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City and Borough of Sitka and  
The Sitka Police Department

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

RONALD DICK, )  
)  
Plaintiff, )  
)  
v. )  
)  
CITY AND BOROUGH OF SITKA & THE )  
SITKA POLICE DEPARTMENT, )  
)  
Defendants. )

Case No. 3:23-cv-00041-HRH

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT**

COMES NOW defendants CITY AND BOROUGH OF SITKA and THE SITKA POLICE DEPARTMENT (hereinafter collectively referred to as "Sitka" or "the City") and, pursuant to Federal Rule of Civil Procedure 56, OPPOSE the plaintiff's pending motion for summary judgment and CROSS-MOVE for summary judgment in their favor.

The plaintiff, Ronald Dick, believes that federal law allows him to drive an unregistered, uninspected and unapproved golf cart on Sitka's public roads. While he was allowed to do so for a time, the law itself never permitted this use. Mr. Dick believes that the Americans with Disabilities act (ADA) requires local governments to allow golf carts to drive on their streets.

There is no authority supporting this claim. Some courts have held that the ADA requires *Ronald Dick v. City and Borough of Sitka et al*, Case No. 3:23-cv-00041-HRH  
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reasonable accommodation for the use of golf carts on certain public trails. There's been a suggestion that limited use on road shoulders might be allowed. But to require allowing unmodified and unapproved golf carts onto public roads in mixed traffic would be well beyond the scope of federal law. Such use would pose immediate public safety concerns. The ADA does not force municipalities to allow the preferred transport of particular disabled persons. Rather, federal law requires reasonable accommodation. There are multiple options for Mr. Dick which qualify. In addition to the local bus system and various courtesy transports, current state and local law allow for "All Purpose Vehicles" (APV's) which are properly licensed and registered to be driven on many public roads. The requirements for APV's are reasonably tailored to meet legitimate safety concerns. It's not clear whether Mr. Dick's golf cart meets these requirements, because it appears he has never attempted to have it certified, licensed or registered. To the extent he's hoping to have the court simply ignore the current laws and require the City to allow all golf carts on the roads, there's no support whatsoever for his interpretation of federal law. The litigation should be resolved in favor of the defendants on the ADA claims. Dick's state law claims are likewise baseless, since the officers had legitimate cause to investigate the golf cart and warn Dick not to drive it on the public roads anymore. There is absolutely no support that the officers acted outrageously or intentionally caused harm to Mr. Dick.

**A. Procedural And Substantive Background**

Ronald Dick has sued the City and Borough of Sitka and the Sitka Police Department for alleged violations of the Americans with Disabilities Act, as well as for the state-law tort claims of wrongful arrest and intentional infliction of emotional distress. See Complaint filed 3/1/23. For purposes of this motion, the defendants are assuming that Mr. Dick's supported allegations are correct. Dick posits that he is "gravely disabled" and that he has used what he classifies as an "Other Power Driven Mobility Device" (OPMD) to get around town. Id. He claims that it is *Ronald Dick v. City and Borough of Sitka et al*, Case No. 3:23-cv-00041-HRH  
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impossible for him to ride a bike, motorcycle or ATV, or drive a car or enter or sit in a car (without assistance." Id. He does not claim that he cannot use a powered wheelchair or ride in a car with assistance. He alleges that he has been using his OPDMD since January 8, 2019. Id. Given that this case has only just begun, the defendants have not had an opportunity to conduct discovery into these claims. However, Dick has proffered some supporting material that shows his golf cart was obtained at least in part as a medical device for his disability. For purposes of this motion, the City is not contesting the claim that the golf cart is indeed intended to be used as an OPDMD under the ADA.

