IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

KARL VANDENHUERK and TERRIA VANDENHUERK, on behalf of themselves and all those similarly situated, Plaintiffs, v. STATE OF ALASKA, DEPARTMENT OF CORRECTIONS, and JEN WINKELMAN in her official capacity as Acting Commissioner of the Department, Defendants.	)	Case No. 3AN-21-06183CI

ORDER GRANTING SUMMARY JUDGMENT ON CONTRACT CLAIMS
(Case Motions #1 and #4)

This is a class action case brought by an incarcerated inmate and his spouse relating to the cost of phone calls in Alaska state prisons and related surcharges to call recipients. The Plaintiffs allege the State is charging Plaintiffs excessive amounts for telephone calls in violation of the Cleary Final Settlement Agreement.[1] They claim call recipients who pay for those calls are third party beneficiaries of the Cleary settlement agreement and they are therefore entitled to recover damages for the excess charges.

The Parties have previously moved for summary judgment on these issues, which the court has previously denied.[2] Subsequently, the parties filed a *Stipulation* Regarding Plaintiffs' Third Cause of Action Concerning Section V(C)(2) of the Cleary Final

[1] Plaintiffs also claim the excessive cost of phone calls is also a violation of Article I, Section 12 of the Alaska Constitution Regarding the Right to Rehabilitation, requiring declaratory and injunctive relief. That claim is not addressed in this order.

[2] *Order Denying Summary Judgment* (Case Motion #1 & 4) (October 3, 2023); *Order re Second Motion for Partial Summary Judgment* (Case Motion #15) (October 25, 2023); *Order Denying Motion for Reconsideration* (Case Motion #22) (December 27, 2023).

Settlement Agreement (CFSA).[3] In this *Stipulation* the parties acknowledged some portions of the contract claim remain unresolved, and agreed that the Court should decide whether call recipients were intended to be third-party beneficiaries of Section V(C)(2) of the CFSA. These issues were previously brought forth in two motions:

Case Motion No. 1- *Plaintiff's Motion for Partial Summary Judgment*

Case Motion No. 4- *Cross Motion for Partial Summary Judgment*

For the reasons stated below, Plaintiff's *Motion* is granted and Defendant's *Motion* is denied.

I. BACKGROUND

The Department of Corrections contracts with Securus Technologies to provide phone services within prison facilities. Inmates can place, but not receive, calls to outside numbers. Inmates can call certain numbers without incurring a charge, such as the Public Defender Agency and the Office of Public Advocacy, among others. For all other calls, the call recipient must pay for the call charges.

These calls are categorized in to three types: local, intrastate, and interstate. Local phone calls are made between two stations located in an area where "intercommunications service is furnished under local rate schedules as specified in the telephone utility's tariffs"[4]; intrastate calls are longer-distance calls that occur within the same state; interstate calls occur between states.[5] The duration of all calls is limited to 15 minutes.

Karl Vandenhuerk is currently incarcerated by the State of Alaska; Terria Vandenhuerk is married to Karl and is not incarcerated. On June 1, 2021, the couple filed a Class Action Complaint on behalf of themselves and all those who are similarly situated ("Vandenhuerk" or "plaintiffs"). The Complaint alleges three claims for relief against the State of Alaska, the Department of Corrections and the Commissioner of the Department

[3] Stipulation Regarding Plaintiff's Third Cause of Action Concerning Section V(C)(2) of the Cleary Final Settlement Agreement (July 12,2024).
[4] Exhibit 4 – *Defendant's Response to Plaintiffs' Second Discovery Requests* at 2.
[5] Exhibit 4 – *Defendant's Response to Plaintiffs' Second Discovery Requests* at 2.

based on the cost of phone calls in Alaska state prisons and related surcharges to call recipients.

