

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 THIRD JUDICIAL DISTRICT AT ANCHORAGE
3

4 ALASKA STATE EMPLOYEES)
5 ASSOCIATION, LOCAL 52,)

6 Plaintiff,)

7 vs.)

8 STATE OF ALASKA;)
9 DEPARTMENT OF HEALTH &)
10 SOCIAL SERVICES; DEPARTMENT)
11 OF ADMINISTRATION; OFFICE of)
12 GOVERNOR MICHAEL J. DUNLEAVY,)

13 Defendants.)

Case No. 3AN-19-06327 CI

COPY
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APR 15 2019

Clerk of the Trial Courts

14 **ASEA'S MOTION FOR TEMPORARY RESTRAINING ORDER**
15 **AND PRELIMINARY INJUNCTION**

16 The Alaska State Employees Association, Local 52 ("Union") moves this Court
17 for a temporary restraining order and a preliminary injunction, enjoining the State of
18 Alaska from continuing its contract with Wellpath Recovery Solutions, LLC
19 ("Wellpath") until the State of Alaska has cured its violation of the Union's Collective
20 Bargaining Agreement ("CBA").
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22 **I. INTRODUCTION**

23 The Union is a labor organization that represents public employees, including
24 approximately 211 employees who work for the State of Alaska at the Alaska Psychiatric
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1 Institute (“API”).¹ On April 15, 2019, the Union filed a Complaint in Alaska Superior
2 Court, alleging that the State of Alaska² breached the Union’s CBA. If not enjoined
3 immediately, the State of Alaska’s breach of the CBA will cause the Union and the
4 employees it represents irreparable harm.
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6 First, time is of the essence. The State of Alaska’s decision to contract with
7 Wellpath deprives the Union of mandatory rights under the CBA to receive, review, and
8 respond to a feasibility study **prior to** any decision by the State of Alaska to contract out
9 and privatize API. Article 13 of the CBA, described at length below, provides, in part,
10 that the State of Alaska’s decision to contract out “shall be made only after the affected
11 agency has conducted a written feasibility study” that “shall include all costs including,
12 but not limited to, wages, benefits, administrative costs, agency overhead, program
13 supervision, and audits.”³ Under the CBA, that feasibility study and notice to the Union
14 triggers the Union’s right to respond in (at the least) 30 days to any decision to contract
15 out with its own plan, and precludes the State of Alaska from releasing any bids or
16 contracting with any other party during that time period and until the Union’s alternative
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22 ¹ Metcalfe Aff., April 15, 2019 at ¶ 1.

23 ² “State of Alaska” includes the Department of Health and Social Services, the
24 Department of Administration and the Office of Governor Michael Dunleavy.

25 ³ Exhibit A, Excerpts from the CBA between the Union and the State of Alaska
26 covering the General Government Bargaining Unit, July 1, 2016 through June 30, 2019 at
Article 13, section 13.01 B. Metcalfe Aff. at ¶ 3.

1 plan receives fair consideration.⁴ The State of Alaska has violated these mandatory CBA
2 provisions.

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4 If this Court does not immediately enjoin the State of Alaska from continuing its
5 contract with Wellpath the Union will be forever deprived of its right to submit an
6 alternative plan related to the State of Alaska's decision to privatize or contract out the
7 operations of API. The State of Alaska failed to complete a feasibility study prior to
8 contracting with Wellpath, and does not expect to complete or provide any such study to
9 the Union until some yet-to-be-determined date.⁵ In fact, the procurement and contract
10 for the study is not completed or even issued yet.⁶ There is no indication when the
11 feasibility study will take place, or even if it will be a meaningful study.

