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2 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 THE RETIRED PUBLIC EMPLOEES )  
5 OF ALASKA, INC., )

6 Plaintiff, )

7 v. )

8 SHELDON FISHER, in his official )  
9 capacity as Commissioner of the )  
10 Department of Administration, )

11 Defendant. )

Case No. 3AN-16-04537 CI

12 ANSWER

13 Defendant, Sheldon Fisher, Commissioner of the Department of Administration,  
14 by and through the Office of the Attorney General, answers the complaint in this action  
15 as follows:  
16

17 JURISDICTION AND PARTIES

18 1. Defendant admits that Plaintiff seeks declaratory and injunctive relief  
19 pursuant to AS 09.40.230, AS 22.10.020(g), and Alaska Civil Procedure Rules 57 and  
20 65. Except as expressly admitted herein, Defendant denies the allegations of paragraph

21 1.

22 2. The allegations in paragraph 2 state legal conclusions to which no  
23 response is required. To the extent a response is deemed necessary, Defendant denies  
24 the allegations in paragraph 2.  
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3. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Plaintiff's paragraph 3 and, therefore, denies such allegations.

4. Defendant admits that Retired Public Employees of Alaska, Inc. ("RPEA") has had standing to sue on behalf of its constituents in the past. The remaining allegations in paragraph 4 state legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations in paragraph 4.

5. Defendant admits that he is the Commissioner of Alaska's Department of Administration ("DOA") and that Plaintiff sues him in his official capacity. Defendant admits that Alaska statutes designate the Commissioner, or the Commissioner's designee, as the Administrator of the public employee retirement systems under AS 39.35, AS 14.25, and AS 22.25. Except as expressly admitted herein, Defendant denies the allegations of paragraph 5.

6. Defendant admits that many retired State employees reside in Anchorage and venue in Anchorage is proper. To the extent this paragraph alleges Defendant failed to comply with legal requirements, Defendant denies the allegations in paragraph 6. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Plaintiff's paragraph 6 regarding where RPEA is headquartered and, therefore, denies such allegation.

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LEGAL FRAMEWORK

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3 7. Defendant admits that Alaska statutes provide for retirement benefits to  
4 State employees and that the stated purpose of the retirement benefit system is to  
5 encourage qualified personnel to enter and remain in service to the State. Except as  
6 expressly admitted herein, Defendant denies the allegations of paragraph 7.

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8 8. Defendant admits that for a period of time starting in 1975, Alaska  
9 statutes provided that retirees who are eligible for monthly retirement benefits are also  
10 eligible for major medical insurance coverage. Eligibility requirements for major  
11 medical insurance coverage depend on whether the retiree is a member of the Defined  
12 Contribution Plan or Defined Benefit Plan. Defendant further admits that since 1979,  
13 the State has offered an optional dental-visual-audio (“DVA”) plan to supplement the  
14 major medical insurance coverage. Since 1987, the State has offered an optional long  
15 term care (“LTC”) plan. Participation in the DVA and LTC plans are optional. Except  
16 as expressly admitted herein, Defendant denies the allegations of paragraph 8.

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18 9. Defendant admits that some State employees eligible for retirement  
19 benefits are entitled to receive major medical insurance coverage at no cost, if they  
20 complete the required forms and do not choose to waive this coverage. Other retirees  
21 are eligible for retirement benefits but are not entitled to receive major medical  
22 insurance coverage at no cost. Except as expressly admitted herein, Defendant denies  
23 the allegations of paragraph 9.

