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9
10 **IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**
11
12 **THIRD JUDICIAL DISTRICT AT ANCHORAGE**

13 TIM COOK, *Pro Se*,
14 and Other Similarly Situated
15 S03T- Bristol Bay Permit Holders

16 Plaintiffs

17 v.

18 BRISTOL BAY REGIONAL
19 SEAFOOD DEVELOPMENT
20 ASSOCIATION, INC.

21 Defendant.

22 Case No. 3AN- CI

23 **EMERGENCY COMPLAINT**
24
25 **FOR INJUNCTIVE RELIEF REGARDING**
2022 ELECTION OF BBRSDA BOARD OF DIRECTORS

Preliminary Statement

1. The Bristol Bay Regional Seafood Development Association (BBRSDA) has authority pursuant to AS 43.76.370(a) to “conduct an election ...to approve, amend, or terminate a seafood development tax...” Given this authority to regulate taxes paid to the State of

1 Alaska, BBRSDA is an agency of State. As an agency of the State of Alaska, it is bound
2 by the equal protection guarantees of both the United States and State of Alaska
3 Constitutions. BBRSDA is also bound by State law regarding the conduct of its business.

4 2. On or about April 5, 2022, BBRSDA concluded an election to seat three new Directors
5 to its seven-member Board of Directors. Plaintiff asserts that the election procedures
6 recently implemented by BBRSDA were not properly adopted, prejudiced and
7 disenfranchise BBRSDA Members, and violated State Law, and violated Members' equal
8 protection rights under both US and Alaska Constitutions.

9 3. Specifically, BBRSDA did not allow candidates to run for designated seats (as required
10 in the organizational Bylaws), improperly adopted changes to the election procedure (Text
11 Voting) and altered the manner in which some of the Directors are chosen (Ranked
12 Choice). These changes are unfair, wrongly disenfranchised voters, were improperly
13 adopted by BBRSDA, were not approved by the Department of Commerce, Community,
14 and Economic Development (henceforth DCCED), and violate the Constitutional rights of
15 BBRSDA Members.

16 4. BBRSDA is a governmental organization created through AS 44.33.065. The
17 legislation requires all S03T Bristol Bay Drift Net Permit Holders (approximately 1,863)
18 to be members of the BBRSDA (Henceforth this group will be referred to as Permit
19 Holders or Members). It also requires all Permit Holders / Members to pay tax to support
20 BBRSDA. The tax is based on each Member's salmon catch. In 2021 the tax was
21 approximately \$3.0 million dollars.

22 5. A seven-member Board of Directors (the Board) controls BBRSDA. The Board is
23 virtually unfettered and without oversight. The only means Members have to ensure
24 BBRSDA operates in their best interest is through the fair election of Directors.

25 6. The enabling legislation, 3 AAC 149.010(c), for the creation of BBRSDA explicitly
requires that "the organization must describe in detail the process by which members of
the board of directors are to be elected" and the plan must be submitted for review and
approval by Department of Commerce, Community, Economic Development (DCCED).
In adopting changes for the 2022 election, BBRSDA did not comply with this
requirement.

7. Among the most serious of BBRSDA's Voting Procedures deficiencies are:

- a. BBRSDA violated State law by not obtaining approval from DCCED for the new “Text Voting” procedure nor for “Rank Choice” election of Directors;
 - b. BBRSDA violated its Bylaws in adopting the new election procedures;
 - c. BBRSDA did not adhere to the timelines for elections prescribed in its Bylaws.
 - d. Different and unfair timelines were imposed on voters depending upon which procedure “Text Voting” or “Paper Ballot” they chose.
 - e. Election rules were changed mid-election that prejudiced some voters.
 - f. BBRSDA did not have current text enabled phone numbers for all BBRSDA Members, and thus those Members were either disenfranchised or overburdened in attempting to vote;
 - g. BBRSDA violated the Telephone Consumer Protection Act by sending mass texts to Members.
 - h. BBRSDA required Members to provide more sensitive personal information than was needed for verification of their eligibility to vote.
 - i. BBRSDA did not and does not have a written policy as to whom it will divulge, share or sell, nor how it will securely store the sensitive personal information it acquired from Members.
 - j. Given BBRSDA’s lack of security and written policy regarding how Members’ sensitive personal information is used, many members were unwilling to provide that information to BBRSDA. Thus, those Members were disenfranchised.
8. Therefore, Plaintiff requests the Court to issue an Injunction nullifying the just completed 2022 BBRSDA Director’s election, and requiring BBRSDA to conduct a new Directors’ election in the same fashion has been used since BBRSDA’s inception, *i.e.* mail-in “paper balloting” with candidates running for designates seats, an elected s by a plurality of votes.

Parties

9. Defendant, Bristol Bay Regional Seafood Development Association (BBRSDA), is an institution organized pursuant to AS 44.33.065. BBRSDA is organized as a Non-Profit

Corporation, quasi-governmental agency, in the State of Alaska, entity # 92643. BBRSDA lists its mailing address as 3705 Arctic Bld., #1188, Anchorage, Alaska 99503.

10. Plaintiff Tim Cook holds a S03T Drift Gillnet Permit in Bristol Bay. Cook is a Member of the BBRSDA, as are all S03T Bristol Bay Drift Gillnet Permit Holders. Cook is a resident of Anchorage, Alaska. Those similar situated to Cook are also S03T Drift Gillnet Permit Holders in Bristol Bay, and are also Members of the BBRSDA.

Jurisdiction and Venue

11. This Court has jurisdiction over this case pursuant to AS 22.15.030.

12. Venue is proper under AS 22.10.030 and Alaska R. Civ. P. 3(b) because the issues pertaining to this litigation occurred within the Third Judicial District at Anchorage, Alaska.