Count III of Plaintiff's Complaint concerns whether the recipients of local phone calls from Alaska's prisons are entitled to damages because the State of Alaska, Department of Corrections ("DOC") has violated and is violating Section V(C)(2) of the Cleary Final Settlement Agreement ("CFSA").[6]

Section V(C)(2) of the CFSA reads:

> 2. (a) The Department may install coinless pay phones in each facility for local and long distance calls which provide caller identification for each call. No charge shall be assessed **to the caller or recipient** for local calls. At least seven speed call numbers which bypass caller identification shall be installed in each phone for calls to the local offices of the Public Defender, Public Advocate, Alaska Legal Services, Ombudsman, Department of Revenue, Division of Public Assistance, and Legislative Information Office, where such local offices exist.
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> (b) If, after one year of operation on a statewide basis, revenues from toll calls are insufficient to pay for the cost of local calls in the coinless payphone system, the Department reserves the right to assess **of not more than $0.50 per call** for local calls. If the Department exercises this right, the plaintiffs have the corresponding right to challenge any charge as to its amount and necessity, and to propose less costly and restrictive alternatives.[7]

This Court previously ruled on parts of this cause of action. On May 27, 2022, this Court issued an order holding that 1.) Section V(C)(2) of the CFSA mandates that it cannot cost more than $0.50 to make a local phone call for an inmate in the custody of DOC; and 2.) that DOC violated Section V(C)(2) of the CFSA by charging more than $0.50 for such calls.[8] However, in this same order it declined to rule 1.) whether the DOC's violation of Section V(C)(2) of the CFSA gives rise to a claim for monetary damages; or 2.) whether, when it costs more than $0.50 for local phone calls by inmates in the custody

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[6] *Class Action Complaint* at p. 15-17 (emphasis added).
[7] No. 3AN-81-05274CI FSA (Alaska Super., Sept 21, 1990).
[8] *Order re Plaintiff's Motion for Partial Summary Judgment and Defendant's Cross Motion for Partial Summary Judgment* at 3-4, 8.

of DOC, the recipients of those calls are entitled to damages as third-party beneficiaries of the CFSA.[9]

After additional summary judgment briefing, this Court found there was a fact dispute about whether call recipients were intended to be third party beneficiaries of Section V(C)(2) of the CFSA and declined again to rule on the above two issues. In their *Stipulation* filed July 12, 2024, the parties requested the Court make this decision based solely on the evidence that has been presented in prior briefing.

Thus, based solely on previous briefing and evidence this Court will decide 1.) whether recipients were intended to be third-party beneficiaries of Section V(C)(2) of the CFSA and 2.) whether, when it costs more than $0.50 for local phone calls by inmates in the custody of DOC, the recipients of those calls are entitled to damages as third-party beneficiaries of the CFSA.

II. ARGUMENTS

A. The State's Argument

The State's position is that call recipients are not third-party beneficiaries to the CFSA. The State argues that the parties to the CFSA did not intend for call recipients to be third-party beneficiaries. The State contends it is entitled to summary judgment because call recipients have not shown the CFSA contains the necessary expression of intent to benefit the call recipients or the intent that call recipients have the power to enforce the CFSA. Additionally, the State argues that the CFSA does not manifest an intent for third parties to enforce the CFSA. The State argues that extrinsic evidence supports that the CFSA did not intend to create rights for third-party beneficiaries or the right to enforce. Further, the state argues, even if a third-party was intended to benefit from the CFSA, the Telephone Access Provision does not support a claim for monetary damages.

[9] *Id.* 4-8

B. Plaintiff's Argument

Vandenhuerk argues that the State's violations of Section V(C)(2) of the CFSA give rise to a claim for monetary damages. Vandenhuerk contends that with basic contract interpretation, the CFSA Section (V)(C)(2) gives rise to claim for monetary damages and that Section V(C)(2) of the CFSA is akin to Section VI(J), CFSA's "gate money" provision. Vandenhuerk claims that the existence of enforcement provisions in the CFSA does not preclude Section V(C)(2) from giving rise to monetary damages.

Moreover, Vandenhuerk argues, call recipients are intended third-party beneficiaries of the CFSA. Vandenhuerk contends that Section V(C)(2) supports the conclusion that inmates intended to give call recipients the benefit of the $0.50 cap on local calls. Vandenhuerk argues that the State could have and chose not to negotiate with the CFSA inmates to disclaim any remedies for third-party beneficiaries. Lastly, Vandenhuerk contends that finding for the State will inflict substantial consequences upon the Plaintiffs.