Dick claims that his device "was modified for use on Sitka's roads at the point of purchase and is equipped with: a DOT approved windshield; windshield wipers; headlights; front and rear running lights; turn signals and flashers, front and rear brakes; and a horn." Complaint at para. 9. He does not reference what set of standards he looked to in order to make it usable on Sitka's roads. As we will discuss below, he has apparently not attempted to have this vehicle certified for use under Sitka's current law regarding the use of APV's on public roads. It's possible that the vehicle would need to be able to move faster than it currently can. And certainly, it would need to be licensed and registered. At this point we simply don't know what, if anything, is lacking in order for him to be able to legally use the vehicle on Sitka roads under the law. Not only was he never given a citation for anything, he never took the steps necessary to determine if his golf cart could be qualified as an APV. He's suing on the theory that all he has to do is cite generally to federal law and the City will have to let him go where he wants with whatever vehicle he chooses.

Dick alleges that he was told that he could use his golf cart on the City roads and did so until Marcy 27, 2022. See Complaint at Para. 11. He was told this by certain officers within the Sitka police, but this information was not correct. As we will examine below, the statements of *Ronald Dick v. City and Borough of Sitka et al*, Case No. 3:23-cv-00041-HRH  
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an officer or the decision to enforce a law or not cannot form the basis of some estoppel claim. A driver cited for speeding won't be heard to complain that he'd been getting away with it for years prior. Dick also raises claims regarding the March 27, 2022 confrontation. Again, he was not cited for any crime. He was warned not to take his golf cart back on the roads. This was an accurate statement of the law and remains accurate. This does not constitute false arrest, false imprisonment or any other tort. The video record of the events also shows that no officer intentionally inflicted Dick with emotional distress.

The core problem with this suit is that it's based on Dick's personal belief and feelings. Since he was never cited for anything, there's no specific charge to consider. Since he never brought the vehicle in for inspection, it's impossible to determine whether it would or would not pass muster and be certified. What we can conclude is that the ADA does not mandate that the City simply let him ride around on his apparently untitled, unregistered and uninsured golf cart with modifications that may or may not be enough to qualify it under the new law. It's not legal to drive the vehicle on public roads as it stands, and his motion should be denied. Since there are several alternative forms of transport available, he already has reasonable accommodations available.

**B. Summary Judgment Standard.**

Summary judgment is used to avoid trial where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See, e.g., Bloom v. General Truck Drivers, Office, Food & Warehouse Union, 783 F.2d 1356, 1358 (9th Cir.1986). Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." FRCP 56(c). An issue of material fact is "genuine" if a reasonable juror could find for the opposing party. See Anderson

v. Liberty Lobby, Inc., 477 U.S. 242, 251–52 (1986). The party opposing summary judgment must proffer admissible evidence to show a genuine issue of material fact, or show that their position is correct under law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). All legitimate inferences are drawn in favor of the party opposing the motion. Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 520 (1991).

Under the Americans with Disabilities Act, summary judgment may be granted on the question of "reasonable accommodation" where the entity in question shows that "an 'accommodation seems reasonable on its face, i.e., ordinarily or in the run of cases.'" Dark v. Curry Cnty., 451 F.3d 1078, 1088 (9th Cir. 2006) (citing U.S. Airways, Inc. v. Barnett, 535 U.S. 391, 401–02, 122 S.Ct. 1516, 152 L.Ed.2d 589 (2002)). As we shall see, the accommodations are already in place, and the ADA does not require the City to open its streets up to whatever golf cart other conveyance he personally prefers to use.

