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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

RONALD OERTWICH, )  
)  
Plaintiff, )

v. )

TRADITIONAL VILLAGE OF TOGIAK )  
(a/k/a NATIVE VILLAGE OF TOGIAK, a/k/a )  
TRADITIONAL COUNCIL OF TOGIAK, )  
a/k/a COMMUNITY OF TOGIAK); STATE )  
OF ALASKA DEPARTMENT OF PUBLIC )  
SAFETY; CITY OF TOGIAK; JIMMY )  
COOPCHIAK, in his individual and official )  
capacity; TEODORO PAUK, in his individual )  
and official capacities; LEROY NANALOOK, )  
in his individual and official capacity; ROGER )  
WASSILLIE, in his individual and official )  
capacity; ANECIA KRITZ, in her individual )  
and official capacity; ESTHER THOMPSON, )  
in her individual and official capacity; JOHN )  
NICK, in his individual and official capacity; )  
WILLIE WASSILLIE, in his individual and )  
official capacity; HERBERT LOCKUK JR., in )  
his individual and official capacity; WILLIE )  
ECHUCK JR., in his individual and official )  
capacity; CRAIG LOGUSAK, in his individual )  
and official capacity; PAUL MARKOFF; )  
PETER LOCKUK SR.; and BOBBY )  
COOPCHIAK, )

Defendants. )

Case No. 3:19-cv-00082-SLG

**CITY OF TOGIAK'S  
MEMORANDUM OF LAW  
IN SUPPORT OF MOTION  
TO DISMISS PUNITIVE  
DAMAGES CLAIM**

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## **I. INTRODUCTION**

City of Togiak (“the City”) respectfully requests immediate dismissal of Plaintiff’s claim for punitive damages against the City. Punitive damages are not recoverable in a lawsuit against a public entity in Alaska.

## **II. STANDARD OF REVIEW**

In evaluating a Federal Civil Rule 12(b)(6) motion to dismiss, “[a]ll allegations of material fact in the complaint are taken as true and construed in the light most favorable to the nonmoving party.”<sup>1</sup> A claim should be dismissed if “it appears beyond doubt that a plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”<sup>2</sup>

In the instant motion, the City seeks only to dismiss Plaintiff’s punitive damages claim against the City, on the basis that Alaska law does not recognize any viable claim for that category of damages against a public entity such as the City..

## **III. DISCUSSION**

Plaintiff has filed this suit in Federal Court based on federal question jurisdiction as to some of his claims, and asserted supplemental jurisdiction<sup>3</sup> as to his state law tort claim of false imprisonment against the City.<sup>4</sup> Plaintiff has alleged a claim for punitive damages

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<sup>1</sup> *Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997).

<sup>2</sup> *Id.*

<sup>3</sup> Complaint, ¶¶ 1-4.

<sup>4</sup> *Id.*, ¶¶ 43-45; 71-73.

against the City.<sup>5</sup> Plaintiff's state law tort claim against the City is governed by Alaska law, and his punitive damages claim against the City is barred by Alaska state law.<sup>6</sup>

In *Hazen v. Municipality of Anchorage*, the Alaska Supreme Court held that "in the absence of statutory authorization punitive damages are not available against a municipality, irrespective of the nature of the conduct involved."<sup>7</sup> "Alaska is among the 'overwhelming majority of jurisdictions' which endorses the rule that punitive damages may not be awarded against governmental entities in the absence of explicit statutory authorization."<sup>8</sup> No decision of the Alaska Supreme Court "has ever authorized an award of punitive damages against a public entity."<sup>9</sup>

The Alaska Supreme Court has identified a combination of reasons why punitive damage awards against governments are disfavored: "punitive damages are not needed to compensate victims; the punishment rationale does not make sense when applied to government; and deterrence of future misconduct is better accomplished by other means... ."<sup>10</sup>

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<sup>5</sup> Complaint, p. 12, ¶ IV

<sup>6</sup> *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

<sup>7</sup> *Hazen v. Municipality of Anchorage*, 718 P.2d 456, 465-66 (Alaska 1986).

<sup>8</sup> *Alaska Housing Finance Corp. v. Salvucci*, 950 P.2d 1116, 1123 (Alaska 1997) (citing Benjamin W. Baldwin, *Jackson v. Housing Authority: The Availability of Punitive Damages in Wrongful Death Actions Against Municipal Corporations*, 65 N.C. L. Rev. 1441, 1447 n. 55 (1987)).

<sup>9</sup> *See id.*

<sup>10</sup> *Id.* at 1124.

Plaintiff's Complaint seeks "Punitive damages against Defendants sufficient to punish them and to deter further wrongdoing[.]"<sup>11</sup> The City is a second class city and a public entity.<sup>12</sup> Alaska Statute 09.17.020 does not provide any "explicit statutory authorization"<sup>13</sup> to impose punitive damage awards on public entities such as the City.<sup>14</sup> Nor does Plaintiff's Complaint identify any "explicit statutory authorization" for an award of punitive damages against the City. Rather, the lawsuit alleges a tort claim against the City for false imprisonment.<sup>15</sup> As a matter of law, and regardless of what facts Plaintiff may prove, an award of punitive damages against the City is not permitted.<sup>16</sup>

#### IV. CONCLUSION

For the foregoing reasons, the City requests immediate dismissal of the punitive damages claim asserted against the City in Plaintiff's Complaint.

DATED at Anchorage, Alaska this 25th day of April, 2019.

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<sup>11</sup> Complaint, p. 12, ¶ IV.

<sup>12</sup> *Id.*, ¶ 9.

<sup>13</sup> *Alaska Housing Finance Corp.*, 950 P.2d at 1123.

<sup>14</sup> AS 09.17.020.

<sup>15</sup> While the City disputes the allegations in the Complaint, the Court must assume them to be true for purposes of this motion to dismiss. *See Vignolo v. Miller*, 120 F.3d 1075, 1077 (9th Cir. 1997).

<sup>16</sup> *Hazen v. Municipality of Anchorage*, 718 P.2d 456, 465-66 (Alaska 1986).

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2019, a true and correct copy of the foregoing document was served via the Court's CM/ECF electronically on the following counsel of record:

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PUNITIVE DAMAGES CLAIM  
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