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State of Alaska Third Judicial District  
Palmer

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Clerk of the Trial Courts  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER

ANDREA RICHEY, et al.,  
Plaintiffs,

v.

MATANUSKA-SUSITNA BOROUGH,  
Defendant.

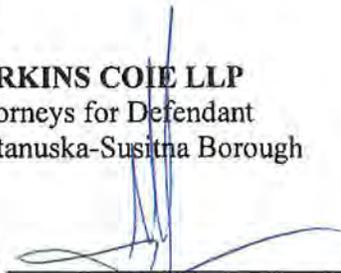
CASE NO. 3PA-14-00959 CI

**NOTICE TO CLERK OF NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that defendants Matanuska-Susitna Borough, on this date, filed a Notice of Removal of this case to the United States District Court for the District of Alaska. A copy of the Notice of Removal is attached to this Notice.

DATED: September 2, 2014.

**PERKINS COIE LLP**  
Attorneys for Defendant  
Matanuska-Susitna Borough

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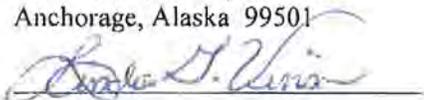
Notice to Clerk of Notice of Removal  
Case No. 3PA-14-00959 CI  
Page 1 of 2

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**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing  
was sent this 20<sup>th</sup> day of September, 2014,  
to the following by U.S. Mail:

Ronald A. Offret  
733 West 4th Ave., Suite 206  
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Attorneys for Defendant  
Matanuska-Susitna Borough

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

ANDREA RICHEY, et al.,

Plaintiffs,

v.

MATANUSKA-SUSITNA BOROUGH,

Defendant.

Case No. 3:14-cv-\_\_\_\_\_

**NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, defendant the Matanuska-Susitna Borough hereby removes Case No. 3PA-14-00959 CI, entitled *Andrea Richey v. Mat-Su Borough*, from the Superior Court of Alaska at Palmer, where said case was originally filed and is currently pending, to the United States District Court for the District of Alaska. The removal is based on 28 U.S.C. §§ 1331, 1367, 1441, 1446, and on the following grounds:

1. On or about January 17, 2014, the original plaintiff in this action, Steven

Notice of Removal  
*Richey v. Matanuska-Susitna Borough*  
Case No. 3:14-cv-\_\_\_\_\_

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Barenberg, filed a complaint in the Superior Court for the State of Alaska at Palmer. The complaint was subsequently amended to substitute Andrea Richey in place of Steven Barenberg as the plaintiff. On or about July 18, 2014, plaintiff filed a motion to amend the complaint to add a claim under 42 U.S.C. § 1983. On August 11, 2014, the Superior Court granted plaintiff's motion and allowed plaintiff to amend the complaint to add a federal statutory claim. A copy of the amended complaint and the Order allowing it are attached hereto as Exhibit A. The Borough will also file copies of all documents filed in the Superior Court proceedings.

2. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) because the Defendant filed this Notice within 30 days after receiving the order allowing an amended complaint, which asserted a federal claim, from which it could first determine that this action was removable and less than one year after commencement of this action as required under 28 U.S.C. § 1446(b). *See Sullivan v. Conway*, 157 F.3d 1092, 1094 (7th Cir. 1998) (time for removal runs from date of order allowing amended complaint rather than the motion for leave to amend); *Sanchez v. Aerogroup Retail Holdings, Inc.*, 2013 WL 1820841 (N.D. Cal. April 13, 2013) (same).

3. In the amended complaint, plaintiff now asserts a violation of 42 U.S.C. § 1983. Amended Complaint at 7. Accordingly, this Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331.

4. Pursuant to 28 U.S.C. § 1441(a), venue is proper in this Court because this is the district court for the district and division embracing the place where the state court

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action is pending.

5. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the District of Alaska, written notice of the removal will be given by the undersigned to plaintiff and a copy of this Notice of Removal will be filed with the Clerk of the Superior Court at Palmer as required by 28 U.S.C. § 1446(d).