III. APPLICABLE LAW

This issue was originally raised by summary judgment motions. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[10] The moving party has the initial burden of making that prima facie showing through admissible evidence.[11] Once the moving party meets that burden, the burden shifts to the non-moving party to set forth specific facts showing that he could produce evidence reasonably tending to dispute or contradict the movant's evidence and thus demonstrate that a material issue of fact exists.[12]

When evaluating a summary judgment motion, the court draws all reasonable inferences in favor of the non-moving party, requiring only that the evidence proposed for trial not be based entirely on unsupported assumptions and speculation, and not be too incredible to be believed by reasonable minds.[13] After the court makes reasonable

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[10] ALASKA R. CIV. PROC. 56(c).
[11] *Winschel v. Brown*, 171 P.3d 142, 145 (Alaska 2007).
[12] *Thomas v. Archer*, 384 P.3d 791 (Alaska 2016).
[13] *Thomas v. Archer*, 384 P.3d 791 (Alaska 2016).

inferences from the evidence in favor of the non-moving party, summary judgment is appropriate only when no reasonable person could discern a genuine factual dispute on a material issue.[14]

The Court has the duty to review the entirety of the record on a motion for summary judgment to determine whether any of the evidentiary material presented "suggests the existence of any other triable genuine issues of material fact."[15]

Moreover, "[a] party opposing summary judgment need not prove that it will prevail at trial, but only that there is a triable issue of fact. Any evidence sufficient to raise a genuine issue of material fact, so long as it amounts to more than a scintilla of contrary evidence, is sufficient to oppose summary judgment."[16] Therefore, a party needs to produce more than a scintilla of evidence in order to defeat summary judgment.

Here the Court decides the issue of intent as it relates to a contract. Generally, interpretation of contract language is a question of law.[17] However, the intent of the parties when entering the contract is a question of fact.[18] Although this Court previously concluded that fact issues precluded summary judgment, the parties have requested the Court determine this issue of fact relying solely on the evidence presented in prior briefing.[19] Accordingly, the Court decides this matter based upon a stipulated record, and based upon the parties' joint conclusion that no further evidence is needed for the Court to render a decision.

IV. ANALYSIS

Before the Court are the following two issues:

(1) When it costs more than $0.50 for local phone calls by prisoners in the custody of DOC, the recipients of those calls are entitled to damages as

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[14] *Thomas v. Archer*, 384 P.3d 791 (Alaska 2016).
[15] *Prentzel v. State, Dept. of Public Safety,* 169 P.3d 573, 582 (Alaska 2007) (quoting *Jennings v. State,* 566 P.2d 1304, 1310 (Alaska 1977)).
[16] *Kalenka v. Infinity Ins. Companies*, 262 P.3d 602 (Alaska 2011)(citing *Indus. Commercial Elec., Inc. v. McLees,* 101 P.3d 593, 597 (Alaska 2004) and *Beal v. McGuire,* 216 P.3d 1154, 1161 (Alaska 2009)).
[17] *K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d 702, 712 (Alaska 2003).
[18] *K & K Recycling, Inc. v. Alaska Gold Co.*, 80 P.3d 702, 712 (Alaska 2003).
[19] *Stipulation Regarding Plaintiffs' Third Cause of Action Concerning Section V(C)(2) of the Cleary Final Settlement Agreement* (July 15, 2024).

third-party beneficiaries of the CFSA; and

(2) Whether the State's violation of Section (V)(c)(2) of CFSA gives rise to a claim for monetary damages.

The Alaska Supreme Court discussed the CFSA, third-party beneficiaries, and damages in *Perotti v. Corr. Corp. of Am.* Perotti was an inmate and the Alaska Supreme Court had previously held that DOC owed all Alaska inmates legal duties as detailed the CFSA.[20] However, in *Perotti*, the Alaska Supreme Court did not answer the question of whether Perotti was a third-party beneficiary under the CFSA.[21]

In this case, the Court must address whether call recipients, as non-inmates, were intended to be third-party beneficiaries. There is no express statement of intent that call recipients are intended third-party beneficiaries; therefore, the Court must discern the intent of the contracting parties, as requested by the parties. Here, both parties offer different versions of the parties' contractual intent.

A. When it costs more than $0.50 for local phone calls by inmates in the custody of DOC, the recipients of those calls are entitled to damages as third-party beneficiaries of the CFSA.

Prisoners in DOC custody generally may not receive incoming calls, but can only place outgoing collect calls at the expense of the recipient.[22] The CFSA contains a provision limiting how much the Department may charge for local calls. This raises the question whether the recipients of those calls are entitled considered third party beneficiaries under CFSA, which is a contract between prisoners and the state.