Facts Common to All Allegations

13. There are approximately 1,863 S03T Bristol Bay Drift Gillnet Permit Holders. These Permits are held by individuals, some of whom reside in Alaska, as well as other states.

14. The Bristol Bay Regional Seafood Development Association (BBRSDA) was formed under AS 44.33.065.

15. Under AS 44.33.065, all S03T Bristol Bay Drift Gillnet Permit Holders are Members of BBRSDA. (Henceforth, S03T Bristol Bay Drift Gillnet Permit Holders will be referred to as "Permit Holders" or as "Members".)

16. BBRSDA was empowered by the State to hold an election that authorized the levying of a 1% tax on the landing of all Permit Holders. AS 43.76.360

17. Permit Holders cannot opt-out or avoid paying the 1% tax used to support BBRSDA.

18. Membership in BBRSDA for all S03T Permit Holders is mandatory. Permit Holders cannot opt-out of Membership in BBRSDA. AS 44.33.065

19. Pursuant to AS 43.76.370(a) BBRSDA has continuing authority to hold elections to "approve, amend, or terminate a seafood development tax...".

20. An entity that has been delegated authority by the State of Alaska to hold elections that can impose taxes on individuals is functionally an agency of the government.

1 21. Pursuant to 3 AAC 149.010(c) BBRSDA was required to submit a plan to DCCED,
2 “[t]o demonstrate that [the BBRSDA] can provide representation on the board of
3 directors...[and] the organization must describe in detail (A) the process by which
4 members of the board of directors are to be elected.”

5 22. On information and belief, in 2005, pursuant to 3 AAC 149.010(c), BBRSDA
6 submitted to the DCCED a detailed procedure for electing Directors of the BBRSDA
7 (henceforth, “Original Voting Plan”). The Original Voting Plan provided:

- 8 a. The BBRSDA Board would have at least seven Directors;
- 9 b. Only BBRSDA Members were qualified to run for the Board of Directors;
- 10 c. Candidates for the Board of Directors were required to designate the seat which
11 they were running for;
- 12 d. Director Seats A, B, and C were reserved for residents of Alaska, Seats D and E
13 were reserved for non-Alaska residents, and seats F and G were “at-large” seats
14 that did not have a residency requirement;
- 15 e. each director would be elected based on who received a plurality of the votes cast
16 for the seat for which they were running;
- 17 f. members were nominated to run for Director’s seats by a petition containing
18 signatures of 10 members;
- 19 g. the voting process used “paper ballots” that were mailed to each Member
20 (henceforth Paper Ballot).

21 23. The Original Voting Plan was approved by DCCED.

22 24. On information and belief, the Original Voting Plan and Paper Ballot procedure has
23 been used from inception of BBRSDA until the 2022 election. There has never been any
24 suggestion or claim regarding the legitimacy of the Original Voting Plan.

25 25. In 2021 BBRSDA began considering major changes in the voting procedure for its
Board of Directors. This included moving from the Paper Ballot procedure to an
“electronic” procedure.

26 26. The Agenda for the November 17, 2021 BBRSDA Board of Directors Meeting, under
“Miscellaneous Business”, had a subsection that was titled “Revision to BBRSDA Bylaws
and Policies.”

- 1 27. The Agenda for the November 17, 2021 BBRSDA Board of Directors Meeting did not
2 state that any revisions to the Bylaws affecting the election of Directors would be
3 considered.
- 4 28. The Agenda for the November 17, 2021 BBRSDA Board of Directors Meeting did not
5 state that any revisions to the policies affecting the election of Directors would be
6 considered.
- 7 29. Neither prior to, nor during the November 17, 2021 BBRSDA Board of Directors
8 Meeting were copies of the proposed revisions of the Bylaws or policies affecting the
9 election of Directors distributed to or published for Member review or comment.
- 10 30. On November 17, 2021 the Board of Directors of BBRSDA voted to amend the
11 Bylaws and allow a new electronic procedure for electing Directors to the BBRSDA to be
12 used. The new procedure was characterized as “electronic or text voting” (henceforth Text
13 Voting).
- 14 31. The amendment to the Bylaws of BBRSDA adopted on November 17, 2021, that
15 adopted the new Text Voting procedure did not provide any specificity as to how Text
16 Voting would be implemented.
- 17 32. On November 18, 2022, the day after the Board Meeting where BBRSDA adopted
18 Text Voting, BBRSDA held a Member Meeting. During the Member Meeting there was
19 no announcement to Members that the Bylaws or policies governing election procedures
20 for Directors had been amended or changed.
- 21 33. BBRSDA publishes a monthly electronic newsletter titled “Waypoints”. There was no
22 announcement in the “Waypoints” newsletter prior to the November 17, 2021 Board
23 Meeting advising Members that the Board was considering amending the election
24 provisions of the Bylaws.
- 25 34. In the December 2021 issue of “Waypoints” there was no announcement that
BBRSDA Bylaws governing election procedures for Directors had been amended or
changed.
35. In the January 4, 2022, “Waypoints” newsletter there was no notice that BBRSDA
Bylaws governing election procedures for Directors had been amended or changed.
However, the newsletter did state: “Watch your mailbox and text messages this month.
BBRSDA will be sending information about the upcoming Board of Directors election to

1 the mailing address and phone number listed on your S03T permit..." and "We're
2 modernizing the election by transitioning to a secure, digital voting platform..." The link
3 in the newsletter did not provide any additional information regarding the changes made
4 in the voting procedure.

