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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FIRST JUDICIAL DISTRICT AT JUNEAU

Thomas H. Abel, as Special Administrator )  
of the Estate of Mark Christopher Cook, Jr. )

Plaintiff, )

vs. )

State of Alaska, Alaska )  
Department of Corrections, )

Defendant. )

Case No. 1JU-23-\_\_\_\_\_ CI

**COMPLAINT FOR NEGLIGENCE AND WRONGFUL DEATH**

Plaintiff Thomas H. Abel, as court-appointed administrator of the Estate of Mark Christopher Cook, Jr. through counsel, and pursuant to Alaska R. Civ. P. 3,7-10, and 15, and AS 09.55.570 and AS 09.55.580, alleges, for causes of action against the State of Alaska's Department of Corrections, as follows:

**I. Identification of Parties**

1. At the time of his 23 April 2023 death, Mark Cook, Jr., an adult resident of Hoonah, Alaska, was Twenty Seven (27) years of age. He is survived by a

daughter, Ernestine Donalda Cook, who is now seven (7) years of age. He is also survived by an unborn daughter, who is a wrongful death beneficiary under AS 13.12.108. Mr. Cook left no Will. At the time of Mr. Cook's demise, his estate devolved to his only surviving child, Ernestine Donalda Cook, as a matter of law. AS 13.12.103(1).

2. At the time of the events leading to this action, and thereafter, plaintiff Thomas H. Abel resided in Hoonah, Alaska, in the First Judicial District, State of Alaska. Since all material events complained of herein occurred in Juneau, Alaska, venue for this matter is proper in Juneau, Alaska.

4. Through Letters of Administration issued on 7 June 2023, plaintiff was appointed by the Juneau Superior Court as Administrator of the Estate of Mark Christopher Cook, Jr., Case No. 1JU-23-122 PR.

5. Defendant Alaska Department of Corrections, an agency within the State of Alaska, is charged by Alaska law, *inter alia*, adequately to house and protect persons committed by law to its custody.

6. As used in this Complaint, "Department of Corrections" includes, but is not limited to, all employees and staff who failed to provide adequate care to Mark Cook, Jr. from the time of his incarceration at Lemon Creek Correctional Center (LCCC) in Juneau, Alaska, from 3 April 2022 until 22 April 2023, resulting in Mr. Cook's untimely demise on 23 April 2023.

## STATEMENT OF FACTS

7. LCCC is an institution that is a part of and is under the supervision and control of the State of Alaska's Department of Corrections.

8. Mark Christopher Cook, Jr. was incarcerated at Lemon Creek Correctional Center (LCCC) on or about 3 April 2023 as a pre-trial detainee. He was then charged with disorderly conduct and assault in the third degree. The assault charge was dutifully dismissed. Most of the time he was incarcerated at LCCC, then, Mr. Cook was held for disorderly conduct. Due to a medical condition, throughout his incarceration at LCCC, Mr. Cook was placed by LCCC staff in administrative segregation pursuant to Section V.A. of the Department of Corrections's Policy and Procedures Manual (effective 14 April 2014). His cell was observed by a camera, which could be monitored 24/7 via a computer feed to a central location at LCCC.

9. Upon his admission to, and throughout his incarceration at LCCC, Mark Cook, Jr. suffered from excruciating, and debilitating, back pain. His medical condition was known to the Hoonah Police Department, where Mr. Cook was incarcerated prior to his transport to LCCC following pain medication, and almost certainly communicated to LCCC prior to Mr. Cook's admission. Too, his condition was known to the Alaska State Troopers, who refused to transport Mr. Cook from Hoonah to Juneau unless and until he received medication for his excruciating back pain.

10. After LCCC medical staff refused to speak with plaintiff about Mr. Cook's medical condition, and need for pain medication, plaintiff contacted LCCC Superintendent Robert Cordle on three separate occasions to seek advise of Mr. Cook's medical condition, need for hospitalization rather than confinement in administrative segregation. Mr. Cordle intervened but refused to move Mr. Cook to a medical facility, such as BRH, that could provide needed medical care to Mr. Cook.

11. Mr. Cook had unbearable pain when he tried to urinate or defecate. On at least one occasion, Mr. Cook fell off the toilet in his cell, and lay on the concrete floor to seek to obtain relief for his pain. While there, he defecated and urinated on himself. This instance would have been observed by LCCC staff via the camera in Mr. Cook's cell. However, on information and belief, Mr. Cook laid on the floor in his own feces and urine until a LCCC staff member finally assisted him.

12. On another occasion, Mr. Cook fell on the way to the shower, and fell again in the shower, exacerbating his pain. He laid in his own urine and waste for an unknown time until staff eventually came to assist him.

