

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

STATE OF ALASKA, DEPARTMENT OF  
REVENUE, TAX DIVISION,

Plaintiff,

v.

TURO, INC.,

Defendant.

FILED IN CHAMBERS  
STATE OF ALASKA  
FIRST JUDICIAL DISTRICT AT JUNEAU  
BY: GLB ON: 6/28/18

Case No. 1JU-18-580 CI

**ORDER DENYING MARCH 8, 2018 PETITION TO ENFORCE ADMINISTRATIVE  
SUBPOENA**

**I. Introduction**

The parties are the State of Alaska, Department of Revenue, Tax Division (hereinafter “the Tax Division”) and Turo, Inc. (hereinafter “Turo”). The issue before the court is whether to grant the Tax Division’s March 8, 2018 petition “to enforce compliance with an Administrative Subpoena *Duces Tecum* issued by the Alaska Commissioner of Revenue on December 14, 2017, in connection with an ongoing investigation pursuant to the collection of vehicle rental taxes under AS 43.52.010-.099.”<sup>1</sup> The petition is DENIED because the underlying subpoena is overbroad; even were it not, the court could not enforce it for want of authority.

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<sup>1</sup> Petition to Enforce Administrative Subpoena *Duces Tecum*, Case No. 1JU-18-580 CI (Mar. 8, 2018) [hereinafter *Petition to Enforce*].

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## II. Factual Background

The Tax Division is investigating Turo's tax liability in Alaska based on the services it provides. Turo is incorporated in Delaware and has its principal place of business in California. Turo is a peer-to-peer car service. Car owners list their vehicles on Turo's website. Prospective users search for and reserve available cars as needed. The owner meets the anticipated user at a mutually agreed-upon time and place to exchange the car. Turo operates throughout much of the United States but disallows owners in New York from sharing their cars. Turo also operates in two Canadian provinces, Germany, and the United Kingdom. Turo does not maintain its own fleet of cars anywhere it operates. It does not create online car listings. The company does not maintain any employees, facilities, or property in Alaska. Turo is just the online platform owners and users in Alaska capitalize on to coordinate car sharing—whether through the company's website or by using its mobile app. The car owner and prospective user are in the driver's seat, so to speak. Turo largely is not.<sup>2</sup> Turo does, however, collect 25% of gross proceeds from each owner/user transaction. The car owners receive the remainder. Turo also provides insurance liability coverage through Liberty Mutual, requires car owners and users to agree to its terms of service, and implements additional policies like fines for excess mileage or smoking.<sup>3</sup> Turo's connections with Alaska are not insignificant: "[T]here are at least tens of

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<sup>2</sup> See Turo Inc.'s Opposition to Petition to Enforce Administrative Subpoena *Duces Tecum*, Case No. 1JU-18-580 CI pp. 2-3 (May 22, 2018) [hereinafter *Turo's Opposition*] (explaining the nature of Turo's business model); see also, e.g., Reply Brief on Petition to Enforce, Case No. 1JU-18-580 CI Exhibits 4 and 5 (May 25, 2018) [hereinafter *Sur-reply*].

<sup>3</sup> See, e.g., *Sur-reply*, *supra* note 1, at Exhibits 1-5, 8.

thousands of dollars of ... transactions that have occurred within Alaska [from 2009 onward], with at least ten of those hosts individually earning over \$9,000 ... As of this writing, there are fifty four listings immediately available in ‘Anchorage, AK’ and thirty-five listings immediately available at the Anchorage International Airport.”<sup>4</sup>

### III. Procedural Posture

Briefly, the Tax Division issued an administrative subpoena to Turo on December 14, 2017 by e-mail at [ler@turo.com](mailto:ler@turo.com). It directed the company to produce “all records related to vehicle rental activity in Alaska in the years 2009 to 2017, including all attachments, documents incorporated by reference, and amendments.”<sup>5</sup> Turo was to deliver the documents to the Tax Division by January 16, 2018.<sup>6</sup> Turo has consistently opposed production. It wrote the Tax Division an e-mail on January 3, 2018, noting:

As a preliminary matter, this purported “subpoena” was not properly served, nor is Turo subject to personal jurisdiction in the State of Alaska. Even if the threshold matters of jurisdiction and service were satisfied, the request is overly broad, unduly burdensome, irrelevant, would have provided inadequate time for response, and suffers from numerous other legal deficiencies not the least of which, as I believe you are aware, Turo is a peer to peer car sharing platform, not a rental car service.<sup>7</sup>

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<sup>4</sup> See *id.* at pp. 4-5; see also, e.g., *Petition to Enforce*, *supra* note 1, at Attachment B (e-mail correspondence between Turo and the Tax Division).