5 36. The salient portions of the amended BBRSDA Bylaws are:

- 6 a. "At least seventy-five (75) days prior to the voting deadline..." there will be a call
7 for candidates¹ and a "Notice of the Annual election" which "will describe the
8 method and time frames for the election process."²
9 b. Submission of required candidate materials will occur "at least forty-five (45) days
10 prior to the voting deadline for each board election..."³;
11 c. If there is "no [candidate] for a seat, the Board will make at least one nomination
12 for that seat",⁴
13 d. BBRSDA will "employ an independent election vendor to perform the functions of
14 receiving votes, counting votes, and qualifying election results. Votes may be
15 submitted electronically or by mailing paper ballots to the election vendor... as
16 provided by the Corporation and published in that year's annual election notice."⁵
17 e. "Ballots shall be provided at least seven (7) days prior to the voting deadline
18 established in the notice of the annual election, or upon request until the voting
19 deadline has passed."⁶

20 37. BBRSDA mailed a letter dated January 13, 2022 to Members titled "Re: Notice of
21 BBRSDA Board Election & Call For Board Member Candidates".⁷ (henceforth: Notice
22 of Election). Also enclosed in the envelope was a Post Card entitled "Voter Information
23 Card for BBRSDA Board Election"⁸ (henceforth Voter Information Postcard").
24
25

1 Exhibit 1, BBRSDA Bylaws, Amended 11/17/2021, Art. IV, Sec. IV.

2 *Id.* at Sec. III.

3 *Id.* at Sec. IV.

4 *Id.*

5 *Id.* at Sec. V.

6 *Id.*

7 Exhibit 2, Notice of Election.

8 Exhibit 3, Voter Information Postcard.

1 38. The envelope in which the Notice of Election was mailed, did not indicate on its
2 exterior that it contained election material.

3 39. Because the envelope in which the Notice of Election was mailed did not indicate on
4 its exterior that it contained election material, some number of BBRSDA Members
5 assumed it to be unimportant or junk mail and discarded the letter without opening.

6 40. The Notice of Election explained the “purpose of this letter is to provide notice of the
7 upcoming 2022 board election, give details of the election process, and make a call for
8 board candidates.”⁹

9 41. The Notice of Election stated: “BBRSDA is transitioning to an electronic voting
10 process this year, but members may opt for a paper ballot and election packet.”¹⁰

11 42. The Notice of Election explained the Text Voting procedure as:

12 a. “[O]n or before March 21, 2022”¹¹ BBRSDA will send a text
13 message...containing a link to an online voting portal.”

14 b. You will use the link to securely enter your vote into the electronic voting platform
15 hosted by Election Buddy.”

16 43. The Notice of Election contained the “2022 BBRSDA Board Election Timeline” The
17 “time line listed the following:

18 February 15 Board Candidate application period ends at 11:59 AKT

19 February 22 Board Candidate information posted to BBRSDA website

20 March 1 Deadline for voter contact changes, opt-out, and paper ballot requests

21 March 11 Paper ballots and election packets mailed out

22 March 21 Electronic ballots texted and emailed out

23 March 28 Postmark for paper ballots

24 April 4 Deadline for electronic votes

25 April 8 Election Results posted to BBRSDA website

26 ⁹ Exhibit 2, Notice of Election at p. 1.

27 ¹⁰ *Id.*

28 ¹¹ *Id.*

- 1 44. The Notice of Election provided that March 1, 2022 was the “Deadline for voter
2 contact changes, opt-out, and paper ballot requests”.
- 3 45. The BBRSDA website stated: “you MUST send us changes to your voter contact info
4 and/or request a paper ballot **BY MARCH 1st** in order to vote.”¹² (emphasis in original)
- 5 46. On March 1, 2022, BBRSDA contradicted and changed the March 1, 2022 deadline
6 for voter contact changes. On its website, BBRSDA stated: “members can get an
7 electronic ballot sent to a different mobile phone number ... or have your ballot also sent
8 to your email address. Those changes can be submitted any time until the day before
9 electronic ballots are sent out (March 20).”¹³
- 10 47. On March 2, 2022, the BBRSDA website simultaneously and contradictorily claimed
11 the deadline to change Voter information was March 1 and March 20 (see Exhibit 4 at
12 para. 2 and Exhibit 5).
- 13 48. Per BBRSDA Bylaws “the deadline for candidates to submit required materials will
14 close at least forty (45) days prior to the voting deadline for each board seat.”¹⁴
- 15 49. Per the Election Notice, the deadline for submitting candidate materials was February
16 15, 2022. And the deadline for voting on Paper Ballots is March 28, 2022. This period
17 does not meet the 45-day minimum prescribed in BBRSDA Bylaws between the deadline
18 for submitting Board candidate materials and the voting deadline.
- 19 50. Paper Ballots are sent to Members eleven days sooner than Text Voters are sent the
20 link for voting.
- 21 51. Paper Ballot voters are required to return their ballots eight days sooner than Text
22 Voters.
- 23 52. In the top right-hand corner of the Notice of Election was the phrase “Voter ID Key:
24 #####-##”.¹⁵ It was not in bold typeface nor underlined, nor in large font.

25 ¹² Exhibit 4, para. 2, Screen Shot from BBRSDA Website titled “Reminder for S03T Permit Holders”,
(Reminder).

¹³ Exhibit 5, Screen Shot from BBRSDA Website titled “TODAY is the DEADLINE”, (Deadline).

¹⁴ Exhibit 1, Article IV, Section IV,

¹⁵ Exhibit 2, Notice of Election at p. 1

1 53. The "Voter ID key" is a unique number assigned to each Member who is qualified to
2 vote. It is confidential.

3 54. The "Voter ID Key" was not randomly generated.

4 55. Nowhere in the Notice of Election did it state that the "Voter ID Key" was important,
5 should be retained, or that the Member would need the "Voter ID Key" in order to change
6 or update their telephone number or email address.

7 56. The Notice of Election did not prescribe how a Member could obtain their "Voter ID
8 Key" should it be lost or not retained by the Member.