12
13 While the State of Alaska has pushed back the date for Wellpath to assume full
14 operational control (privatization) over API from July 1, 2019 to September 1, 2019 and
15 has stated its intent to complete a feasibility study,⁷ the State of Alaska's contract with
16 Wellpath continues.⁸ Recent documents disclosed by the State of Alaska establish that
17 Wellpath's milestones under what is called the "transition phase" (currently ongoing)
18 include finalizing selection of staff, interviewing and orienting "all employees,"
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22 ⁴ Exhibit A at 13.01 C. 1-3.

23 ⁵ Metcalfe Aff. at ¶¶ 4-5.

24 ⁶ *Id.*; Exhibit B, Emails between Deputy Commissioner Albert Wall, Jake Metcalfe
and others, March 2019.

25 ⁷ Metcalfe Aff. at ¶ 6.

1 negotiating shared service agreements, and onboarding and training all staff.⁹ In other
2 words, the State of Alaska and Wellpath are moving towards total privatization of API
3 even though the State of Alaska has not complied with the CBA. If this Court does not
4 enjoin such acts, the Union will lose members, and any ability to submit an alternative
5 plan and will lose the rights the State of Alaska and the Union agreed to under the CBA.¹⁰
6 Wellpath is becoming more entrenched at API, making it impossible for the Union to
7 submit an alternate plan under the CBA that receives “fair consideration.”¹¹ This
8 constitutes irreparable harm that cannot be avoided without court intervention.
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11 Second, there should be no dispute that the State of Alaska violated the CBA, and
12 continues to violate the CBA by continuing its contract with Wellpath. The Union has a
13 substantial likelihood of success on the merits regarding its claims that the State of
14 Alaska breached the CBA by failing to comply with Article 13, breached the covenant of
15 good faith and fair dealing, and anticipatorily breached the Collective Bargaining
16 Agreement ratified by the State of Alaska and the Union, currently awaiting legislative
17 funding and set to take effect on July 1, 2019 (“Ratified CBA”).¹²
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21 ⁸ Exhibit B.
22 ⁹ Exhibit C, Alaska Psychiatric Institute, High Level Transition Timeline:
23 Milestones (0331).
24 ¹⁰ Metcalfe Aff. at ¶ 7.
25 ¹¹ Exhibit A at Article 13, Section 13.01 C; Metcalfe Aff. at ¶ 9.
¹² Metcalfe Aff. at ¶ 2; *see generally* AS 23.30.215.

1 In preparation for filing its Complaint and this motion practice, the undersigned
2 contacted an attorney with the State of Alaska who represents the Department of Health
3 & Social Services (“DHSS”).¹³ The undersigned informed the DHSS about this motion
4 practice, including the specific requested injunctive relief and the Complaint, and expects
5 that the State of Alaska will enter an appearance in the next day or soon after in order to
6 brief the requested injunctive relief.¹⁴ The undersigned also served the attorney via email
7 and also served the State of Alaska’s Attorney General via hand-delivery.¹⁵

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10 **II. LEGAL STANDARD**

11 Under Alaska law, a “[p]laintiff may obtain a preliminary injunction by meeting
12 either the balance of hardships or the probable success on the merits standard.”¹⁶ The
13 showing required to obtain a preliminary injunction depends on the nature of the
14 threatened injury.¹⁷ The balance of hardship standard applies when a party establishes
15 three factors (1) the plaintiff is faced with irreparable harm, (2) the opposing party is
16 adequately protected, and (3) the plaintiff raises “serious and substantial questions going
17 to the merits of the case” establishing that the issues raised are not “frivolous or
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22 ¹³ Brown Aff., April 15, 2019 at ¶ 2.

23 ¹⁴ *Id.*

24 ¹⁵ *Id.*

25 ¹⁶ *Alsworth v. Seybert*, 323 P.3d 47, 54 (Alaska 2014).

26 ¹⁷ *See State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005).