<sup>5</sup> See *Petition to Enforce*, *supra* note 1, at Attachment A, p. 1 (reformatted by un-capitalizing all the words in the clause beginning “all” and ending “2017”).

<sup>6</sup> See *id.*

<sup>7</sup> See *id.* at Attachment B. In its e-mail, Turo offered the Tax Division a brief summary regarding how actively Alaska car owners list on Turo’s website and the limited amount of money the car owners make by sharing their cars. Turo offered as much to highlight that “a protracted legal dispute about [the records] is not in the best interests of the state of Alaska.” See *id.*

The Tax Division proceeded to negotiate with Turo to have it produce the requested records but was unsuccessful in its efforts. Turo maintained the position it outlined in its January 3, 2018 e-mail.<sup>8</sup> Having been rebuffed but still wanting the requested documents, the Tax Division initiated the present proceedings by filing the March 8, 2018 petition noted in the introduction above.<sup>9</sup>

Turo filed a formal opposition on May 22, 2018.<sup>10</sup> It advances three arguments. First, Turo argues that the court lacks the authority to enforce the subpoena both because the subpoena was issued under AS 43.05.040, which Turo argues does not authorize the Tax Division to issue subpoenas to non-residents like itself, and, more fundamentally, because the court lacks personal jurisdiction over the company.<sup>11</sup> Second, it asserts that it is not subject to Alaska's Vehicle Rental Tax, and the Tax Division therefore issued its subpoena for an illegitimate purpose. Additionally, Turo contends that the subpoena is overbroad.<sup>12</sup> Third, Turo argues that the subpoena is invalid because the Tax Division did not properly serve it.<sup>13</sup>

As to Turo's first point, the company argues that AS 43.05.040 only provides that "a subpoena issued under this section may compel attendance of a witness or production of a document or thing, located either inside or outside the state, to the maximum extent permitted by

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<sup>8</sup> *See id.* at Attachment C (e-mail communications between Turo and the Tax Division subsequent their January 3, 2018 exchange).

<sup>9</sup> *See Petition to Enforce, supra* note 1.

<sup>10</sup> *See Turo's Opposition, supra* note 2.

<sup>11</sup> *See id.* at p. 1.

<sup>12</sup> *See id.* at pp. 1-2.

<sup>13</sup> *See id.* at p. 2.

law”; it does not provide that documents or things may be compelled from non-residents.<sup>14</sup> Turo cites to *Patterson v. GEICO General Insurance Co.*<sup>15</sup> and *Yelp, Inc. v. Hadeed Carpet Cleaning, Inc.*<sup>16</sup> to support its interpretation—cases that, insofar as they are relevant, address the propriety of a superior court compelling an out-of-state, non-party to appear and testify.

Turo also argues that the court lacks proper jurisdiction. It admits that its website is accessible in Alaska and that the site is at least marginally interactive but says that it should still be excepted from jurisdiction: “even where a website is ‘highly interactive’ the fact that it is ‘accessible from’ the forum state does not give that state jurisdiction over the operator, absent evidence that the website actually ‘target[s] the forum state.’ To show purposeful availment, there must be ‘something more’ than the maintenance of a minimally interactive website.”<sup>17</sup>

Turo’s website is accessible worldwide. Moreover, the company emphasizes that “[owners and u]sers, not Turo, supply the location where they want to share their vehicle or borrow a

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<sup>14</sup> See *id.* at pp. 4-5; see also ALASKA STAT. ANN. § 43.05.040(a) (West, Westlaw through June 18, 2018).

<sup>15</sup> 347 P.3d 562, 574 n.33 (Alaska 2015).

<sup>16</sup> 770 S.E.2d 440, 443 (Virginia 2015).

