

1 Law Office of Joseph W. Geldhof
2 2 Marine Way, Suite # 207
3 Juneau, Alaska 99801
4 Telephone: (907) 723-9901 [Mobile]
5 E mail: joeg@alaskan.com
6 Counsel for Plaintiff Eric Forrer

FILED
DISTRICT OF ALASKA
JUDICIAL DISTRICT
AT JUNEAU

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**SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU**

ERIC FORRER)
Plaintiff,)

vs.)

STATE OF ALASKA)
and LUCINDA MAHONEY,)
Commissioner of the Alaska)
Department of Revenue and)
JULIE ANDERSON,)
Commissioner of the Alaska)
of Commerce, both)
in their capacity as officials of)
the State of Alaska.)
Defendants.)

1JU-20-00644 Civil

**SUPPLEMENTAL AUTHORITY RELATED TO PLAINTIFF'S MOTION
FOR PRELIMINARY INJUNCTION**

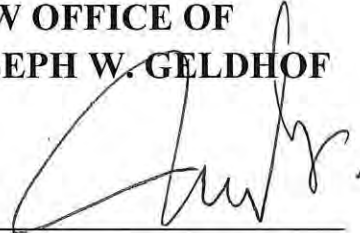
While preparing for the oral arguments scheduled for July 9, 2020, counsel for Eric Forrer ("Forrer"), noted that neither party provided the court with the express terms of the RPL pertaining to business relief funding that is central to the dispute to be addressed by the Court.

Attached as **Exhibit A** is the operative RPL document pertaining to the business relief allocation Forrer believes was incorporated by reference in HB 313,

1 the measure ratifying the allocation of the CARES Act funds via the RPL process
2 about which Forrer brought the above-captioned lawsuit as well as associated
3 materials produced by the executive branch related to the business relief funding
4 allocation.
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6
7 **DATED** this 8th day of July, 2020 at Juneau, Alaska.

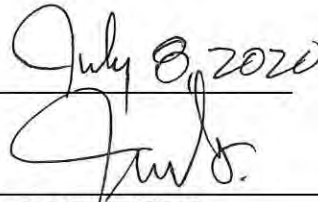
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9 **LAW OFFICE OF**
10 **JOSEPH W. GELDHOF**

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12 _____
13 Joseph W. Geldhof
14 Alaska Bar # 8111097
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18 **Certification**

19 I certify that a copy of this document,
20 and Exhibit A was hand delivered at
21 approximately 1500 hrs., local time, to:
22 the Alaska Attorney General's office in
23 Juneau, Alaska.

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DATED: July 8, 2020
By: 
Joseph W. Geldhof

Department of Commerce, Community, and Economic Development
Executive Administration
Commissioner's Office

Subject of RPL: State of Alaska COVID-19 Small Business Relief	ADN/RPL #: 08-2020-0251
Amount requested: \$ 290,000,000	Appropriation Authority: Sec. 1 Ch 1 FSSLA 2019 Pg 5 Ln 10 (Commissioner's Office) Sec 1 Ch 8 SLA 2020 Pg 4 Ln 25 (Commissioner's Office)
Funding source: Federal Receipts (1002) FY2020 Operating and FY2021 Operating	Statutory Authority: AS 44.88, AS 44.33.020(35)

PURPOSE

Federal authorization is required to expend increased federal revenues.

On March 27, 2020, Congress passed the federal act known as the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Section 601 of this Act established the Coronavirus Relief Fund (CRF) with the stated purpose of distributing \$150,000,000,000 to states for, "necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)".

Alaska has received \$1,250,000,000 from this fund and will direct \$290,000,000 toward small business relief programs.

An estimated \$750,000 for the Alaska Regional Development Organizations (ARDORs) to provide technical assistance to regional businesses in applying for and obtaining access to funding. One development organization per region currently unrepresented by an ARDOR may qualify for funding under this program upon entering an agreement to meet both the standard and COVID-19 specific reporting requirements of the ARDOR program.

The ARDORs provide regional expertise in economic development and are well positioned to provide local businesses information about funding opportunities and technical support needed to broaden access to those funding opportunities. The \$750,000 proposed would be equally distributed across the ARDORs and, in areas of the state not covered by an existing ARDOR, additional qualified entities to bolster their outreach and support resources to regional businesses. As of FY17, the State of Alaska does not provide operating funding to ARDORs. This RPL would provide a grant to ARDORS for a temporary increase in activities in direct response to the Coronavirus public health pandemic.