**C. Dick's Personal Golf Cart Is Not Generally Allowed On The Public Roads Or Sidewalks Under Local Law.**

Mr. Dick's complaint seems to emerge in part from a misunderstanding regarding the laws regarding the use of golf carts on the public roads. We should clarify what Alaska law requires as a general matter. First of all, there must be a title and registration for the vehicle unless an exception applies. See AS 28.10.011 ("Every vehicle driven, moved, or parked upon a highway or other public parking place in the state shall be registered under this chapter."). The exceptions are listed as those vehicles:

- 1) driven or moved on a highway only for the purpose of crossing the highway from one private property to another, including an implement of husbandry as defined by regulation;
- (2) driven or moved on a highway under a dealer's plate or temporary permit as provided for in AS 28.10.031 and 28.10.181(j);
- (3) special mobile equipment as defined by regulation;
- (4) owned by the United States;
- (5) moved by human or animal power;

- (6) exempt under 50 U.S.C. App. 501-591 (Soldiers' and Sailors' Civil Relief Act);
- (7) driven or parked only on private property;
- (8) the vehicle of a nonresident as provided under AS 28.10.121;
- (9) transported under a special permit under AS 28.10.151;
- (10) being driven or moved on a highway, vehicular way, or a public parking place in the state that is not connected by a land highway or vehicular way to
  - (A) the land-connected state highway system; or
  - (B) a highway or vehicular way with an average daily traffic volume greater than 499;
- (11) an implement of husbandry operated in accordance with the provisions of AS 19.10.065;
- (12) an electric personal motor vehicle.

Id. The exceptions number 1-12 are inapplicable on their face to Mr. Dick's golf cart. The provision for "electric personal motor vehicle" is limited to "(12) "an electric personal assistive mobility device that is a self-balancing vehicle with two nontandem wheels, designed to transport only one person, has an electric propulsion system, and has a maximum speed of not more than 15 miles an hour." AS 28.90.990. Sitka is not on the list of exempt communities under subsection (10). See <https://doa.alaska.gov/dmv/reg/exempt.htm>. All vehicles subject to registration must have a title, as well. See AS 28.10.201. All vehicles subject to registration on the public roads (that is—those not given an exemption) are required to carry the mandatory insurance coverage as well. AS 28.22.011. And, of course, all drivers must be licensed (we are presuming Mr. Dick is).

Certain vehicles classified as "low speed vehicles" under state law may be registered, but they must be approved by the state and meet a variety of requirements. See AS 28.90.990(17). The regulations for such vehicles are also covered by federal law. See 49 C.F.R. § 571.500 (federal motor vehicle safety standards for "low-speed vehicles"). Those vehicles including golf carts which do not meet these standards as determined by the state DMV are not street-legal. See, e.g., Haar v. State, Dep't of Admin., Div. of Motor Vehicles, 349 P.3d 173, 177 (Alaska 2015). As the court explained, the Department of Administration "may refuse to issue a

certificate of title or may revoke a previously issued title under certain conditions. It may also refuse to issue a vehicle's registration or may revoke a registration for reasons including that 'the vehicle is determined to be mechanically unsafe to be driven or moved on a highway, vehicular way or area, or other public property in the state.'" Id. at 178. Our high court found these provisions to have a reasonable basis. Id. at 180-81.

There appears to be no title or registration for Mr. Dick's golf cart on record. It's not clear if he has the required liability coverage. As discussed below he apparently has never attempted to have the vehicle approved for road use. So it's impossible to tell for certain at this stage if it could be certified for use on the roads. What we can say for certain is that the golf cart would have to be titled, registered and otherwise approved in order to be road worthy. He does not simply get to point to federal law and demand to be exempt from state and local rules. It's also not clear if Mr. Dick actually is licensed to drive. There's been no time for discovery yet, and he was never arrested or cited for anything. He's bringing suit because he was told if he kept driving a golf cart around the streets he would be cited. However, it doesn't appear to be necessary to delay resolution to explore these factual questions, since he has no legal case as the matter stands.

As to sidewalks, Sitka has adopted the State of Alaska's traffic laws. See Sitka Ord. 11.28.010. Under Alaska law: "No person may drive a vehicle on a sidewalk or sidewalk area other than upon a permanent or temporary driveway, except as a municipality allows the riding of bicycles on sidewalks outside of a business district." 13 AAC 02.487. The reasons for this are self-evident, given the threat to pedestrians of vehicles on sidewalks. See Affidavit of Chief Baty [Exhibit A].