<sup>17</sup> *Turo’s Opposition*, *supra* note 2, at p. 7 (quoting *DFSB Kollektive Co. v. Bourne*, 897 F. Supp. 2d 871, 880-81 (N.D. Cal. 2012) (citing and quoting *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 419 (9th Cir.1997) and *Matus v. Premium Nutraceuticals, LLC*, 2016 WL 3078745, at \*3 (C.D. Cal. May 31, 2016), *aff’d*, 715 F. App’x 662 (9th Cir. 2018)); see also, e.g., *Advanced Tactical Ordnance Sys., LLC v. Real Action Paintball, Inc.*, 751 F.3d 796, 803 (7th Cir. 2014), *as corrected* May 12, 2014 (“The interactivity of a website is also a poor proxy for adequate in-state contacts. We have warned that ‘[c]ourts should be careful in resolving questions about personal jurisdiction involving online contacts to ensure that a defendant is not haled into court simply because the defendant owns or operates a website that is accessible in the forum state, even if that site is ‘interactive.’”).

vehicle.”<sup>18</sup> Further, Turo reiterates that it does not have any physical presence whatsoever in Alaska. In sum, Turo says all it has is an interactive website that Alaskans coincidentally use but that is not targeted at Alaska.<sup>19</sup>

Turo’s second point has two parts. The court will not, as elaborated on in Part IV, *infra*, decide whether Alaska’s Vehicle Rental Tax applies to Turo and therefore will not summarize Turo’s position on the matter. As to the issue of broadness, Turo explains: “[T]he Subpoena ... contains virtually no restriction on information sought ... [T]he request for ‘all records’ from an eight-year period, beginning the year Turo was founded, is unduly burdensome and overly broad.”<sup>20</sup>

Finally, Turo’s third point is that the Tax Division did not serve it properly, and therefore the subpoena is invalid. The Tax Division e-mailed the subpoena to Turo at [ler@turo.com](mailto:ler@turo.com).<sup>21</sup> Turo explains that it only uses the [ler@turo.com](mailto:ler@turo.com) address to receive courtesy copies of law enforcement subpoenas in criminal matters.<sup>22</sup> Turo’s website apparently even states that receipt at the [ler@turo.com](mailto:ler@turo.com) address does not constitute service on the company.<sup>23</sup> In addition, Turo

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<sup>18</sup> *Turo’s Opposition*, *supra* note 2, at p. 8.

<sup>19</sup> *See id.* at pp. 8-9; *see also, e.g., Tuna Processors, Inc. v. Anova Food, Inc.*, No. CIV.07-6192-AA, 2007 WL 3232609, at \*4 (D. Or. Nov. 1, 2007) (concluding that “two sales of [the company’s] tuna products via the Internet were random and fortuitous contacts rather than the result of purposeful conduct directed at this forum” considering “absence of an established distribution channel, a local sales force, or local advertising” such that there was no personal jurisdiction).

<sup>20</sup> *See Turo’s Opposition*, *supra* note 2, at p. 11.

<sup>21</sup> *See Petition to Enforce*, *supra* note 1, at Attachment A; *see also Turo’s Opposition*, *supra* note 2, at p. 3.

<sup>22</sup> *See Turo’s Opposition*, *supra* note 10, at p. 3.

<sup>23</sup> *See id.*

highlights that there are apparently no records indicating that it ever received a copy of the subpoena via certified mail or of a proof of service.<sup>24</sup>

The court conducted a show cause hearing on May 29, 2018 to hear more from the parties' before deciding whether or not to enforce the Tax Division's petition.

#### **IV. Discussion**

The court reserves judgment on the issue of tax liability but agrees with Turo that the subpoena is overbroad. It otherwise disagrees with Turo's arguments except insofar as to say that it lacks authority to enforce the Tax Division's petition.

The court respectfully disagrees with Turo regarding its interpretation of AS 43.05.040, notwithstanding that the statute does not explicitly provide that documents or things may be compelled from non-residents. The court believes that the Tax Division may subpoena non-residents for production of a document or thing. Enforcement is another issue.<sup>25</sup> The court believes that the most reasonable interpretation of AS 43.05.040 is to read subsection (a) as permitting the Tax Division to serve subpoenas on non-residents. The Tax Division may need to seek enforcement of its subpoena outside of Alaska because of the phrasing in subsection (c). Subsection (a) reads: "A subpoena issued under this section may compel attendance of a witness or production of a document or thing, located either inside or outside the state, to the extent permitted by law."<sup>26</sup> Subsection (c), on the other hand, reads: "The court, to the maximum

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<sup>24</sup> *See id.*

<sup>25</sup> These issues appear to be matters of first impression in Alaska.