Vandenhuerk argues call recipients are intended beneficiaries under black letter law because "a third-party [can] enforce a contract upon a showing that the parties to the contract intended that at least one purpose of the contract was to benefit the third party."[23]

The Alaska Supreme Court adopted the test from the Restatement (Second) of Contracts to determine if a third party is an intended beneficiary of a contract:[24]

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[20] *See generally Perotti v. Corr. Corp. of Am.*, 290 P.3d 403 (Alaska 2012) (discussing *Rathke v. Corr. Corp. of Am., Inc.*, 153 P.3d 303, 310–11 (Alaska 2007)).
[21] *Perotti v. Corr. Corp. of Am.*, 290 P.3d 403, 406 (Alaska 2012).
[22] *Defendants' Cross Motion* at 5.
[23] *Smallwood v. Cent. Peninsula Gen. Hosp.*, 151 P.3d 319, 324 (Alaska 2006).
[24] See *Id.* at 325; *Antenor*, 462 P.3d at 8 n3; *Rathke*, 153 P.3d at 310-11.

> (1) Unless otherwise agreed between promisor and promisee, a beneficiary of a promise is an intended beneficiary if recognition of a right to performance in the beneficiary is appropriate to effectuate the intention of the parties and either
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> > (a) the performance of the promise will satisfy an obligation of the promisee to pay money to the beneficiary; or
> >
> > (b) the circumstances indicate that the promisee intends to give the beneficiary the benefit of the promised performance.[25]
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> (2) An incidental beneficiary is a beneficiary who is not an intended beneficiary.

Here, the contract is the CFSA, and the contracting parties are the inmates and the Department. Since it is the Department which agreed to cap the price of phone calls, it is the promisor. The inmates receive the benefit of that promise, so they are the promisees. As the Supreme Court noted in *Rathke*, when applying the Restatement provisions to determine third party beneficiary status, "the motives of the parties in executing a contract—especially the promisee—are determinative."[26] Moreover, it is ordinarily the promisee's motives which are relevant to the determination.[27] Thus, here we look first to the inmates' intent. Still, in applying this test, the court must "examine the parties' objective intent rather than their subjective motives.[28] When interpreting a contract, the object is to give effect to the reasonable expectations of the parties.[29]

The DOC argues there was no "clear intent" to recognize the recipients' vital role in effectuating the terms under Section V(C) of the CFSA. However, the CFSA states "No charge shall be assessed to the caller **or recipient** for local calls..." (emphasis added).[30] The inmates' intention was likely to avoid the imposition of high call rates, regardless of whether the caller or recipient paid for the call charge. This is the only reasonable

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[25] Restatement (Second) of Contracts § 302 (1979); *Rathke v Corrections Corp. of America, Inc.*, 153 P.3d 303, 310 (Alaska 2007); see also *Smallwood v. Cent. Peninsula Gen. Hosp.*, 151 P.3d 319, 324 (Alaska 2006).
[26] *Rathke*, 153 P.3d at 310.
[27] *Rathke*, 153 P.3d at 310, n24 ("*State v. Osborne,* 607 P.2d 369, 371 (Alaska 1980) ("Ordinarily, only the promisee's ... motives are relevant.") (citing 4 A. Corbin, Corbin on Contracts § 776 (1951)). *See also* 13 Williston § 37:8 at 71 ("According to the majority rule, there is no requirement of mutual intent, as to the right of enforcement, on the part of the contracting parties; instead, it is the intent or purpose of the promisee who pays for the promise that has been generally considered as governing....")."
[28] *Perotti*, 290 P.3d at 408; *Rathke*, 153 P.3d at 310.
[29] *Peterson v. Wirum*, 625 P.2d 866 (Alaska 1981).
[30] CFSA Section V(C)(2)(a).

conclusion because recipients pay for the calls that inmates initiate. Thus, this portion of the CFSA demonstrates that call recipients should benefit from free local calls from inmate callers.

Additionally, at the time the CFSA was enacted Section V(C)(2) contemplated that phone calls were free, but that the price may increase:

> (b) If, after one year of operation on a statewide basis, revenues from toll calls are insufficient to pay for the cost of local calls in the coinless payphone system, the Department reserves the right to assess of not more than $0.50 per call for local calls.[31]

Considering only the plain text of the CFSA, this Court agrees recipients are intended to benefit from the call price cap of $0.50. The recipients are named in subsection (a) as beneficiaries and subsection (b) further elaborates the promise DOC made to the prisoners that local calls would be free for one year and then prices would be capped at $0.50. Inmates likely intended this benefit because recipients pay for calls, not the inmates themselves. Inmates reasonably expected to benefit call recipients, and the DOC agreed to limiting their right to charge call recipients for local calls.