1 obviously without merit.”¹⁸ In weighing the potential hardships to each party, this Court
2 is required to “[a]ssume the plaintiff will ultimately prevail when assessing the
3 irreparable harm to the plaintiff absent the injunction,” and also conversely “[a]ssume the
4 defendant ultimately will prevail when assessing the harm to the defendant from the
5 injunction.”¹⁹ When irreparable harm is not found, the much higher standard or probable
6 success on the merits must be established before an injunction can be issued.²⁰
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8 The Union’s claim satisfies all criteria for injunctive relief. If this Court does not
9 issue an injunction, the Union will be irreparably harmed as the State of Alaska and
10 Wellpath are moving toward hiring staff and transitioning to the full privatization of API
11 without first completing a feasibility study and allowing the Union to submit an
12 alternative plan, as required by the CBA. There is no harm to the State of Alaska in
13 maintaining the status quo at API.
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16 **III. BACKGROUND FACTS**

17 **A. The Wellpath Contract with the State of Alaska.**

18 On February 8, 2019, the DHSS Commissioner Adam Crum announced that he
19 had “invoked his authority under state law to immediately assume management of
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¹⁸ *Alsworth*, 323 P.3d at 54.

24 ¹⁹ *Id.*

25 ²⁰ *City of Kenai v. Friends of Recreation Ctr., Inc.*, 129 P.3d 452 (Alaska 2006).

1 [API].”²¹ The day prior, on February 7, 2019, the State of Alaska, through its
2 Department of Administration (“DOA”) and Chief Procurement Officer Jason Soza,
3 approved a single-source contract under its procurement code, allowing Wellpath to take
4 over the management of API (“Wellpath Contract”).²² The Wellpath Contract is divided
5 into two phases, including a “Startup” phase (“Phase 1”) from February 8, 2019 through
6 June 30, 2019, and an “Ongoing Operations” phase (“Phase 2”), from July 1, 2019 (called
7 the “Operation Date”) through June 30, 2024.²³ Phase 2 includes complete privatization
8 of API. According to the Wellpath Contract, the terms and conditions of Phase 2 will be
9 “negotiated and reflected in an amendment prior to June 30, 2019.”²⁴

12 The Wellpath Contract includes a term called “Completion of Phase 1,” which
13 provides that on or before April 15, 2019, the State of Alaska will “engage in
14 negotiations to amend this agreement and outline the terms described in Phase 2:
15 Ongoing Operations.”²⁵ The Wellpath Contract states that in order to operate API during
16 Phase 2, Wellpath must satisfy benchmarks, including API’s continued compliance with
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19 ²¹ Exhibit D, State of Alaska Press Release, “Commissioner Assumes Management
20 of Alaska Psychiatric Institute; Changes Will Improve Patient and Staff Safety,” Feb. 8,
21 2009; Complaint, filed by the Union against the State of Alaska, April 15, 2019
at 4, ¶ 10.

22 ²² Exhibit E, Standard Agreement Form for Professional Services between the State
23 of Alaska and Wellpath Recovery Solutions, LLC, Feb. 8, 2019 (“Wellpath Contract”).

24 ²³ *Id.* at 6.

25 ²⁴ *Id.*

26 ²⁵ *Id.*

1 applicable licensing, accreditation and regulatory requirements, a promise that API's
2 80 beds will be "fully available for utilization" and that API be "staffed by the necessary
3 clinical and support staff."²⁶ According to the Wellpath Contract, Wellpath is not
4 responsible for the operations of API during Phase 1, but that the parties contemplate
5 "Wellpath being prepared to assume responsibility as of the commencement of the
6 Operation Date, on July 1, 2019."²⁷

8 The Wellpath Contract states that current employees will "remain the financial
9 responsibility of the State" during Phase 1, but that effective on the "Operations Date,
10 existing State employees at API shall be eligible to apply for rehire with Wellpath and
11 have preference in that process."²⁸ The Wellpath Contract further obligates Wellpath to

12 honor terms & conditions of existing contracts that API is currently
13 engaged in. Requests for termination or adjustment to any contract must be
14 presented to the State, in writing, for approval, along with a proposal for the
15 amendment / termination that exhibits adherence to the terms & conditions
16 of these contracts. The State will remain financially responsible for the
17 costs of services provided under these contracts during Phase 1.²⁹

18 Even so, the Wellpath Contract contemplates hiring employees for jobs currently held by
19 Union members, and covered by the CBA during Phase 1.³⁰

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22 ²⁶ *Id.*

23 ²⁷ *Id.* at 7.

