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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

ELIZABETH BAKALAR, )  
 )  
 Plaintiff, ) Case No. 3:19-cv-00025-JWS  
 )  
 v. )  
 )  
 MICHAEL J. DUNLEAVY, in his )  
 individual and official capacities; )  
 TUCKERMAN BABCOCK; and )  
 the STATE OF ALASKA, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**MOTION TO CONSOLIDATE CASES**

Before this Court are two employment cases in which Plaintiffs seek enforcement of their Federal and State Constitutional rights against the same three defendants. The plaintiffs—Elizabeth Bakalar in the instant case (Case No. 3:19-cv-00025-JWS), and Anthony L. Blanford and John K. Bellville in Case No. 3:19-cv-00036-HRH—move this Court under Fed. R. Civ. Proc. 42(a) to consolidate the cases because the factual and legal issues in the cases are virtually identical,

the defendants are the same in both cases, and consolidation will promote convenience and judicial economy. For these reasons, as explained more fully below, Plaintiffs urge this Court to exercise its discretion and consolidate the two cases for purposes of discovery and trial. Because this case was filed first, Case No. 3:19-cv-00036-HRH should be assigned to the judge in this matter in accordance with Local Rule 3.1(d)(2).

### ***Discussion***

Fed. R. Civ. Proc. 42(a) provides for consolidation of cases involving common questions of law or fact:

When actions involving common questions of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning the proceedings therein as may tend to avoid unnecessary costs or delay.

The purpose in consolidating cases under this rule is “to promote convenience and judicial economy,” *Johnson v. Manhattan Railway Co.*, 289 U.S. 479, 496-497 (1973), and to avoid “unnecessary costs or delay in the administration of justice.” *Hall v. Hall*, 138 S. Ct. 1118, 1125 (2018)(quoting legislative history). This Court has broad discretion to order consolidation if two cases appear to be of like nature and relative to the same question, if a joint trial of them would avoid unnecessary

costs and delay, and it is case reasonable to try them together. Fed. R. Civ. Proc. 42(a).

This case and the *Blanford* case present identical questions of law. Plaintiff Bakalar and Plaintiffs Blanford and Bellville in Case No. 3:19-cv-00036-HRH all allege that the three named Defendants retaliated against them for exercising their rights to free speech under the First Amendment of the United States Constitution and Article I, § 5 of the Alaska Constitution. The three plaintiffs also each allege that Defendants violated the implied covenant of good faith and fair dealing applicable to at-will employment relationships under Alaska law.

These two cases also present common questions fact. Both complaints allege that, soon after Defendant Dunleavy was elected as Governor of Alaska on November 6, 2018, Defendant Babcock, as Governor-elect Dunleavy's transition chair, demanded the resignations of all at-will State of Alaska employees; that Babcock's demand was intended to solicit a pledge of allegiance from state employees to Mr. Dunleavy's political positions; that Babcock also announced that any state employee who refused or failed to offer her or his allegiance to Mr. Dunleavy risked being fired; that Defendant Dunleavy ratified Babcock's assertions about the intent of the resignation demands; and that all three plaintiffs were fired on the same day, December 3, 2018,

at almost the same hour that Defendant Dunleavy was sworn in as Governor. The only differences in the two cases are that Plaintiff Bakalar in this case alleges that she was fired in retaliation for exercising her free speech rights by blogging about national politics, while the plaintiffs in the *Blanford* case allege that they were fired in retaliation for exercising their free speech rights when they refused to offer resignations under the conditions announced by Defendants Babcock and Dunleavy.

Consolidation of the *Blanford* case with this case will promote convenience and judicial economy. Convenience will be promoted by allowing the parties to engage in one discovery track, preventing the need for duplicate depositions, document requests, and written discovery, and to prepare for only one trial. Because of the similarity of their claims and their related factual allegations, the plaintiffs in both cases, who are represented by the same counsel, expect to rely on much of the same evidence to support their claims. Consolidation will promote judicial economy by placing the cases before one judge, allowing the parties to present legal disputes to the Court in one forum, and allowing the Court to resolve those disputes in one order that is applicable to all parties, rather than risking inconsistent results.

Consolidation of the cases will not prejudice Defendants.

Defendants will instead benefit because consolidation will reduce, if not eliminate, the need for duplicative discovery and motion practice.

Defendants, like Plaintiffs, are represented by the same counsel in both cases.

### ***Conclusion***

For all of the above reasons, Plaintiffs in both cases respectfully request that the Court consolidate the two cases by assigning the second-filed case, No. 3:19-cv-00036-HRH, to the judge in the instant matter, in accordance with Local Rule 3.1(d)(2).

Dated March 14, 2019.

By:                   s/Stephen Koteff                    
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