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**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' MOTION TO TAKE
JUDICIAL NOTICE IN
CONNECTION WITH PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS COMPLAINT**

Plaintiffs Cruise Lines International Association Alaska and Cruise Lines International Association (collectively, "Plaintiffs") respectfully move this Court, pursuant to Federal Rule of Evidence 201 and Local Rule 7.1(d), to take judicial notice of four exhibits attached to Plaintiffs' concurrently filed Opposition to the Motion to Dismiss filed by Defendants the City and

Borough of Juneau, Alaska and Juneau's City Manager Rorie Watt, in his official capacity (collectively, "CBJ" or "Defendants").

I. The Material to be Noticed and its Relevance to this Action

Plaintiffs respectfully request that the Court take judicial notice of the following materials:

- A. **Exhibit 1 to Plaintiffs' Opposition:** CITY AND BOROUGH OF JUNEAU, AK., CODE OF ORDINANCES CH. 69.20, "Marine Passenger Fee," available at: https://www.municode.com/library/ak/juneau/codes/code_of_ordinances?nodeId=COLABOJUALVOII_TIT69RETA_CH69.20MAPAFE_69.20.005PUIN (last visited July 7, 2016);¹
- B. **Exhibit 2 to Plaintiffs' Opposition:** City and Borough of Juneau, AK. Res. No. 2552, "A Resolution Repealing the Sunset Date on the Port Development Fee on Vessels Carrying Passengers for Compensation, and Repealing Resolution 2423(b)am," available at: http://www.juneau.org/clerk/Notices/documents/Res2552-Final-Repealing_Sunset_Date_PortDevelopment_Fee.pdf (last visited July 7, 2016);²
- C. **Exhibit 3 to Plaintiffs' Opposition:** City and Borough of Juneau, AK., "Comprehensive Annual Financial Report for Fiscal Year Ended June 30, 2015," available at: <http://www.juneau.org/financeftp/cafr2015/documents/CompeteCAFRFY15includingCover.pdf> (last visited July 7, 2016);³
- D. **Exhibit 4 to Plaintiffs' Opposition:** CITY AND BOROUGH OF JUNEAU, AK., CODE OF ORDINANCES § 03.05.050, "Manager: Power and Duties," available at: https://www.municode.com/library/ak/juneau/codes/code_of_ordinances?nodeId=PTIICOOR_TIT03AD_CH03.05MA_03.05.050PODU (last visited July 7, 2016).⁴

¹ Exhibit 1 is attached hereto and is incorporated by reference herein and in Plaintiffs' concurrently filed Opposition to Defendants' Motion to Dismiss Complaint.

² Exhibit 2 is attached hereto and is incorporated by reference herein and in Plaintiffs' concurrently filed Opposition to Defendants' Motion to Dismiss Complaint.

³ Exhibit 3 is attached hereto and is incorporated by reference herein and in Plaintiffs' concurrently filed Opposition to Defendants' Motion to Dismiss Complaint.

⁴ Exhibit 4 is attached hereto and is incorporated by reference herein and in Plaintiffs' concurrently filed Opposition to Defendants' Motion to Dismiss Complaint.

Each of the four exhibits attached to Plaintiffs' Opposition may be judicially noticed by this Court, and may be referenced and relied upon by the Court as it resolves Defendants' facial challenge to the Court's subject matter jurisdiction. Exhibits 1 and 2 are the CBJ ordinances and resolutions at issue in this litigation. Each is referenced throughout Plaintiffs' First Amended Complaint and available publicly online. (ECF No. 16-1, ¶¶ 1-3, 14, 16-18, 20-30.) Exhibit 3 is CBJ's own financial document, also available publicly online. Exhibit 4 is the CBJ ordinance, available publicly online, enumerating the powers and duties of the CBJ City Manager, Rorie Watt.