24 ²⁸ *Id.*

25 ²⁹ *Id.*

26 ³⁰ *Id.* at 6, 9-11 (Appendix C – Exhibit 1, Staffing Plan).

1 At some point in the last two or three weeks, the State of Alaska, through its
2 Deputy Commissioner Albert Wall, announced that it would extend Phase 1 of the
3 Wellpath Contract to allow the State of Alaska to obtain a feasibility study related to its
4 plans to privatize API.³¹ That extension is not in the Wellpath Contract, or other contract
5 documents made publicly available.³² Regardless, that extension appears to extend some
6 of the deadlines for specific tasks by Wellpath, including the April 15 deadline, which is
7 now moved to June 15, and the July 1 deadline or Operation Date, which is now
8 apparently moved to September 1, 2019.³³

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11 But Wellpath and the State of Alaska continue to move towards total privatization
12 of API. In documents recently disclosed by the State of Alaska in response to a public
13 records request, the State of Alaska produced a document called “High Level Transition
14 Timeline: Milestones,” indicating a roadmap to total privatization.³⁴ That document
15 describes the “key milestones” under the Wellpath Contract and its original internal
16 deadlines (before the apparent extensions), clearly converting all Union members to
17 private Wellpath employees.³⁵

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22 ³¹ Exhibit B; Metcalfe Aff. at ¶ 6.

23 ³² Brown Aff. at ¶ 3.

24 ³³ Exhibit B; Metcalfe Aff. at ¶ 6.

25 ³⁴ Exhibit C.

26 ³⁵ *Id.*

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At different times over the last eight weeks since Wellpath engaged in Phase 1 at API, Wellpath and other State of Alaska employees have

- Informed Union members that following the Operations Date Wellpath will continue the salaries of current Union members for six months, and then will reevaluate and possibly reduce salaries;³⁶
- At different town meetings, told Union members that no one will lose their jobs, but then announced that no one's job is certain or safe;³⁷
- Modified schedules of current Union employees, including demanding that certain employees return to work on days off, refusing to make informational meetings available via video, causing Union members to return to work on days off to hear updates regarding their jobs;³⁸
- Informed Union members that it would circulate information about hiring on with Wellpath, including human resources and benefits information, and then failed to do so;³⁹
- Pushed back the timeline related to current Union members' status as State of Alaska employees, including most recently an announcement regarding the Operations Date for the Wellpath Contract, changing the date from July 1, 2019 to September 1, 2019;
- Modified the April 15, 2019 deadline in the Wellpath Contract again in testimony before the Legislature, identifying new dates and new deadlines for the Operations Date.⁴⁰

³⁶ Brown Aff. at ¶ 4.
³⁷ *Id.*
³⁸ *Id.*
³⁹ *Id.*
⁴⁰ Metcalfe Aff. at ¶ 6; Exhibit B.

1 The changes have left Union members in flux, not knowing the status and security
2 of their job and existing benefits, including those articulated in the CBA and the Ratified
3 CBA.⁴¹

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5 **B. The Single-Source Procurement.**

6 The State of Alaska, through DHSS, signed a DHSS Authority to Seek
7 Professional Services on February 7, 2019, and submitted a Request for Alternate
8 Procurement (“RAP”).⁴² The RAP eventually sought and received authority for a single-
9 source contract for Wellpath at an estimated cost of \$84 million.⁴³ Attachments to the
10 RAP include emails to and from DHSS leadership explaining the reasons for the RAP
11 and the requested contract with Wellpath.⁴⁴ The RAP, and the statements DHSS
12 executives have made to obtain the Wellpath Contract, have come under scrutiny by
13 legislators for the last two months. That process has established that the State of Alaska
14 intended to have Wellpath take over API completely starting in December 2018, soon
15 after Governor Michael Dunleavy’s election,⁴⁵ and ignored letters that establish the
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21 ⁴¹ Metcalfe Aff. at ¶ 7.

