

C. Jonathan Benner (*pro hac vice*)  
Kathleen E. Kraft (*pro hac vice*)  
Thompson Coburn LLP  
1909 K Street, N.W., Suite 600  
Washington, DC 20006-1167  
Phone: 202-585-6900  
Fax: 202-585-6969  
Email: jbenner@thompsoncoburn.com  
kkraft@thompsoncoburn.com  
Herbert H. Ray, Jr. (Alaska Bar No. 8811201)  
Keesal, Young & Logan  
1029 West Third Avenue, Suite 650  
Anchorage, AK 99501-1954  
Phone: 907-279-9696  
Fax: 907-279-4239  
E-mail: bert.ray@kyl.com  
*Attorneys for Plaintiffs*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

CRUISE LINES INTERNATIONAL  
ASSOCIATION ALASKA, *et al.*,

Plaintiffs,

v.

THE CITY AND THE BOROUGH OF  
JUNEAU, ALASKA, *et al.*,

Defendants.

Case No. 1:16-cv-00008-HRH

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' SEALED MOTION  
REQUESTING LEAVE TO FILE  
PLEADINGS AND EXHIBITS UNDER  
SEAL**

Plaintiffs Cruise Lines International Association and Cruise Lines International Association Alaska ("Plaintiffs" or "CLIA") file the following response to Defendants City and Borough of Juneau and Rorie Watt's (collectively, "CBJ" or "Defendants") sealed motion requesting leave to file un-redacted copies of the following: CBJ's Cross Motion for Summary

Judgment and Opposition to Plaintiffs' Motion for Summary Judgment, ECF No. 118, ("Cross-Motion and Opposition"); CBJ's Objections and Responses to Plaintiffs' Statement of Facts in Support of Motion for Summary Judgment, ECF No. 104-1; CBJ's Statement of Facts in Support of its Cross-Motion and Opposition and in Support of its Motion to Strike Certain Exhibits, ECF No. 118-2; and certain exhibits cited and discussed therein. *See Generally* CBJ Sealed Mot. Req. Leave File Under Seal ("Motion" or "Mot."). The Motion concerns 46 CBJ-proffered exhibits that are documents produced by CLIA in its initial disclosure or in response to discovery requests, and that have been designated "Confidential" or "Highly Confidential" by CLIA, pursuant to the Stipulation and Protective Order Governing the Production and Exchange of Confidential Information, ECF No. 44-1, ("Protective Order"). In its Motion, CBJ states that it is submitting those exhibits under seal pursuant to the Protective Order, but that CBJ does not agree the documents are confidential or highly confidential. Mot. at 2. CBJ ultimately defers to CLIA to provide the Court with support for the need to file the exhibits under seal.

### **ARGUMENT**

CBJ first argues that the exhibits it challenges are neither confidential nor highly confidential, but then concedes that it "does not have any information as to why the Plaintiffs designated these documents as Confidential or Highly Confidential." Mot. at 3. CLIA is best positioned to assert whether and to what extent documents it has in its possession and has produced during discovery are confidential, highly confidential, or subject to filing under seal. More importantly, the Protective Order in this case expressly permits the parties to designate documents as confidential or highly confidential. Pursuant to the Protective Order, documents and information may be designated as "Confidential" if they contain "nonpublic commercial information," "private or sensitive data," or may result in "substantial harm, embarrassment,

inconveniens, or unfairness to a person or entity if lost, comprised, or disclosed without authorization.” Protective Order at 4. Documents and information may be designated as “Highly Confidential” if they contain “extremely sensitive confidential information that is reasonably believed to contain proprietary and/or trade secret information.” *Id.*

The exhibits at issue have been designated confidential or highly confidential by CLIA for one of three reasons. *First*, they contain sensitive internal communications between CLIA members and/or CLIA partners regarding nonpublic commercial matters. *Second*, they contain sensitive communications between CLIA members and elected officials regarding CLIA’s legislative positions and interests. *Third*, they consist of drafts of sensitive documents that, while eventually shared with elected officials and/or the general public, were not final or approved versions in the exhibits proffered by CBJ.

Any exhibit falling under one of these three categories is properly designated as confidential or highly confidential and, therefore, is properly subject to being filed under seal pursuant to the Protective Order. That is the case for each of the 46 exhibits at issue here.

