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FILED  
STATE OF ALASKA  
THIRD DISTRICT

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CLERK OF THE TRIAL COURTS

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CLERK OF THE TRIAL COURTS

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**

**THIRD JUDICIAL DISTRICT AT ANCHORAGE**

MUNICIPALITY OF ANCHORAGE, )

Plaintiff, )

vs. )

Dewey C. Wells, Samantha Wells  
DBA Little Dipper Diner )

Defendants. )

Case No. 3AN-20-07424CI

**ANSWER TO COUNTERCLAIM**

Plaintiff Municipality of Anchorage (MOA) answer the counterclaim filed by Defendants Dewey C. Wells, and Samantha Wells, dba Little Dipper Diner as follows.

I. Denied.

II. Denied.

III. Denied.

IV. Denied.

V. Denied. Further, no private right of action exists for a tort based on the Alaska Constitution. See e.g. *Lowell v. Hayes*, 117 P.3d 747 (Alaska 2005).

VI. Denied. Further, no private right of action exists for a tort based on the Alaska Constitution. See e.g. *Lowell v. Hayes*, 117 P.3d 747 (Alaska 2005).

**MUNICIPALITY  
OF  
ANCHORAGE**

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VII. Denied. Further, no private right of action exists for a tort based on the Alaska Constitution. See e.g. *Lowell v. Hayes*, 117 P.3d 747 (Alaska 2005).

VIII. Denied.

IX. Denied.

X. Denied.

XI. Denied.

XII. Denied.

### **AFFIRMATIVE DEFENSES**

1. The MOA exercised its lawful Emergency Powers during a pandemic to protect the health and safety of all residents.

2. Defendants lack standing to assert counterclaims based on the void for vagueness doctrine and separation of powers.

3. The claims raised by Defendants on August 31, 2020 were moot by the expiration of the Mayor's Emergency Order 15 on August 30, 2020.

4. Defendants' counterclaim, and each and every count contained therein, fails to state a cause of action or claim upon which relief can be granted.

5. Defendants' alleged harm was caused by their own acts and/or omissions. To the extent that Defendants sustained damages, Defendants failed to mitigate them.

6. The MOA acted in a matter that was proper, reasonable, lawful and exercised in good faith.

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7. The MOA is immune from a liability for use of its emergency powers found in Anchorage Municipal Code 3.80, the use of which benefitted the health and safety of all Anchorage residents due to a public health emergency.

8. The MOA is immune from liability for the alleged harm that Defendants asserted. Defendants' claims are barred, in whole or in part, by AS 09.65.070, and other applicable statutory and common law immunities

9. The MOA reserves the right to assert any additional affirmative defenses as may be reviewed by further investigation and/or discovery in this action.

### **REQUEST FOR RELIEF**

Wherefore the MOA having answered the counterclaim, the MOA respectfully requests that it be awarded the relief as follows:

A. For judgment in favor of the MOA, dismissing the counterclaim with prejudice,

B. For judgment awarding the MOA its attorney fees pursuant to Alaska R. Civ. P. 82 and costs pursuant to Alaska R. Civ. P. 79, and

C. For such other relief as this Court deems just and equitable under the circumstances.

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Respectfully submitted this 21st day of September, 2020.

KATHRYN R. VOGEL  
Municipal Attorney

By: /s/ Linda J. Johnson

Linda J. Johnson  
Assistant Municipal Attorney  
Alaska Bar No. 8911070  
Ruth Botstein  
Assistant Municipal Attorney  
Alaska Bar No. 9906016

Certificate of Service

I certify that on 09/21/2020 I caused to be mailed  
a true and correct copy of the foregoing to:

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Cathi Russell, Legal Secretary  
Municipal Attorney's Office

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MOA's Answer to Counterclaim  
Page 4 of 4