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By KPO Deputy

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

9 ERIC FORRER)
10 Plaintiff,)
11 vs.)
12 STATE OF ALASKA)
13 anc. SHELDON FISHER,)
14 Commissioner of the Alaska)
15 Department of Revenue)
16 in his capacity as an official of)
17 the State of Alaska.)
18 Defendants.)
19 _____)

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Juneau

1JU-18- 00699 Civil

20 **RESPONSE TO DEFENDANTS' MOTION TO STRIKE PLAINTIF'S**
21 **DEMAND FOR JURY TRIAL**

22 **INTRODUCTION**

23 Defendant, Eric Forrer ("Forrer"), as part of the public interest lawsuit
24 brought against the State of Alaska and Sheldon Fischer ("state"), timely filed a
25 request for a jury trial. The state opposes the request for a jury trial and has
26 moved to strike Forrer's demand for a jury trial.

27 For reasons outlined below, Forrer believes the state's motion to strike is
28 wrong as a matter of law or, at best, premature. Because the state has not filed
an *Answer* in this dispute and because Forrer believes there may be material

1
2 factual issues in dispute in this litigation, resolution by a jury as to the factual
3 issues in dispute may well be consistent with the Alaska Constitution affording
4 Forrer with the right to submit factual issues to a jury for resolution.
5

6 ARGUMENT

7 Forrer believes *Defendants' Motion to Strike Plaintiff's Demand for Jury*
8 *Trial* is at least premature and wrong as a matter of law.
9

10 The right to a jury trial is established in the Alaska Constitution. In
11 relevant part, the Alaska Constitution provides: "In civil cases where the amount
12 in controversy exceeds two hundred fifty dollars, the right of a of trial by a jury
13 of twelve is preserved to the same extent as it existed at common law."¹
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16 Before addressing the merits of the state's "motion to strike," it is worth
17 remembering that the existing procedural issue before the trial court is whether
18 Forrer, on behalf of the public, stated a claim upon which relief can be granted in
19 his *Complaint* (now amended). Forrer has argued previously that the court need
20 only review the *Amended Complaint* and ascertain whether Forrer made out a
21 claim and whether the court has authority to issue some form of relief. Relevant
22 to this inquiry is what form of relief has Forrer requested on behalf of the public.
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27 ¹ Alaska Constitution, Article I, Section 16.

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2 Forrer's *Amended Complaint* calls into question the legality of the bonded
3 indebtedness scheme adopted in HB 331, a proposal that would allow the state to
4 incur debt to obtain funds for the repayment of discretionary oil tax credits.
5 Essentially Forrer questions whether issuance of the proposed bonds is legal
6 according to the Alaska Constitution. In furtherance of Forrer's legal claim that
7 the HB 331 violates the Alaska Constitution, Forrer pled a number of facts and
8 referred to multiple provisions of the Article IX in the Alaska Constitution.
9
10

11 The state asserts that "[t]he nature of Plaintiff's claims are in equity."
12 [*Defendants' Motion to Strike* at page 3]. This is wrong in large part.
13

14 In reality, Forrer has requested a legal declaration with regard to the
15 constitutionality of HB 331, the legislative measure authorizing the state to
16 borrow up to \$1,000,000,000 via bonds. To be sure, Forrer has requested
17 conditional equitable relief, in the form of injunction, a remedy that is independent
18 of and not necessarily dependent on the legal relief Forrer seeks in the form of a
19 legal declaration.
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22 The state seemingly concedes that the core of this dispute is related to a
23 legal dispute and not a matter sounding in equity. The state notes: "... questions
24 of constitutional ... interpretation, including the constitutionality of a statute, are
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2 questions of law ...”. [*Defendants’ Motion to Strike* at page 3. Lines 3 & 4],
3 (emphasis added).

4
5 Seemingly, it is beyond doubt that Forrer seeks declaratory relief according
6 to the law in this dispute. The state’s misplaced invocation of the superior
7 court’s jurisdictional statute and conclusion that “[t]hese statutes do not provide a
8 right to a trial by jury” [*Defendants’ Motion to Strike* at page 2, lines 8-10], is
9 oddly misplaced.
10

11 The state’s contention that the jurisdictional provisions in statute do not
12 provide a right to a jury trial is correct. So what?
13

14 The Alaska Constitution provides Forrer and the public with the right to a
15 jury trial; the reference to the non-existence of a provision in statute can hardly
16 trump an express right afforded to Forrer and the public in the Alaska Constitution.
17