The remainder of the small business relief funding, estimated to be \$289,250,000, is designated for the AK CARES Funding Program ("AK CARES"). AK CARES is an essential part of the State's expedited economic response to COVID-19, providing grants at the direction of the Department of Commerce, Community and Economic Development (DCCED) to qualifying Alaska small businesses utilizing a third-party processor in order to rapidly review applications, distribute funding, and provide the necessary reporting. It is estimated that a processor will be able to verify applications and distribute funding at a rate of \$150,000,000 per month. The DCCED will transfer funds, through AIDEA, to the contractor. The first transfer will be in the amount of \$37.5 million with additional weekly disbursements based on actual applications approved.

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The DCCED estimates that there are over 10,000 small businesses in Alaska that were unable to obtain Small Business Administration (SBA) Payroll Protection Program (PPP) loans before funding ran out on April 16, 2020. With the second tranche of funding to the PPP program, that number is anticipated to be closer to 5,000 – 7,000, primarily small to micro businesses with fewer than 50 employees. Through DCCED and AIDEA's outreach to Alaska small businesses, DCCED estimates an average funding need by these businesses between \$30,000 and \$50,000.

AK CARES is being established in AIDEA, as a conduit for DCCED to provide a granting program utilizing the CRF distribution to small businesses. DCCED and AIDEA do not have the capacity to quickly retain and train staff or establish the necessary systems to operate a program with the anticipated volume of applicants expediently without contracting with an Alaska financial institution. An RFP will be put out for financial institution partner(s) to support the program per the terms detailed in the attachment to this RPL.

The third-party contractor(s) will ensure that funding distributed through these DCCED directed grants comply with all State and Federal guidelines on use of the CRF. Any CRF funding received by AIDEA through DCCED for AK CARES will comply with the federal CRF guidelines and will not be used by AIDEA for any other purposes.

Subject to the availability of funding and the order of applications received, AK CARES will make DCCED directed grants of between \$5,000 and \$100,000 to all licensed and eligible Alaska small businesses established prior to March 11, 2020 who have had business impacted by COVID-19. For purposes of this program, small businesses are defined as those with 50 full time equivalent employees or less. Businesses that have secured an Economic Injury Disaster Loan, PPP loan, or other federal program funding made available directly to small businesses under the Cares Act do not qualify. Up to 20 percent (but not limited to) of the funding is designated for rural communities (defined as a population of 5,000 or less). The amount of the DCCED directed grant is based upon an application for funding for (i) defined eligible expenses incurred by the applicant business during the period from March 11, 2020 to the application date plus (ii) defined eligible expenses certified to be incurred over the next eight weeks by the applicant business to re-staff/re-open.

PREVIOUS LEGISLATIVE CONSIDERATION

The Legislature has not considered a federal appropriation for contingency items. There are no previous RPLs for this activity.

TIMING ISSUES

The CARES Act was passed by Congress and signed into law on March 27, 2020. The Alaska State Legislature recessed on March 29, 2020. Given the timing of the CARES Act and passage of the FY21 Budget, the Governor's Office did not have enough information to request an appropriation during the current legislative process.

This RPL has been revised based on federal guidance released subsequent to the original RPL and to incorporate program detail that was not previously developed. The amount, statutory reference, appropriation authority, and distribution method have been updated.

Agency Contact: Micaela Fowler, Administrative Services Director, 907-465-2506

EXHIBIT A
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AK CARES Funding Program

DCCED Directed Grant Disbursement Program

Overview

In response to Governor Mike Dunleavy's Disaster Order dated March 11, and extended through enactment of SB 241 on April 9, 2020, AIDEA has implemented emergency regulations (3AAC 104.000 through 104.900) adopted under AIDEA Resolution G20-13 for the development of programs and regulations to address the financial hardship to small businesses in the state caused by the COVID-19 outbreak.

