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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

CRUISE LINES INTERNATIONAL  
ASSOCIATION ALASKA, and CRUISE  
LINES INTERNATIONAL  
ASSOCIATION,

Plaintiffs,

v.

THE CITY AND BOROUGH OF  
JUNEAU, ALASKA, a municipal  
corporation, RORIE WATT, in his  
official capacity as City Manager,

Defendants.

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

**DEFENDANTS CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S  
PARTIAL OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE  
LIST OF EXHIBITS SHOWING OBJECTIONS TO MARINE PASSENGER FEE  
AND PORT DEVELOPMENT FEE AND CROSS-MOTION FOR LEAVE TO  
FILE LIST OF EXHIBITS SHOWING EXPENDITURES REQUESTED AND  
EXPENDITURES AGREED TO INTO EVIDENCE**

*CLIAA, et al. v. CBJ, et al.* Case No. 1:16-cv-00008-HRH  
*DEFENDANTS CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S PARTIAL OPPOSITION TO  
PLAINTIFFS' MOTION FOR LEAVE TO FILE LIST OF EXHIBITS SHOWING OBJECTIONS TO MARINE  
PASSENGER FEE AND PORT DEVELOPMENT FEE AND CROSS-MOTION FOR LEAVE TO FILE LIST OF  
EXHIBITS SHOWING EXPENDITURES REQUESTED AND EXPENDITURES AGREED TO INTO EVIDENCE*

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Defendants, The City and Borough of Juneau, Alaska, a municipal corporation, and Rorie Watt, in his official capacity as City Manager (hereafter collectively CBJ), hereby file their partial opposition to Docket 200, *Plaintiffs' Motion for Leave to File List of Exhibits Showing Objections to Marine Passenger Fee and Port Development Fee*, and also hereby file a Cross-Motion for Leave to File List of Expenditures Requested and of Expenditures Agreed to into Evidence.

The Plaintiffs' Motion was apparently filed in reaction to the demonstrative aids that CBJ used at oral argument. CBJ provided charts created from the exhibits already filed with the Court: one chart listing expenditures that were requested by CLIA representatives and/or members (proposed Exhibit MO<sup>1</sup>) and one chart listing expenditures that were agreed to or were not objected to by CLIA representatives and/or members (proposed Exhibit MP). CBJ made these charts summarizing the exhibits already provided to the Court with CBJ's Opposition and Cross Motion for Summary Judgment for purposes of demonstrative aids at oral argument.<sup>2</sup> The charts were provided to counsel for CLIA in Court before the oral argument. As shown on the hard copies provided to the Court and CLIA counsel, all of the expenditures on the proposed exhibits MO and MP were requested or approved or non-objected to through communications from NWCA or the CLIA members.

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<sup>1</sup> For ease in reference, CBJ continues the exhibit numbers with those previously filed in support of CBJ's Cross Motion for Summary Judgment.

<sup>2</sup> CBJ did not list all the MPF and PDF expenditures since their inception, only those that were requested (proposed Exhibit MO), or approved/non-objected (proposed Exhibit MP).

CLIA has included in its proposed exhibit objections by Northwest Cruiseship Association (NWCA). Although CLIA apparently wants the Court to consider objections by NWCA as objections by CLIA, CLIA continues to refuse to admit that the NWCA was a predecessor association with the same cruise ship members who bring ships to Juneau as CLIA. CLIA also refuses to admit that NWCA was an authorized representative of the cruise line companies, who are also CLIA's members.<sup>3</sup> By asking the Court to accept "objections" by the Northwest Cruiseship Association in support of CLIA's Summary Judgment Motion and Opposition to CBJ's Cross Motion, CLIA necessarily admits what CBJ has been saying all along--that the Northwest Cruiseship Association was a representative of CLIA's members, and that their communications, letters, approvals, and requests to CBJ are binding on the current CLIA members, and as such, binding on CLIA. CLIA's members cannot have it both ways. The CLIA members cannot say, through CLIA (as their current association representative), that they agree NWCA represented the members when NWCA "objected" to an expenditure, but that NWCA did not represent the members when it requested, agreed to, or did not object to expenditures.