DOC argues they do not render promised performance to the call recipients directly because a telephone company bills the call recipients, not the DOC. Thus, they argue, the call recipients are not intended to benefit. But this argument is simply a red herring.

Take this illustration from Restatement (Second) of Contracts:

> 10. A, the operator of a chicken processing and fertilizer plant, contracts with B, a municipality, to use B's sewage system. With the purpose of preventing harm to landowners downstream from its system, B obtains from A a promise to remove specified types of waste from its deposits into the system. C, a downstream landowner, is an intended beneficiary under Subsection (1)(b).[32]

In this example it is irrelevant how A chooses to remove the waste from its deposits in the system. They made a promise to B that they must uphold. This promise implicates C as

[31] CFSA Section V(C)(2).
[32] Restatement (Second) of Contracts § 302 (1981).

an intended beneficiary. A could choose to subcontract a waste remover, however their promise to B still stands.

Here, C are the call recipients. B are the prisoners who contracted with DOC (A) to protect the interests of the call recipients. Similar to the example, DOC is free to elect their method of providing calls. Ultimately, call recipients are billed directly for calls and DOC has promised to maintain a call rate at or below $0.50.

DOC's argument would also render the cap on the cost of phone calls entirely meaningless. Following DOC's logic, it could agree that it will never charge for any phone call, and then contract out the service to a third party and escape any responsibility if that third party charges money.

A different example illustrates the point if we assume the provision at issue relates to food instead of phone calls. Suppose DOC had contracted that it would provide inmates with three meals per day at no cost, but then contracted out that service to a food service company which contracted to provide one meal per day, but would optionally serve the other two meals if inmates' families agreed to pay for the extra meals. What if instead the contracted service is an educational course? What about counseling, or medical care? In any of these examples, why should it make a difference that DOC contracts out a basic essential service to a third party, if that third party turns around and charges families for providing the service? If in fact DOC can avoid all responsibility for surcharges, or irregularities in pricing, then it can agree to whatever it chooses, and then shirk responsibility when the third party charges the families. That result cannot be what the parties intended when entering the CFSA.

The DOC also argues call recipients are not intended beneficiaries because they are not listed in section I(D), where it states "the provisions of this agreement will become binding on the Department and members of the plaintiff class, Subclass A and B. These subclasses include all inmates, with some exceptions, who are or will in the future be incarcerated in correction facilities owned or operated by the state."[33] The DOC notes that to determine whether plaintiffs are third-party beneficiaries we should look at the

[33] *Cleary Final Settlement and Order* § I(D).

agreement as a whole. Since family members who pay for the calls are not mentioned in other parts of the agreement which specifically enumerate members of the plaintiff class, DOC says they cannot reasonably be intended beneficiaries.

However, the identification of class members does not refute Vandenhuerk' s argument that call recipients are intended beneficiaries, as viewing the agreement as a whole reinforces plaintiff's conclusion. As in the Restatement illustration, two parties may contract for the benefit of another. The Department contracted with the plaintiffs to charge call recipients no more than $0.50 for local calls. The Department is bound by its promise to provide local calls at this rate or lower. Thus, call recipients are intended beneficiaries of this contract.

Otherwise, DOC's promise to cap the call rate would be entirely illusory. It is a fundamental principle of contract law that the court should avoid a contract interpretation which results in an illusory promise.[34] As noted by Williston, an esteemed treatise on contracts,

> in general consideration requires a bargained-for benefit or detriment. Where an illusory promise is made, that is, a promise merely in form, but in actuality not promising anything, it cannot serve as consideration. Even if it were recognized by law, it would impose no obligation, since the promisor always has it within the promisor's power to keep the promise and yet escape performance of anything detrimental to itself or beneficial to the promisee. In such cases, where the promisor may perform or not, solely on the condition of whim, the promise will not serve as consideration.[35]

As Williston further notes, a common illustration for the lack of consideration for the promise is an agreement to buy or sell goods where the quantity is to be fixed by the wishes (or whims) of one of the parties. The promise is illusory and is not deemed to be consideration for the other's promise.[36]

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[34] The illusory promise doctrine instructs courts to avoid constructions of contracts that would render promises illusory because such promises cannot serve as consideration for a contract. See 3 Williston on Contracts § 7:7 (4th ed. 2008).
[35] *Id.* (citing Restatement (Second), Contracts § 77, comment a and illustration 1, 2.)
[36] 3 Williston on Contracts § 7:7.