**1. Internal communications between CLIA members and partners are properly designated as Confidential or Highly Confidential**

Exhibits BH, BW, EP, EQ, ER, ES, ET, EU, FB, FI, FP, FT, FV, IB, IH, IN, IO, IZ, JA, KG, KI, KO, KW, LP and LR, for which CBJ challenges the confidentiality designation, are email communications between CLIA members, partners, and in the case of Exhibit IH, legal counsel. The exhibits discuss confidential business and litigation strategy, legislative goals, and other sensitive information pertaining to the operation of CLIA and its members. As such, the documents are properly designated as Confidential or Highly Confidential pursuant to the Protective Order. The exhibits must be filed under seal.

**2. Communications with and/or concerning elected officials are properly designated as Confidential or Highly Confidential**

Exhibits BZ, CA, CE, CF, ED, and JO, for which CBJ challenges the confidentiality designation, are direct communications with elected officials and/or communications regarding strategies for meeting with elected officials to discuss CLIA's legislative positions and interests. The communications contain confidential and sensitive information that neither CLIA nor a third-party wishes to divulge publicly. Accordingly, CLIA has designated these documents as Confidential or Highly Confidential, and the exhibits must be filed under seal.

**3. Internal draft documents are properly designated as Confidential or Highly Confidential**

Exhibits BB, CB, and CD, for which CBJ challenges the confidentiality designation, are internal letters and communications to elected officials or draft press releases. CBJ has conveniently excluded the parent/cover emails when creating these exhibits. Thus, the Court lacks critical background and contextual information demonstrating the draft nature and purpose of the content of these exhibits. Indeed, in their proffered state, there is no way for CLIA or this Court to determine if the document comprising the exhibit is the final version of a letter transmitted to an elected official, or the final press release that was actually distributed to the general public. In light of the fact that CBJ has provided only incomplete and naked drafts, CLIA contends that the internal draft documents are properly designated as Confidential and Highly Confidential and must be filed under seal.

**4. Although documents contained in a "family" of other Confidential or Highly Confidential materials are properly designated as Confidential or Highly Confidential, CLIA has no objection to those documents being filed unsealed**

Exhibits AT, AW, BS, EJ, EU, FC, FR, FW, FX, HT, IT, and KT, for which CBJ challenges the confidentiality designation, are the "parent" or "child" document attached to a

document that has been properly designated as Confidential or Highly Confidential. In other words, for these exhibits, CBJ has included solely the parent or child document as the exhibit—without the attached contextual documents that are confidential. Thus, in their incomplete state, the exhibits themselves do not contain confidential information. For this reason alone, CLIA has no objection to CBJ filing Exhibits AT, AW, BS, EJ, EU, FC, FR, FW, FX, HT, IT, and KT unsealed.

### CONCLUSION

The 34 exhibits for which CBJ challenges the confidentiality designations have been designated as such by CLIA because they are (1) sensitive internal communications between CLIA members and/or CLIA partners regarding nonpublic commercial matters; (2) sensitive communications between CLIA members and elected officials regarding CLIA's legislative positions and interests; or (3) drafts of sensitive documents that were not final or approved versions ultimately released to elected official and/or the general public. The documents were properly designated as Confidential or Highly Confidential pursuant to the Protective Order entered in this case.

For these reasons, CLIA respectfully requests that the Court enter an order granting Defendants' motion to file under seal and directing CBJ to file the following exhibits **under seal**: BB, BH, BW, BZ, CA, CB, CD, CE, CF, ED, EJ, EP, EQ, ER, ES, ET, EU, FB, FI, FP, FT, FV, IB, IH, IN, IO, IZ, JA, JO, KG, KI, KO, KW, LP, and LR. CLIA further requests that the Court permit Defendants to file the following exhibits **unsealed**: AT, AW, BS, EJ, EU, FC, FR, FW, FX, HT, IT, and KT.

DATED: March 23, 2018

Respectfully submitted,

By: /s/ C. Jonathan Benner

C. Jonathan Benner (*pro hac vice*)

Kathleen E. Kraft (*pro hac vice*)

Thompson Coburn LLP

Herbert H. Ray, Jr. (Alaska Bar No. 8811201)

Keesal, Young & Logan, LLC

*Attorneys for Plaintiffs Cruise Line*

*International Association Alaska and Cruise*

*Lines International Association*

**CERTIFICATE OF SERVICE**

I certify that on March 23, 2018, I caused a true and correct copy of the foregoing Motion to be filed using the Court's Electronic Case Files System ("ECF"). The document is available for review and downloading via the ECF system, and will be served by operation of the ECF system upon all counsel of record.

/s/ Kathleen E. Kraft \_\_\_\_\_

Kathleen E. Kraft