IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKA BUILDING, INC., an Alaska corporation, Plaintiff, vs. 716 WEST FOURTH AVENUE LLC and LEGISLATIVE AFFAIRS AGENCY, Defendants.	Case No.: 3AN-15-05969 CI

JOINDER IN LEGISLATIVE AFFAIRS AGENCY'S MOTION FOR SUMMARY JUDGMENT UNDER THE LACHES DOCTRINE REQUEST FOR ORAL ARGUMENT UNDER RULE 77(E)

COMES NOW, Defendant 716 West Fourth Avenue, LLC ("716"), and hereby respectfully joins in Defendant Legislative Affair Agency's (the "Agency's) motion for summary judgment under the laches doctrine.

716 reincorporates and resubmits its arguments regarding the equitable defense of laches made in the concurrently filed Opposition to Plaintiff's Motion for Preliminary Injunction, attached to this joinder as Exhibit A.

716 additionally joins in the Agency's request for oral argument on the motion to dismiss under Rule 77(e) of the Alaska Rules of Civil Procedure. As 716 has previously indicated, the court should hold oral argument regarding the motion to dismiss prior to any hearing on Plaintiff's motion for preliminary injunction and Plaintiff's motion to compel.

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DATED: 10-27-15

By: _____
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐ facsimile ☒ U.S. Mail on the 27 day of October 2015, on:

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716'S OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

Defendant 716 West Fourth Avenue, LLC ("716") has objected to disclosing certain proprietary information relating to 716's internal financial operations. Plaintiff Alaska Building, Inc. ("ABI") has filed for a preliminary injunction in order to make that otherwise irrelevant proprietary information discoverable. For the reasons stated within this motion, ABI is barred from seeking injunctive relief by the equitable defense of laches and ABI has otherwise failed to meet the "balance of hardships" test. A proposed order denying the injunction and affidavits of counsel and Mark Pfeffer, Operating Manager of 716, accompany this Motion.

I. FACTUAL BACKGROUND

On September 19, 2013, 716 entered into an agreement with the Legislative Affairs Agency (the "Agency") to renovate and expand the Anchorage Legislative Information Office (the "LIO Project"). The Alaska Building, which is owned by ABI,

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is situated immediately adjacent to the LIO. Jim Gottstein, president and sole member of ABI, learned about the contemplated renovation of the LIO as early as "mid-September, 2013."[1] On October 2, 2013 Gottstein met with Mark Pfeffer to discuss the project.[2] By October 3, 2015, ABI was specifically aware that (1) the construction and renovations involved in the project would cost tens of millions of dollars, (2) was not the subject of a competitive procurement process, and (3) media outlets were reporting the agreement would increase the Legislature's rent rates.[3] By mid-October, Gottstein had reviewed AS 36.30.083(a) and formed the opinion that the September 19, 2013 agreement was not a valid lease extension.[4]

By October 11, 2013 Gottstein was engaging in discussions with his own business associates as well as legal counsel for 716, threatening to seek injunctive relief unless Mark Pfeffer provided assurances that he was taking any potential risk of construction damage to the Alaska Building seriously.[5]

On October 25, 2013 Gottstein again communicated with 716's counsel regarding ABI's concerns of potential construction damage associated with the project.[6] Specifically, ABI requested to be paid for Plaintiff's personal services to date and

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[1] Plaintiff's Response to 716 Interrogatory No. 1. Attached as Exhibit A.

[2] *Id.*

[3] *See* Id.; Plaintiff's Response to LAA Interrogatory No. 1. Attached as Exhibit B; Deposition of Jim Gottstein (excerpts attached as Exhibit C) at 77: 21-25.; 78: 1-19.

[4] *See* Ex. A; Plaintiff's Response to LAA Interrogatory No. 1; Exhibit C at 78: 20-25; 79: 1-2.

[5] *See* Ex. C at 81:1-9, 15-25; 83: 24-25; 84: 1.

[6] *See* Ex. C. at 89: 8-18; October 25, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit D.