18
19 The state seemingly conflates Forrer’s ancillary request for contingent
20 equitable relief (in addition to the basic legal relief he seeks in the form of a
21 declaration), with the notion that he and the public may not demand a jury trial to
22 determine factual issues. The state’s apparent confusion as to the nature of a jury
23 in the context of this dispute is possibly related to the state’s position that it need
24 not file an *Answer*. Having sought to dismiss Forrer’s *Complaint* (now
25 amended), based on allegations that Forrer has failed to state a claim upon which
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1 relief can be granted, it may be that the state believes there are no facts in dispute
2 in this litigation. If the state actually believes there there are no facts in dispute
3 in this case, Forrer disagrees, at least at this juncture.
4

5
6 Forrer believes the state has not adequately addressed in even a summary
7 manner various factual issues raised in the *Amended Complaint*. As a matter of
8 fact, in the context of wrestling with the pending motion to dismiss filed by the
9 state, Forrer has provided the state and the court with various factual issues that
10 appear to be on controversy in the instant dispute.² The state has steadfastly
11 ignored Forrer's presentation of material issues Forrer believes are material to the
12 dispute. These issues of fact seemingly require a trier of fact to weigh and
13 consider what are the factual issues underlying Forrer's claims prior to entry of
14 judgment with regard to the constitutionality of the state's proposed bonded
15 indebtedness scheme as a matter of law. In furtherance of resolving this matter,
16 Forrer believes factual issues in dispute should be decided by a jury.
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21 Forrer apprehends the distinction between law and equity has largely been
22 abolished in most judicial systems but he notes: "the classification of a remedy as
23 legal or equitable remains important for several reasons of general significance."³
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26 ² See, e.g., *Affidavit of Eric Forrer*, attached, previously provided to the state and the court.

27 ³ Dobbs & Roberts, *Law of Remedies*, 3rd Edition, page 9 (2017).

1
2 Even with the merger of law and equity nearly sixty years ago, the right to demand
3 a jury trial for the purpose of ascertaining the facts in a dispute is protected. The
4 right to a jury trial "...cannot be dispensed with, except by the assent of the parties
5 entitled to it, nor can it be impaired by any blending with a claim properly
6 cognizable at law, of a demand for equitable relief in aid of the legal action or
7 during its pendency."⁴
8

10 CONCLUSION

11 Forrer has believes there may be outstanding factual disputes necessary for
12 the court to render a legal declaration related to the constitutional issues at the
13 heart of this dispute. Without an *Answer* or completion of discovery, it is
14 premature to rule on whether a jury is required to ascertain material facts that are
15 necessary for the court to address the legal remedy requested by Forrer, that being
16 a legal declaration as to the constitutionality of the billion-dollar bond scheme
17 authorized by HB 331.
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20
21 Accordingly, Forrer believes the court should refrain from striking Forrer's
22 request for a jury trial. Implicit in this request for relief on the part of Forrer is
23 the proposition that neither the state or Forrer should be precluded from moving
24 for summary judgment as a matter of law in the future if there are no outstanding
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26
27 ⁴ *Beacon Theatres v. Westover*, 359 US 500, 510 (1959).

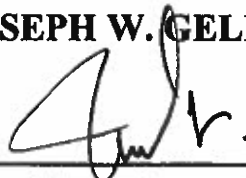
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2 issues of fact that would preclude entry of summary judgment. But at this
3 juncture, there appear to be facts in contention.

4
5 Because Forrer seeks a legal remedy in the form of declaratory relief, he
6 and the public are entitled to have a jury ascertain material facts in dispute related
7 to the underlying constitutional claims.

8
9 The court should deny the state's motion to strike without prejudice.

10
11 **DATED** this 8th day of August, 2018 at Juneau, Alaska.

12
13 **LAW OFFICE OF**
JOSEPH W. GELDHOF

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15 

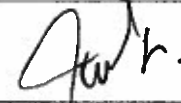
16
17 Joseph W. Geldhof,
Alaska Bar # 8111097

18
19 **PROOF OF SERVICE CERTIFICATION**

20 I certify that on this date, a copy
21 of this document
was sent via USPS to:

22 **William Milks,**
23 Ass'tant Attorney General
24 c/o Alaska Department of Law
Office of the Attorney General
Pouch 3
Juneau, Alaska 99811-0300

25 **DATE:** August 8, 2018

26
27 
Joseph W. Geldhof