<sup>26</sup> *See* ALASKA STAT. ANN. § 43.05.040(a) (West).

extent permitted by law, may compel obedience to the same extent as witnesses may be compelled to obey the subpoenas of the court.”<sup>27</sup> The “to the maximum extent permitted by law” language in subsection (a) is unqualified. The same language in subsection (c) is qualified: it only reaches as far as does the court’s authority to compel witnesses to obey subpoenas of the court. The scope of the Tax Division’s authority to *issue* a subpoena is broader than the court’s ability to *enforce* the very same subpoena. The court believes that the Tax Division is entitled to issue subpoenas under AS 43.05.040—including to non-residents—to secure documents or things so long as jurisdiction exists and all other circumstances are proper—in other words, to the unqualified, maximum extent permitted by law. Here, that reach would extend to encompass subpoenas issued to non-resident Turo over whom the Tax Division and this court have jurisdiction, as elaborated on in the next paragraph.<sup>28</sup> The court is limited by subsection (c) to enforcing the subpoena only where the party that received the subpoena is a resident of Alaska or if they were served the subpoena in Alaska—to the extent that it could compel a witness to obey a subpoena of the court.<sup>29</sup> The court believes its interpretation is bolstered by other

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<sup>27</sup> See *id.* § 43.05.040(c).

<sup>28</sup> See ALASKA STAT. ANN. § 09.05.015 (West). The court does not believe that it is necessary to decide whether the subpoena power is always coextensive with its or other pertinent authorities’ capacity to exercise personal jurisdiction. The Alaska Supreme Court has yet to address the issue. It just so happens that the two powers are coextensive here in this case. Finally, the court would also like to note that it does not find the cases to which Turo cites to distinguish the subpoena power from personal jurisdiction very persuasive as they mostly just address compelling non-resident, non-party witnesses. See, e.g., *Turo’s Opposition*, *supra* note 10, at p. 6, n. 7.

<sup>29</sup> See, e.g., ALASKA R. CIV. P. 45(d)(2), (e); *Patterson v. GEICO Gen. Ins. Co.*, 347 P.3d 562, 574 n.33 (Alaska 2015); see also May 29, 2018 Hearing at 10:51:57 am to 10:58:26 am.



language in subsection (c). The first sentence of subsection (c) reads: “If a person who is subpoenaed neglects or refuses to obey the subpoena issued as provided in this section, the department may report the fact to the superior court or the appropriate court of another jurisdiction, and may seek an order from the court compelling obedience to the subpoena.”<sup>30</sup> The statute explicitly references “court[s] of another jurisdiction,” which suggests the Legislature anticipated and expected that the Tax Division would sometimes need to seek assistance from courts outside Alaska for assistance in enforcing subpoenas. In light of the foregoing, the court finds that the Tax Division was permitted to issue Turo the subpoena it did, but that this court lacks the authority to enforce the subpoena. The Tax Division may need to seek assistance from courts in Delaware or California, where Turo is a resident.

The court disagrees with Turo that personal jurisdiction is lacking.<sup>31</sup> It believes the circumstances of the case tip the scales toward a conclusion that personal jurisdiction exists and

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<sup>30</sup> See ALASKA STAT. ANN. § 43.05.040(c) (West).