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sought to force Pfeffer into agreeing to a "$Ten [sic] million purchase obligation" if the building was catastrophically damaged.[7] Representatives of 716 and ABI met on October 28, 2013. Apparently unsatisfied with that meeting, ABI emailed 716's counsel on October 30, 2013, threatening to "launch the grenade"—later described by Gottstein as filing suit "and asking for a preliminary injunction to stop the project" [8]—unless 716 agreed to his proposed Indemnification Agreement terms.[9]

During this same time period, Plaintiff contemplated, but ultimately chose not to raise his concerns with then Attorney General Michael Geraghty.[10] In one of the letters Gottstein drafted but never sent, dated October 30, 2013, Gottstein raised concerns that (1) the lease extension was illegal under AS 36.30.083, and (2) the project developer had not made adequate assurances that the Alaska Building would not be damaged as a result of any construction.[11] Indeed, as part of the October 30, 2013 correspondence with 716's counsel, Gottstein not only threatened to file for injunctive relief, but also threatened to contact the Attorney General and then Deputy Attorney General for the Department of Law's Criminal Division, Rick Svobodny.[12] No letters were ever sent.

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[7] *See Id.*

[8] Ex. C. at 94: 5-14.

[9] October 30, 2013 email chain between Jim Gottstein and Doc McClintock, attached as Exhibit E.

[10] Draft letters to Attorney General Geraghty, dated October 30, 2013, attached as Exhibit F.

[11] *Id.*

[12] *See* Exhibit E.

Indeed, rather than file suit or send a letter notifying a high government official of the alleged lease illegality, ABI voluntarily elected to enter into indemnity and insurance agreements with 716.[13] Drafting and negotiations regarding the principal agreement took place in November of 2013 and a final Access, Indemnity, and Insurance Agreement ("the Agreement") was executed on December 6, 2013.[14] As part of the Agreement, 716 paid: (1) $15,000 to ABI in consideration of the "professional time required to address preparation" for the LIO Project;[15] (2) $10,000 to ABI for offsite mirroring of data;[16] (3) $2,000 to Gottstein as a rent abatement payment for relocating his office across the hall during construction;[17] and (4) $3,900 to ABI for use of the parking space in the alley.[18] Incorporated into the terms of the Agreement, ABI also received over $14,400 in rent from Criterion General as part of a Space Lease.[19] Based on those values alone, ABI received approximately $45,300 in compensation under the terms of the Agreement and Space Lease.

LIO Project construction commenced in December 2013 and concluded on or about January 9, 2015.[20] At no time during the construction process did ABI file to stop

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[13] One such agreement, regarding relocation of a gas line and gas meters, was actually entered into on October 30, 2013. Exhibit E.; *See also* Ex. C at 97: 7-20.

[14] Interpretation of the Agreement is a subject of dispute in 3AN-15-09785CI.

[15] *See* Ex. C. at 108: 22-25; 109: 1-13.

[16] *See Id.* at 109: 14-23.

[17] *See Id.* at 110: 8-14.

[18] *See Id.* at 109: 24-25; 110: 1-7.

[19] *See Id.* at 111: 2-11.

[20] *See* Ex. A. Plaintiff's Response to LAA Request for Admission No. 17.

the LIO Project. Rather, on January 23, 2015, Gottstein emailed 716 (and Criterion) asserting a claim for $250,000 for alleged damage to the Alaska Building ABI during the LIO Project construction.[21] Having tendered the claim to Criterion's insurer pursuant to the terms of the Agreement, 716 did not pay ABI any amount in satisfaction of the alleged damages.[22] According to Gottstein, had ABI been compensated for alleged property damage, ABI would "probably not" have filed this litigation.[23]

It was not until March 31, 2015—almost **3** months after construction of the LIO ended, **15 months after** construction began and **17 months after** the extension was signed—that ABI filed suit challenging the damage to the Alaska Building as well as the "legality" of the lease extension.[24]

II. DISCOVERY REQUEST

ABI has requested discovery of information relating to 716's internal financial operations and 716 has refused to disclose that information on the basis that the confidential and proprietary information sought is irrelevant to ABI's claims.[25] As the court is aware, the scope of this litigation is limited to (1) the legality of the lease extension and (2) whether the rental rate affiliated with the lease is at least 10 percent

[21] *See* Ex. G Claim from Alaska Building, Inc. dated January 23, 2015.

[22] *See Id.* at 118: 24-25; 119: 1-2.

[23] *See Id.*.

[24] See Ex. A; Plaintiff's Responses to LAA Request for Admission Nos. 19, 20, and 23.

[25] *See* 716's Opposition to Motion to Compel.