13. On an unknown date, and at an unknown time, Mr. Cook was finally examined by a medical doctor, who, on information and belief, advised that Mr. Cook needed back surgery but neither LCCC or DOC would provide that surgery since Mr. Cook was a pre-trial detainee, and had not been sentenced. Mr. Cook was Alaska Native, and could have received that surgery free of charge at SEARHC, the IHS provider in

Southeast Alaska. On information and belief, LCCC did not make contact with SEARHC or seek to obtain care that was objectively required to alleviate Mr. Cook's back pain.

14. Based on telephone conversations between plaintiff and Mr. Cook during Mr. Cook's incarceration, his severe back pain persisted, and worsened, during the time he was incarcerated at LCCC. On information and belief, by 22 April 2023, Mr. Cook's back pain had become unbearable. Rather than admitting Mr. Cook to Bartlett Regional Hospital so his severe, debilitating back pain could be properly treated by health care professionals, defendant's employees callously and without just cause left Mr. Cook in his cell, where he was forced by circumstances to endure excruciating back pain.

15. On the afternoon of 22 April 2023, at least three different LCCC officers were responsible for observing Mr. Cook via the in-cell camera linked to the facility computer: Jim Colman, Levi Chilton, and Darrick Futrel. At or about 4:05 pm. ADT on 22 April 2023, one of these officers provided a food tray to Mr. Cook. All three officers continued to provide food trays to other inmates on C tier. During this distribution of food trays, none of those officers, or anyone else, monitored Mr. Cook's cell via computer and the camera in his cell.

16. At approximately 4:30 p.m. ADT on 22 April 2023, one of these officers discovered that Mr. Cook's camera was covered with an object, preventing viewing his cell by camera. When officers visually checked Mr. Cook's cell, they discovered him hanging by the neck from a grate at the back of his cell. Although the bedsheet used by

Mr. Cook was cut down a short time after discovery, Mr. Cook was then unconscious. He was subsequently transported to Bartlett Regional Hospital, where he was pronounced dead at 1:39 a.m. ADT on 23 April 2023.

17. Had Mr. Cook been admitted to Bartlett Regional Hospital for proper treatment of his excruciating, and worsening, back pain, his suicide at LCCC would not have occurred.

## II. CAUSES OF ACTION

18. Pursuant to AS 33.30.011(1), Alaska's Department of Corrections is required to "establish, maintain, operate, and control correctional facilities suitable for the custody, care, and discipline of persons ... held under authority of state law." The Department is further required to "provide necessary ... medical services for prisoners in correctional facilities." AS 33.30.011(4). Under AS 33.30.071(b), "[t]he responsibility of the commissioner under AS 33.30.011 begins when a prisoner is accepted into the commissioner's custody or admitted into a correctional facility." 22 AAC 05.005 specifies that if the admitting facility staff finds that a person is in immediate need of medical attention, "the staff member shall advise the remanding or admitting party to contact responsible medical authority. The initial admission process may not be commenced until the admitting staff member is satisfied that the admittee has received medical attention." 22 AAC 05.020(a) specifies that "Nothing in this section requires that the department accept custody of a prisoner or admit a prisoner into a correctional or

contract facility. The commissioner will determine if the department will accept or admit a particular type of prisoner [by considering] factors that include the following: ... (2) the mental or physical health of the prisoner; ... [and] (5) the capability of the correctional or contract facility to handle a particular type of prisoner.”

19. The Department of Corrections was negligent and breached a duty of care to Mark Cook, Jr. by accepting Mr. Cook for placement when the facility was unable to provide appropriate health care for him. The Department of Corrections should have refused Mr. Cook’s admission and requested that custody be remanded to Bartlett Regional Hospital (BRH), which had the ability to provide appropriate care for Mr. Cook, considering his condition and circumstances.

20. 22 AAC 05.120 specifies that the commissioner of the department “will establish procedures for the provision of adequate medical services to all prisoners.” It further specifies that “Each prisoner must be given a health inspection upon initial admission in accordance with 22 AAC 05.005 ... If a prisoner manifests a need for medical services, health care personnel shall visit the prisoner and provide needed treatment.” Furthermore, under 22 AAC 05.005(b), the admitting staff person is required to “determine whether the admittee is in need of medical attention, by inspecting for obvious injuries or illnesses, and by inquiring about any medical problems or recent use of medication or unprescribed drugs. A person [who] appears to be ill, injured, or incapacitated by alcohol, narcotics, or similar agents, but not in immediate need of

medical attention, must be given medical attention as soon as possible.” The Department of Corrections was negligent in failing to contact plaintiff, or Mr. Cook’s grandmother, Ernestine Hanlon-Abel, both of whom had relevant information about Mr. Cook’s extant medical condition and need for hospital care rather than placement in a jail cell.

21. LCCC knew, or should have known, that while Mark Cook, Jr. was in its custody and dependent upon it for his care, his excruciating back pain, and inability to obtain relief for it in the facility, created a risk of harm to his health and well-being. Once admitted to LCCC, the Department of Corrections breached its duty of care to Mark Cook, Jr. by not transporting him to Bartlett Regional Hospital so he could obtain proper medical care to alleviate the horrific pain he then was experiencing.