The Department of Commerce, Community & Economic Development (DCCED) has been identified as a pending recipient of the COVID-19 Response Fund ("CRF") provided to the State for items that "are necessary expenditures incurring due to the public health crisis with respect to the Coronavirus Disease 2019 (COVID-19)" as constrained by guidance released by the US Treasury on April 22 (the "Guidance") and the May 4 Frequently Asked Questions document.

Amounts paid from the CRF are subject to the restrictions outlined in the Guidance and set forth in section 601(d) of the Social Security Act, as added by section 5001 of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). DCCED has directed AIDEA to structure a program using the CRF to expeditiously distribute DCCED directed grant funding to Alaska's small businesses impacted by the COVID-19 health emergency and unable to access or qualify for funding directly from the federal programs enacted under the Cares Act.

Program Structure

DCCED directed grant disbursement program through an engagement agreement between AIDEA and a financial institution(s) as Program Operator(s) for grant application receipt, review, processing, funding and administration ("AK CARES" or the "Program"). AK CARES is being established in AIDEA, as a conduit for DCCED to provide small business relief using the CRF.

Program Funding and Availability

The total amount of funding dedicated to the Program will be determined by DCCED, subject to receipt of the CRF distribution (the "Program Cap"). The Program is targeting a launch date of May 26, 2020.

Applications for funding under the Program will be accepted from the date of Program launch until the earlier of (i) November 15, 2020, (ii) the end of the Governor's declared COVID-19 State of Emergency for the State of Alaska, or (iii) the Program Cap is reached.

The Program Operator(s) will provide funding anywhere in Alaska so that the AK CARES program shall be equitably available to benefit all regions of the state. Applications will be received on an equitable/non-preferential basis and processed in the order that they are received ("first-come, first-served" basis). Up to twenty (20) percent of the Program Cap will be dedicated for Rural Communities defined to be those

communities in Alaska with a population of 5,000 or less. The Alaska Demographics site will be the defining rule on rural population.

Eligible Applicants

Any small business licensed to do business in the State meeting the following criteria:

1. Applicant was an eligible business when the public health disaster emergency declaration was issued by the Governor on March 11, 2020;
2. Businesses with 50 full time equivalent employees or less as of March 11, 2020; and
3. Applicant was excluded or did not qualify, or otherwise unable to obtain funding from SBA PPP, SBA EIDL, or other federal funding programs under the Cares Act.

Applicants are the eligible, licensed Alaska businesses affected by the COVID-19 health emergency. Each Applicant may only make one application for funding. Alaska businesses having common ownership or member interests are not limited to apply or capped in aggregate funding due to that common ownership or member interests. Funding is based upon the actual expenses incurred by the business due to the crisis, subject to the maximum funding amount per business applicant.

Businesses that are not Eligible Applicants include:

- Marijuana related businesses (due to Program Operator institutional restriction);
- Secondary income sources;
- Out of state businesses;
- Businesses with more than 50 full time equivalent employees;
- Businesses that have received funding or have an approved application for SBA's PPP or EIDL loan program; and
- Businesses which have filed for bankruptcy.

Eligible Expenses

Subject to Section 601(d) of the Social Security Act outlined in the Guidance, funding may be used by the applicant to meet the following COVID-19 emergency related expenses ("Eligible Expenses") paid by the applicant business or held in arrears:

- Payroll costs and expenses;
- Payment of any short term (less than 24 months) or credit card debt incurred by the applicant to support the applicant's business during the emergency;
- Rent or mortgage payments (unless otherwise waived by lessor/lender);
- Utilities payments;
- Purchase of personal protective equipment required by the business;
- Business related equipment; and
- Expenses incurred to replenish inventory or other necessary re-opening expenses.

Funds must be expended in compliance with State and Federal law.

Applicant Funding

Grant funding: \$5,000 up to a maximum of \$100,000 per applicant business.

Subject to the cap of \$100,000 per applicant, the maximum amount of funding a business can apply for is based upon the following calculation:

1. Eligible Expenses from the State's date of declaration of emergency (March 11, 2020) to the application date; plus
2. Eligible Expenses to be incurred over the next eight (8) weeks by the business to re-staff/re-open (subject to review and limits based on prior year's expenses during the same period).

The total amount of Eligible Expenses which cannot be verified or funded by controlled disbursement (i.e funded directly to Applicant) will not exceed 25% of the total amount.

