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

4 STATE OF ALASKA,)
5 OFFICE OF PUBLIC ADVOCACY,)
6 OFFICE OF ELDER FRAUD AND)
ASSISTANCE,)
7 Plaintiff,)
8 vs.)
9 BILLIE C. DICKERSON d/b/a/ ALASKA)
10 VALLEY PARK AND SELL,)
11 Defendant.)

Case No. 3AN-09-11759 C

12 **PLAINTIFF'S TRIAL MEMORANDUM**

13
14 **1. Overview**

15 The present case is a civil action, brought by the Office of Elder Fraud
16 and Assistance under authority of AS 44.21.415 on behalf of elder Arthur
17 Bartlett, to recover economic damages for breach of contract from defendant
18 Billie C. Dickerson, in the principal amount of \$240,100 plus contractual
19 interest at 6.0%, from November 1, 2004 through the date of entry of
20 judgment.

21 That \$240,100 is the principal amount owed Mr. Bartlett on a
22 \$300,000 cash loan he made under agreement with Mr. Dickerson during the
23 period November, 2004 through November, 2007. Specifically, Bartlett lent
24 Dickerson \$200,000 cash on November 1, 2004 and an additional \$100,000
25 in cash on January 1, 2006.

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2 Dickerson borrowed that \$300,000 ostensibly to capitalize his
3 business, Alaska Valley Park and Sell, LLC ("AVPS"). In actuality, however,
4 Dickerson spent nearly all of the cash assets of AVPS on himself and his
5 own personal expenses. That personal spending is the major reason why
6 AVPS failed.

7 Still, at least through November, 2007, Dickerson managed to repay Bartlett
8 a total of \$59,900 principal-only on the loan. Dickerson has made no
9 payments since November, 2007.

10 Dickerson claims that the \$300,000 was not a loan but an
11 "investment" and that Bartlett must absorb the loss.

12 Dickerson also blames the failure of AVPS on the downturn in the
13 economy. That "blame someone/something else" approach is not
14 convincing. The business and financial account records of AVPS prove a
15 much more believable, alternative explanation. Those records show that
16 Billy Dickerson used and abused the cash assets of AVPS, on literally
17 hundreds of occasions, to buy personal items, pay personal expenses and
18 pocket personal cash.

19
20 **2. Undisputed Facts**

21 There is no dispute that Dickerson obtained \$300,000 in cash from
22 Arthur Bartlett on the dates specified. There is no dispute that Mr. Dickerson
23 paid Mr. Bartlett a total of \$59,900 back through November 29, 2007 and has
24 made no payments since. There is no dispute that there is a principal
25 balance of \$240,100 at stake.

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3 **3. Disputed Facts**

4 The parties dispute whether that \$300,000 was loan or a speculative
5 "investment." Mr. Bartlett contends that the \$300,000 transfer was a loan, to
6 be repaid at 6.0% interest, on a monthly basis. Mr. Dickerson contends that
7 the transfer was merely a speculative "investment" carrying no promise of
8 repayment or return, other than what Dickerson, in his discretion, would
9 choose to pay and did pay, as a "monthly dividend." Dickerson denies that
10 he owes Bartlett either principal or interest of any kind in any amount.

11
12 **4. Issues**

13 Whether the \$300,000 transfer from Arthur Bartlett to Billie Dickerson
14 was a loan? If so, then, whether defendant Billie Dickerson is liable in
15 economic damages for breach of his obligation to repay that loan?

16 In *Berger v. State, Dept. of Revenue*¹ the Supreme Court of Alaska
17 analyzed whether a transaction constituted a loan using the following
18 definition:

19
20 **A loan is the payment of money by a lender to a borrower in
21 exchange for an agreement to repay with or without interest. See
22 Southwest Concrete Prods. v. Gosh Constr. Corp., 51 Cal.3d 701,
23 274 Cal.Rptr. 404, 406, 798 P.2d 1247, 1249 (1990) ("A loan of
24 money is the delivery of a sum of money to another under a
25 contract to return at some future time an equivalent amount.");
Liberty Nat'l Bank & Trust Co. v. Travelers Indem. Co., 58 Misc.2d
26 443, 295 N.Y.S.2d 983, 986 (N.Y.1968) ("A loan is defined in
Webster's New Twentieth Century Dictionary (1964) as '...
anything furnished for temporary use to a person at his request,
on the condition that it shall be returned, or its equivalent in kind,**

¹ *Berger v. State, Dept. of Revenue*, 910 P.2d 581, 586 (Alaska 1996).
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2 with or without a compensation for its use....' "); Consumer
3 Credit Code (1974 Act) § 1.301(25)(a)(i) (defining loan as
4 including "the creation of debt by the lender's payment of or
5 agreement to pay money to the debtor or to a third person for the
6 account of the debtor").