**D. Representations Regarding Legality Are Not Binding On The City.**

Dick relies on communications that, by his account, confirmed that his use of his OPDMD was permitted "under the ADA." See Complaint at Para. 10. He cites to an email from Lance Ronald Dick v. City and Borough of Sitka et al, Case No. 3:23-cv-00041-HRH  
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Ewers of the Sitka Police, who did some research and could not find any laws prohibiting the use of golf carts on the City roads. See Exhibit to Plaintiff's MSJ. It appears Lance Ewers may have been looking for a law forbidding the use of golf carts, and found the reference to low-speed vehicles. But, as discussed, these need to be registered. There's no indication that Mr. Dick's golf cart ever was. And as a vehicle subject to registration, the golf cart would absolutely need insurance in order to be driven on the public roads. The state law does not simply allow uninsured, untitled and unregistered golf carts on state roads and highways.

To the extent Dick is relying on the position of the Sitka police department regarding the legality of his golf cart as a public vehicle, this reliance is legally misplaced. It's well-established that the position taken regarding law or its enforcement by a police officer or an entire department do not have any actual force of law. This holds true both regardless of whether there has been a decision to criminalize particular conduct or a decision that certain conduct is not criminal.

Put another way, there is no doctrine of estoppel when it comes to decisions made by officers or police departments. And there can be no "reasonable reliance" on a particular department policy or representation. This is because police officers and departments have no authority to make or alter laws. And their internal policies and decisions, while they may impact many people, may be changed without public notice. The policies are not regulations and have no force of law.

It's not clear what theory Dick is asserting which would bind the City to the emails. The Alaska Supreme Court has never held that municipal or state law shall be determined by representations of peace officers. The closest analogy would probably be application of the laches doctrine to prevent changes in property status. Corkery v. Municipality of Anchorage, 426 P.3d 1078, 1083–85 (Alaska 2018). But this is an equitable defense to delays in asserting a claim.

The court held that it did not prevent the municipality from asserting its position on a building *Ronald Dick v. City and Borough of Sitka et al*, Case No. 3:23-cv-00041-HRH  
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permit. Id. No such doctrine has ever been applied to bar a municipality from enforcing the law where an officer or other agent has told the affected citizen that his actions were legal. With that clarified, we will turn to the question of whether federal law requires Sitka to permit Mr. Dick to drive his golf cart on public roadways, regardless of state and local law.

**E. Federal Law Does Not Require Municipal Governments To Permit Golf Carts On Their Roads.**

The core of Mr. Dick's position in this litigation is that federal disability law requires that Sitka allow him to drive his golf cart around town on the public roads. While he cites a good deal of background case-law, when it comes to the main point at issue, he offers no direct support. Simply put, there is no case law or regulatory authority requiring municipal governments to allow golf carts to freely drive on their roadways. A search of the case law shows no courts interpreting the ADA to impose such a requirement. It seems that Mr. Dick has misunderstood what the classification of "other power-driven mobility device" (OPDMD) means. We will briefly examine the origin of the concept.

The ADA was created "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," while providing "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. §§ 12101(b)(1)–(2). Title II of the ADA prohibits discrimination in public services by governmental entities, and would be the portion applicable to Sitka. See 42 U.S.C. §§ 12131–12165. Dick argues that Title II governs "how defendants must make reasonable modifications to permit OPDMDs on Sitka roads and sidewalks for people with mobility disabilities and that the defendants violated the code by "forbidding the plaintiff from using his OPDMD on Sitka roads and sidewalks. Motion for Summary Judgment at 16/27.

The concept of the OPDMD comes from regulations implementing Title II. Under these provisions:

(b)(1) Use of other power-driven mobility devices. A public entity shall make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the public entity can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the public entity has adopted pursuant to § 35.130(h).

