gateway Borough's transit system policy states: "All buses have
2 priority seating areas inside by the door for seniors and riders with limited mobility, plus space
3 for mobility devices." However, this policy does not mention, nor explicitly require or advise
4 the use of available straps to secure mobility devices while the bus is in operation.

5 10. On September 9, 2023, after boarding Bus # P20 at approximately noon, Mr.
6 Gillingham was directed by the bus driver to park his rented electric mobility scooter in the
7 designated area.

8 11. Despite the presence of straps designed to stabilize mobility devices like
9 scooters, the driver did not require Mr. Gillingham to use these straps, nor did any policy of the
10 Ketchikan Public Transit System mandate their use.

11 12. The bus began its route at approximately 12:05 PM and at approximately 12:12
12 PM, while executing a left-hand turn, the unsecured scooter tipped over, causing Mr.
13 Gillingham to fall and sustain injuries.

14 13. The failure of the Ketchikan Gateway Borough to enforce or even establish a
15 policy requiring the use of straps to secure mobility devices, coupled with the driver's failure to
16 advise on their use, directly contributed to the accident and Mr. Gillingham's injuries.

17 **COUNT I: NEGLIGENCE**

18 **(Plaintiff Donald Gillingham v. Defendant Ketchikan Gateway Borough d/b/a**
19 **The Ketchikan Gateway Borough Transit System)**

20 14. Plaintiffs re-allege and affirm all previous allegations as if fully set forth herein.

21 15. Defendant Ketchikan Gateway Borough, through its operation of the Ketchikan
Public Transit System, owed a duty of care to its passengers, including Mr. Gillingham, to
ensure their safe transportation. This duty encompassed the safe transport of mobility devices
such as electric scooters.

1 16. Moreover, as a common carrier, the Ketchikan Gateway Borough Transit System
2 was required to exercise the highest degree of care for the safety of its passengers and is liable
3 for the slightest negligence.

4 17. Defendant breached its duty of care by:

- 5 a. Failing to establish and enforce a clear policy for securing mobility
6 devices on its buses.
- 7 b. Failing to train or instruct its employees, including the driver of Bus #
8 P20, to require passengers to secure their mobility devices.
- 9 c. Allowing Mr. Gillingham to remain seated on an unsecured mobility
10 scooter while the bus was in motion, which posed a significant risk to his
11 safety.

12 18. The breach of duty by Defendant was the direct and proximate cause of the
13 incident on September 9, 2023.

14 19. The failure to secure Mr. Gillingham's scooter and the decision to allow him to
15 remain seated on the unsecured scooter during the bus's operation resulted in the scooter tipping
16 over during a turn, leading to Mr. Gillingham's fall and injuries.

17 20. As a direct and proximate result of Defendant's negligence, Mr. Gillingham
18 suffered physical injuries, pain, and suffering, and incurred medical expenses. He also faces
19 long-term health consequences due to the injuries sustained.

20 21. Initially, Donald Gilligham was unaware of the severity of his injuries. He
21 returned to his cruise ship and saw the ship's doctor as the vessel was traveling north to Juneau.
The ship's doctor recommended he be evaluated at Bartlett Regional Hospital when the ship
arrived in Juneau.

22. Upon their arrival in Juneau, medical assessments revealed that Donald Gillingham sustained three broken ribs and a punctured lung as a result of the scooter's fall.

23. He was subsequently admitted to the Critical Care Unit (CCU) to undergo lung exercises and has been prescribed painkillers for pain management.

24. The accident on September 9, 2023, has had profound continuing implications on Donald Gillingham's health, social, and financial well-being. Prior to the accident, Mr. Gillingham had no history of heart disease, was medication-free, enjoyed a good appetite, maintained moderate activity levels appropriate for his age, and had a sound mind.

25. Following the incident, Mr. Gillingham developed atrial fibrillation (A-Fib), experienced confusion, and showed an inability to focus.

26. Mr. Gillingham's overall quality of life has drastically declined since the accident. He suffers from diminished appetite leading to significant weight loss, weakened strength and balance, increased fatigue resulting in excessive sleep, decreased mobility to the extent that he rarely drives, and impaired concentration affecting his ability to enjoy previously pleasurable activities like watching movies and reading.

27. Accordingly, Plaintiff seeks compensatory damages for the injuries and losses suffered by Mr. Gillingham as a direct result of the negligent conduct of Defendant, including but not limited to medical expenses, pain and suffering, loss of enjoyment of life, and other related damages.

28. Defendant's breach of duty has caused plaintiff to suffer damages in an amount in excess of \$100,000.00

COUNT II: LOSS OF CONSORTIUM

**(Plaintiff Patricia Gillingham v. Defendant Ketchikan Gateway Borough
d/b/a The Ketchikan Gateway Borough Transit System)**

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2 29. Plaintiffs re-allege and affirm all previous allegations as if fully set forth herein.

3 30. As a result of the negligence of the Defendant, Donald Gillingham suffered
4 serious injuries which have had a profound and detrimental impact on the marital relationship
5 between Patricia and Donald Gillingham.

6 31. Since the incident, the physical injuries and emotional trauma suffered by
7 Donald Gillingham have led to significant changes in his health, vitality, and ability to
8 contribute to the marital partnership, including the loss of companionship, affection, comfort,
9 and the ability to engage in shared activities and endeavors which were integral to their marital
10 bond prior to the accident.

11 32. Patricia Gillingham has been deprived of her husband's companionship and
12 support, both emotionally and physically, which they previously enjoyed. This deprivation has
13 caused her significant distress and loneliness, diminishing the quality of her marital and familial
14 life.

15 33. The loss of consortium suffered by Patricia Gillingham is a direct and
16 foreseeable consequence of the Defendant's negligence which caused Donald Gillingham's
17 injuries. This loss extends beyond the immediate aftermath of the incident and is likely to
18 persist, affecting the depth and quality of their marital relationship.

19 34. Therefore, Patricia Gillingham seeks compensatory damages for the loss of
20 consortium, including but not limited to compensation for the loss of companionship, affection,
21 assistance, and support that she has experienced and will continue to experience as a result of
the Defendant's negligent actions.

1 WHEREFORE, Plaintiffs, DONALD GILLINGHAM and PATRICIA GILLINGHAM
2 demand judgment against Defendant Ketchikan Gateway Borough, doing business as the
3 Ketchikan Gateway Borough Transit System, for:

- 4 a. General damages;
- 5 b. Special damages;
- 6 c. Prejudgment and Postjudgment Interest;
- 7 d. Costs;
- 8 e. Expenses;
- 9 f. Attorneys' fees as allowed by law; and
- g. For such other and further relief as this Honorable Court deems just.

JURY DEMAND

10 Plaintiffs, DON GILLINGHAM and PATRICIA GILLINGHAM demand a trial by jury
11 on all issues so triable.

12 Dated: May 8, 2024

14 By: /s/ Mark Choate

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Attorneys for Plaintiff