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below the market rental value of the real property at issue at the time the lease was executed.[26] ABI is not asserting a veil piercing argument.[27]

Preserving its discovery objections, which are fully laid out in 716's opposition to Plaintiff's motion to compel, 716 nevertheless offered to provide 716's Operating Agreement to Judge McKay for an *in camera* review, for Judge McKay to make a relevance determination.[28] ABI rejected this overture and filed for a preliminary injunction on October 6, 2015. ABI acknowledges that the disputed discovery is not relevant to the underlying litigation issues—the legality of the lease or the market rental rate—but argues it is relevant for the purposes of this injunction motion.[29] Plaintiff's request for a preliminary injunction thus fundamentally appears to be a discovery litigation tactic to obtain otherwise undiscoverable information.

III. ARGUMENT

A. The equitable doctrine of laches bars ABI's claim for injunctive relief.

Despite ABI's extensive knowledge of the LIO Project, its negotiated compensation payments, and its awareness of the tens of millions of dollars paid by 716 to various entities involved in the Project, ABI waited **almost two full years**, until

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[26] *See* Amended Complaint, filed by Plaintiff on August 25, 2015.

[27] Plaintiff's Motion for Preliminary Injunction at 6; FN 3.

[28] *See* September 30, 2015 email exchange between undersigned and Gottstein, dated, attached as Exhibit H.

[29] Motion to Compel at 3, 5-6; Plaintiff's Motion for Preliminary Injunction at 3 ("[i]f 716 LLC had produced documents providing that it would be able to pay back the money, this Motion [for Preliminary Injunction] would not have been filed."

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October 6, 2015, to file for preliminary injunctive relief. ABI's claim for injunctive relief is now barred under the equitable defense of laches.[30]

In order to prevail under the defense of laches, 716 must show, (1) that the plaintiff has unreasonably delayed in bringing the action, and (2) that this unreasonable delay has caused undue harm or prejudice to the defendant.[31] The factual background provided above is evidence of ABI's unreasonable delay in bringing the action. Plaintiff's lawsuit mirrors the facts of *City and Borough of Juneau v. Breck*, 706 P.2d 313 (Alaska 1985) and the application of the laches doctrine should be similarly applied here to bar Plaintiff's request for injunctive relief. In *Breck*, the Supreme Court stated:

> [O]ne of the factors to be considered in measuring the plaintiff's delay is when, under the circumstances, it becomes no longer reasonable for the plaintiff to assume that the defendants would comply with the law. Additionally, the court will "look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer."[32]

Breck involved litigation surrounding the construction of a marine park and parking garage in Juneau.[33] In December 1983 the City and Borough of Juneau ("the City") publicly announced that it was seeking design-build proposals for the parking structure and executed a construction contract with Kiewit in May of 1984.[34] The

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[30] *See also* The Legislative Affairs Agency's Memorandum in Support Of Motion for Summary Judgment (Laches).

[31] *City & Borough of Juneau v. Breck,* 706 P.2d 313, 315 (Alaska 1985); *See also Moore v.* State, 553 P.2d 8, 15 (Alaska 1986),

[32] Id. at 315 (internal citations omitted).

[33] *Id.* at 314.

[34] *Id.* at 314.

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contract specified the project was to be completed largely within a six to eight month period.[35] The legality of the project was opposed by Juneau citizen Betty Breck, who contacted the mayor and voiced her concerns to the City's Assembly on nine separate occasions, even after the City awarded the contract to Kiewit.[36] Breck was aware that construction had begun in the middle of May, but contended that it was not until the end of June that she realized the assembly would not respond absent litigation.[37] When Breck ultimately filed suit on August 24, 1984 it was "approximately eight months after the city advertised its intent to seek 'design-build' proposals, four months after the contract with Kiewit Construction was signed, and after approximately 50 per cent of the project was complete."[38] The superior court nonetheless issued the preliminary injunction after concluding Breck had demonstrated a high probability of success on the merits, and that Breck had shown irreparable injury for which there was no adequate and complete remedy at law.[39]

The Alaska Supreme Court reversed.[40] It held that "the signing of the contract and the commencement of work under the contract would have galvanized a reasonable plaintiff into seeking a lawyer."[41] A reasonable person would have known well before June (the date Breck claimed she began to prepare to file suit) that the City was

[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.* at 315.
[39] *Id.* at 314.
[40] *Id.* at 315.
[41] *Id.* at 316.