9 57. At no place in the Notice of Election did it state that Members should retain their
10 "Voter ID key".

11 58. At no place in the Notice of Election did it state the "Voter ID key" was needed by
12 Members who wished to provide a different text-enabled to number to BBRSDA.

13 59. At no place in the Notice of Election did it state the "Voter ID key" was needed by
14 Members to request a Paper Ballot.

15 60. In the Notice of Election, the phrase "on or before March 21, 2022" is not specific. It
16 indicates a Member could receive a text containing the link at any time on or before
17 March 21.

18 61. The Notice of Election listed four options (here after "Voting Options") regarding the
19 ability of a Member to vote in the election. They were:

- 20 a. The ability to update the Member's telephone number;
- 21 b. The ability to vote by Email;
- 22 c. The ability of to receive a Paper Ballot;
- 23 d. The ability to opt-out of the election.

24 62. By default, if a Member did not proactively select an alternate Voting Option, they
25 were sent a text from BBRSDA to a telephone number that BBRSDA has "associated"
with their S03T Permit.

63. The Notice of Election described two methods for a Member to select or change any
of the four different Voting Options. The two methods to exercise those options were:

- a. by returning the "Voter Information Postcard", or;
- b. by emailing the BBRSDA and referencing the "Voter ID Key."

- 1 64. The Voter Information Postcard (Exhibit 3) has the statement: “Verified Email and/or
2 Updated Mobile Contact#” and below it has two blank lines, one preceded by the word
3 “Email:_____” and the second preceded by the word
4 “Mobile#_____”.
- 5 65. On the Voter Information Postcard (Exhibit 3) there are no boxes to check on either
6 the “Email:” nor the “Mobile#” line, which a Member could use to indicate which is their
7 preferred method to receive the ballot.
- 8 66. Nowhere on the Notice of Election nor the Voter Information Postcard is the term
9 “Verified Email” defined or explained.
- 10 67. Prior to sending the Notice of Election, BBRSDA did not have a written policy to
11 determine which means of voting - text, Email, or both- to use to send the Member the
12 link to the secure voting portal if a Member provided both a telephone number and an
13 email address.
- 14 68. The Voter Information Postcard (Exhibit 3) at the bottom, has space for a Member to
15 initial if a Member wishes to receive a paper ballot, or to opt-out of the election.
- 16 69. BBRSDA did not have a written policy to determine how to handle a situation where a
17 Member provided their email or mobile number, but then initials the option to receive a
18 paper ballot.
- 19 70. BBRSDA did not have a written policy to determine how to handle a situation where a
20 Member provided their email or mobile number, but then also initialed the option to “opt-
21 out” of the election.
- 22 71. BBRSDA did not have means to verify the bona fides of a Member’s initials on the
23 “opt-out” option on the Voter Information Postcard.
- 24 72. An interloper could initial the “opt-out” option on the open face of the Voter
25 Information Postcard, and BBRSDA had no means of detecting this fraud.
73. BBRSDA did not have a written policy on how to handle suspected fraud in the
election process.
74. The Voter Information Postcard exposed a Member’s sensitive personal information to
the public.
75. The Voter Information Postcard card was not enclosed in an envelope, thus the
Member’s name, address, phone number, permit number, Email address, mobile number

and their "Voter ID key" were exposed to all who come in contact with the Voter Information Postcard.

76. The Voter Information Postcard was not secure in that is easily manipulated, altered, or made invalid.

77. An interloper could obtain a Member's Voter ID Key from the open face of Voter Information Postcard and commit election fraud.

78. The Voter Information Postcard required Members to provide their "Verified Email Address and/or Updated Mobile Contact#" even if they request a paper ballot.

79. The Voter Information Postcard did not require initials to provide an updated cellphone number for Text Voting.

80. The Voter Information Postcard's option to "opt-out of the 2022 BBRSDA Board election" was superfluous. A Member could simply not vote, which would be functionally the same as the same as opting-out.

81. The second method described in the Notice of Election for a Member to exercise any of the four Voting Options was by emailing BBRSDA, referencing the "Voter ID Key", and then updating the Member's "contact info".¹⁶

82. When BBRSDA receives an email from a Member, the Member's Email address is "captured" by the BBRSDA email system.

83. When a Member provides sensitive personal information, such as address, permit number, telephone number, or other personally identifying information, some or all of that information is "captured" by BBRSDA.

84. BBRSDA collates Members' sensitive personal information, such as name, address, permit number, telephone numbers, boat names, etc. into a data base.

85. Some Members are reticent to provide BBRSDA with their personal information because their sensitive personal information is captured by BBRSDA.

86. In February 2022, in response to Members who had not retained their Voter ID Key, but wished to change their voting preference or update their telephone number to a text enabled devise, BBRSDA began offering a "call-in" method for Members to obtain their "Voter ID Key".

¹⁶ Exhibit 2, Notice of Election, p. 1-2.

1 87. The “call-in” method required Members to call BBRSDA “from the phone number
2 listed on your permit”.¹⁷

3 88. The Commercial Fisheries Entry Commission (CFEC) does not list a telephone
4 number on the plastic Permit Cards it issues to Permit Holders.

5 89. The CFEC does not list a telephone number on the paper Certificate of Permit
6 Ownership it issues to Permit Holders.

7 90. Because there is no phone number listed on the plastic Permit Card nor on the Paper
8 Certificate issued to Permit Holders by the CFEC, the BBRSDA requirement to call “from
9 the phone number listed on your permit”¹⁸ (emphasis added) is nonsensical.

10 91. As of February 12, 2022, BBRSDA had not posted on the front page of its website,
11 BBRSDA.com, that Members could “call-in” to obtain their “Voter ID Key”.