(2) Assessment factors. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a public entity shall consider—

(i) The type, size, weight, dimensions, and speed of the device;

(ii) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);

(iii) The facility's design and operational characteristics (e.g., whether its service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);

(iv) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and

(v) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws and regulations.

28 C.F.R. § 35.137. The code says absolutely nothing about requiring the use of OPDMD's on public roads or highways. It speaks, as shown above, of assessing their use in "a specific facility."

If we treat the roads and highway as a facility, then the need to prevent him from driving his unregistered, uninspected, untitled and apparently uninsured golf cart on the roads and highways is considerable. See Affidavit of Chief Baty [Exhibit A]. The existing laws prohibit the use of unregistered and untitled vehicles on the roads precisely because there's no way to tell whether and to what extent these vehicles will create a hazard to their users and others. The ADA has never been interpreted to require a waiver to such laws, and establishing one would open the way to any individual such as Mr. Dick to drive any vehicle they desired on the public roads. This cannot be seen as a reasonable interpretation of the law, and it isn't.

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The plaintiff cites to an illustration offered by the Attorney General suggesting that a county could accommodate the use of golf carts on the shoulders of a highway "in limited circumstances that do not involve a significant risk to the health or safety of others" is "reasonable modification" of the county policy. See MSJ at 22/27. This is a very far cry from Dick's insistence that federal law mandates that Sitka allow him to use his golf cart on its roadways and sidewalks. Doing so without any restrictions would run afoul of state and municipal law, and pose a direct threat to the safety of Mr. Dick and the public on roads and sidewalks. See Affidavit of Chief Baty.

The requirement of "reasonable accommodations" does not mandate a reworking of city and state traffic laws to allow for Mr. Dick's preferred golf cart. The case law regarding OPDMD accommodation is limited, but informative. The case closest to being on point is Boudreau v. Nocco, a case from the federal court in Florida last December. No. 8:21-CV-1158-VMC-AEP, 2022 WL 17369636, at \*1 (M.D. Fla. Dec. 2, 2022) [Exhibit B]. In that case, the plaintiff sued on the theory that the ADA required Pasco County to allow him to use his golf cart on public sidewalks. Id. The court noted that the ADA requires "reasonable" accommodations, not "optimal ones fine tuned to [their] preferences." Id. (citing Medina v. City of Cape Coral, 72 F. Supp. 3d 1274, 1279 (M.D. Fla. 2014) and Nunes v. Mass. Dep't of Corr., 766 F.3d 136, 146 (1st Cir. 2014)). The Boudreau court went on to note that the plaintiff had access to public transportation and other alternative methods of travel. Id. The court explained that "meaningful access" doesn't mean equal access or preferential treatment. Id. The court held that these were already providing sufficient access to disabled persons, and refused to force the local government to allow the golf cart on the sidewalks.

It's clear that a "reasonable accommodation" under the ADA can include existing alternatives, not just accommodations created in response to a particular complaint. See, e.g., *t Ronald Dick v. City and Borough of Sitka et al*, Case No. 3:23-cv-00041-HRH  
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naturally follows that when an individual already has “meaningful access” to a benefit to which he or she is entitled, no additional accommodation, “reasonable” or not, need be provided by the grantee. A.M. ex rel. J.M. v. NYC Dep't of Educ., 840 F. Supp. 2d 660, 680 (E.D.N.Y. 2012), aff'd sub nom. Moody ex rel. J.M. v. NYC Dep't of Educ., 513 F. App'x 95 (2d Cir. 2013). Sitka has a bus system known as "The Ride" and there are charity and courtesy shuttles available, as well as the state process for certifying an electric vehicle referenced above. But the most direct alternative, which Mr. Dick briefly mentions, is to get an alternative vehicle certified for road use under the new All-Purpose Vehicle System.

