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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 CITY AND
BOROUGH OF JUNEAU'S MOTION
TO DETERMINE THE LAW OF THE
CASE ON THE TONNAGE CLAUSE
AND RIVERS AND HARBORS ACT**

Plaintiffs Cruise Lines International Association Alaska and Cruise Lines International Association (“Plaintiffs” or “CLIA”) respectfully move this Court, pursuant to Federal Rule of Evidence 201 and Local Rule 7.1(d), to take judicial notice of two exhibits attached to CLIA’s concurrently filed Opposition to the *Motion to Determine the Law of the Case on the Tonnage Clause and Rivers and Harbors Act*, ECF No. 81 (the “Motion”) filed by Defendants City and

Borough of Juneau, Alaska, and Juneau’s City Manager Rorie Watt, in his official capacity (collectively, “CBJ”).

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

CLIA respectfully requests that the Court take judicial notice of the following materials:

- A. **Exhibit 1 to CLIA’s Opposition:** *CBJ now accepting project proposals for Marine Passenger Fee proceeds*, City and Borough of Juneau (Dec. 8, 2017), available at: <https://beta.juneau.org/newsroom-item/cbj-now-accepting-project-proposals-for-marine-passenger-fee-proceeds> (last visited Jan. 30, 2018);¹
- B. **Exhibit 2 to CLIA’s Opposition:** *Actions—S.1214—107th Congress (2001-2002): Maritime Transportation Security Act of 2002*, available at: <https://www.congress.gov/bill/107th-congress/senate-bill/1214/all-actions?overview=closed#tabs> (last visited Jan. 30, 2018).²

The two exhibits attached to CLIA’s Opposition may be judicially noticed by this Court and may be referenced and relied upon by the Court as it considers CLIA’s Opposition to CBJ’s Motion to Determine the Law of the Case.

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 are “generally known within the territorial jurisdiction of the trial court “ or can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *Hansen v. City of S.F.*, No. 12-CV-04210-JST, 2014 WL 1310282, at *2 (N.D. Cal. Mar. 31, 2014) (a “court shall take judicial notice of a fact “not subject to reasonable dispute in that it is capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned”). Pursuant to the Rule, the court “must take judicial notice if a party

¹ Exhibit 1 is attached hereto and is incorporated by reference herein and in CLIA’s concurrently filed Opposition to CBJ’s Motion to Determine the Law of the Case.

² Exhibit 2 is attached hereto and is incorporated by reference herein and in CLIA’s concurrently filed Opposition to CBJ’s Motion to Determine the Law of the Case.

requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2).

This motion is filed pursuant to Local Rule 7.1(d) which provides that when a “citation or reference is made to . . . 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 routinely take judicial notice of documents and information made publicly available online by government entities. *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998–99 (9th Cir. 2010) (taking judicial notice of list of approved vendors displayed publicly on school district websites) (citing, among others, *In re Amgen Inc. Sec. Litig.*, 544 F. Supp. 2d 1009, 1023–24 (C.D. Cal. 2008) (taking judicial notice of drug labels taken from the FDA’s website); *Cty. of Santa Clara v. Astra USA, Inc.*, 401 F. Supp. 2d 1022, 1024 (N.D. Cal. 2005) (taking judicial notice of information posted on a Department of Health and Human Services web site)); *Gerritsen v. Warner Bros. Entm’t Inc.*, 112 F. Supp. 3d 1011, 1033–34 (C.D. Cal. 2015) (“Under Rule 201, the court can take judicial notice of “[p]ublic records and government documents available from reliable sources on the Internet,” such as websites run by governmental agencies.” (citing, among others, *Paralyzed Veterans of Am. v. McPherson*, No. C 06–4670, 2008 WL 4183981, at *5 (N.D. Cal. Sept. 8, 2008) (“Information on government agency websites has often been treated as properly subject to judicial notice.”))).

Additionally, in “this new technological age[,]” courts may take judicial notice of documents “insofar as they are available via the worldwide web” when the Court is supplied with the necessary information to access the website and confirm the accuracy of the document’s content. *In re Tourism Assessment Fee Litig.*, No. 08CV1796-MMA WMC, 2009 WL 10185458, at *4-5 (S.D. Cal. Feb. 19, 2009) (quoting *In re Agribiotech Sec. Litig.*, 2000 U.S. Dist. LEXIS

5643, *4–5 (D. Nev. Mar. 2, 2000)), *aff'd*, 391 F. App'x 643 (9th Cir. 2010); *see also Barnes v. Marriott Hotel Servs., Inc.*, No. 15-cv-01409-HRL, 2017 WL 635474, at *4 (N.D. Cal. Feb. 16, 2017) (“It is not uncommon for courts to take judicial notice of factual information found on the world wide web.” (citations omitted)).

Here, Exhibit 1 is properly subject to judicial notice by this Court. Exhibit 1 contains information on CBJ’s processes for accepting project proposals from the public for future expenditures of Marine Passenger Fee proceeds. CBJ, a government entity, has made the information available to the public on CBJ’s government website. Exhibit 2 also is properly subject to judicial notice by this Court. Exhibit 2 contains all actions taken on Senate Bill 1214, the Maritime Transportation Security Act of 2002 (which Act contains the amendment to the Rivers and Harbors Appropriations Act of 1884 that is at issue in this litigation). The Library of Congress, an agency of the legislative branch of the United States government, has made the information available on Congress.gov, a website that the Library of Congress hosts and manages. CLIA has provided the Court with website addresses (in hyperlinks) for each of these documents in this Motion and in CLIA’s Opposition, enabling the Court to access the websites and confirm the accuracy of the documents’ content.

III. Conclusion

For the reasons outlined above, CLIA respectfully moves the Court to take judicial notice of Exhibits 1 and 2 to CLIA’s concurrently filed Opposition to CBJ’s Motion to Determine the Law of the Case on the Tonnage Clause and Rivers and Harbors Act.

DATED: January 30, 2018

By: /s/ C. Jonathan Benner

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Kathleen E. Kraft (*pro hac vice*)

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International Association Alaska and Cruise

Lines International Association

CERTIFICATE OF SERVICE

I certify that on January 30, 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