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embarking "on a course of action that it would not alter unless forced to."[42] The Court agreed with the City's contention that Breck "should have realized that the large financial commitment, and the delay that would result if the contract was declared void, made such a change inconceivable."[43] It further rejected Breck's contention that her delay in bringing suit was excusable because she lacked knowledge about how to file suit.[44] Because cancelation of the contract would have cost the City millions of dollars, and thus resulted in undue prejudice to the City, the Court held that Breck's claims of injunctive relief were barred by the equitable doctrine of laches.

ABI's claims are similarly barred as the Plaintiff has (1) unreasonably delayed in bringing the present action and (2) this unreasonable delay has caused undue harm or prejudice to the defendant.

1. Plaintiff unreasonably delayed in bringing the instant action.

In order to evaluate the reasonableness (or unreasonableness) of a plaintiff's delay, the court must look to when, under the circumstances, it became unreasonable for the plaintiff to assume a defendant would stop its planned course of action absent litigation.[45] The court must "look to that point in time when there were positive steps taken by defendants which made their course of conduct irrevocable, and would have galvanized reasonable plaintiffs into seeking a lawyer."[46] Finally, the Alaskan Supreme

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[42] *Id.*

[43] *Id.*

[44] *Id.*

[45] *See Id.* at 315 (citing *Moore v. State*, 553 P.2d at 16).

[46] *Id.* (internal citations omitted).

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Court has said that "in determining when laches should be applied, our concern is not so much with when the alleged wrong occurred, as it is with when, in light of any resulting prejudice to defendants, it became reasonable to expect plaintiffs to act upon the wrong."[47]

Here, ABI became aware of the LIO Project sometime between late September and early October 2013. By the middle of October 2013, Gottstein had reviewed AS 36.30.083(a) and formed the belief that the lease was illegal.[48] By the end of October 2013 ABI threatened to, but chose not to file for injunctive relief or mail any of the letters Gottstein had drafted to the Attorney General voicing his concerns that the LIO project was illegal and the contemplated construction efforts should be terminated. Instead, ABI voluntarily elected to receive approximately $45,300 in compensation and Gottstein personally observed the construction activities taking place at 716 West 4th Avenue from December 2013 through January 2015.

Other than the parties directly involved in the Project, ABI was arguably the entity most closely involved with the Project. Plaintiff's building shared a wall with the old Empress Theatre, which was torn down to expand the LIO into the adjacent space. Plaintiff signed agreements with 716 and Criterion involving liability and risk allocation. Plaintiff hired an engineer to help monitor the process. He continued to accept rent payments. Plaintiff waited until three months *after* construction was

[47] *Moore v. State*, 553 P.2d at 14.

[48] Plaintiff's Response to LAA Interrogatory No. 1.

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completed to file suit, and only included the lease legality claim as a throw-in claim to his construction damage suit.[49]

Under the facts of this case, Plaintiff is guilty of inexcusable delay in filing this action. The delay was even more unreasonable than the delay in *Breck* given: (1) Gottstein is an attorney and had allegedly formulated the basis for his claim in October 2013 (Breck was not an attorney), (2) ABI waited to file suit until the Project was completed (Breck only waited until the facility was halfway completed); (3) no efforts were actually made to voice concerns to government officials (Breck spoke with the mayor and testified before the assembly on nine occasions); and (4) ABI and Gottstein received approximately $45,300 in compensation during the construction period (Breck received no compensation).

ABI's delay in bringing this action served to provide ABI with the maximum financial benefit while potentially causing the greatest financial harm to 716. As explained in detail in the following section, ABI was aware that 716 expended tens of millions of dollars in construction costs and expected to receive tens of millions of dollars in lease payments. The court should find ABI has unreasonably delayed in bringing the action.

2. ABI's unreasonable delay caused undue harm or prejudice to 716.

[49] Plaintiff claims he did not file for an injunction because he was concerned about "retaliatory damage to the Alaska Building." *See* Ex. C. at 134: 5-7. Although his motive for not filing is irrelevant, it should be made clear that Gottstein himself has acknowledged that no one threatened ABI during the Project. *See* Ex. C at 141: 22-24; Ex. C. at 118: 24-25; 119: 1-2 (throw-in claim).