The Alaska Supreme court recognized the illusory promise doctrine in *Askinuk*.[37] There, the Supreme Court recognized that "illusory promises are those that "by their terms make performance entirely optional with the 'promisor'."[38]

In *Askinuk*, the parties agreed to a renegotiation clause in a lease which included a lease price of $1.00 per year for ten years. Thereafter, the parties were to renegotiate the terms, but if they could not agree then the $1.00 per year lease price would continue in effect until a new agreement was reached. This provision required the parties to negotiate in good faith. And because every contract includes the implied covenant of good faith and fair dealing, the contract was not considered illusory.[39] "The covenant prevents each party from doing anything that will injure the right of the other to receive the benefits of the agreement."[40]

In this case, similar to *Askinuk*, the CFSA contains a provision for free local calls. The provision could be modified to permit a charge for calls, if necessary, after the first year, but the call charge could not exceed $.50 per call. If this provision cannot be enforced by the party who pays for the call, then it would be entirely illusory – in effect it would allow DOC unfettered discretion to charge whatever it chooses and deprive inmates (and their families) of the benefits of the agreement. The Court therefore rejects this interpretation of the contract.

The DOC additionally argues that "the contract clearly establishes that inmates were the sole enforcers of this promised performance."[41] The CFSA states:

> ...the Department reserves the right to assess of not more than $0.50 per call for local calls. If the Department exercises this right, the plaintiffs have the corresponding right to challenge any charge as to its amount and necessity, and to propose less costly and restrictive alternatives.[42]

However, the Department is not merely exercising their right here, but they have instead violated it by charging more than $0.50. Further, this argument still does not refute

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[37] *Askinuk Corp. v. Lower Yukon School District*, 214 P.3d 259, 267 (Alaska 2009).
[38] *Askinuk*, 214 P.3d at 267 (quoting RESTATEMENT (SECOND) OF CONTRACTS § 77 cmt. a (1981).)
[39] Askinuk, 213 P.3d at 267-268.
[40] *Id.*
[41] *Defendants' Cross Motion* at 5-6.
[42] CFSA Section V(C)(2).

the fact that call recipients are intended beneficiaries. Intended third-party beneficiaries may enforce the contract terms intended to benefit them.[43]

Returning to the issue of damages under the CFSA, DOC argues that if call recipients are intended third-parties, they may not claim damages under CFSA because they must "stand in the shoes" of an inmate.[44] Thus, DOC argues, call recipients cannot seek damages because the enforcement provisions of the CFSA do not mention payment of monetary damages for violations. This argument is considered further in section (b) of this Order below.

In summary, when interpreting a contract, the object is to give effect to the reasonable expectations of the parties.[45] This Court has determined call recipients were intended beneficiaries of the CFSA because it is likely what the parties reasonably expected. The Department promised the prisoners they would not charge call recipients more than $0.50 for local calls. The parties intended the call recipients to benefit from Section V(C)(2) of the agreement and as such they are harmed by a violation of this section. Intended third-party beneficiaries may enforce the contract terms intended to benefit them.[46]

B. DOC's violation of Section V(C)(2) of the CFSA gives rise to a claim for monetary damages.

Previously, this Court acknowledged that the law does not expressly provide for nor expressly preclude the possibility of obtaining monetary damages under Section V(C)(2) of the CFSA.[47] To date, the Alaska Supreme Court has not squarely decided the issue.

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[43] *Howell*, 943 P.2d at 1207; *Neal*, 895 P.2d at 505; *Kodiak Elec.*, 694 P.2d at 154; *Osborne*, 607 P.2d at 371.
[44] *State v. Osborne*, 607 P.2d 369 (Alaska 1980).
[45] *Peterson v. Wirum*, 625 P.2d 866 (Alaska 1981).
[46] *Howell*, 943 P.2d at 1207; *Neal*, 895 P.2d at 505; *Kodiak Elec.*, 694 P.2d at 154; *Osborne*, 607 P.2d at 371.
[47] *Order re Motions for Partial Summary Judgment* at p. 4-6 (May 27, 2022).