Applications will require satisfactory supporting information of Eligible Expenses to be confirmed by AIDEA's Program Operator and certifications from applicant. Program Operator will not be held liable for the accuracy or completeness of the Applicants information or certifications. Program Operator will use a controlled disbursement process, when possible, so that Program Operator can ensure that grant proceeds are used according to the defined Eligible Expenses under the Program and in compliance with the CRF Guidelines.

Application Process

The Application form, including instructions and operating procedures, will be made available prior to the Program launch date on the Program Operator, AIDEA and DCCED websites. In order to expeditiously establish the Program, applications will be received by the Program Operator through a designated, secure email channel. Applicant assistance will also be provided through a designated phone line established by the Program Operator.

Applicants will receive confirmation by return email that the application has been received and the date and time the application entered the funding queue. The Program Operator will review and verify the Applicant meets the eligibility criteria and following review will provide notice to the Applicant that their application is complete or incomplete. If an application is confirmed as complete and there is any further supporting information requested by the Program Operator, the Applicant will be notified and given the opportunity to provide this information within no more than three (3) days of notice while preserving their position in the funding queue. Program Operator will give consideration to technological access limitations for rural communities.

Program Rates and Fees

DCCED, AIDEA and the Program Operator(s) are facilitating this program with no cost or fees paid by the Applicant. The amount of approved funding received by the Applicant will be fully applied to Eligible Expenses. To the extent the Program Operator requires a membership or account creation to facilitate funding, those costs will not be paid by the Applicant.

As similarly provided under the SBA PPP, a Program Processing Fee will be payable through Program funding by DCCED and capped at 3% on the approved grant as directed by DCCED to cover the administrative and operational costs of the Program. The Program Operator may not collect any fees from the Applicant.

Compliance with CRF

Small business relief is being provided under direction for grant funding by DCCED. Confirmation of Eligible Expenses determining the amount of grant funding with CRF is required with the application prior to approval. Applicant is required to certify that all funds received will be used for Eligible Expenses and in compliance with State and Federal law.

Program Audit

AIDEA's RFP for Program Operator provided that the financial institution shall agree to the following:

- Inspection: will permit employees, agents or auditors of the Authority to inspect the business records of the bank relating to the program being administered, wherever located, during normal business hours or at any other reasonable time agreed to between the Parties.
- Books and Records: will keep and maintain proper books, accounts and records with respect to the programs being administered in accordance with Generally Accepted Accounting Principles. Participating bank agrees to provide reports and other financial information necessary to facilitate the tracking, reporting and auditing of the programs being administered.
- Federal Funding: will comply with all applicable federal and state statutes and regulations and requirements to federal funding utilized in the programs being administered.

Pursuant to 3 AAC 104.130, AIDEA and Program Operator reserve the right to audit an applicant's certified Eligible Expenses. An applicant will be required to certify that they will maintain a complete record of all transactions financed with the emergency loan proceeds for a minimum period of three (3) years from funding.

Pursuant to 3 AAC 104.110, an applicant will be required to certify that they remain liable under the Program for the wrongful misapplication of the proceeds up to one and one-half times the amount of proceeds received.

Attachments:

AK CARES Term Sheet with Program Operator

AK CARES Funding Program

Requirement	Description	Purpose	Terms and Conditions
Program Structure	DCCED Directed Grant Disbursement Program (the "Program")	To fully service, administer and monitor the distribution of the Program funding, the Program is structured through Program Operator's loan system as a loan application with 100% grant authorization upon application approval and funding to Program Operator.	Subject to the following terms and conditions as may be modified based on the guidelines defining the source of funding for the program arranged by AIDEA.
Program Rate & Fees	Program cost & fee structure – objective is to achieve the lowest all-in cost of funding to Alaska's small businesses.	<p>Program Operator and AIDEA are facilitating the program at cost.</p> <p>There are no additional fees.</p> <p>The only way PROGRAM OPERATOR can extend funding to an applicant is if they become a member/customer. As such Program Operator is donating the cost of becoming a member/customer to all approved non-member/customer applicants under the program.</p>	<p>Program Processing Fee:</p> <ul style="list-style-type: none"> 3%, based on the final funding amount to applicant <p>Rate breakdown</p> <ul style="list-style-type: none"> 2.62% to PROGRAM OPERATOR .38% Cost of Operations fee to AIDEA <p>These administrative costs of the program are paid from the source of funding for the program. Program Operator may not collect any fees from the applicant.</p>
Eligible Applicant	Lack of access to the federal funding programs.	Borrower was excluded or did not qualify, or otherwise unable to obtain funding from SBA PPP, SBA EIDL, or other federal funding programs under the Cares Act.	<p>Acceptable documentation:</p> <p>Signed certification from applicant that they have not received or been able to access any PPP or EIDL funds, do not have an application pending, or was otherwise do not qualify or unable to apply.</p>
Application Data	Establish a new application form for	For applicant's ease of reference, PROGRAM	The Program application will require borrowers to certify a