CLIA does not have any independent rights with respect to the Port Development Fee expenditures and Marine Passenger Fee expenditures. CLIA has no obligation to pay either fee and as such has no interest of its own, independent of the cruise ship members,

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<sup>3</sup> See CLIA's footnote 1 in their Motion for Leave to File List of Exhibits Showing Objections to Marine Passenger Fee and Port Development Fee.

to submit “objections” to proposed expenditures. That the proposed exhibit by CLIA also shows some objections by CLIA, means these objections necessarily came from CLIA’s members, just as the objections by NWCA necessarily came from NWCA’s members, which are the same cruise line companies that are currently members of CLIA.

CBJ’s position is that CLIA’s “objections” have no constitutional or other legal significance. Despite CLIA’s counsel’s statements at oral argument alluding to “consensus” by CLIA being the constitutional standard the Court should use, there is no case law to support such a position, and none was offered by CLIA. Even if CLIA objected to specific expenditures while representing its members, or if CLIA’s members directly objected to particular expenditures, or if NWCA objected to specific expenditures, that does not make any of the expenditures unconstitutional or otherwise improper.

The converse—the request or agreement or non-objection—to expenditures by NWCA or the CLIA members does have legal significance to CLIA’s current position that expenditures must be limited to the physical vessel. CBJ’s position has consistently been there is no case law to support that position. To the extent the NWCA or CLIA members requested, agreed to or did not object to expenditures for the benefit of the crew or passengers, that evidence demonstrates that CLIA and its members have historically acknowledged that passenger fees may be used for services that benefit the vessels or the passengers.

CBJ's charts show the expenditures to which NWCA/ CLIA members or representatives did request (proposed Exhibit MO), and agree or not object to (proposed Exhibit MP). Those facts are legally significant on CBJ's defenses of waiver, estoppel, quasi-estoppel, laches and the statute of limitations. CLIA's "objection" chart does not bear on those issues at all. CBJ does not oppose the Plaintiffs' Motion, if CLIA either accedes to the following to requests, or the Court grants the Motion with these two conditions:

1. CBJ be granted leave to file the charts used in Oral Argument as Exhibits MO and MP and for the Court's review and consideration on the pending motions;
2. The Court enter a finding that the NWCA was a predecessor of CLIA and/or represented the current CLIA members and along with the individual CLIA members had the authority on behalf of the CLIA member cruise ship companies who bring cruise ships to Juneau to request, agree, not object, or object to proposed MPF or PDF expenditures.

CBJ proposes these two conditions make the submittal of all the lists fair to both parties and will provide the Court assistance in reaching decisions on the pending motions.

**Conclusion:**

CBJ respectfully requests that the Court grant CBJ's Cross-Motion for Leave to File List of Expenditures Requested and of Expenditures Agreed to into Evidence. CBJ

also respectfully requests that the Court deem admitted by CLIA that the Northwest Cruiseship Association was a representative of CLIA's member cruise ship companies who bring cruise ships to Juneau, and had the authority of CLIA's cruise ship company members to request, agree, not object to, or object to proposed MPF and PDF expenditures.

HOFFMAN & BLASCO, LLC

Dated: September 26, 2018

By: /s/ Robert P. Blasco  
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City Manager

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Dated: September 26, 2018

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and Rorie Watt, in his official capacity as  
City Manager

**CERTIFICATE OF SERVICE**

The undersigned certifies that on September 26, 2018 a true and correct copy of the foregoing **DEFENDANTS CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S PARTIAL OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE LIST OF EXHIBITS SHOWING OBJECTIONS TO MARINE PASSENGER FEE AND PORT DEVELOPMENT FEE AND CROSS-MOTION FOR LEAVE TO FILE LIST OF EXHIBITS SHOWING EXPENDITURES REQUESTED AND EXPENDITURES AGREED TO INTO EVIDENCE** was served on the following parties of record via ECF:

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          /s/ Robert P. Blasco  
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