1. Prior Supreme Court Precedent

In *Perotti v. Corrections Corp. of America*, the Alaska Supreme Court considered the question of whether monetary damages are available to inmates for violations of the CFSA generally.[48] The *Perotti* Court explained that the CFSA is "quite specific in describing the means by which it will be enforced" and that the enforcement provision of the CFSA makes no mention of payment of monetary damages.[49] Thus, the enforcement provision of the CFSA "does not generally contemplate an award of monetary damages for violations.[50]

However, the *Perotti* Court did not foreclose the possibility of awarding monetary damages pursuant to the CFSA. Instead, in a footnote, the Court stated:

> The Cleary Settlement does include at least one term that may lend itself to a specific claim for monetary damages. The Cleary Settlement directs payment of gate money to prisoners who leave the facility. In *Hertz v. State, Department of Corrections*, we left open the question whether a released prisoner who has been denied this gate money has a damage claim for past failure to pay these funds under the Cleary Settlement. We do not decide this question today, but we note that, in contrast to Perotti's claims for damages, there is a clear and precise measure of monetary damages for a violation of the gate money provision of the Cleary Settlement.[51]

In an unreported opinion shortly after *Perotti*, the Alaska Supreme Court reiterated that the CFSA "include[s] at least one term- payment of gate money- that might 'lend itself to a specific claim for monetary damages.'"[52]

More recently the *Antenor* Court declined to decide whether inmates could recover compensatory damages for violations of Section V(C)(2) of the CFSA, because the Court found that the issue was waived on appeal.[53] In doing so, the Court noted that "[e]ven if

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[48] *Perotti v. Corr. Corp. Am.*, 290 P.3d 403(Alaska 2012).
[49] *Id.* at 409.
[50] *Id.*
[51] *Id.* at n. 28 (internal citations omitted).
[52] See *Larson v. Reimer*, 2013 WL 3811806 (Alaska July 17, 2013) (quoting *Perotti*, 290 P.3d at n. 28) (emphasis added).
[53] *Antenor v Dept. of Corrections*, 462 P.3d, 1,14 (Alaska 2020).

it may be appropriate to direct the payment of restitution to the inmates' families, the families and not the inmates would have to seek that remedy."[54]

Thus, the Alaska Supreme Court has not foreclosed the possibility of recovering damages under Section V(C)(2) of the CFSA. And significantly, in this case the inmates' families are seeking that remedy.

2. Is there a clear and precise measure of monetary damages?

Vandenhuerk argues that monetary damages are available because, like the provision for gate money, Section V(C)(2) provides a clear and precise measure of monetary damages. Vandenhuerk insists that the Alaska Supreme Court has "made clear that any violation of the [CFSA] that would allow for a 'clear and precise' calculation of financial loss would give rise to an award of monetary damages."[55] By contrast, the State argues monetary damages are simply not available under the CFSA, or alternatively, they are not available for violations of Section V(C)(2). They assert that Section V(C)(2) "is modifiable" and, therefore, not a clear and precise measure of damages.[56]

This Court previously noted these are both overstatements of the law. As discussed above, the Supreme Court has suggested monetary damages *might* be available for violations of the CFSA insofar as the violated provision includes a clear and precise measure of damages.

Vandenhuerk explained how damages arising from a violation of Section V(C)(2) could be calculated using simple arithmetic and are thus "clear and precise" damages as contemplated by the Alaska Supreme Court in *Perotti*.[57] The State did not specifically engage this argument. Instead, the State asserts that Section V(C)(2) "is modifiable and is not a clear and precise measure to afford the inmates the right to monetary damages."[58]

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[54] *Id.* at n. 84 (internal quotations omitted). The Court further stated: "[w]e express no opinion about their entitlement to such a remedy, but we note that in Perotti v. Corr. Corp. of Am., we observed that Cleary's enforcement provision "contains no mention of the payment of compensatory or nominal monetary damages for violations." 290 P.3d 403, 409 (Alaska 2012). *Id.*

[55] *Pl.'s Mot. For Partial Summary Judgment* at 7 (emphasis in original).

[56] *Def.'s Opp. to Pl.'s Mot. For Partial Summary Judgment and Cross Motion for Partial Summary Judgment* at 7.

[57] *Reply Memorandum in Support of the Plaintiffs' Motion for Partial Summary Judgment and in Opposition to the Defendant's Cross Motion for Partial Summary Judgment* at 9.

[58] *Defendants' Cross Motion* at 3.