EXHIBIT A

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	the Program with required information for funding application incorporating the terms and conditions of the program.	<p>OPERATOR will be modeling its application similarly to the SBA's PPP application.</p> <p>Some portions of the application will be for statistical data collection purposes, and reporting to AIDEA, including:</p> <ul style="list-style-type: none"> • Rural Community reach • Regional distribution of funding • Industry codes • Job creation, employee retention. <p>These data points will not be considered for funding purposes.</p>	<p>series of questions and agreements concerning the business being affected by the COVID-19 emergency, use of funding solely for Eligible Expenses, compliance with law, as well as attach clearly defined supporting information for the application</p> <ul style="list-style-type: none"> • Application is being finalized with AIDEA and will be agreed prior to Program launch • PROGRAM OPERATOR and AIDEA will also define the Program guidelines and operating procedures as a reference for applicants
Minimums and maximums	DCCED directed grant amounts per applicant	<p>Target market based on small to microbusinesses.</p> <p>Applicant is defined as each licensed, eligible small business.</p>	<p>Applicant Min and Max funding amount:</p> <p>DCCED directed grant minimum \$5,000 up to a maximum \$100,000.</p> <p>Maximum amount of funding determined by Program Operator based on Applicant's supporting information for Eligible Expenses incurred but unpaid or held in arrears from March 11, 2020 plus Eligible Expenses to be incurred over the next 8 week period to re-staff/re-open.</p>
Payment Terms			<p>Once Program Operator has approved an application and allocated funding, DCCED's direction to AIDEA to transfer funds to the Program Operator is notice of approval of grant to the applicant.</p>

			There is no repayment requirement, provided applicant has complied with the full terms of the Program.
Source of Funds/AIDEA support	Funding capital for the Program	This program would run through Program Operator's Consumer Lending channels to facilitate the grant funding,.	<p>Program cap to be determined by AIDEA based on the directed sources of funding.</p> <p>AIDEA will direct funding to PROGRAM OPERATOR based on the following:</p> <ul style="list-style-type: none"> • On the Program launch date: an initial deposit, from AIDEA, of 25% of the program cap, will be made to PROGRAM OPERATOR into a non-interest bearing account. • Weekly, PROGRAM OPERATOR will provide a notice to AIDEA of the amount funded by PROGRAM OPERATOR and the corresponding required deposit amount. AIDEA will make a replenishing deposit, into the non-interest bearing account, no later than eight days from the receipt of the notice.
Program Duration	Availability of Program		PROGRAM OPERATOR operates the application period from the date of Program launch until the earlier of (i) November 15, 2020, (ii) the end of the Governor's declared COVID-19 State of Emergency for the State of Alaska, or (iii) the Program Cap is reached
Equal Access	Program is only for Alaska's small businesses.	The Program Operator is an equal opportunity lender. All businesses regardless of location	Program will ensure equal, non-preferential access to eligible applicants across the state of Alaska through dedicated access