22. LCCC personnel provided inadequate care to Mark Cook, Jr. by inadequately monitoring his cell and thus failing to observe that his condition was deteriorating and required immediate intervention. This inadequate monitoring included, but was not limited to, failing to monitor Mr. Cook’s cell while meals were being delivered to other inmates.

23. LCCC personnel provided inadequate care to Mark Cook, Jr. by failing to notice when he placed an object over the camera in his cell. Had responsible personnel noticed that in the moment, personnel could have rushed to Mr. Cook’s cell to cut him down from the grate from which he hung, and provide immediate rescue breathing for Mr. Cook, which was then essential to his well-being.



24. DOC breached its duty of care to Mark Cook, Jr. by failing to provide rescue breathing for him even after LCCC personnel realized that Mr. Cook was unconscious.

### III. Liability

25. The Alaska Department of Corrections (DOC) owed to Mark Cook, Jr. a duty under the common law and under AS 33.30.011, AS 33.30.071, 22 AAC 05.005, 22 AAC 05.020, and 22 AAC 05.120, to safeguard and meet Mark Cook, Jr.'s basic day-to-day needs. The Department's acceptance of Mark Cook, Jr. to its custody and care and then its failure adequately to monitor, supervise, and care for him at all times at issue in this Complaint was a breach of the Department's non-delegable and basic duty and constitutes negligence.

22. DOC owed a duty to Mark Cook, Jr. to determine whether he was in a state of mind in which he could cause harm to himself to alleviate his severe, unceasing back pain. DOC breached that duty by failing to send Mark Cook, Jr. To Bartlett Regional Hospital, where he could obtain proper treatment to alleviate his excruciating back pain. DOC also breached its duty when it failed to notice, over an approximately 25 minute period, that Mark Cook, Jr. had placed an object over the camera in is cell, presumably to prevent staff from intervening in his desperate act of suicide.

26. DOC breached its basic duty to care for Mark Cook, Jr. while he was housed at LCCC from 3 April 2023 to 22 April 2023. These breaches constitutes negligence.

27. As a direct and proximate result of defendant's breaches of its duties owing to Mark Cook, Jr., Mr. Cook suffered almost three weeks of intense pain, distress, and anxiety. He also suffered physical distress, intense back pain, anguish, and fear of impending death, and, then, death itself.

#### IV. Damages

28. As a direct and proximate result of defendant's breaches of duty, plaintiff, on behalf of the Estate of Mark Christopher Cook, Jr., claims all damages recoverable under Alaska law, including, but not limited to: (a) damages under AS 09.55.570 for Mark Cook, Jr.'s extensive physical and emotional pain and suffering from 3 April 2023 until the time of his extreme distress on the afternoon of 22 April 2023 when he may have hung by his neck for up to 25 agonizing minutes (during the time window from 4:05 p.m. to 4:30 p.m.) without being able to breathe, knowing that he was in a state-run facility that should have and could have saved his life and, finally, for his death; and (b) Ernestine Donelda Cook's damages as a dependent under AS 09.55.580 for her loss of her father's comfort and consortium, loss of assistance and personal care services and support, loss of companionship and society, mental anguish and suffering as a result of

the cruel and inhumane treatment and death of her father, loss of enjoyment of life and resultant shortened life, and all other damages recoverable under Alaska law.

29. Plaintiff seeks a separate recovery for each of the distinct tortious acts committed by the State of Alaska that caused distinct injuries, including death, to Mark Cook, Jr..

30. Members of Mark Cook, Jr.'s family, including his father, Mark Cook, Sr., and mothers of his already born and to-be-born children, Heather Kunigelis and Olivia Mae Wilson, respectively, have endured emotional pain and suffering, diminution of consortium with the decedent, and extraordinary expenses, including medical and funeral expenses, in consequence of defendants' maltreatment of decedent leading to his death at the young age of 27.

#### **V. Plaintiff's Prayer for Relief**

31. Plaintiff Thomas H. Abel, as court-appointed special administrator of the Estate of Mark Christopher Cook, Jr. requests the following relief:

- i. General damages in an amount to be demonstrated at trial, but exceeding \$100,000.00; Plaintiff is seeking a separate recovery for each distinct tortious act committed by the State of Alaska that injured Mark Christopher Cook, Jr.;
- ii. Prejudgment and post-judgment interest at the rate allowed by law;
- iii. Attorney's fees and costs as permitted by law;
- iv. Exemplary damages, as permitted by Alaska law; and

v. Such other and further relief as this Court deems just and equitable.

DATED on this 28<sup>th</sup> day of August, 2023, at Juneau, Alaska.

LAW OFFICE OF VANCE A. SANDERS, LLC



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Attorney for Thomas H. Abel