DATED: September 2, 2014.

**PERKINS COIE LLP**

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Attorneys for Defendant  
University of Alaska, Anchorage

**CERTIFICATE OF SERVICE**

This is to certify that a true copy of the foregoing was sent this 2nd day of September, 2014, to the following by mail:

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/Thomas M. Daniel

Notice of Removal  
*Richey v. Matanuska-Susitna Borough*  
Case No. 3:14-cv-\_\_\_\_\_

IN THE DISTRICT COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT PALMER

ANDREA RICHEY, *et. al.*<sup>1</sup>

Plaintiffs,

vs.

MATANUSKA SUSITNA BOROUGH,

Defendant.

Case No. 3PA-14-00959CI

**FIRST AMENDED COMPLAINT**

Plaintiffs, Steven Barenberg, and those similarly situated, by and through their attorneys, The Law Offices Of Aglietti Offret & Woofler, hereby complain and allege against the defendant, Matanuska Susitna Borough; as follows:

1. The Plaintiffs, individually and collectively, are or were residents of the State of Alaska;

2. The Defendant, Matanuska Susitna Borough [hereinafter MSB], is an organized Second-class borough conducting its governmental activities as a political subdivision of the State of Alaska pursuant to Title 29 *et. seq.*.

3. Plaintiffs, individually and collectively, have been, are today, or were at times relevant hereto, employees of the defendant, MSB for periods spanning approximately 20 years preceding this matter;

4. Plaintiffs, individually and collectively, as present or former employees of MSB, and during the above specified timeframe, provided labor, services, effort and time within the course, scope, and furtherance of MSB's enterprise and operations for which MSB compensated plaintiffs as employees;

<sup>1</sup> Other similarly situated plaintiffs and initial class members are: Ryan Greiling; P. Daniel Carter; Christian M. Hartley; Larry Fetchenhier; LuJean Fetchenhier; Beunice T. Tatum; Robert L. O'Mara; Daniel G. Gavoni; James J. Carnahan; Robert C. Diaz; Sandra J. Hoefft; Paula Brown; Daniel F. Clemons; James Keel; and others to be named.

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5. Plaintiffs, individually and collectively, as employees of MSB, and during the timeframe above specified, provided labor, services, effort and time within the course, scope, and furtherance of MSB's enterprise and operations and were at all times subject to the direction, control, supervision, and guidance of MSB and/or its agents, officers, and supervisory employees.

6. Plaintiffs, individually and collectively, as employees of MSB, and during the timeframe above specified, provided labor, services, effort and time within the course, scope, and furtherance of MSB's enterprise and operations and were at all times trained by MSB and/or its agents, officers, and supervisory employees.

7. Plaintiffs, individually and collectively, as employees of MSB, and during the timeframe above specified, provided labor, services, effort and time within the course, scope, and furtherance of MSB's enterprise and were at all times provided all equipment, tools, clothing, supplies necessary to the performance of their duties by MSB and within the course, scope and furtherance of MSB's operations.

8. Since 1968, MSB has been a signatory to the State of Alaska's Public Employees Retirement System [PERS]; a defined benefit (DB) plan by which both MSB and its PERS-eligible employees make contributions to the retirement system during employment to cover the cost of employee retirement benefit.

9. Under MSB's contract with PERS, an MSB employee's membership was to begin when the employee was employed by MSB in a qualified position, received PERS-eligible compensation, and was eligible to make PERS contributions.

10. Under MSB's PERS contract, individuals who were first employed by MSB before July 1, 2006, were to be members of the PERS plan.

11. Under MSB's PERS contract, individuals who were first employed by MSB after July 1, 2006, were to be members of the Defined Contribution Plan.

12. Under MSB's PERS contract, a permanent full-time employee is one

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who occupies a permanent position with MSB that regularly requires working 30 or more hours a week.

13. Under MSB's PERS contract, a permanent part-time employee is one who is occupying a permanent position with MSB that regularly requires working at least 15 hours but less than 30 hours a week.