7
8 In *United States v. Matanuska-Susitna Borough*², the Supreme Court
9 of Alaska cited the common law and dictionary definition of the term
10 "investment" as:

11 The placing of capital or laying out of money in a way intended to
12 secure income or profit from its employment.... to place money
13 or property in business ventures or real estate, or otherwise lay it
14 out, so that it may produce revenue or gain (or both) in the
15 future.

16 *Webster's Dictionary* provides similar support, defining
17 "investment" as "an expenditure of money for income or profit or
18 to purchase something of intrinsic value ... the sum invested or
19 the property purchased ... *the commitment of funds with a view*
20 *to minimizing risk and safeguarding capital while earning a*
21 *return...."* *Webster's Third New International Dictionary* 1190
22 (1969) (emphasis added).

23 A loan can be an investment because a loan is one way to "place
24 money or property in business ventures or real estate, or otherwise lay it out,
25 so that it may produce revenue or gain ('or both') in the future". And the
26 conduct of parties to an agreement is evidence of the terms of the
agreement as well as evidence of their performance under those terms.

Arthur Bartlett lent Billie Dickerson \$300,000. Bartlett fully performed
his side of the loan agreement when he tendered the constituent portions
(first \$200,000 in cash and then \$100,000 in cash) to Dickerson. Bartlett
recorded the payments he received from Dickerson to pay down that loan.

² *United States v. Matanuska-Susitna Borough, et al*, 906 P.2d 1386, 1388-89 (Alaska 1995).

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2 Bartlett never evidenced any intention to have or allow such a large sum of
3 money to be used as by Dickerson as his own personal ATM—though that is
4 what Dickerson did.

5 Dickerson borrowed that \$300,000 in cash from Bartlett. Dickerson
6 partially performed by repaying Bartlett as follows:

7

8	Date	\$ Amount Loaned	\$Amount Paid Back	Principal Balance
9	11/2/04	200,000.00		
10	11/10/04		1,500.00	198,500
11	12/13/04		1,500.00	197,000
12	1/3/05		1,500.00	195,500
13	2/1/05		1,500.00	194,000
14	3/5/05		1,500.00	192,500
15	4/7/05		1,500.00	191,000
16	5/1/05		1,500.00	189,500
17	6/4/05		1,500.00	188,000
18	7/1/05		1,500.00	186,500
19	8/5/05		1,500.00	185,000
20	9/5/05		1,500.00	183,500
21	10/5/05		1,500.00	182,000
22	11/1/05		1,500.00	180,500
23	12/8/05		1,500.00	179,000
24	1/1/06		1,500.00	177,500
25	1/5/06	100,000.00		277,500
26	2/2/06		2,100.00	275,400
	3/4/06		2,100.00	273,300
	4/1/06		2,100.00	271,200
	5/4/06		2,100.00	269,100
	6/2/06		2,100.00	267,000
	7/5/06		2,100.00	264,900
	8/4/06		2,100.00	262,800
	9/6/06		2,100.00	260,700
	10/5/06		2,100.00	258,600
	11/13/06		2,100.00	256,500
	12/6/06		2,100.00	254,500
	3/2/07		2,100.00	252,300
	4/13/07		2,100.00	250,200
	5/15/07		2,100.00	248,100
	7/13/07		2,000.00	246,100
	8/21/07		2,000.00	244,100

10/19/07	2,000.00	242,100
11/26/07	2,000.00	240,100
	PAID: 59,900.00	DUE: 240,100

The three elements of a claim on money lent are (1) the money was delivered to the defendant, (2) the money was intended as a loan and (3) the loan has not been repaid.³

The evidence for Mr. Bartlett to be admitted at trial proves, by a preponderance, that he (1) delivered \$300,000 to Billie Dickerson, (2) that the \$300,000 was intended as a loan and (3) that that loan has not been repaid. Those elements being present and satisfied, Mr. Bartlett has a valid claim for breach, by Mr. Dickerson, of his promise to repay that loan.

The Parties' Loan Agreement Falls Under The "Full Performance" Exception To The Statute Of Frauds

Alaska's statute of frauds is codified at AS 09.25.010. The "full performance" exception is codified at AS 09.25.020(1).

