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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

**CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S OBJECTIONS AND
RESPONSES TO PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

The Plaintiffs' Motion for Summary Judgment is supported by a "Statement of Facts," which includes 223 separate factual allegations, and has attached 135 exhibits and the affidavits of Jim Calvin and Kathleen Kraft. The City and Borough of Juneau and Rorie Watt (hereafter collectively CBJ) will address here each allegation, together with related exhibits, those allegations which are not accurate, misleading, incomplete, not relevant, and in dispute. As to

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particular exhibits, CBJ respectfully requests in a separately filed Motion to Strike that certain exhibits addressed here be stricken and not considered on the Plaintiffs' Motion for Summary Judgment. As to the facts alleged by the Plaintiffs, which are not accurate, misleading, incomplete, and not relevant, CBJ respectfully requests the Court find that there are material facts in dispute that precludes the Court from entering summary judgment for the Plaintiffs.¹ The Court draws all reasonable inferences in favor of CBJ.²

II. CBJ DISPUTES THE FOLLOWING FACTS AS BEING NOT ACCURATE, MISLEADING, INCOMPLETE, AND/OR NOT RELEVANT TO THE CLAIMS OF THE PLAINTIFFS

The Plaintiffs' factual allegations will be addressed by number and with CBJ's explanation of its dispute as to that fact and its objections to the exhibits referenced in each fact. CBJ will not repeat verbatim the alleged fact, but rather will address the dispute as to that fact.

CLIA Title: Parties³

No. 3. The allegation that CLIA "represents the interests of the Cruise Lines," is incomplete, misleading, and is lifted from a self-serving CLIA publication. CBJ disputes that CLIA represents the interests of the Cruise Lines here to the extent CLIA is attempting to assert standing to raise the constitutional rights of the cruise ship passengers and to the extent that CLIA has associational standing for all of the alleged claims here.

CBJ also objects to the extent CLIA is attempting to assert interests that diverge or are opposite to their members. For example, many projects funded by the Marine Passenger Fee ("MPF") and Port Development Fee ("PDF") were either proposed or not-objected to by CLIA's

¹ *Anderson v. Libby Lobby*, 477 U.S. 242, 248 (1986).

² *Beard v. Banks*, 548 U.S. 521, 529 (2006); *Anderson v. Libby Lobby*, 477 U.S. 242, 247-252 (1986).

³ CBJ does not adopt the titles inserted by CLIA in its Statement of Facts. CBJ is using the section titles only to assist the Court in following CBJ's objections.

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cruise line members. (See more detail below). Additionally, CLIA's exhibits 72 and 134⁴ actually state that CLIA represents the interests of 340 Executive Partners and 15,000 Global Travel Agency and 25,000 Travel Agent Members. Many of these "Executive Partners" are tour companies who benefit and use services and facilities that CLIA claims should not have been funded with MPF or PDF and with whom the cruise line members have contracts for and derive significant profits.⁵ These tour companies are part of the overarching "cruises" offered to the passengers from whom the fees are collected.⁶ Benefits to the tours are a benefit to the cruise line members and the vessels. To the extent that CLIA argues that specific expenditures that are used by the tour groups and passengers are not a benefit to their cruise line members and/or vessels, that is a dispute of material fact which precludes summary judgment.

No. 4: CLIA has not produce any documents in discovery or with their Motion that would establish that any of the cruise ships that CLIA members bring to the Port of Juneau are registered⁷ in the United States. Exhibit 105 is a CLIA prepared publication from 2013 and does not include information on the registration of the ships. There is nothing on page 6 of Exhibit 105 that supports the allegation that any of the CLIA members who bring cruise ships to the Port of Juneau are "registered" in the United States.⁸ CBJ disputes this fact and it is a material fact related to standing and to the Plaintiffs' alleged constitutional claims. Despite the large group of

⁴ The Plaintiffs' cited Exhibit 134 is another CLIA publication, which also states: "Cruise industry remains hot in cold Alaska waters...Binkley [CLIA's Executive Director] Bright future for cruise industry." This shows that the fees alleged as unconstitutional do not burden interstate commerce nor create irreparable injury.