They note that in *Hertz v. State Dep't of Corr.*, the Supreme Court held the CFSA did not create a "continuing claim of entitlement to gate money because it [the CFSA] grants broad discretion to the trial court to terminate or modify its terms in response to changes in the law and circumstances."[59]

Similarly, here, the State contends the CFSA allows DOC "to exercise a right to charge for local calls and provides the court the ability to terminate or modify its terms in response to changes in law and circumstances."[60] Vandenhuerk notes that Section V(C)(2) enforces a specific price cap which is not modifiable unless the CFSA is changed. Further, they argue, *Hertz* concerned prospective injunctive relief, not monetary damages. Lastly, in *Perotti* and *Larson*, both decided after *Hertz*, the Alaska Supreme Court made clear that damages could be available for violation of the gate money provision.

In the footnote from *Perotti* cited above, the Alaska Supreme Court stated, "there is a clear and precise measure of monetary damages for a violation of the gate money provision of the Cleary Settlement."[61] The gate money provision in the CFSA provides for a specific minimum amount of money for a specific purpose: "being available to the inmate at the time of release."[62] The provision sets a minimum amount: "at least $150 of gate money." Further, the provision directs that DOC "shall seek funding to provide this gate money."[63]

In this Court's view, if the gate money provision with its minimum is clear and precise, then the maximum amount for local phone calls is equally as clear and precise. The Court sees no difference between a $150 minimum and a $0.50 maximum. This Court is not persuaded by the State's argument that money damages for these calls are not "clear and precise" as required under the CFSA. The gate money provision is likely more modifiable than Section V(C)(2).

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[59] *Defendants' Cross Motion* at 3, citing *Hertz v State*, 230 P.3d 663, 669 (Alaska 2010).
[60] *Defendants' Cross Motion* at 3, (citing Cleary Final Settlement and Order § V(C) and § IX).
[61] *Perotti v. Corr. Corp. of Am.*, 290 P.3d 403, 409 (Alaska 2012).
[62] CFSA § VI.J.
[63] CFSA § VI.J.

This Court has already determined that Section V(C)(2) mandates that it cannot cost more than $0.50 to make a local phone call for an inmate in the custody of DOC. Any amount over $0.50 is a clear and precise monetary damage. These damages fit into the description of possible damages contemplated by the Alaska Supreme Court in *Hertz*. However, contemplation by the Supreme Court is not enough to prove intent. Interpretation of the contract text itself as discussed above contributes to the conclusion the parties intended damages would be available for a violation under Section V(C)(2).

The CFSA is a contract between prisoners and the DOC, but call recipients pay for phone calls. Having determined the CFSA intended call recipients to be third party beneficiaries, damages may be sought under Section V(C)(2).

Under *Perotti* the Alaska Supreme Court Supreme Court suggested monetary damages *might* be available for violations of the CFSA insofar as the violated provision includes a clear and precise measure of damages. We concluded that local call costs above $0.50 are "clear and precise" and thus the kind of monetary damages contemplated by the Alaska Supreme Court. Call recipients may seek these monetary damages because they are clear and precise and because call recipients are the intended beneficiaries of Section V(C)(2) of the CFSA.

The CFSA is understood to provide for damages where the damages are clear and precise. The damages to call recipients under Section V(C)(2) are clear and precise because they are not modifiable and simple to ascertain. We therefore hold that local call recipients may enforce the call rate cap of $0.50 as third-party beneficiaries of the CFSA.

V. CONCLUSION

The two questions answered above came to this Court on a summary judgment motion.[64] This Court previously declined to rule on the intent of the contract which precluded summary judgment. Here we rule that 1.) DOC's violation of Section V(C)(2) of the CFSA gives rise to a claim for monetary damages and 2.) When it costs more than $0.50 for local phone calls by inmates in the custody of DOC, the recipients of those calls are entitled to damages as third-party beneficiaries of the CFSA. Those were the sole

[64] They were also raised in Defendants' *Opposition and Cross Motion for Summary Judgment.*

facts previously precluding judgment here. With that decided, summary judgment is denied for defendants and granted for plaintiffs.

VI. ORDER

For the reasons stated herein, Plaintiff's *Motion for Summary Judgment* is **GRANTED** and Defendant's *Cross Motion for Summary Judgment* is **DENIED.**

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 14th day of July, 2025.

Thomas A. Matthews
Superior Court Judge

I certify that on 7/14/25 (W) a copy of the following was mailed/faxed/hand-delivered to each of the following at their addresses of record.
Dudukgian Marquez
Davis Harrison
Feronti Pace