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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' MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF**

Defendants, The City and Borough of Juneau, Alaska, a municipal corporation, and Rorie Watt, in his official capacity as City Manager (hereafter collectively CBJ), pursuant to Local Rule 10.1(m), hereby request permission to submit the following overlength brief: *The City and Borough of Juneau and Rorie Watt's Cross Motion for Summary Judgment and Opposition to Plaintiffs' Motion for Summary Judgment*, (which consists of CBJ's principal brief both on CBJ's Cross Motion and its Opposition), *CBJ's Statement of Facts*, and *CBJ's Objections and*

*Response to the Plaintiffs' Statement of Facts.* CBJ has attached CBJ's *Statement of Facts Not in Dispute and Statement of Facts in Dispute* as Appendix A to the principal brief.

In support of this Motion for Leave to File Overlength Brief, CBJ states as follows:

1. The Summary Judgment Motion seeks a permanent injunction to the collection of and use of all "vessel source fees." Assuming that means the CBJ Port Development Fee and Marine Passenger Fee, the loss of revenue to the CBJ to be able to provide services to the passengers and/or vessels would be at least \$8,000,000 per year as long as the injunction is in place, based on the current level of passengers.
2. Without the use of the Port Development Fee and Marine Passenger Fee, CBJ will be forced to stop significant services now being provided to the passengers and/or the vessels. Some examples of services that will no longer be provided: crossing guards, all of the security improvements, all of the services requested by the Plaintiffs' members for their two private docks, downtown foot and bike police patrol, restroom maintenance for the restrooms on the public and private docks and downtown (currently requiring cleaning every 2 hours during the cruise ship season). This list is by way of example and is not exhaustive.
3. Without the use of the PDF, infrastructure projects at the 16b dock will be cancelled. These improvements and projects have been ongoing for several years.
4. Without the use of the PDF and MPF, the ongoing Sea Walk project, that has been in the planning and development stages since 2004, and is partially constructed, will be stopped.

5. The substantial adverse effect upon the community and the cruise ship passengers warrants the additional briefing effort. The issues before the Court are issues of first impression in the federal courts. The extreme adverse consequences to the CBJ and the cruise ship passengers if the Plaintiffs' requested injunction is granted warrants a full opportunity for briefing to provide a complete record for the appellate courts.
6. CBJ's defenses upon which CBJ relies to request dismissal of the Plaintiffs' claims are extensive. To comply with Loc. Dist. Ct. Rule 56.1, CBJ is required to put its arguments and facts for those defenses into one Cross-Motion. The defenses are further complicated because the defenses apply separately to the PDF and the MPF due to different factual histories. With so many valid defenses to put before the Court, additional pages are necessary to present the Court with the complete legal and factual basis for the CBJ Cross-Motion.
7. The Cross-Motion seeks dismissal of all of the Plaintiffs' claims on the basis of waiver, laches, estoppel, quasi-estoppel, and the statute of limitations. The Cross-Motion alternatively requests the Court dismiss the First Amended Complaint and direct the Plaintiffs to exhaust their administrative remedies. As these defenses are based upon 17 years of history related to these fees and the conduct and statements of the Plaintiffs during those 17 years, an extensive Statement of Facts is required, together with sufficient discussion of those facts in the context of the six defenses.
8. CBJ's Opposition includes complete discussion of the cases relied on by the Plaintiffs, where the Plaintiffs cited to most of the cases with only a sentence or in string cites. It may be the Plaintiffs intend to discuss those cases in their Reply.

CBJ only has the Opposition in which to provide the Court with its complete legal analysis of the cases relied upon by the Plaintiffs.

9. The Plaintiffs insisted on the CBJ filing its Cross Motion and Opposition as one pleading. CBJ did not agree that was required by the federal rules, but as a compromise to reaching an agreement on a briefing schedule, CBJ capitulated to the Plaintiffs' demand. CBJ should not be penalized for making that concession to the Plaintiffs.
10. CBJ's Opposition has to address 135 exhibits and 223 separate factual allegations by CLIA. CBJ has done that in an efficient manner by separating out its Objections to the Plaintiffs' Statement of Facts, and consistent with what Plaintiffs did, provide the Court with a separate Statement of Facts. The volume of exhibits and factual allegations from the Plaintiffs in a case of this magnitude and importance to the community of Juneau warrants allowing CBJ to provide the Court with a complete record.
11. The Plaintiffs' Summary Judgment broadly alleges the unconstitutionality of expenditures over a 17 year time frame. CBJ should have the opportunity to provide the Court with the history of those expenditures, particularly those which were requested by the Plaintiffs or approved by the Plaintiffs, which the Plaintiffs are now claiming to be unconstitutional. The Plaintiffs also chose to not identify for the Court the actual expenditures being challenged, but only gave the Court categories of expenditures. CBJ's legal position is that is improper under all existing federal court decisions. However, because the Plaintiffs declined to identify the actual expenditures being challenged, CBJ has had to assume that all