⁵ See Exh. A, Exh. KM, list of cruise ship excursions available for purchase from cruise line websites, Exh. B release from Princess regarding their on-shore tours; See also Exh. C, pages 10-11, excerpt of McDowell group study "Economic Impacts of the Cruise Industry in Alaska 2011."

⁶ See Exh. D, Exh. E. contracts with passengers limiting liability and defining cruises to include on-shore tours.

⁷ "Registered" means documented and given that nationality of the country to which it has been documented. A U.S. documented boat means it is registered by the United States Coast Guard. See Exh. F This is also called "flagging" a vessel; the flag state is the country in which it is registered.

⁸ Page 6 of Exhibit 105 shows a chart of the cruise passenger market, not where the ships are registered.

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ships that arrived in 2017,⁹ none of the ships who came to Juneau in 2017 are CLIA member

ships that are registered/flagged in the United States (as listed in order of the 2017 calendar):

- Nieuw Amsterdam, Holland America¹⁰, flagged in Netherlands,
- Eurodam, Holland America, flagged in Netherlands,
- Oosterdam, Holland America, flagged in Netherlands
- Noordam, Holland America, Holland America, flagged in Netherlands,
- Carnival Legend, owned by Carnival Cruise Lines, flagged in the country of Malta
- Norwegian Jewel, Norwegian Cruise Line, flagged in the Bahamas,
- Ruby Princess, Princess Cruises, flagged in Bermuda,
- Star Princess, Princess Cruises, flagged in Bermuda,
- Norwegian Pearl, Norwegian Cruise Line, flagged in the Bahamas,
- Coral Princess, Princess Cruise Lines, flagged in Bermuda,
- Grand Princess, Princess Cruise Lines, flagged in Bermuda,
- Volendam, Holland America, flagged in Netherlands,
- Island Princess, Princess Cruises, flagged in Bermuda,
- Regatta, Oceania Cruise Line, flagged in Marshall Islands,
- Emerald Princess, Princess Cruises, flagged in Bermuda,
- Amsterdam, Holland America Line, flagged in the Netherlands,
- Europa, HAPAG-Lloyd Cruises, flagged in Bahamas
- Seven Seas Mariner, Seven Seas Radisson, flagged in Bahamas,
- Solstice, Celebrity Cruises, flagged in Malta,
- Norwegian Sun, Norwegian Cruise Line, flagged in Bahamas,
- Explorer of the Seas, Royal Caribbean, flagged in Bahamas,
- Radiance of the Seas, Royal Caribbean, flagged in Bahamas,
- Seabourn Sojourn, Seabourn Cruises, registered in the Bahamas,
- Disney Wonder, Disney Cruise Line, flagged in Bahamas,
- Silver Shadow, Silversea Cruises, flagged in the Bahamas,
- Millennium, Celebrity Cruise Line, flagged in either China or Malta,
- Infinity, Celebrity Cruise Line, flagged in Malta,
- Crystal Serenity, Crystal Cruises, flagged in the Bahamas,
- Grand Princess, Princess Cruise Lines, registered in Bermuda¹¹,

⁹ CBJ hereby provides the correct 2017 Cruise Ship Calendar bate stamped CBJ199153-199158 provided as Exh G. CLIA provided in Exhibit 102 an inaccurate cruise ship calendar for Juneau for 2017 and is missing several ships; most obviously Exhibit 102 is blank for ships during the week; Exhibit 102 should be struck in entirety. Juneau had ships(s) almost every day in 2017, with the majority of days having two or more ships.

¹⁰ The owners of these ships are taken off Plaintiffs' Exhibit 104. CBJ does not know which is the correct misnomer, for instance some have "Princess Cruise Lines" and others "Princess". CBJ believes these ships are owned by the same company, but whether it is one company or a separate company does not matter as the registration information has been determined regardless.

¹¹ See marine traffic profiles for all of these ships, provided as Exhibits H-Z, AA-AF, AH-AM.