22 ⁴² Exhibit F, Request for Alternative Procurement (“RAP”), Feb. 7, 2019 (without
23 exhibits).

24 ⁴³ *Id.* at 5.

25 ⁴⁴ Complaint at 8-11.

26 ⁴⁵ *Id.*

1 existence of other available vendors, including Providence Health & Services Alaska.⁴⁶
2 In early April, the Alaska State Legislature, House of Representatives, sent a letter to
3 Jason Soza, the State of Alaska’s chief procurement officer, and asked him to terminate
4 Phase 2 of the Wellpath Contract for various reasons, including that the State of Alaska,
5 through DHSS circumvented the procurement process in order to facilitate “permanent
6 transfer of API management to Wellpath” without competitive bidding.⁴⁷
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9 Moreover, on February 20, 2019 (days after the State of Alaska finalized the
10 Wellpath Contract) the Center for Medicare and Medicaid Services (“CMS”) approved
11 the API Plan of Correction (submitted without reference to Wellpath) on or about
12 February 20, 2019. As a result, API is not in jeopardy of losing its certification or federal
13 funding. On April 12, 2019, in a press release, Comm. Crum announced that The Joint
14 Commission determined API meets or exceeds Medicare and Medicaid requirements,
15 providing a “deemed status” to API for three years.⁴⁸ Comm. Crum credits the State of
16 Alaska’s decision to contract with Wellpath as a basis for accreditation, but The Joint
17 Commission issued its decision effective December 15, 2018, before Wellpath’s presence
18 at API, and conducted its last onsite survey on January 29, 2019 prior to the Wellpath
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23 ⁴⁶ *Id.* at 11; Exhibit G, Letter from Alaska State Legislature to Jason Soza, at March
24 6, 2019 Letter from Preston M. Simmons, Chief Executive, Alaska, Providence Health &
Services Alaska to Representatives Ivy Spohnholz and Tiffany Zulkosky.

25 ⁴⁷ Exhibit G.

1 Contract.⁴⁹ It is false for the State of Alaska to give credit to Wellpath for the CMS
2 certification or The Joint Commission accreditation.

3 **C. The CBA and the Ratified CBA.**

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5 The State of Alaska and the Union entered into a CBA, effective July 1, 2016
6 through June 30, 2019.⁵⁰ The CBA between the Union and the State of Alaska covers
7 employees designated by the Alaska Labor Relations Agency as a General Government
8 Unit (“GGU”) position.⁵¹ Under the CBA, the State of Alaska agreed to mandatory terms
9 regarding contracting out any GGU position.⁵² Those promises are described in “Article
10 13 – Contracting Out” of the CBA, which states, in part:
11

12 Decisions to contract out shall be made only after the affected agency has
13 conducted a written feasibility study determining the potential costs and
14 benefits that would result from contracting out the work in question. The
15 study shall include all costs associated with contracting out the work in
16 question including, but not limited to, wages, benefits, administrative costs,
17 agency overhead, program supervision, and audits.⁵³

18 Article 13.01(C) of the CBA states:
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20 ⁴⁸ Exhibit H, State of Alaska Press Release, “API Accreditation Renewed by the
21 Joint Commission,” April 12, 2019; Exhibit I, Email from Gavin Carmichael, April 8,
22 2019 to API staff.

23 ⁴⁹ Exhibit J, Quality Report, The Joint Commission, reflecting “deemed status” for
24 API.

25 ⁵⁰ Exhibit A.