the expenditures in the 223 statements of fact include expenditures being challenged. To do that, CBJ has had to show the Court in its Objections to the Plaintiffs' Statement of Facts the actual history of each of the expenditures. CBJ respectfully suggests it should be provided the opportunity to make this complete record.

12. CBJ has worked diligently to minimize the length of its combined Cross Motion and Opposition and has made a good faith effort to consolidate the recitation of facts as much as possible.
13. CBJ has filed with this motion its Proposed Cross Motion and Opposition (redacted of all confidential or highly confidential information), Appendix A, Proposed Statement of Facts, and Proposed Objections to Statement of Fact.
14. Provided the Court grants this Motion for Leave to File Overlength Brief, CBJ will file the redacted Cross Motion and Opposition, Dispute of Material Facts (Appendix A) Statement of Facts, and Objections to Statement of Facts, as well as the exhibits and affidavits in support. CBJ also plans to file a motion requesting that the Court take judicial notice in connection with certain exhibits in support of CBJ's Cross Motion and Opposition.
15. CBJ has filed a separate Motion to File Under Seal the unredacted versions of the Proposed Cross Motion and Opposition, Proposed Statement of Facts, and Proposed Objection to Statement of Facts, and proposed certain exhibits which the Plaintiffs have designated in discovery as Confidential or Highly Confidential.
16. Plaintiffs will not be prejudiced in any way by CBJ's overlength Cross Motion and Opposition.

17. CBJ did not oppose the Plaintiffs' Motion to File Over Length Brief for their Summary Judgment Motion. CBJ extended the proposal to the Plaintiffs that neither party oppose an over length brief, but the Plaintiffs declined that offer. Loc. Dist.Ct. R. 56.1 allows the CBJ 100 pages for its Cross Motion and Opposition, including CBJ's Statement of Facts. It is CBJ's position that the CBJ Objections to the Plaintiffs' Statement of Facts should not be counted as pages in the principal brief. The proposed Cross Motion and Opposition and Statement of Facts consists of 124 pages.<sup>1</sup> CBJ would not oppose the Plaintiffs' filing Objections to the CBJ Statement of Facts without those pages being counted toward the Plaintiffs' Opposition if the Plaintiffs similarly do not oppose CBJ's request here.

A copy of CBJ's Proposed Cross-Motion and Opposition is attached along with CBJ's Proposed Statement of Facts, CBJ's Proposed Statement of Facts Not in Dispute and Facts in Dispute (Appendix A),<sup>2</sup> and the Proposed Objections to CLIA's Statement of Facts.<sup>3</sup> CBJ respectfully requests the Court allow CBJ to file its Cross-Motion and Opposition of 124 pages, including the CBJ's Statement of Facts, and Statement of Facts in Dispute (Appendix A), and to file its Objections and Response to CLIA's Statement of Facts, of 83 pages.

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<sup>1</sup> The Objections to the Plaintiffs' Statement of Facts consists of 83 pages.

<sup>2</sup> The Appendix A is not counted in the number of pages for the principal brief because it is a summary of the facts not in dispute and in dispute.

<sup>3</sup> CBJ anticipates the Plaintiffs will oppose this motion and in doing so take issue with CBJ's perspective on the importance of the PDF and MPF in the provision of services to the passengers and/or vessels. Assuming the Plaintiffs do oppose and take issue with CBJ's reasons, the Court does not need to resolve any "factual issues" or any legal arguments to grant CBJ's motion. The motion is made in good faith in a case of first impression that may have substantial impact on not only Juneau, but potentially all Alaska ports and ports in the Lower 48. Whether the Plaintiffs disagree with CBJ's perspective on the impact of this case should not be determinative of allowing CBJ a full opportunity to make its record with the Court and the appellate courts.

*CLIAA, et al. v. CBJ, et al.*

*DEFENDANTS' MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF*

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

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Dated: January 30, 2018

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Watt, in his official capacity as City Manager

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Dated: January 30, 2018

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on January 30, 2018 a true and correct copy of the foregoing  
**DEFENDANTS' MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF**  
was served on the following parties of record via ECF:

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