<sup>31</sup> But see the May 29, 2018 Hearing at 10:48:36 am to 10:49:07 am, where Turo counsel asserts that: “[T]his case is not even about personal jurisdiction. The *Burger King*, the *MGM* case, those are not—that’s not the analysis that the court should be employing here. Personal jurisdiction has to do with whether or not the defendant can expect to be haled into court in a particular state to litigate the dispute. What we’re talking about here is what subpoena power does the Department of Revenue have or does it not have. And that’s really narrowly confined to the four corners of the statute.” The court believes that it is relevant to address personal jurisdiction because it informs interpretation of AS 43.05.040 and its “to the maximum extent permitted by law” language. The court does not believe the issue of personal jurisdiction is a complete red herring like Turo claims.

that it is not necessary to belabor the point through case analogy.<sup>32</sup> The company maintains significant contacts with the State of Alaska. Its involvement with the state is not random, fortuitous, or attenuated, and it amounts to more than just maintaining an interactive website that Alaskans coincidentally use. Yes, Turo does not have a physical presence in Alaska. In fact, it does not even maintain employees, facilities, or property anywhere in Alaska, and car owners and users control many aspects of the sharing process. That said, Turo provides owners and users access to its website and mobile app in Alaska (but not in other states, like New York); exacts 25% of gross profits from exchanges in Alaska that are, while perhaps small in the grand scheme, still anything but insignificant; has users sign terms of agreement; provides some insurance coverage to owners and users; and regulates car use by, for example, assessing fines for misuse. These are just a handful of the ways the company actively engages the Alaska market. This is far more than random, passive engagement with a faraway market. Turo no

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<sup>32</sup> See *International Shoe Co. v. Washington*, 326 U.S. 310, 316-19 (1945); see also, e.g., *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478-82 (1985) (holding that franchisee from Michigan was subject to Florida court's jurisdiction in dispute between himself and the franchisor, a Florida corporation, despite his never even having visited Florida, because his contacts with the state were not "random," "fortuitous," or "attenuated"; he purposefully affiliated himself with the Florida corporation for 20 years and could reasonably have anticipated being dragged into court in the state); *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418 (9th Cir. 1997) (quoting *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1124 (W.D.Pa.1997)) (noting that "[c]ourts that have addressed interactive sites have looked to the 'level of interactivity and commercial nature of the exchange of information that occurs on the Web site' to determine if sufficient contacts exist to warrant the exercise of jurisdiction."); *Def. Training Sys. v. Int'l Charter Inc. of Wyoming*, 30 F. Supp. 3d 867, 877 (D. Alaska 2014) (finding that court had specific jurisdiction over defendant who purposefully established contacts with Alaska by travelling to the state and entering contractual agreements with an Alaskan company).

doubt has significant enough contacts in Alaska that it is fair and appropriate that the company be subject to the jurisdiction of the relevant authorities—the court included—of this state.<sup>33</sup>

The court reserves judgment on whether the Tax Division issued its subpoena for an illegitimate purpose because Turo says it is not subject to Alaska’s Vehicle Rental Tax. “This case is not in the procedural posture to determine Turo’s liability for [the vehicle rental tax]. The only information available to [the Tax Division and before the court] is [the information presently] available to the general public online, [copies of which the Tax Division included with its briefing].”<sup>34</sup> The Tax Division issued its subpoena in the first instance for the express purpose of securing information to determine if Turo is liable to the state for taxes. The Tax Division was unsuccessful in securing what it wanted. The necessary information is neither before the Tax Division nor this court. As such, the court will not decide the matter at this time. The court does take notice of the United States Supreme Court’s recent decision in *South Dakota v. Wayfair, Inc.*<sup>35</sup> In *Wayfair*, the Court overruled *Quill Corp. v. North Dakota* and held that a state may require an out-of-state seller with no physical presence in its territorial boundaries to collect and remit a sales tax.<sup>36</sup>

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<sup>33</sup> See, e.g., *Burger King Corp.*, 471 U.S. at 478-82; *Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd.*, 243 F. Supp. 2d 1073 (C.D. Cal. 2003) (finding that a Vanuatu-based company knowingly and purposefully availed itself of the privilege of doing business in California because a large number of Californians used its services, the company was engaged in commercial conduct, and it signed licensing agreements with every user).

<sup>34</sup> See *Petition to Enforce*, *supra* note 1, at p. 9.

<sup>35</sup> No. 17-494, 2018 WL 3058015 (U.S. June 21, 2018) (overruling *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992)).

<sup>36</sup> See *id.* at \*10-11.