II. Legal Authority for Taking Judicial Notice of this Material

Federal Rule of Evidence 201 allows a court to take judicial notice of facts that can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” FED. R. EVID. 201(b)(2). Pursuant to the Rule, the court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” *Id.* at (c)(2). This motion is filed pursuant to Local Rule 7.1(d) which provides that when a “citation or reference is made to materials or information not readily available to the public in printed form, or to an internet site, the citing party must attach a copy as an exhibit to the motion . . . [and] file a separate motion that the court take judicial notice of the materials or information cited under Federal Rules of Evidence, Rule 201.”

Courts resolving motions to dismiss routinely take judicial notice of documents that are matters of public record. *See Barnes v. Routh Crabtree Olsen, PC*, No. 3:15-CV-01001-BR, 2016 WL 81799, at *3 (D. Or. Jan. 7, 2016) (quoting *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (finding that a district court may take “judicial notice of matters of public record outside the pleadings” when resolving motion to dismiss)). Specifically, this Court

may take judicial notice of local ordinances and resolutions such as Exhibits 1, 2, and 4 to Plaintiffs' Opposition.⁵ See *U.S. v. Jones*, 933 F.2d 1019 (10th Cir. 1991) (stating that judicial notice of statutes and regulations is proper); *Doyle v. Northrop Corp.*, 455 F. Supp. 1318 (D.N.J. 1978) (taking judicial notice of state statutes pursuant to Rule 201 because such statutes were adjudicative facts capable of accurate determination).

The Court may also take judicial notice of public record documents created or adopted by Defendant CBJ, such as the financial information included at Exhibit 3. See *Oceanic California, Inc. v. City of San Jose*, 497 F. Supp. 962 (N.D. Cal. 1980) (taking judicial notice of a general plan, a diagram, and a map, all adopted by the city, along with city resolutions and enactments, as well as California Government Code); *Metzler Inv. GMBH v. Corinthian Colleges, Inc.*, 540 F.3d 1049, 1064 n. 7 (9th Cir. 2008) (finding it was proper for district court to take judicial notice of "reported stock price history and other publicly available financial documents, including . . . SEC filings []" on motion to dismiss); *Vinson v. California Dep't of Corr. & Rehab.*, No. 13-CV-00699-JST, 2014 WL 4594208, at *2 (N.D. Cal. Sept. 15, 2014) (citing *Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001)) (noting that judicial notice of matters

⁵ Exhibits 1 and 2, the CBJ ordinance establishing the Marine Passenger Fee and the resolution creating the current iteration of the Port Development Fee, may be considered by the Court in resolving CBJ's facial subject matter challenge under either the doctrine of "incorporation by reference" or via judicial notice of adjudicative facts. *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). There is competing authority on whether the doctrine of "incorporation by reference" is simply a subset of judicial notice. Compare *CNET Networks, Inc.*, 483 F. Supp. 2d 947 (N.D. Cal. 2007) (noting that court could take judicial notice of full text of items referenced in the complaint either via doctrine of incorporation by reference or because those items were publicly filed) with *Teamsters Local 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, 633 F. Supp. 2d 763, 774-76 (D. Ariz. 2009), judgment vacated in part on reconsideration, 690 F. Supp. 2d 959 (D. Ariz. 2010) (distinguishing between judicial notice and doctrine of incorporation by reference and noting that under either doctrine, court "may consider certain matters beyond the complaint, without converting a motion to dismiss into a summary judgment motion").

in public record is proper, including case law, statutes, and official reports issued by public agencies); *Velazquez v. GMAC Mortg. Corp.*, 605 F. Supp. 2d 1049 (C.D. Cal. 2008) (taking judicial notice of documents recorded with county recorder's office to resolve motion to dismiss).

III. Conclusion

For the reasons outlined above, Plaintiffs respectfully move the Court to take judicial notice of Exhibits 1, 2, 3, and 4 to Plaintiffs' concurrently filed Opposition to Defendants' Motion to Dismiss Complaint.

DATED: July 8, 2016

By: /s/ Kathleen E. Kraft
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Lines International Association*

CERTIFICATE OF SERVICE

I certify that on July 8, 2016, 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