12 92. BBRSDA did NOT post on its Facebook page that Members could “call-in” to obtain
13 their “Voter ID Key”.

14 93. BBRSDA did NOT send notice via USPS mail to its Members informing them of the
15 “call-in” method of obtaining their “Voter ID Key”.

16 94. BBRSDA did NOT state in its electronic newsletter, “Waypoints”, that Members
17 could “call-in” to obtain their “Voter ID Key”.

18 95. Sometime during the election cycle (and from the context of the posting, perhaps on
19 the last day of “Text Voting”), BBRSDA again changed the manner in which a Member
20 could be eligible to “Text Vote”. On its website, it posted the following:

21 “Last Day To Vote...

22 **If you DID NOT receive a text message, your permit likely contains a**
23 **landline or your mobile phone has some type of text message filter. If you’d**
24 **like to provide an email address, please do one of the following by 5pm AKT**
25 **TODAY:**

Email a picture of your permit card or government issued ID (e.g., Drivers (sic)
License) to info@bbrsda.com. Indicate that you want an electronic ballot sent to

¹⁷ Exhibit 4, Reminder

¹⁸ *Id.*

1 your email address and/or an updated phone number (and provide the email
2 address and/or new phone number)." (Bold in original)¹⁹

3 96. With regard to the security of cellphone communication, it is known that cellphone
4 numbers can be "cloned".

5 97. A caller using a cloned cellphone number can dupe the receiver of a call into believing
6 it originates from someone other than who is actually calling.

7 98. Two step verification is a means of increasing electronic and cellphone
8 communications.

9 99. The BBRSDA did not require two-step verification for a person to "call-in" to request
10 their "unique voter ID Key".

11 100. When BBRSDA sent texts to Members which provided a link to "an election portal" it
12 did not use two step verification.

13 101. The BBRSDA collects various personal information about Members including, but not
14 limited to name, address, permit number, telephone numbers, cellphone numbers, and
15 email address.

16 102. BBRSDA has provided Member's telephone numbers, including "unlisted" phone
17 numbers, and other sensitive personal information to third parties.

18 103. BBRSDA did not obtain permission from Members to share or provide their sensitive
19 personal information with third parties.

20 104. BBRSDA does not have any formal policy on how it will use, distribute, sell, store, or
21 share Members' sensitive personal information.

22 105. BBRSDA has shared sold, stored, and/or distributed Members' sensitive personal
23 information to third parties.

24 106. BBRSDA does not have a robust and secure program for protecting the sensitive
25 personal information of its Members.

107. BBRSDA does not have written policy on how it will handle a cyber-security breach.

108. BBRSDA does not have a written policy on how it will alert Members if their personal
information is accessed through a security breach.

¹⁹ Exhibit 10, Screen Shot of BBRSDA Website page titled "Last Day to Vote".

- 1 109. BBRSDA does not have insurance to compensate Members if their sensitive personal
2 data is accessed.
- 3 110. BBRSDA contracted with a third party to conduct the election by Text Voting. On
4 information and belief, the contractor is Election Buddy.
- 5 111. BBRSDA has, or will, provide Election Buddy with Members' sensitive personal
6 information.
- 7 112. BBRSDA has not requested permission from Members to share their personal
8 information with Election Buddy.
- 9 113. BBRSDA has not prohibited Election Buddy from retaining, using or sharing
10 Members' sensitive personal information.
- 11 114. Cellphone users receive numerous texts that are scams or unwanted solicitations.
- 12 115. Many Cellphone users refuse to open or respond to texts from unknow parties.
- 13 116. BBRSDA Members are susceptible to text scams and unwanted solicitations just as
14 most cellphone users are.
- 15 117. The telephone number from which the Text "containing a link to an online voting
16 portal" was not made known to Members.
- 17 118. Because of the prevalence of scams, Members who received a text from an unknown
18 number were likely to disregard the text.
- 19 119. Because of the prevalence of scams, Members who received a text from an unknown
20 number were unlikely to respond when prompted to click on a link, even if it claims to be
21 "a link to an online voting portal."
- 22 120. Members who disregarded or failed to respond to a text that requested them to click on
23 "a link to an online voting portal" were disenfranchised from the election.
- 24 121. The BBRSDA stated that it would send a text "on or before March 21" to Members
25 "containing a link to an online voting portal."
122. An interloper could have sent a text earlier than March 21 to Members, claim the text
was from BBRSDA, and stated that it was intended to initiate the voting process. There is
no way a recipient could tell that the text was not legitimate.
123. On information and belief, the BBRSD did not have current, correct, text-enabled
cellphone numbers for all of its Members.

124. On information and belief, BBRSDA improperly downloaded a copy of confidential privileged information from the Commercial Fisheries Entry Commission (CFEC) which included telephone numbers of Permit Holder / Members.²⁰
125. On information and belief, the telephone numbers improperly down-loaded from CFEC by BBRSDA were not current for 2022.
126. On information and belief, some of the phone numbers that BBRSDA improperly downloaded from CFEC were “unlisted” telephone numbers of Members.
127. Some of the phone numbers that BBRSDA improperly downloaded from CFEC were telephone numbers on the National “Do Not Call Registry”.
128. Some of the phone numbers that BBRSDA improperly downloaded from CFEC were from members who live in Washington State, Oregon, California, and other jurisdictions.
129. BBRSDA did not cross reference the telephone numbers it downloaded from CFEC with the National Do Not Call Registry.
130. The text message which BBRSDA sent to Members, “containing a link to an online voting portal, was a “text message” as defined in the Telephone Consumer Protection Act (TCPA), 47 USC 227.
131. A text message that is sent to several hundred recipients is considered a “Mass Text”.
132. BBRSDA sent a text message “containing a link to an online voting portal” to several hundred Members. (Henceforth this text message will be referred to as “Voting Portal Mass Text”).
133. BBRSDA did not have written prior consent from each Member granting BBRSDA permission to send the Member the “Voting Portal Mass Text”.
134. BBRSDA did not have express prior consent from each Member granting BBRSDA permission to send the Member the “Voting Portal Mass Text”.
135. The TCPA requires the Sender of a Mass Text messages to have obtained “prior consent” from each recipient before sending a Mass Text.
136. The TCPA carries penalties that ranges from \$500 -\$1,500 per violation. Under TCPA each recipient of a mass text message is considered a separate violation. Damages may be tripled in certain circumstances, such as “willfulness”.