14. Plaintiffs, both individually and as a class, routinely worked in excess of 15 and/or 30 hours weekly [securing sufficient hours annually] during all years of their respective MSB employment qualifying each as permanent part-time and/or permanent full-time MSB employees and were therefore eligible for PERS benefits and MSB was required to, but did not, make PERS contributions on such employee's behalf.

15. Under MSB's PERS contract, MSB employees were to receive PERS benefits, defined in part by the date their employment began with MSB on a "tiered" basis; Before July 1, 1986, in Tier I; on or after July 1, 1986, but before July 1, 1996, Tier II; on or after July 1, 1996, but before July 1, 2006, Tier III; on or after July 1, 2006, were to have been members of the PERS DCR Plans (Tier IV).

16. At the time MSB entered into its PERS contract and at all times thereafter, it was required to include all of its permanent part-time and/or permanent full-time MSB employees whose work hours met or exceeded the minimum weekly/annual hours required for PERS eligibility.

17. Throughout all times pertinent to the plaintiffs' employment, MSB negligently and/or intentionally, and in breach of its fiduciary duties to plaintiffs, and unlawfully excluded such plaintiffs from inclusion within MSB PERS eligibility roles by means of artificial and discriminatory job classifications notwithstanding PERS eligibility based upon hourly work totals.

18. By unlawfully excluding plaintiffs from inclusion within MSB PERS eligibility roles, MSB refused and failed to provide for or otherwise make PERS-compliant financial contributions for each plaintiff; thereby denying such plaintiffs proper inclusion within the PERS program according to applicable Tier

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levels, required MSB PERS contributions, and plaintiffs' right to further contribute to such PERS program.

**FIRST CLAIM FOR RELIEF**  
Certification of Class

19. Plaintiffs incorporate the allegations contained in ¶1 - 18 above as if herein fully set forth.

20. Plaintiffs, individually and collectively, represent a class of similarly situated present and former MSB employees so numerous that joinder of all members would be impracticable;

21. There are questions of law and fact common to the class;

22. The claims and/or defenses of the representative plaintiffs would be typical of the claims or defenses of the class;

23. The representative plaintiffs will fairly and adequately protect the interests of the class;

24. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class;

25. Adjudications with respect to individual members of the class could be dispositive of the interests of the other members not parties to the adjudications or could substantially impair or impede their ability to protect their interests;

26. There are questions of law and fact common to the members of the class which predominate over any questions affecting only individual members;

27. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

28. Plaintiffs, both individually and collectively, request this court's certification of these proceedings as a class action.

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**SECOND CLAIM FOR RELIEF**  
**Breach of Fiduciary Duty**

29. Plaintiffs incorporate the allegations contained in ¶¶ 1 - 28 above as if herein fully set forth.

30. The purpose of PERS is to encourage qualified personnel to enter and remain in the service of the state or a political subdivision or public organization of the state by establishing a system for the payment of retirement, disability, and death benefits to or on behalf of the employees.<sup>2</sup>

31. The purpose of PERS is to promote continued public employment.<sup>3</sup>

32. PERS benefits are an element of the bargained-for consideration given in exchange for an employee's assumption and performance of the duties of employment;<sup>4</sup>

33. The benefits under PERS are in the nature of deferred compensation and the right to such benefits vests immediately upon an employee's enrollment in that system.<sup>5</sup>

34. Participation in PERS is generally mandatory and the benefits may not be negotiated under the Public Employment Relations Act;<sup>6</sup>

35. The defendant, MSB, by refusing or neglecting to include plaintiffs among those MSB employees entitled to receive PERS benefits, breached its statutory and fiduciary duty to plaintiffs to ensure that all its employees meeting minimum PERS eligibility requirements would be provided PERS benefits, the violation for which plaintiffs seek injunctive and declaratory relief, establishing their current and retroactive inclusion within the MSB PERS program and for damages to be proven at trial.

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<sup>2</sup> AS 39.35.010(a).

<sup>3</sup> *Holmberg v. State, Div. of Risk Management*, 796 P.2d 823, 826 (Alaska 1990).