26 ⁵¹ *Id.* at 6.

⁵² *Id.*

⁵³ Exhibit A at 29. 13.01(B).

- 1 1. The Employer shall notify the Union of its final decision regarding
- 2 contracting out. A copy of the study will be provided to the Union.
- 3 2. If the Employer decides to contract out and such contracting out will
- 4 result in the displacement of employees, the Employer shall provide
- 5 the Union with no less than thirty (30) calendar days' notice that it
- 6 intends to contract out bargaining unit work. The notification by the
- 7 Employer to ASEA of the results of the feasibility study will include
- 8 all information on which it based its decision to contract out the
- 9 work, including the total cost savings the Employer anticipates.
- 10 3. The Union may then submit an alternate plan that is to include
- 11 potential costs and benefits. During this thirty (30) day calendar
- 12 period the Employer shall not release any bids and ASEA shall have
- 13 the opportunity to submit an alternate plan that will be given full
- 14 consideration by Employer. During this thirty (30) calendar day
- 15 period, the Union shall have the opportunity to discuss the placement
- 16 of affected employees.

13 The Ratified CBA includes nearly identical mandatory terms.⁵⁴

14 It is undisputed that the State of Alaska did not complete a feasibility study prior

15 to contracting with Wellpath, as required by the CBA. Wellpath still has not completed

16 the feasibility study. Moreover, the only feasibility study that exists (procured and

17 completed in 2017 under Governor Bill Walker's administration) establishes that

18 privatization of API will result in diminished safety and quality of services for staff and

19 patients.⁵⁵

23 ⁵⁴ Metcalf Aff. at ¶ 3.

24 ⁵⁵ Exhibit K, Excerpts from the Feasibility Study of the Privatization of the Alaska

25 Psychiatric Institute, Final Report, Feb. 23, 2017 at 1-5.

1 In response to the State of Alaska's breach of the CBA, the Union filed a
2 grievance.⁵⁶ That claim is currently scheduled for hearing in mid-June, around or near
3 the time the State of Alaska will presumably (under the new deadlines) enter into the
4 final contract negotiations regarding Phase 2 or total privatization of API.⁵⁷ The relief
5 from that grievance proceeding is inadequate, and will not provide any basis for the
6 Union to be made whole.⁵⁸

8 **IV. ARGUMENT**

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10 This Court should issue an injunction. The Union has a substantial likelihood of
11 success because the State of Alaska breached the CBA contracting with Wellpath without
12 first conducting and completing the feasibility study required by Article 13 of the CBA,
13 and by entering into the Wellpath Contract before allowing the Union an opportunity to
14 review the feasibility study and present an alternate plan. Even though the Phase 2 of the
15 Wellpath Contract is delayed, the Union is unable to submit an alternate plan or respond
16 to any arguments that its alternate plan can be more cost effective, efficient and
17 comprehensive without the feasibility study required under the CBA. These undisputed
18 facts establish breach of contract and breach of the covenant of good faith and fair
19 dealing, and an anticipatory breach of contract, promissory estoppel, and establish serious
20 issues with the single-source contract.
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24 ⁵⁶ Exhibit G.

25 ⁵⁷ Metcalfe Aff. at ¶ 8.

1 The Union will also be irreparably harmed if the State of Alaska is not enjoined
2 from taking any additional acts to implement Phase 2 of the Wellpath Contract. The
3 injury to the Union is immediate and, without an injunction, is not remediable after the
4 fact. Under the Wellpath Contract, employees who are Union members will be,
5 essentially, deterred from maintaining their membership with the Union, and will be,
6 potentially, hired by Wellpath under the Wellpath Contract. This will make it impossible
7 for the Union to enjoy its right to submit an alternate plan if or when the State of Alaska
8 fulfills its obligation to provide for a feasibility study. Essentially, the State of Alaska
9 breach of the CBA and its contract with Wellpath will limit and destroy the Union's
10 rights under the CBA.