²⁰ Information provided on 2/11/2022 by CFEC IT Lead Ty McMillan .

137. BBRSDA has previously sent a “Mass Texts” to Members.²¹
138. The “Mass Texts” that BBRSDA has previously sent are in violation of the TCPA.
139. When the Notice of Election was posted on January 13, 2022, BBRSDA’s Bylaws and policies required candidates to designate which Board of Director seat they were running for.²²
140. The Notice of Election stated that the open seats were seat A (Alaska Resident); seat D (Non-Alaska resident), and Seat G (Open Resident).
141. On January 13, 2022, the application form provided by BBRSDA to prospective Director candidates did not require that they designate which seat they were running for.
142. In late January, an inquiry was made to BBRSDA Executive Director Andy Wink, asking whether Director candidates could run for more than one seat at a time.
143. BBRSDA Executive Director Andy Wink, when asked whether candidates could run for more than one Director seat at a time responded candidly that BBRSDA had not considered that eventuality.
144. On February 2, 2022 the BBRSDA held a Board meeting (hereafter: February 2nd Board Meeting). The draft Agenda for February 2nd Board Meeting did not list election procedures nor any proposed changes to the Bylaws of BBRSDA as topics of the meeting.
145. During the course of the February 2nd Board Meeting there was no discussion of election related issues prior to the Board going into Executive Session.
146. At the February 2nd Board Meeting a motion was made, and passed, to go into Executive Session. The motion to go into Executive Session did not list election issues as a rationale for going into Executive Session.
147. While in Executive Session during the February 2nd Board Meeting, there were discussions regarding election issues.
148. Upon emerging from Executive Session held at the February 2nd Board Meeting, a motion was made to change the election procedures for BBRSDA Directors to incorporate “Ranked Choice” election of Directors, and to eliminate the requirement or ability of Board candidates to designate which seat they were running for.

²¹ Exhibit 9, Copies of two Mass Texts sent by BBRSDA to Members.

²² Exhibit I, Bylaws, Art. III, Sec. I

1 149. At the February 2nd Board Meeting, after the motion was made to adopt changes to the
2 election procedures of BBRSDA Directors, it was passed without discussion.

3 150. BBRSDA members, and candidates running for Director seats were not made aware of
4 the election changes made at the February 2nd Board Meeting until February 13, 2022
5 when BBRSDA posted the following to its website:

- 6 a. "Board Candidates will no longer be required to declare or nominate what seat
7 they are running for, rather each qualified Candidate will be listed on the ballot
8 under each seat for which he/she qualifies (based on their residency)"²³, and;
9 b. Winners for Open residency board seats (Seat G and F) will be determined via a
10 ranked-choice voting method. Voters will rank Candidates in order of preference
11 and the winner will be the most preferred Candidate who was not elected to a
12 residency-based seat during the same election."²⁴

13 151. Article III, Section I of the Bylaws of BBRSDA states Members running for the Board
14 "shall be qualified and run for designated Board of Directors seats based on their
15 residence..." (emphasis added).

16 152. The change adopted at the February 2nd Board Meeting that "Board Candidates no
17 longer be required to declare or nominate what seat they are running for..."²⁵ would
18 require amending the Bylaws.

19 153. BBRSDA has not properly amended its Bylaws such that a that it would allow "Board
20 Candidates [to] no longer be required to declare or nominate what seat they are running
21 for..."²⁶

22 154. The voting changes made at the February 2nd Board Meeting were announced
23 February 13, 2022 on the BBRSDA website.

24 155. The February 13th announcement by BBRSDA regarding the election changes made at
25 the February 2nd Board Meeting claimed, this was only a "slight change"²⁷.

23 Exhibit 6, pg. 2, Website Elections Page, BBRSDA Website, 1-13-22.

24 *Id.* under the heading "***UPDATE***".

25 Exhibit 6, pg. 2, Website Elections Page.

26 *Id.*

27 *Id.*

156. As of March 3, the BBRSDA website, BBRSDA.com, did not provided any additional explanation of the voting changes made at the February 2nd Board Meeting.

157. As of March 3, the BBRSDA had not provided any written explanation of the mechanics or procedures for Ranked Choice voting that was adopted at the February 2nd Board Meeting.

158. On February 17, 2022 Plaintiff, emailed BBRSDA Executive Director Andy Wink and requested that he “provide a complete description of all the procedures, written rules, balloting formats, and anything else that pertains to the Ranked Choice Voting.”²⁸ (Hereafter this will be referred to as February 17 Information Request)

159. On February 23, 2022 BBRSDA Executive Director Andy Wink responded via email to the February 17 Information Request stating: “I’m referring questions about the election to our attorney who is handling election matters.”²⁹ The name of the attorney handling election issues for BBRSDA was not provided, nor was the attorney’s contact number provided.³⁰

160. On February 28, 2022, Plaintiff having not been contacted by BBRSDA’s attorney, nor receiving any information pursuant to the February 17 Information Request, Plaintiff called BBRSDA Executive Director Andy Wink. (hereafter “February 28 Call”).