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The court must next consider whether the unreasonable delay has caused undue harm or prejudice to the defendants in this action. 716 already expended tens of millions of dollars in construction costs. In order to undertake the Project, 716 signed a construction contract with Criterion General on November 11, 2013 in excess of $30,000,000.[50] 716 spent approximately $44,500,000 in construction efforts.[51] The Premises was renovated to meet the specific needs of the Agency, including an expansion of office space and appropriate off-street parking spaces.[52] The Agency paid $7.5 million in tenant improvements.[53]

If ABI had filed an injunction in October, 2013 as Gottstein had threatened, and had he been successful, 716 would not have paid over $30,000,000 to Criterion. By waiting until well after construction was complete to challenge the lease, ABI's seeks to cause 716 to suffer the maximum prejudice from payments spent in its construction efforts.

In addition to jeopardizing costs already incurred, ABI's request to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services also significantly prejudices the defendants by depriving 716 the benefit of its bargain under the terms of the contract. 716 invested $9,000,000 of its own money into the project as a good faith investment, expecting a monthly rate of return on

[50] Affidavit of Mark Pfeffer ¶ 5.

[51] Id. at ¶ 7.

[52] *See* Extension of Lease and Lease Amendment No. 3.

[53] *See* Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency's Motion for Summary Judgment; *See* Affidavit of Mark Pfeffer ¶ 5.

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its investment outside of merely recovering debt services and operating expenses.[54] That monthly rate of return is not a negligible amount.

In summary, 716 faces irreparable injury if the court grants an injunction at this stage—there are deeds of trusts, loans, and commitments made in reliance on the contract that was signed. Sequestering a significant amount of monthly rent payments puts all of that potentially in default and affects numerous entities involved in the Project's financing, not simply 716 and the Agency. It goes without saying that 716, who has been the Landlord of the LIO for 23 years, stands to lose its professional reputation and status among lending institutions, construction professionals, and business clients should the court grant ABI injunctive relief.

The Court should find that ABI's unreasonable delay in bringing suit has and will continue to cause undue harm and prejudice to 716. As 716 has met both prongs under the equitable doctrine of latches, the Court should bar ABI's request for a preliminary injunction.

B. Denial of the preliminary injunction is still appropriate even if the court finds that 716 has not successfully raised the defense of laches.

Preliminary injunctions are extraordinary remedies involving the exercise of very far-reaching power to be granted only sparingly and in limited circumstances.[55] The traditional purpose of a preliminary injunction is to prohibit an action. Preliminary injunctions are meant to "protect the status quo and to prevent irreparable harm during

[54] *See* ¶ 7 of Affidavit of Mark Pfeffer at 7.

[55] *MicroStrategy Inc. v. Motorola, Inc.*, 245 F.3d 335, 339 (4th Cir. 2001).

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the pendency of a lawsuit ultimately to preserve the court's ability to render a meaningful judgment on the merits."[56] Under Alaska law, in deciding whether to grant or deny a preliminary injunction, Alaska courts apply the "balance of hardships" test. Immediate injunctive relief is warranted when the following three factors are present:

> (1) the plaintiff must be faced with irreparable harm; (2) the opposing party must be adequately protected; and (3) the plaintiff must raise serious and substantial questions going to the merits of the case. Where the harm is not irreparable, or where the other party cannot be adequately protected, then the moving party must show probable success on the merits.[57]

Here, ABI cannot show it is faced with irreparable harm by maintaining the status quo during the pendency of the litigation. ABI's sole claim of irreparable harm is the unsubstantiated, speculative claim that because 716 is limited liability corporation it will be unable to pay "pay back rent money it has received in excess of that allowed by law."[58] Not only does this argument ignore the fact 716's has operated as landlord to the LIO for the past 23 years,[59] but it also is hypocritical given ABI's assessment that 716 was financially viable enough to execute a ten million dollar purchase option over the Alaska Building.[60] Likwise, by delaying this litigation, any "damage" is already

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[56] *Perry v. Judd*, 840 F. Supp. 2d 945, 950, 954 (E.D. Va.) *aff'd*, 471 F. App'x 219 (4th Cir. 2012)(barring under laches the plaintiffs' motion for a preliminary injunction where the plaintiffs, various candidates who were seeking the Republican Nomination for office of President of the United States, had "slept on their rights to the detriment of the defendants.")

[57] *Holmes v. Wolf*, 243 P.3d 584, 591 (Alaska 2010)(internal citations omitted.)

[58] Plaintiff's Memorandum at 3-4.

[59] *See* ¶ 3 of Affidavit of Mark Pfeffer.