11 Finally, there is no harm to the State of Alaska if the parties continue the status
12 quo, with the State of Alaska operating API. Such action will not jeopardize API's
13 accreditation status with CMS or the findings of The Joint Commission. Indeed, an
14 injunction will allow the State of Alaska to follow the terms of the CBA, obtain the
15 feasibility study, and then allow the Union to submit an alternative plan before the State
16 of Alaska takes any steps towards privatization, as required by the CBA.

17 **A. The Union has a Substantial (if not Guaranteed) Likelihood of Success on**
18 **the Merits.**

19 The Union will prevail on its claims for breach of contract, anticipatory breach of
20 contract and breach of the covenant of good faith and fair dealing. Under Alaska law, a

1 claim for a breach of contract requires proof that a party had a duty to perform and that
2 the party failed to perform as agreed in the contract.⁵⁹ The CBA unequivocally requires
3 the State of Alaska to abide by a specific procedure when it determines to contract out
4 positions that are subject to the CBA. It is undisputed that the State of Alaska failed to
5 follow those steps, and is now trying to complete the feasibility study after it has entered
6 into the multi-year Wellpath Contract.⁶⁰ In fact, in March 2019, Deputy Commissioner
7 Wall told the Union that on advice of counsel the State of Alaska decided to extend the
8 deadlines in the Wellpath Contract to “comply” with the CBA.⁶¹ Even so, the State of
9 Alaska continues to contract out with Wellpath under the terms of the Wellpath Contract,
10 and in violation of the CBA. There simply cannot be any dispute over whether the State
11 of Alaska breached the CBA.

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15 The State of Alaska also anticipatorily breached the Ratified CBA. That contract,
16 subject to funding pursuant to AS 23.40.215, includes nearly identical provisions as the
17 CBA.⁶² The Ratified CBA is set to take effect on July 1, 2019. The State of Alaska will
18 be in breach of that contract if it continues to take the steps towards privatization without
19 satisfying Article 13 of the CBA.
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22 ⁵⁹ See Alaska P.J.I. 24.03, “Breach of Contract,” and 5A A. Corbin, Corbin on
Contracts, § 1228 (1963).

23 ⁶⁰ Metcalfe Aff. at ¶¶ 5-6; Exhibit L, ASEA Press Release, “State to Study API,
Misunderstands Contract,” March 15, 2019.

24 ⁶¹ Exhibit K.

25 ⁶² Metcalfe Aff. at ¶ 3.

1 There is also a substantial likelihood that the Union will prevail on its claim for
2 breach of the covenant of good faith and fair dealing. Under Alaska law, the covenant of
3 good faith and fair dealing is implied in every contract in order to “effectuate the
4 reasonable expectations of the parties to the agreement.”⁶³ The covenant includes
5 subjective and objective elements.⁶⁴ In order to satisfy the subjective element, a party
6 must establish that another party deprived it of the benefit of the contract.⁶⁵ The
7 objective element requires a showing that the other party acted in an unfair matter.⁶⁶ A
8 party breaches the covenant of good faith and fair dealing when it deprives “the other
9 party of the explicit benefits of the contract,” and acts “in a manner that a reasonable
10 person would regard as fair.”⁶⁷ Based on the facts, exhibits, and affidavits attached to
11 this pleading, there is a substantial likelihood that because the State of Alaska breached
12 the CBA, it breached the covenant of good faith and fair dealing. In fact, such a claim is
13 assumed proved when a party, like the State of Alaska, breaches a contract.
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17 The same is true for the Union’s promissory estoppel claim. There substantial
18 likelihood the Union will prevail on its claim for promissory estoppel because the Union
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21 ⁶³ *Anchorage Chrysler Ctr., Inc. v. DaimlerChrysler Motors Corp.*, 221 P.3d 977,
22 992 (Alaska 2009).