161. On the February 28 Call, after Plaintiff inquired when and how BBRSDA’s attorney would contact Plaintiff, the name and telephone number of BBRSDA’s attorney was provided to Plaintiff.

162. During the February 28 Call, Plaintiff asked for an explanation of procedures BBRSDA would use for Ranked Choice voting. Wink stated on several occasion that BBRSDA adopted the “standard version” of Ranked Choice voting.

163. There is no “standard version” Ranked Choice voting.

164. In the course of the February 28 Call, Executive Director Wink stated that BBRSDA’s attorney, Steve Mahoney had all of the written information about the election

²⁸ Exhibit 7, Email Exchange Requesting Documents on Ranked Choice.

²⁹ *Id.*

³⁰ *Id.*

1 and Ranked Choice voting. Further that Mahoney was authorized to provide the
2 information to Plaintiff.

3 165. On February 28, 2022 Plaintiff contacted BBRSDA attorney Steve Mahoney, via
4 telephone. Mahoney apologized and stated that it must have slipped his mind to contact
5 Plaintiff.

6 166. During the call of February 28 with Mahoney, Plaintiff requested all written
7 procedures, rules, balloting formats, and anything that pertained to the BBRSDA election
8 and Ranked Choice Voting. Mahoney stated that he would email those to Plaintiff as soon
9 as he returned to his office, and requested that Plaintiff text his email address to Mahoney.

10 167. Plaintiff texted Mahoney confirming the request for documents and providing
11 Plaintiff's email address.³¹

12 168. To date, Plaintiff has not received any documents or further contact from BBRSDA
13 attorney Steve Mahoney.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF AS 43.33.065; 44.62.310; 43.76.350; 3 AAC 149.010.**

16 169. Plaintiff realleges and incorporates by reference all foregoing allegations.

17 170. Regional Seafood Development Associations, created pursuant to AS 43.33.065, are
18 required to conform to the laws of the State of Alaska.

19 171. BBRSDA violated AS 43.33.065 *et seq.*, AS 44.62.310, *et seq.*, AS 43.76.350 *et seq.*
20 and 3 AAC 149.010, *et seq.*

21 172. In particular, under 3 AAC 149.010(c), Regional Seafood Development Associations
22 must "describe in detail...the process by which members of the board of directors are to
23 be elected [and] how the election process for the board of directors will provide
24 representation on the board of directors for each fishery". BBRSDA's failed to provide
25 comply with this requirement.

173. BBRSDA violated the Alaska Open Meetings Act, AS 44.62.310, by inappropriately
going into Executive Session to discuss topics that should have been discussed in an open
meeting.

³¹ Exhibit 8, Text Exchange with Steve Mahoney

1 **Second Cause of Action**

2 **BBRSDA Violated Its Bylaws**

- 3 174. Plaintiff realleges and incorporates by reference all foregoing allegations.
- 4 175. Organizations such as BBRSDA are required to conform to their Bylaws.
- 5 176. BBRSDA violated its Bylaws.
- 6 177. Among the many violations of its Bylaws, BBRSDA:
- 7 a. improperly amend its Bylaws with regard to changes in the 2022 election;
- 8 b. breached Article III of BBRSDA Bylaws;
- 9 c. breached Article IV of BBRSDA Bylaws;
- 10 d. improperly held Executive Session(s) to discuss election changes;
- 11 e. failed to properly notice Board Meetings;
- 12 f. failed to properly notice Amendments to BBRSDA By Laws;
- 13 g. failed to provide Members with meaningful notice that the Board was considering
- 14 changes to the election process;
- 15 h. failed to allow Members to provide meaningful comment on election changes prior
- 16 to adoption; and,
- 17 i. adopted policies regarding Board Member elections without properly amending
- 18 BBRSDA Bylaws.

17 **Third Cause of Action**

18 **Violation of Articles of Incorporation**

- 19 178. Plaintiff realleges and incorporates by reference all foregoing allegations.
- 20 179. Organizations such as BBRSDA are required to conform to their Articles of
- 21 Incorporation.
- 22 180. BBRSDA violated its Articles of Incorporation.
- 23 181. BBRSDA violated its Articles of Incorporation, by among other things, amending its
- 24 Bylaws in a manner that is not consistent with the laws of the State of Alaska.

24 **Fourth Cause of Action**

25 **Violation of the Rights BBRSDA Members**

182. Plaintiff realleges and incorporates by reference all foregoing allegations.

183. Membership organizations in general, and mandatory Membership organizations in particular, are required to protect the rights of their Members, including the right to have free and fair elections, operate in the best interests of its Members, conform to the law, its Articles of Incorporation, Bylaws, and policies.

184. All S03T Bristol Bay Drift Gillnet Permit Holders are required by law to Members of BBRSDA. As such, BBRSDA is a mandatory Membership organization.

185. BBRSDA violated the rights of its Members by adopting Election procedures that, among other things:

- a. disenfranchised certain segments of voters, suppressed voting by certain segments of voters;
- b. required Members to divulge more sensitive personal information than is reasonably necessary to verify their bona fides for voting purposes; improperly accessed State documents to acquire Members' sensitive personal information;
- c. disclosed to third parties sensitive personal information of Members which BBRSDA has collected for voting purposes, failed to adequately advise Members of voting procedures; and,
- d. altered voting procedures during the course of the election to benefit some voters over others.

Fifth Cause of Action

Equal Protection under the Alaska Constitution and US Constitution

186. Plaintiff realleges and incorporates by reference all foregoing allegations.

187. The equal protection provisions of Art. I, Sec.1 of the Alaska Constitution guarantees "that all persons are equal and entitled to equal rights, opportunities, and protection under the law..."

188. The equal rights amendment, Sec. I of the 14th Amendment to the US Constitution provides: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

189. Because BBRSDA is empowered to “conduct an election ...to approve, amend, or terminate a seafood development tax...” AS 43.76.370, it is functionally an agency of the State of Alaska.