[60] *See Id.*

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done; the State, has already paid $7.5 million in tenant improvements,[61] and 716 has already contributed vast resources in the expansion and renovation efforts. Any "irreparable harm" from that expenditure has already occurred. Finally, with respect to prong one, the availability of funds from the Legislature to pay for the Agency's monetary obligations is contingent upon appropriation of funds for the particular fiscal year involved.[62] If the Agency's Executive Director determines that sufficient funds are not appropriated by the Legislature, the lease can be terminated by the Agency or amended.[63] In summary, ABI cannot show continuation of the status quo subjects the State to irreparable harm.[64]

Conversely, 716—the opposing party to the injunction—would be left inadequately protected were the injunction granted. ABI's request is to sequester funds received under the terms of the lease other than direct operating expenses and projected debt services. This sequestration deprives 716 the benefit of its bargain under the terms of the contract. 716 invested $9,000,000 of its own money into the LIO Project as a good faith investment, expecting a monthly rate of return on its investment.[65] As stated above, that monthly rate of return is not de minimus, nor does it exist in a vacuum.

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[61] *See* Affidavit of Jessica Gary ¶¶ 4-7, submitted on 10/21/2015 as part of the Agency's Motion for Summary Judgment; *See* Affidavit of Mark Pfeffer ¶ 5.

[62] Extension of Lease and Lease Amendment No.3 ¶ 43. The Governor, of course, can also veto appropriated funds.

[63] *Id.*

[64] It goes without saying that any irreparable harm ABI faced during construction is over as ABI waited until the construction process was completed to file suit.

[65] *See* ¶ 7 of Affidavit of Mark Pfeffer at 7.

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And, of course, sequestration of any portion of monthly lease payments adversely affects 716's ability to conduct business in the state.

Because the harm is not irreparable and 716 cannot be adequately protected were an injunction granted, ABI must do more than just raise serious and substantial questions going to the merits of the case; as the moving party ABI must show probable success on the merits.[66] For the reasons explained above, ABI's claim is likely barred by the equitable defense of laches. Beyond the laches argument, ABI has not shown probable success on the merits. Defendants complied with AS 36.30.083(a). As the lease extension indicates, Timothy Lowe completed an independent analysis "and concluded that the rent due under the terms and conditions of the lease extension and amendment [are] at least 10 percent below the market rental value of the real property at the time of the extension for a ten year term."[67] In dispute of this claim, ABI has attached an affidavit of a retired real estate appraiser, Larry Norene, to its motion. In the event the case is not summarily dismissed, ABI will have the opportunity to have a battle of the expert appraisals; however, merely finding an individual who disagrees with Mr. Lowe's appraisal is insufficient to support a finding of probable success on the merits. Placing blind faith in Mr. Norene's appraisal, after Mr. Lowe's appraisal was vetted by various groups, including the Alaska Housing Finance Corporation, completely negates the purpose of having safeguards already in place to ensure

[66] 716 disputes, for the same reasons stated within this section, that ABI has even raised serious and substantial questions going to the merits of the case.

[67] *See* ¶ 1.2 of 9/19/13 lease.

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statutorily compliance. AS 36.30.083(a) requires the market value to be established by a real estate broker's opinion of the rental value or by an appraisal of the rental value. The legislative council was not obligated to select Mr. Gottstein's preferred appraiser to determine rental value. Similarly, there can be no-good faith dispute that the Lease Extension was an extension of the original lease arrangement, despite Plaintiff's claims to the contrary in his motion for summary judgment on this issue. (The court will not hear argument on this novel claim until at least January 30, 2016.)

In granting citizen-taxpayer standing, the court afforded ABI the opportunity to air its grievances. The court specifically warned ABI at the oral argument on August 18, 2015 that permission to proceed in the litigation was not an indication of whether or not his claims would ultimately prevail. Citizen-standing should not now be interpreted to mean ABI has carte-blanche to jeopardize the financial and professional well-being of the parties involved. There is no prejudice to ABI in waiting for the court to address the merits of its claims pursuant to the court's initial scheduling order and subsequent scheduling of dispositive arguments on summary judgment and other motions. As such, Plaintiff's request for a preliminary injunction should be denied.

In the event the court is inclined to grant ABI's request for the injunction, 716 requests the opportunity for oral argument. Attached to this Opposition is a proposed order, denying the preliminary injunction request and outlining a reasonable schedule for hearings on the various motions the parties have filed.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served ☐ electronically ☐ messenger ☐ facsimile ☒ U.S. Mail on the 27 day of October 2015, on:

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