23 ⁶⁴ *Id.*

24 ⁶⁵ *Id.*

25 ⁶⁶ *Id.*

26 ⁶⁷ *Casey v. Semco Energy, Inc.*, 92 P.3d 379, 383 (Alaska 2004).

1 relied on the promises by the State of Alaska, as described in the CBA, and enforcement
2 is necessary in the interest of justice.⁶⁸

3
4 Finally, the single-source procurement awarded to Wellpath is a violation of the
5 CBA. Article 13 of the CBA allows the Union to submit an alternate plan prior to the
6 State of Alaska contracting with any other party. Even so, the State of Alaska entered
7 into the Wellpath Contract without affording the Union the rights under the CBA. These
8 facts are undisputed and establish the State of Alaska's breach.

9
10 **B. The Union Will Suffer Irreparable Harm if an Injunction does not Issue.**

11 The Union and its members will suffer irreparable harm if this Court does not
12 immediately enjoin the State of Alaska from continuing the Wellpath Contract. The
13 injury to the Union is irreparable for the reasons explained above, including that the
14 Union and its members will not be able to remedy damages if Wellpath and the State of
15 Alaska privatize API. Moreover, the Wellpath Contract (and the milestones associated
16 with it) establishes the intent of Wellpath and the State of Alaska to fill GGU bargaining
17 unit positions with non-union employees, forever altering the Union's membership and
18 its ability to submit any alternate plan regarding API. This Court's immediate
19 intervention is required to allow the Union its rights under the CBA, and to prevent
20 irreparable harm.

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25 ⁶⁸ *Valdez Fisheries Dev. Ass'n, Inc. v. Alyeska Pipeline Serv. Co.*, 45 P.3d 657
(Alaska 2002).

1 Moreover, the longer Wellpath continues to operate within API, the more
2 entrenched it becomes into API operations, making it impossible for the Union’s alternate
3 plan to receive “fair consideration,” as required by the CBA.⁶⁹ Even now Wellpath is
4 developing relationships and entering into contracts with vendors and contractors, and is
5 submitting applications for pharmacy and food service licenses, and working with service
6 providers as it transitions to full privatization.⁷⁰

7
8 **C. The State of Alaska is Adequately Protected.**

9
10 In contrast to the irreparable harm facing the Union and its members, the State of
11 Alaska will not be injured by an injunction maintaining the State of Alaska’s operation of
12 API pending the resolution of this case. Indeed, an injunction will require the State of
13 Alaska to follow the law, and to abide by agreements and practices that are already in
14 place. The parties have operated under the same agreements for years. An injunction
15 ordering the State of Alaska to comply with the CBA and the Ratified CBA will cause no
16 injury. As established by the exhibits and undisputed facts in this case, API has not lost
17 certification or accreditation. The decisions by CMS and The Joint Commission are not
18 because of the State of Alaska’s contract with Wellpath.
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21 Finally, the State of Alaska has a strong public policy in favor of collective
22 bargaining agreements. In AS 23.40.070, the Alaska Legislature recognized that it is the
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24 ⁶⁹ Exhibit A at 13.01 C.

25 ⁷⁰ Metcalfe Aff. at ¶ 9; Exhibit C.

1 “public policy of the state to promote harmonious and cooperative relations between
2 government and its employees and to protect the public by assuring effective and orderly
3 operations of government,” including by allowing public employees the right to
4 “organize for the purpose of collective bargaining.”⁷¹

6 **V. CONCLUSION**

7 For the reasons explained here, this Court should issue the proposed order granting
8 the Union’s request for injunctive relief.

10 DATED this 15th day of April 2019, at Anchorage, Alaska.

11 DILLON & FINDLEY, P.C.
12 Attorneys for Plaintiff

13 By: Molly C. Brown
14 Molly C. Brown, ABA No. 0506057
15 Margaret Simonian, ABA No. 9901001

25 ⁷¹ AS 23.40.070(a).