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25 10. Defendant admits that eligible retirees who select major medical insurance  
26 coverage have an option to select coverage under the DVA and/or LTC plans. Retirees

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2 who are not eligible for premium free major medical coverage may also elect coverage  
3 under the optional DVA and/or LTC plans. Depending on the retirees' selection, DVA  
4 coverage may be provided to the benefit recipient and their eligible dependents. A  
5 retiree may select individual or joint coverage under the LTC plan. Retirees pay the  
6 premiums for coverage under the DVA and and/or the LTC plans. Except as expressly  
7 admitted herein, Defendant denies the allegations of paragraph 10.  
8

9       11. Defendant admits that major medical insurance coverage, when elected by  
10 an eligible retiree, begins when monthly retirement benefits begin, but not before July 1,  
11 1975. Coverage under the optional DVA plan started no earlier than October 1, 1979  
12 and was initially effective on the 1st of the month following the month in which the  
13 premium was first deducted from the retirees' monthly benefit. Subsequently, coverage  
14 for new benefit recipients began on the date of their appointment to receive retirement  
15 benefits. Except as expressly admitted herein, Defendant denies the allegations of  
16 paragraph 11.  
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18       12. The allegations in paragraph 12 state legal conclusions to which no  
19 response is required. To the extent this paragraph alleges that Defendant failed to  
20 comply with legal requirements, Defendant denies the allegations in paragraph 12.  
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22       13. The allegations in paragraph 13 state legal conclusions to which no  
23 response is required. To the extent this paragraph alleges that Defendant failed to  
24 comply with legal requirements, Defendant denies the allegations in paragraph 13.  
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14. The allegations in paragraph 14 state legal conclusions to which no response is required. To the extent this paragraph alleges that Defendant failed to comply with legal requirements, Defendant denies the allegations in paragraph 14

**STATEMENT OF FACTS**

15. Defendant admits that in 1975 the State granted major medical insurance coverage for all members of the Alaska Public Employees' Retirement System ("PERS") and Teachers' Retirement System ("TRS") Defined Benefit Plans. Defendant also admits that this plan is now known as the "AlaskaCare Retiree Health Plan" and DOA published a Retiree Insurance Information Booklet in May 2003 that generally describes the plan. Defendant further admits that DOA published booklets prior to 2003 and that DOA has subsequently amended the 2003 version. The booklet contains terms of the AlaskaCare Retiree Health Plan, including major medical insurance coverage and the optional DVA coverage. Except as expressly admitted herein, Defendant denies the allegations of paragraph 15.

16. Defendant admits that, effective January 1, 2014, DOA substantially adopted the standard dental plan language used by Moda Health/Delta Dental of Alaska for the dental portion of its optional DVA plan ("the AlaskaCare plan"). The dental portion of the DVA plan offered prior to 2014 is no longer available. Except as expressly admitted herein, Defendant denies the allegations of paragraph 16.

17. Defendant admits that the AlaskaCare plan amended the dental benefits previously available to retirees who selected the optional DVA insurance coverage.

a. Defendant admits the allegations of paragraph 17(a).

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b. Defendant admits that the previous plan did not indicate a frequency for dental cleanings. The AlaskaCare plan covers no more than two cleanings per year for most people, and no more than four cleanings per year for patients with diabetes or periodontal disease.

c. Defendant admits that the previous plan covered topical fluoride treatments but coverage was conditioned on those treatments being “necessary for diagnoses or treatment of dental condition as determined by the claims administrator.” Defendant admits the second sentence of paragraph 17(c).

d. Defendant admits that the previous plan covered dental sealants for children through age 18 and did not indicate what teeth or a frequency. The AlaskaCare plan covers sealants to the unrestored, occlusal surfaces of permanent molars, and benefits are limited to one sealant per tooth, during any 5-year period. The AlaskaCare plan provides no age limit.

e. Defendant admits that the previous plan covered denture replacements when the existing dentures were at least five-years-old and could not be made serviceable. The AlaskaCare plan covers denture replacements when the existing dentures are at least seven-years-old and cannot be made serviceable.

f. Defendant admits the allegations of paragraph 17(f).

g. Defendant admits the allegations of paragraph 17(g).

h. Defendant admits that the AlaskaCare plan’s covered expenses are based on a “recognized charge.” The recognized charge for network dentists is the lesser of 100% of the covered expense, 100% of the dentist’s accepted filed fee with Delta

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Dental, or 100% of the dentist's billed charge. For out-of-network providers in Alaska, the recognized charge is the lesser of what the dentist bills or submits for that service or 75% of the 80th percentile of the prevailing charge rate as determined by Delta Dental. For out-of-network providers outside of Alaska, the recognized charge is the lesser of what the dentist bills or submits for that service or the prevailing charge rate as determined by Delta Dental.