	<p>Regional representation: ensure that all Alaskans from all approved business sectors have equal access to the Program.</p>	<p>within the state will have equal access to apply. There are additional qualification, documentation, and verification guidelines that must be met, by all, prior to approval.</p> <p>We will collect statistical data regarding rural community applications and approvals.</p>	<p>channel(s) to PROGRAM OPERATOR.</p> <p>PROGRAM OPERATOR will retain up to 20% of the total Program funding from AIDEA for rural communities. Rural communities are defined as having a population of 5,000 or less. Applications will be monitored on an on-going basis.</p> <p>Taking of an application in no way guarantees the applicant will be approved for the funding. Application decisions will not be made by Program Operator until all of the required documentation is received and verified.</p>
<p>Business License, Professional License, Article of Incorporation current bi-annual report.</p>	<p>All borrowers are required to have an active business, professional license, or current article of incorporation with a current bi-annual report for review.</p>	<p>Ensure borrowers have a legitimate business established prior to March 11, 2020 and are licensed to operate in the State of Alaska.</p> <p>Program is intended to include:</p> <ol style="list-style-type: none"> 1. Alaska small businesses affected by the COVID-19 health and economic emergency in all regions of the State 2. Businesses authorized to do business in the State which would otherwise not have access to the SBA PPP or other federal loan programs under the CARES Act; and 3. Alaska seasonal businesses which have not fully 	<p>Excluded from borrowing:</p> <ul style="list-style-type: none"> • Marijuana related businesses.(PROGRAM OPERATOR institutional restriction) • Secondary income sources • Out of state businesses. • Based on target market, businesses with more than 50 full time equivalent employees • Business that have received or have an approved application for PPP or EIDL loan. <p>Included in borrowing:</p> <ul style="list-style-type: none"> • Non-members/customers will be welcome to apply. • Businesses that are rejected from PPP or EIDL consideration or otherwise unable to access those programs. Based on target market, businesses with 1-50

		benefited from the terms and conditions of the SBA PPP or other federal loan programs	full time equivalent employees.
Eligible Expenses	<p>Define the business purpose for borrowing.</p> <p>Applicant is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses due to the COVID-19 health and economic emergency.</p>	<p>Working capital required by the applicant for recovery or economic support related to the COVID-19 health and economic emergency.</p> <p>We will collect statistical data in the application process in regards to job creation or retention.</p>	<p>Subject to Section 601(d) of the Social Security Act outlined in the Guidance, funding may be used by the applicant to meet the following COVID-19 emergency related expenses ("Eligible Expenses") incurred but unpaid by the applicant business:</p> <ul style="list-style-type: none"> • Payroll costs and expenses; • Payment of any short term (less than 24 months) or credit card debt incurred by the applicant to support the applicant's business during the emergency; • Rent or mortgage payments (unless otherwise waived by lessor/lender); • Utilities payments; • Personal protective equipment for employees ; • Business related equipment; and • Expenses incurred to replenish inventory or other necessary re-opening expenses. <p>Funds must be expended in compliance with state and federal law. Applicant remains liable for Misuse of Funds under Regulation 3 AAC 104.110.</p>
Controlled Disbursement	Controlled disbursement refers to how the borrower receives the funds.	In the event of a controlled disbursement funding proceeds are paid directly to creditor via cashier's check.	Controlled disbursement, when possible, so that Program Operator can ensure that proceeds were used according to the permitted use of funds and in compliance with the guidelines and criteria of AIDEA's source of funding through DCCED.

Application denial	Program Operator reserves the right to decline an applicant if they do not meet the requirements of the Program	Circumstances for denial* <ul style="list-style-type: none"> • Inability to provide required documents • Inaccurate or incomplete documentation • Misrepresentation in an attempt to mislead • Not a COVID-19 related event • Unwilling to comply with terms and conditions *this is not an exhaustive list	Borrower does have the right to appeal their decline within 90 days, in accordance with Regulation 3 AAC 104.140.
Audit	Program Operator will make all reasonable effort to enforce and comply with the requirements of the Program and the guidelines defined for the use of funds.	Allow DCCED and AIDEA to perform audits of the Program as recommended or required.	Program Operator agrees to the following: <ul style="list-style-type: none"> • Inspection: will permit employees, agents or auditors of AIDEA to inspect the business records relating to the loan program being administered, wherever located, during normal business hours or at any other reasonable time agreed to between the Parties. • Books and Records: will keep and maintain proper books, accounts and records with respect to the loan programs being administered and agrees to provide reports and other financial information necessary to facilitate the tracking, reporting and auditing of the loan programs being administered. • Federal Funding: agrees to comply with all applicable federal and state statutes and regulations and requirements to federal