Mr. Bartlett lent \$300,000 to Mr. Dickerson at 6%. Their agreement was not reduced to a writing subscribed to by Mr. Dickerson. The loan agreement also involved a principal amount in excess of \$50,000 to be repaid over a period of time longer than one year.

AS 09.25.020 provides that a contract, promise, or agreement that is subject to AS 09.25.010 that does not satisfy the requirements of that section but that is otherwise valid is enforceable if (1) there has been full

3 McIntyre v. Nice, 786 A.2d 620, 622 (Maine 2001) citing Doughty v. Sullivan, 661 A.2d 1112, 1123 (Me.1995).

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2 performance of one side accepted by the other in accordance with the
3 contract.

4 Arthur Bartlett and Billie Dickerson agreed that Arthur Bartlett would
5 transfer \$300,000 in cash, in two separate transactions, to Billie Dickerson.
6 By tendering that \$300,000 in cash to Billie Dickerson as promised, Arthur
7 Bartlett fully performed.

8 Even if the parties' oral agreement falls within the statute of frauds for
9 one reason or another the full performance by one party exception at AS
10 09.25.020(1) applies. The parties' oral loan agreement is enforceable.

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12 **5. Plaintiff's Exhibits**

13 The court has been provided with bench copy of plaintiff's exhibits and
14 Mr. Dickerson has been served with his copy of same.

15 **Plaintiff's Exhibit 1: Copy Of Plaintiff's Initial Disclosures:**

16 Plaintiff's Exhibit 1 is a copy of plaintiff's initial disclosures as
17 generated and served upon Mr. Dickerson under Rule 26(a) Alaska Rules of
18 Civil Procedure. By means of those disclosures and by means of the
19 complaint, Mr. Dickerson has received constitutionally sufficient notice of the
20 nature of the claims against him and the evidentiary bases for those claims.

21 Included in Exhibit 1, at EFA Bates Nos. 15-16, is the typewritten
22 response of Mr. Dickerson which the court accepted and ruled would be
23 deemed to be his answer to the complaint. In that document, Mr. Dickerson
24 writes in pertinent part:

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2 I did go to Art and asked him if he would invest with VPAS
3 and for that investment we would pay him monthly
4 dividends and when he invested the second time I gave
5 him a list of inventory from the shop to that would be his if
6 something was to go bad. I am sure that Art has retained
7 that list. Each check that Art gave us was wrote out to
8 VPAS it went into VPAS account. The moneys went into
9 the business □ We did pay Art regularly till things started
10 to decline. □ What I can say is that had the economy done
11 what it was projected to be, Art would have Gained equity
12 in VPAS as we would have. (sic).

13
14 Mr. Dickerson has been served with plaintiff's initial disclosures and
15 plaintiff's exhibits for trial including the specific accounting records of VPAS.
16 Those accounting records document the spending of Mr. Dickerson in his
17 role as owner-manager-equity stakeholder in VPAS. In detail, those records
18 show that it was not the economy, as such, that brought about the "decline"
19 of VPAS. The decline was due to the wasteful, reckless spending of Billie
20 Dickerson. On a monthly basis, Mr. Dickerson spent thousands of dollars
21 (including thousands of dollars from the Bartlett loans proceeds) on personal
22 expenses, luxury items and improvements to his home.

23
24 Mr. Dickerson is free to claim or assert whatever he chooses in his
25 defense. He has chosen to blame the decline in the economy for the failure
26 of VPAS. At trial, Mr. Bartlett will impeach and rebut that claim with the
evidence of Mr. Dickerson's reckless spending of VPAS's cash assets and
his incompetent management of VPAS's business.

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2 **Plaintiff's Exhibit 2: Additional Disclosures: VPAS Business**

3 **Records**

4 Plaintiff's Exhibit 2 is a copy of the documentation filed by Mr.
5 Dickerson and Ms. Sherman to register Alaska Valley Park and Sell, LLC
6 with the State of Alaska, Division of Corporations, Business and Professional
7 Licensing. Included in Ex. 2 is a letter from Billie Dickerson to Scott Sterling
8 (counsel for plaintiff) dated March 24, 2010. Mr. Dickerson wrote in pertinent
9 part:
10

11 **So I started to look for investors on line my paster and any friend
12 I knew. At the time I didn't have a clue that Art could do
13 anything, but I was visiting my parents and Art was there so out
14 of conversation I told /Art what I was needing and that was a
15 investor. That was when Art said he could do the money to
16 finance us. At the time I had no clue he was able to that kind of
17 money. Of course I told him that we pay him monthly dividends
18 on investments. He was fine with this. [] Art invested in a bus
19 that took us all down. Did Art write two checks to Valley park
20 and sell yes he did (sic).**

21 Mr. Dickerson again asserts his claim that the \$300,000 was not a
22 loan and that the monthly payments were dividends not loan payments. Mr.
23 Dickerson has no comment on why Arthur Bartlett was charging 6.0%
24 interest on the \$300,000 if all he was expecting was "monthly dividends."
25 Mr. Dickerson also provides no documentation to prove the financial and
26 accounting basis for how he supposedly calculated the "dividend" each
month.