Except as expressly admitted herein, Defendant denies the allegations of paragraph 17 and its subparagraphs. To the extent this paragraph alleges that Defendant failed to comply with legal requirements, Defendant denies the allegations in paragraph 17 and its subparagraphs.

18. Defendant denies the allegations of paragraph 18.

19. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Plaintiff's paragraph 19 and, therefore, denies such allegations.

20. Defendant admits that Defendant declines to repeal the 2014 amendments to the dental portion of its optional DVA coverage. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in Plaintiff's paragraph 20 and, therefore, denies such allegations.

21. Defendant admits that RPEA has not been provided with an analysis on whether the enhancements in dental coverage offered in the current AlaskaCare plan offset any alleged disadvantages. To the extent this paragraph alleges that Defendant

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failed to comply with legal requirements, Defendant denies the allegations in paragraph 21.

22. Defendant admits that eligible retirees have the option of selecting coverage under the DVA plan. Defendant lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Plaintiff's paragraph 22 pertaining to the previous positions alleged to have been taken by Defendant or his predecessor and, therefore, denies such allegations. To the extent paragraph 22 states legal conclusions, no response is required. To the extent a response is deemed necessary, Defendant denies the allegations of paragraph 22.

**FIRST CAUSE OF ACTION  
VIOLATION OF ALASKA CONSTITUTION ARTICLE XII, § 7**

23. The allegations in paragraph 23 state legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations in paragraph 23.

24. The allegations in paragraph 24 state legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations in paragraph 24.

25. The allegations in paragraph 25 state legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations in paragraph 25.



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2 26. The allegations in paragraph 26 state legal conclusions to which no  
3 response is required. To the extent a response is deemed necessary, Defendant denies  
4 the allegations in paragraph 26.

5 27. The allegations in paragraph 27 state legal conclusions to which no  
6 response is required. To the extent a response is deemed necessary, Defendant denies  
7 the allegations in paragraph 27.  
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9 **AFFIRMATIVE DEFENSES**

10 1. The complaint and cause of action fail to state a claim for which relief can  
11 be granted.

12 2. Plaintiff's claims may be barred by AS 09.50.250, the doctrines of  
13 sovereign and discretionary immunity, and/or official immunity.

14 3. The individual State officer is entitled to qualified immunity with respect  
15 to any constitutional claims for damages asserted by Plaintiff.

16 4. The court lacks jurisdiction to consider Plaintiff's request for a declaratory  
17 judgment as it pertains to the LTC plan as there is no actual controversy.  
18

19 5. Defendant reserves the right to assert additional defenses and other  
20 matters as the case proceeds.  
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22 **PRAYER FOR RELIEF**

23 Defendant seeks the following relief:

24 1. That the complaint be dismissed in its entirety with prejudice.

25 2. That Plaintiff's prayer for relief be denied.

26 3. That Defendant be awarded its costs and fees in the action.

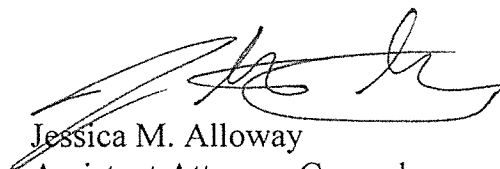
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4. That the Court award Defendant such other relief as may be just and equitable under the circumstances.

DATED March 14, 2016.

CRAIG W. RICHARDS  
ATTORNEY GENERAL

By:



Jessica M. Alloway  
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