<sup>4</sup> *Hammond v. Hoffbeck*, 627 P.2d 1052, 1056 (Alaska 1981).

<sup>5</sup> *Id.* at 1057.

<sup>6</sup> AS 39.35.120; AS 39.35.170; 1978 Formal Att'y Gen. Op. No. 3.

**THIRD CLAIM FOR RELIEF**  
Injunctive and Declaratory Relief

36. Plaintiffs incorporate the allegations contained in ¶1 – 35 above as if herein fully set forth.

37. The defendant, MSB, by refusing or neglecting to include plaintiffs among those MSB employees entitled to receive PERS benefits, breached its statutory, implied, express, contractual, and fiduciary duties to plaintiffs to ensure that all its employees meeting minimum PERS eligibility requirements would be provided PERS benefits, the violation for which plaintiffs seek injunctive relief, thereby establishing their current and future inclusion within the MSB PERS program.

38. The defendant, MSB, by refusing or neglecting to include plaintiffs among those MSB employees entitled to receive PERS benefits, breached its statutory, implied, express, contractual, and fiduciary duties to ensure that all its employees meeting minimum PERS eligibility requirements would be provided PERS benefits, the violation for which plaintiffs seek declaratory relief, establishing their retroactive inclusion within the MSB PERS program and for damages to be proven at trial but not less than the maximum PERS contributions which MSB should have made to plaintiffs during their employment.

**FOURTH CLAIM FOR RELIEF**  
Violation of Constitutional Rights

39. Plaintiffs incorporate the allegations contained in ¶1 – 38 above as if herein fully set forth.

40. Alaska's Constitution, Article XII, section 7, of the Alaska Constitution provides that membership in employee retirement systems of the State or its political subdivisions shall constitute a contractual relationship and that accrued benefits of these systems shall not be diminished or impaired;

41. The defendant, MSB, by refusing or neglecting to include plaintiffs

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among those MSB employees entitled to receive PERS benefits, violated the plaintiffs constitutional right to inclusion within, and enjoyment of the benefits contemplated under MSB's PERS contractual commitments, entitling plaintiffs damages to be proven at trial but not less than the maximum PERS contributions which MSB should have made to plaintiffs during their employment.

**FIFTH CLAIM FOR RELIEF**  
Breach of Contractual Rights

42. Plaintiffs incorporate the allegations contained in ¶1 - 41 above as if herein fully set forth.

43. The defendant, MSB, by refusing or neglecting to include plaintiffs among those MSB employees entitled to receive PERS benefits, breached both express and implied contractual commitments to the plaintiffs, entitling plaintiffs damages to be proven at trial but not less than the maximum PERS contributions which MSB should have made to plaintiffs during their employment.

**SIXTH CLAIM FOR RELIEF**  
42 .S.C.A. § 1983 Deprivation of Rights

43 Plaintiffs incorporate the allegations contained in ¶1 - 42 above as if herein fully set forth.

44. The defendant, MSB, through its agents, managers, counsel and others, acting under color of statute, ordinance, regulation, custom, or usage, conspired to exclude plaintiffs from among those MSB employees entitled to receive PERS benefits.

45. By such conspiracy, MSB acted intentionally to deprive plaintiffs of rights, privileges, and immunities secured by the laws and Constitutions of the United States and the State of Alaska and therein including the rights to equal protection of the law.

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**SEVENTH CLAIM FOR RELIEF**

**A.S. 23.10.045**

46. Plaintiffs incorporate the allegations contained in ¶1 – 45 above as if herein fully set forth.

47. The defendant, MSB, entered into Participation Agreement with the State of Alaska, Division of Retirement and Benefits [DRB] with the specific design and purpose to encourage qualified personnel to enter and remain in service with MSB by establishing a plan for the payment of retirement, disability, and death benefits to or on behalf of MSB employees.