			<p>funding utilized in the loan programs administered.</p> <p>Applicant's will certify that they agree to maintain a complete record of all transactions funded for a minimum period of 3 years from funding (3 AAC 104.130).</p>
Public Outreach/Publicity	AIDEA and the Department of Commerce mutually agreed press release with Program Operator.	Program Operator's marketing department is currently developing a marketing plan to clearly communicate the Program procedures to applicants prior to and during Program launch.	<p>PROGRAM OPERATOR and AIDEA agree that all references to the Program through PROGRAM OPERATOR by either party will include PROGRAM OPERATOR and AIDEA identification.</p> <p>PROGRAM OPERATOR and AIDEA agree that all notices to third parties and all other publicity concerning the Program with PROGRAM OPERATOR will be jointly planned, coordinated, and reviewed.</p> <p>PROGRAM OPERATOR and AIDEA personnel will be available as reasonably required to announce the Program launch, provide periodic public updates, and as reasonably requested to speak to a committee of the Alaska Legislature in a hearing during which the Program is on the agenda.</p>

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

ERIC FORRER,

Plaintiff,

v.

STATE OF ALASKA and LUCINDA
MAHONEY, Commissioner of the Alaska
Department of Revenue in her capacity as an
official of the State of Alaska,

Defendants.

FILED IN CHAMBERS
STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU
BY: KJK ON: July 8, 2020

Case No. 1JU-20-644 CI

ORDER FOR CLARIFICATION AS TO STATUS OF PLEADINGS

The status of the pleadings in this case has departed -- on both sides -- from what is called for under the rules. The court asks counsel to be prepared to discuss how to remedy this at the time set for oral argument on plaintiff's motion for preliminary injunction, July 9, 2020 at 9:00 a.m.

Plaintiff filed his complaint in this case on May 13, 2020. On May 20, 2020, plaintiff filed an amended complaint pursuant to Civil Rule 15(a), which permits a party to amend the party's pleading once as a matter of course before a responsive pleading is filed.

Although Civil Rule 12(a) calls for the state, or an officer or agency thereof, to file an answer within 40 days of service of a complaint, the defendants have never filed an answer to the amended complaint. Instead, defendants on June 19, 2020, filed a document entitled "Motion for Summary Judgment Dismissing Complaint as Moot."

Civil Rule 12(b) permits a party to bring any of the defenses set out in that rule by motion. And Rule 12(a) provides that the time for filing an answer is extended if a defendant

files a motion permitted under Rule 12. Thus the filing of a Rule 12(b) motion to dismiss extends the time for filing an answer.


It occurs to the court that counsel for defendants may have believed that the filing of their motion for summary judgment extended the time for filing an answer. A motion for summary judgment, however, is brought pursuant to Civil Rule 56, and not Civil Rule 12. The filing of a motion for summary judgment under Rule 56 does not extend the time for answer. Some ambiguity as to this point resulted from the fact that the motion for summary judgment includes the word "dismissing" in its title. Perhaps someone might, as a result, view the motion as a motion to dismiss, rather than a motion for summary judgment. Any such ambiguity, however, is removed by the fact that the motion is based on a theory of mootness, which is not one of the defenses which, under Rule 12(b), may be brought by a motion to dismiss. Thus it is not possible for the filing of that motion to have extended the time for filing an answer. As a result, the defendants' answer is overdue.

To further complicate matters, plaintiff on June 22, 2020 filed a Second Amended Complaint. However, plaintiff did not move for leave to file this document. Civil Rule 15(a) only permits a plaintiff to amend his complaint once as a matter of course. Any subsequent amendment requires leave of court or written consent of the adverse party, neither of which is evident in the court's file. Thus the second amended complaint is not properly before the court.

This is important because the State's June 19 "Motion for Summary Judgment Dismissing Complaint as Moot" refers to the first amended complaint. Analysis of that motion may be different depending on which complaint is before the court.

The court requests that counsel be prepared to discuss these procedural questions at the time of oral argument on the motion for preliminary injunction.¹

Entered at Juneau, Alaska this 8th day of July, 2020.


Philip M. Pallenberg
Superior Court Judge



Certification of Distribution

Geldhof Via Email

Phillips Via Email

Baton-Walsh Via Email

Via

By: K. Kolwig Date July 8, 2020

¹ It should be made clear that the court does not intend to hear oral argument on the motions for summary judgment on July 9, because briefing on those motions is not complete.