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2 What is known and can be proven, however, is that Mr. Dickerson was
3 desperate for cash to pay for his own personal expenses. He drew that cash
4 directly from VPAS on an almost daily basis, in the hundreds and thousands
5 of dollars. That cash came from the loan proceeds lent by Arthur Bartlett.

6 Plaintiff's Exhibit 2, at Bates Nos. 20-52, consists of copies of the
7 checks drawn upon the VPAS account at Northrim Bank that were written by
8 VPAS (as signed by Melissa Sherman) to Arthur Bartlett for "repayment."
9 For example, check No. 4808, dated 6/1/06, for \$2,100.00, is identified in the
10 memo line as "repayment."

11 Mr. Dickerson also had checks made out to himself for \$2,100.00
12 which he then signed over to Mr. Bartlett. For example, check No. 4903,
13 dated 7/5/06, is made out to Mr. Dickerson for \$2,100 but is endorsed on the
14 back by both Mr. Dickerson and Mr. Bartlett.

15 Mr. Dickerson also had the habit or practice of using bank counter
16 checks to write checks out to himself for cash on the VPAS account at
17 Northrim Bank. For example, at Bates No. EFA 44 in Exhibit 2, there is a
18 copy of counter check no. 283739. Mr. Dickerson wrote out that check to
19 cash on November 13, 2006 for \$2,300.00. He did the exact same thing on
20 December 5, 2006 with counter check no. 362891 for \$2,500.

21 Plaintiff's Exhibit 2, at Bates Nos. 53-69, consists of copies of the
22 VPAS Northrim Account check detail for the period 1/6/06 through 3/11/09
23 for checks written to "Billie Dickerson" and/or "cash" by Billie Dickerson only.
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2 That breakdown, by Melissa Sherman, who compiled it as part of her
3 duties as bookkeeper for VPAS, shows that on no less than 206 occasions
4 during that time, Mr. Dickerson wrote out VPAS checks to himself and/or to
5 cash, totaling in the aggregate over \$100,000. Those draws and cash
6 payments do not include the spending amounts drawn out by Mr. Dickerson
7 to pay for his personal and household expenses, discussed below.

8 Plaintiff's Exhibit 2, at Bates Nos. 69-91, consists of copies of the
9 VPAS check detail, again as kept by Ms. Sherman in her capacity as
10 bookkeeper for VPAS, for all checks drawn upon the VPAS Northrim
11 Account for the period 1/4/06 through 12/15/09. That record speaks for
12 itself. Billie Dickerson diverted and converted nearly every penny of VPAS
13 cash to his own personal use.
14

15 **Plaintiff's Exhibit 3: John Holley Investigative Report:**

16 Plaintiff's Exhibit 3 is a copy of an investigative report, dated
17 December 27, 2009 by (now former) investigator John Holley of the Office of
18 Elder Fraud and Assistance. That report documents the fact that Arthur
19 Bartlett unequivocally expressed to Mr. Holley, in their interview, that he had
20 lent \$200,000 at 6.0% to Billie Dickerson and that "...for approximately three
21 years Billie Dickerson made routine payments on the loan but stopped
22 paying as of November, 2007..."

23 That report also corroborates from Mr. Bartlett the fact that other
24 members of the Dickerson family asked him for and received substantial
25 cash loans.
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2 That report is relevant to the issue of whether Mr. Bartlett intended for
3 the money he lent to Mr. Dickerson was, in fact, a loan.

4 **Plaintiff's Exhibit 4: Request And Order Filing By Billie**

5 **Dickerson:**

6 Plaintiff's Exhibit 4 is a copy of a Request and Order form, signed and
7 filed by Billie Dickerson in the present case on March 8, 2010 . In that filing
8 he writes "I do not have any income." That is a statement which will prove
9 relevant to the issue of Mr. Dickerson's credibility.