48. Plaintiffs [and the proposed class] were [are] direct, intended third-party beneficiaries of MSB's Participation Agreement with DRB and were therefore entitled to benefit of PERS contributions envisioned under the agreement where plaintiffs met or exceeded working hours prescribed within A.S. 39.36.680(32), (33).

49. MSB's intentional failure and refusal to make PERS contributions on behalf of plaintiffs [and the proposed class] constitutes serial violations of law under A.S. 23.10.045 for which plaintiffs may seek damages for each offense to be proven at trial.

**WHEREFORE**, and upon the knowledge thus far known to the plaintiffs, having fully complained, the plaintiffs pray for judgment against the defendant, MSB, as follows:

1. That plaintiffs be declared the representatives of the class of similarly situated persons and that these proceedings be declared a class action.
2. That plaintiffs obtain injunctive relief preventing defendant, MSB, from refusing to recognize plaintiffs as employees entitled to both inclusion within and the benefits derived under, MSB's PERS program.
3. That plaintiffs obtain declaratory relief, thereby establishing that MSB wrongfully excluded plaintiffs from inclusion within its PERS program, that plaintiffs were entitled to inclusion within such program, and that plaintiffs are

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therefore entitled to the receipt of retroactive benefits under, MSB's PERS program.

4. That plaintiffs obtain declaratory relief, thereby establishing plaintiffs' constitutional rights to inclusion within the MSB PERS program, that plaintiffs were constitutionally entitled to inclusion within such program, and that plaintiffs are therefore constitutionally entitled to the receipt of retroactive benefits under, MSB's PERS program.

5. For damages to be proven at trial reflecting MSB's unlawful exclusion of the plaintiffs from the PERS program.

6. For all damages arising from defendant's violation of 42 USC § 1983.

7. For all damages arising from defendant's violation of A.S. 23.10.045.

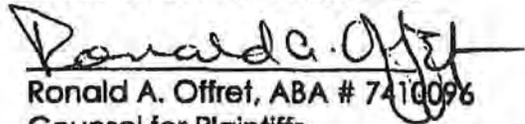
8. For recovery of public interest attorney fees, costs and interests as allowed by law.

9. For such other relief as this court shall deem just and appropriate under the circumstances.

10. The recovery of interest on all amounts awarded at the legal rate of interest, per annum, until paid in full;

Dated this 17 July 2014, at Anchorage, Alaska.

**AGLIETTI, OFFRET & WOOFER**

  
Ronald A. Offret, ABA # 7410096  
Counsel for Plaintiffs

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

ANDREA RICHEY, et. al. )  
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 Plaintiffs, )  
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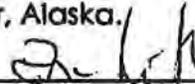
Case No. 3PA-14-00959CI

**ORDER**  
First Amended Complaint

Pursuant to Civil Rule 15(a), Plaintiffs have moved to amend the complaint to include causes of action for 42 USC § 1983 violations. Having reviewed Plaintiffs' motion and any opposition thereto;

**IT IS HEREBY ORDERED** that Plaintiffs' First Amended Complaint is accepted for purposes of this proceeding. The defendant shall have 20 days from the date hereof to file an answer thereto.

Dated this 11<sup>th</sup> day of July 2014, at Palmer, Alaska.

  
Eric Smith  
Superior Court Judge

JUL 18 2014

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Other similarly situated plaintiffs and initial class members are:  
Ryan Grelling; P. Daniel Carter; Christian M. Hartley; Lary Fetchenhier; LuJean Fetchenhier;  
Beunice T. Tatum; Robert L. O'Mara; Daniel G. Gavoni; James J. Camahan; Robert C. Diaz;  
Sandra J. Hoefft; Paula Brown; Angela Richey; Daniel F. Clemons; James Keel; and others to be  
named.

Barenberg v. Matanuska Susitna Borough  
Memorandum In Support Of Motion  
For Certification Of Class  
Case No. 3PA-14-00959CI

FILED 8-17-14  
 CASED  
 Plaintiff  
 Other  
At the address(es) of record:  
\_\_\_\_\_  
Clerk

Attorney(s) of Record  
Defendant  
*Spivey Paulis Offred Dan*