In February of 2022, the Assembly for the City and Borough of Sitka passed an ordinance regarding "all purpose vehicles" on the roadway. See Ordinance No. 2022-02 [Exhibit C]. The current Sitka ordinance was enacted to supplement the State of Alaska's new code for All-Purpose Vehicles ("APV"), which came into effect on January 1, 2022. Id. Under the new state code, APV's are required to be driven on roads with speeds of less than 45 miles per hour. Id. The local communities may prohibit their use. Id. The APV user must have a valid driver license of Class D or higher, the APV must be titled and registered with proof of insurance. Id. It must also have basic safety equipment including lights and reflectors, brakes, throttle and muffler/emission control systems. Id. Front and rear license plates must be affixed. Id.

The City's APV code requires that APV users obtain a permit from the City. SGC 11.75.030(A). The application process is explained in detail. Id. It reflects the reasonable purpose of ensuring that the proposed APV is safe and road-worthy, with insurance and sufficient power. Id. When using a permitted and registered APV, the driver must abide by a standard set of requirements. SGC 11.75.040. These are also standard, and reasonably related to road safety. They echo requirements already imposed on motor vehicle drivers.

Of course, there's no way to know at this point if Mr. Dick's golf cart could qualify. See Affidavit of Chief Baty. Given that it appears to be wholly unregistered, untitled and presumably uninsured, it probably wouldn't. But, as noted, the requirements imposed on these kinds of vehicles are only somewhat greater than those imposed on all motor vehicles. The only substantive difference is that standard motor vehicles are already built to be road worthy, so the work of showing that they have safety features and sufficient power has already been accomplished. Requiring more oversight of the murkier world of APV's is reasonable, and ultimately verifies that they are up to the same general standards as other road-worthy vehicles.

This does not mean that the golf cart Mr. Dick bought and transported to Sitka will ever be able to pass muster. He may have to get some other form of transportation. But this is the situation anyone wanting to drive on the public roads faces, and there are many vehicles that can simply no longer qualify as road worthy due to damage or defect. Mr. Dick's presumptive disabled status does not give him the authority to cast aside these requirements and force the city to accept his chosen alternative vehicle. Nobody has that level of authority, and allowing it would open the way to manifold hazards.

**F. The Plaintiff Was Never Cited Or Arrested In Relation To His Golf Cart.**

Dick has sued for what he claims was "unlawful arrest." See Complaint, Para. 20-22. He claims that he was arrested on March 27, 2022. First of all, this was not an "arrest." He was not even cited. See Affidavit of Officer Chandler [Exhibit D] This is presumably being brought as a pendant claim under state law, since there is no tort of "wrongful arrest" under the ADA or federal law. But in any case, Alaska courts distinguish between investigatory stops and arrests. See, e.g., Howard v. State, 664 P.2d 603, 609 (Alaska Ct. App. 1983). A person detained at an investigatory stop may be detailed while the police make a specific and limited inquiry. Id. Once over, the person must be freed or arrested. Id.

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In this case, a videotape of the encounter shows the officers informing Mr. Dick that his continuing use of the golf cart on public roads will not be tolerated. See Affidavit of Officer Chandler and Video [Exhibit E]. Mr. Dick was obviously unhappy with this, but he was not arrested and his vehicle was not impounded. He seems to believe that because he was not allowed to drive home, this constituted an arrest. But there's no authority to support this position. His vehicle was in the private lot until he could remove it. While it may be annoying to him that he could not drive it home, there's no requirement that officers allow illegal driving to avoid inconveniencing motorists.

The tort of "wrongful arrest", "false arrest" and "false imprisonment" are all considered the same cause of action under Alaska law. See Waskey v. Municipality of Anchorage, 909 P.2d 342, 345 (Alaska 1996). The elements are simply that there was (1) a restraint upon the plaintiff's freedom, (2) without proper authority. Hazen v. Municipality of Anchorage, 718 P.2d 456, 461 (Alaska 1986). The brief stop and discussion with Mr. Dick was done on proper authority, to ensure that he would not violate the law by continuing to drive the vehicle. See Affidavit of Officer Chandler. A warning of this type is a legitimate and Constitutional exercise of police authority. The officers were not using the threats to force a confession or consent from Mr. Dick. They were making sure that he knew that his golf cart was not, in fact, road worthy and would not be allowed on Sitka streets. This was done with authority for the legitimate purpose of enforcing the law.