10 **Plaintiff's Exhibit 5: Unsigned Affidavit of Melissa Sherman:**

11 Plaintiff's Exhibit 5 is an unsigned affidavit of Melissa Sherman. Ms.
12 Sherman has confirmed that she will testify at trial to the truth of the
13 averments set forth in that unsigned affidavit. It is thus a guide to the form
14 and substance of her trial testimony.

15 **Plaintiff's Exhibit 6: Plaintiff's Complaint:**

16 Plaintiff's Exhibit 6 is a copy of the complaint with the complaint
17 exhibits documenting the loan transaction, attached. Those exhibits are
18 marked at Bates Nos. EFA 115-179. Those pages consist of copies of
19 Arthur Bartlett's deposit receipts for the deposits he made of loan payments
20 from Billie Dickerson, plus copies of the checks for payments and copies.

21 Bates Nos. 131-132 are copies of the bank authorization forms signed
22 by Arthur Bartlett documenting the wire transfer of \$200,000 to VPAS on
23 October 27, 2004. Bates No. 133 is a copy of the check for \$100,000 written
24 by Bartlett to VPAS on 1/2/06.

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Bates No. 134 is a copy of a deposit receipt from Mr. Bartlett for 11/12/04 on which Mr. Bartlett wrote the words "Billie's interest payment."

Bates No. 176 is a copy of Mr. Bartlett's handwritten ledger by which he kept track of payments received from Billie Dickerson through 11/26/07. Mr. Bartlett wrote on that ledger " ... + 6 % interest."

Plaintiff's Exhibit 7: Spread Sheet

Plaintiff's Exhibit 7 is a spread sheet compiled by counsel for Mr. Bartlett that may be withdrawn.

Plaintiff's Exhibit 8: Checks From VPAS To/For Bartlett

Plaintiff's Exhibit 8 are copies of the checks drawn upon the VPAS account at Northrim Bank which are believed to have been used to make loan payments to Mr. Bartlett. Exhibit 8 is an excerpt of the same documentation that is discussed and referenced in Exhibit 2.

Plaintiff's Exhibit 9: Spread Sheet

Plaintiff's Exhibit 9, Bates Nos. 214-218, is a loan accounting and payment spread sheet compiled by investigator Holley

6. Plaintiff's Witnesses

Plaintiff's Final Witness List is filed concurrently herewith.

Plaintiff's case-in-chief will be presented through the following witnesses:

Melissa Sherman. Ms. Sherman will testify that she is a former employer and bookkeeper of VPAS with personal knowledge of the records and entries concerning the checking account and the activities of Billie

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2 Dickerson relative to his use of the checking account for his own personal
3 expenses. Ms. Sherman will testify that she was formerly involved in a
4 domestic relationship with Mr. Dickerson and that they are presently in a
5 custody case over their two children.

6 Ms. Sherman will testify that she caused payments to be made to
7 Arthur Bartlett at the direction of Billie Dickerson for the loan of the \$300,000.
8 She will testify about Mr. Dickerson's habits of spending of VPAS cash and
9 management of VPAS business affairs.

10 Ms. Sherman will testify to impeach Billie Dickerson's claim that the
11 economy caused VPAS to fail.

12 Arthur Bartlett. Mr. Bartlett will testify to the essential terms of the
13 loan, the facts of the loan transaction and repayment history received. He
14 will establish that he was importuned for cash by several members of the
15 Dickerson family including Billie Dickerson. He will testify as to the amount
16 he is still owed on the loan he made to Billie Dickerson.

17 John Holley . John Holley will testify as to the results of his
18 investigation into the claim and request for assistance filed by Arthur Bartlett
19 with the Office of Elder Fraud and Assistance, under AS 44.21.415. Mr.
20 Holley will testify to the work he performed in acquiring , analyzing and
21 synthesizing for accounting reporting the financial transactions of VPAS,
22 Billie Dickerson and Arthur Bartlett.

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2 Plaintiff will also call rebuttal witnesses as necessary.

3 **7. Relief Requested**

4 Plaintiff will request entry of judgment in favor of Arthur Bartlett and
5 against Billie Dickerson in the principal amount of \$240,100 in economic
6 damages (subject to adjustment for any offsets or additional credits proven
7 at trial) plus contractual interest at 6.0% from November 1, 2004 through the
8 date of entry of judgment. In addition, Mr. Bartlett will move for award of
9 attorney fees, costs and post-judgment interest at the maximum rates or
10 amounts allowed by law.

11
12 DATED this 5th day of March, 2012 at Anchorage,
13 Alaska.

14
15
16 By: _____


17 Scott A. Sterling
18 Assistant Public Advocate
19 Bar No. 8706053