190. As an agency for the State of Alaska, BBRSDA is bound by the laws of the State of Alaska, and the precepts of the Alaska and US Constitutions regarding governmental actions.

191. BBRSDA violated the laws of the State of Alaska and the Equal Protection provisions of both the US and Alaska Constitutions by, among other things:

- a. discriminating against Members by making it easier for some voters to actually vote, while overburdening and making it more difficult for other Members to vote;
- b. by allowing some Members to vote sooner than other Members; by closing the polls earlier for some Members, and later for other Members;
- c. by requiring some Members to divulge sensitive personal information in order to vote while allowing others to not divulge sensitive personal information;
- d. by improperly altering voting procedures, and election rules;
- e. by failing to provide Members with an opportunity to comment on election changes prior to adoption, and denying others that opportunity;
- f. by changing election rules to favor some candidates and to disadvantage other candidates;
- g. by not providing Members with written copies of the election rules in a timely manner;
- h. by not having written election rules; and,
- i. by changing election rules in the midst of an election that favored some voters over others.

Sixth of Cause of Action

Violation of Telephone Consumer Protection Act

192. Plaintiff realleges and incorporates by reference all foregoing allegations.

193. The Telephone Consumer and Protection Act, (TCPA) 47 USC 227 regulates communications including mass communications including the sending of Mass Text Messages.

194. BBRSDA violated the TCPA on multiple occasions:

- a. On or about Jan 13, 2022, BBRSDA sent a Mass Text message to Members³² without first obtaining the Members' prior consent, and / or to telephone numbers listed on the National Do not Call Registry.
- b. On or about February 24, 2022, BBRSDA sent a Mass Text to Members³³ without first obtaining the Members' prior consent and / or to telephone numbers listed on the National Do not Call Registry.
- c. On or about March 21, 2022, BBRSDA sent a Mass Text BBRSDA³⁴ without first obtaining the Members' prior consent, and / or to telephone numbers listed on the National Do not Call Registry.

SEVENTH CAUSE OF ACTION

VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

18 U.S.C § 1030

195. Plaintiff realleges and incorporates by reference all foregoing allegations.

196. BBRSDA violated the Computer Fraud and Abuse Act (CFAA), 18 U.S.C § 1030, by improperly downloading Members' confidential sensitive personal information from the Commercial Fisheries Entry Commission.

EIGHTH CAUSE OF ACTION

VIOLATION FIDUCIARY DUTY

197. Plaintiffs reallege and incorporate by reference the foregoing allegations.

198. BBRSDA and its current Board of Directors have a fiduciary duty to conduct the election of Directors in a legal manner. BBRSDA breached this duty.

199. BBRSDA and its current Board of Directors have a fiduciary duty to conduct the election of Directors in a fair and equitable manner. BBRSDA and its current Directors have breached this duty.

³² Exhibit 9, Copies of Mass Text Messages, pg.1.

³³ *Id.* at pg. 2.

³⁴ Mass Text soliciting "Text Voting"

1 200. BBRSDA and its current Board of Directors have a fiduciary duty to conduct the
2 election of Directors in manner that does not disenfranchise or overburden Members from
3 voting. BBRSDA and its current Directors have breached this duty.

4 201. BBRSDA and its current Board of Directors have a fiduciary duty to require Members
5 to divulge only the minimum amount of personal information needed to ensure that a
6 Member is qualified to vote in the election of Directors. BBRSDA and its current
7 Directors have breached this duty.

8 202. BBRSDA and its current Board of Directors have a fiduciary duty to seek Member
9 consent before acquiring, sharing, or selling Members' sensitive personal information.
10 BBRSDA and its current Directors have breached this duty.

11 **Prayer for Relief**

12 203. WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief:

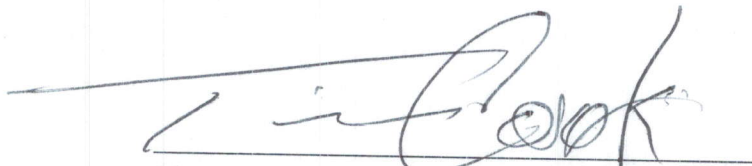
- 13 a. The issuance of an Injunction nullifying the recent 2022 BBRSDA Board
14 Election;
- 15 b. Require BBRSDA to hold a new election for Directors that conforms to the
16 Original Election plan that has been approved by the DCCED, to wit:
 - 17 i. Board Candidates must be nominated by petition from at least ten
18 Members of BBRSDA;
 - 19 ii. Board Candidates must designate which seat they are running for;
 - 20 iii. The election process will use Paper Ballots mailed to each Member;
 - 21 iv. Board Candidates who receive the most votes for the seat for which that
22 person is running is the winner of that seat (*i.e.* plurality).
- 23 c. For an award of full reasonable attorney's fees and costs as provided for public
24 interest litigants under AS 09.60.010; attorney's fees under Telephone
25 Consumers Protection Act, 47 USC 227, attorney's fees under Computer Fraud
and Abuse Act (CFAA), 18 U.S.C § 1030; and other attorneys as may be
appropriate, and all fees, costs and expenses as the court determines is
appropriate;
- d. Such other and further relief as this Court may deem fair, just, equitable, and
reasonable under the circumstances.

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DATED:

4-11-2022

COOK AND ASSOCIATES
Attorneys for the Plaintiff



Tim Cook, AK Bar No. 9007048

CERTIFICATE OF SERVICE

I hereby certify that on 4-12-2022 a true and correct copy of the foregoing document was served by US Mail on the parties registered to:



Northwest Registered Agent Inc.
821 N Street, Suite 102
Anchorage, Alaska 99501