**G. The Intentional Infliction Of Emotional Distress Claim Is Without Merit.**

The plaintiff has alleged that the defendants "recklessly or intentionally intended to cause plaintiff severe emotional distress." Complaint at Para. 25. Intentional infliction of emotional distress (IIED) is a state-law claim. It has no counterpart under the ADA or federal law. The

Alaska Supreme Court has explained:

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The offending party, through extreme or outrageous conduct, must intentionally or recklessly cause severe emotional distress or bodily harm to another. We hold that the trial judge should make a threshold determination whether the severity of the emotional distress and the conduct of the offending party warrant a claim of intentional infliction of emotional distress. The actor's offensive conduct must be very similar to that which would sustain a claim for punitive damages.

Richardson v. Fairbanks N. Star Borough, 705 P.2d 454, 456 (Alaska 1985). This requirement of a preliminary finding by the court is very unusual under Alaska tort law, and underscores how wary the court is of allowing this cause of action to spread beyond its narrow confines.

The plaintiff must do more than simply allege he was emotionally distressed. He has to establish to the court's satisfaction that the conduct was "... so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Oaksmith v. Brusich, 774 P.2d 191, 200 (Alaska 1989). Where this showing is not made, the claim should not proceed.

In this case, Dick is a very long way from meeting his burden. He appears to have been very emotionally upset by the City's decision to start enforcing the law. But the record of the encounter shows no outrageous conduct or violation of the "bounds of decency" by Sitka officers. See Chandler Affidavit and Video. Indeed, these officers would have been well within their authority to simply wait until Dick drove back and then cite him. It's extraordinary to see a claim for IIED in these circumstances, and it should be resolved in the City's favor.

### **Conclusion**

It's unfortunate in some sense that Mr. Dick was given the impression that he could drive his personal golf cart around town. On the other hand, he ended up being able to evade legal requirements for several years and never received a citation for his conduct. His reaction to learning that the law actually doesn't allow him to drive around in an unregistered, untitled and probably uninsured custom golf cart has been excessive. He hasn't attempted to see what he

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would need to do to make his vehicle qualify as road-worthy under the current law. And since he wasn't cited, this entire lawsuit is a preemptive effort to force the City to simply allow him to drive whatever he wants on the public roads. The ADA does not support his position, and indeed existing authority shows that he has no claim under the provisions of the Act. As far as the state law tort claims, neither has any merit. The claim of false arrest is baseless, since he was not arrested and the officers had legitimate cause to investigate whether the golf cart was still being driven on the roads. The warning that he should not drive was a courtesy the police had no obligation to provide. As far as the intentional infliction of emotional distress claim is also without any merit. The video of the incident establishes that the police did not act outrageously. Mr. Dick's own emotional reaction to the City's position doesn't turn an encounter into an arrest or a tort claim. Dick's motion should be denied and summary judgment should be granted in favor of the defendants.

DATED this 5<sup>th</sup> day of June, 2023 at Anchorage, Alaska.

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THE SITKA POLICE DEPARTMENT

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Defendants' Initial Disclosures and Defendants' Preliminary Witness List was served *electronically and via USPS First Class Mail* on this 5<sup>th</sup> day of June, 2023.

To the following persons:

James J. Davis, Jr.  
Goriune Dudukgian  
Northern Justice Project

/s/ Seinna Smith

WALKER & EAKES, LLC  
170.474/pldg/2023-06-05 Defs' Opp &  
Cross-Mtn for Summ Judgment