The court agrees with Turo that the subpoena the Tax Division issued is overly broad. It is appropriate to quash a subpoena if it is so overly broad as to be unduly burdensome to the receiving party.<sup>37</sup> In *Pebble Limited Partnership v. Environmental Protection Agency*, the court quashed document production subpoenas that the plaintiff served third parties to have them produce everything that they had ever received from or communicated to the U.S. Environmental Protection Agency.<sup>38</sup> The court quashed the subpoenas because they were addressed to a third party, were extraordinarily broad, and the plaintiff could secure the requested information in more convenient and affordable ways. The request also spanned eleven years.<sup>39</sup>

Here, the Tax Division served Turo with a subpoena as sweeping as the one in issue in *Pebble Limited Partnership*: it is as lacking in detail, spans a comparably long time span, and is equally reaching in its breadth, requiring “all” documents. Unlike in *Pebble Limited Partnership*, where the plaintiff served the subpoena on a third party, the Tax Division has served its subpoena on an actual party. The court does not believe that that distinction alone is sufficient to so differentiate the present case from *Pebble Limited Partnership* as to render it incomparable. In the end, the fact is that the Tax Division served Turo with a virtually

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<sup>37</sup> See, e.g., *Pebble Ltd. P'ship v. Env'tl. Prot. Agency*, 310 F.R.D. 575, 581 (D. Alaska 2015).

<sup>38</sup> See *id.* at 581-83.

<sup>39</sup> See *id.* at 581-82.

unbounded subpoena that spans in time from Turo's inception to the present day. It is simply too broad to comply with. The State needs to file a more specific, manageable subpoena.<sup>40</sup>

The court disagrees with Turo that the Tax Division's subpoena is invalid because it was improperly served. The Tax Division e-mailed its subpoena to Turo at its [ler@turo.com](mailto:ler@turo.com), which the company uses to receive courtesy copies of law enforcement subpoenas in criminal matters. It bears repeating that the Turo website apparently even says submission at the [ler@turo.com](mailto:ler@turo.com) address does not constitute service. There is otherwise no record that the subpoena was served a different way—no certified mail receipt or proof of service. That said, Turo clearly had notice of the subpoena. If it had not, it could not have responded via e-mail to the Tax Division on January 3, 2018 like it did. “Due process requires notice ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’”<sup>41</sup> The court does not know how the Tax Division's subpoena wound its way through Turo's corporate labyrinth to general counsel, but it did. Turo was reasonably apprised of the subpoena and able to respond to it in a timely and thorough fashion. There does not seem to have been the slightest prejudice.<sup>42</sup>

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<sup>40</sup> The court recognizes that *Pebble Limited Partnership* is not binding authority, but it finds the case's analysis persuasive.

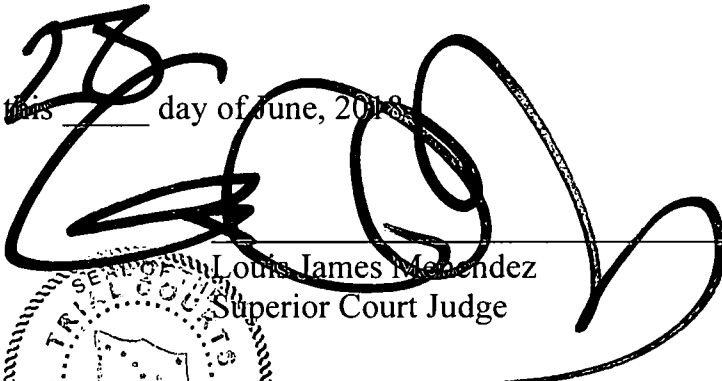
<sup>41</sup> *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 272 (2010) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

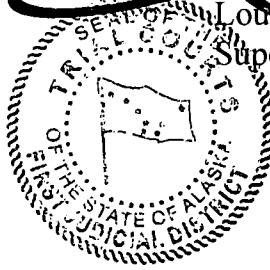
<sup>42</sup> *See id.* (holding that debtor's technical failure to provide creditor notice of bankruptcy did not violate due process rights because creditor had actual notice of the bankruptcy).

**V. Conclusion**

The Tax Division's March 8, 2018 petition is DENIED because the underlying subpoena is overbroad and because, even were it not, the court does not have the authority to enforce the subpoena.

Entered at Juneau, Alaska this \_\_\_\_\_ day of June, 2018.

  
\_\_\_\_\_  
Louis James Mendez  
Superior Court Judge



**CERTIFICATION**

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