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- World of Residensea, "The World", owned by Resideansca, not a CLIA member, ¹² Registered in Bahamas. ¹³

No. 8: CLIA's allegations as to the City Manager's responsibilities are not accurate. The City Manager prepares a list of recommended projects and grants for the use of the MPF and PDF, based on input from CBJ departments, and on input from CLIA and CLIA members and CLIA member affiliated companies, such as Cruise Lines Agency of Alaska. ¹⁴ Since 2000, CLIA's predecessor, or CLIA member companies, and/or member company affiliates, have provided input to the manger's recommended list, including agreeing with proposed expenditures and including requesting particular projects or expenditures, many of which were unrelated to the actual vessel. ¹⁵ Since 2008, CBJ Code 69.20.120(b) sets out the procedure for the City Manager to follow before sending the final recommendations to the Assembly Finance Committee for review. The City Finance Committee then provides the final list for consideration by the Assembly during its yearly budget analysis. ¹⁶ The responsibility for decisions related to expenditures lies solely with the Borough Assembly as part of its discretionary budgetary decision-making powers. ¹⁷

¹² This is a permanent floating residence at sea, with 165 apartments with private owners, See Exh. AO. The ship itself is registered in Bahamas. See Exhibit AP.

¹³ There were a few non CLIA-member ships who came to Juneau in 2017 (see CLIA's Cruise line member list, Exhibit Y):

- Sea Lion and Sea Bird, Wilderness Cruises/National Geographic, flagged in United States
- Quest, Lindblad Expeditions/ National Geographic; CBJ could not determine the flagging of this ship.

¹⁴ Watt Affidavit.

¹⁵ For example, see letter from AJ Dock Enterprises, a company which is under 50% ownership of Holland America Line, CBJ04990-04992, provided as Exh. AQ; See also requests from Kirby Day with Princess Cruises, CBJ 5134-5137, provided as Exh. AR.

¹⁶ Affidavit of Watt.

¹⁷ Affidavit of Watt.

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CLIA Title: History of CBJ's Marine Passenger Fee and Port Development Fee¹⁸ Marine Passenger Fee

No. 11. CLIA admits that the CBJ marine passenger fee is the result of a voter initiative directing the CBJ to implement a \$5.00 per passenger fee. CLIA presents no factual or legal authority that would have allowed the CBJ assembly to ignore the vote of the people on the Initiative and not institute the passenger fee by adopting an Ordinance. CLIA cites to Exhibit 120, which is two memoranda prepared by then City Attorney John Corso in 1999 and 2003. CBJ objects to the use of these memoranda because they do not constitute admissions by CBJ as to any facts or law and are merely a legal opinion of a lawyer, which are not binding on CBJ or on this Court.¹⁹ Of import, the 1999 memorandum precedes the Initiative passing, the Ordinance and any expenditures by the CBJ.²⁰ Mr. Corso makes the point that if the Initiative passes, “we must live with the ordinance as the petitioners have given it to us.”²¹ If the Court is not going to strike Exhibit 120 in its entirety, CBJ points out the following from the memoranda. In the 1999 memoranda, Mr. Corso correctly opines the alleged revenues that cruise passengers generate for the CBJ are not relevant to issues under the Tonnage Clause, as the use of revenues is a policy decision for the Assembly.²² The Plaintiffs have cited no case where the Federal Court considered other revenue sources in determining whether the expenditures of any challenged fee violated the Tonnage Clause. CBJ discusses this in its Opposition. Mr. Corso correctly opines that the only relevant issue under the Tonnage Clause is whether the “particular fee at issue is

¹⁸ This section title is not accurate and misleading. The section includes multiple sections regarding revenue and funds not related to the Marine Passenger Fee or the Port Development Fee.

¹⁹ See Motion to Strike.

²⁰ An interesting note is that Mr. Corso engaged McDowell Group as an expert for any potential litigation. McDowell Group made many studies as consultants for the CBJ for many years. Apparently, the Plaintiffs' attorneys at Thompson Coburn had no problem going directly to McDowell Group to retain them for this litigation and McDowell Group had no problem ignoring their many years of consulting on these issues for the CBJ to be retained by the Plaintiffs.

²¹ Exh. 120, p. 1.

²² Exh. 120, p. 8.

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justified by the particular service or services.”²³ As to the 2003 memorandum, Mr. Corso correctly points out that the 2002 amendment to the Rivers and Harbors Act was to prevent “a fee imposed on ships that merely pass through local waters without stopping”, citing to Congressman Young’s statements in the Congressional Record.²⁴ Mr. Corso opined that the 2002 amendment “makes no fundamental changes and does not invalidate our port or passenger fees.”²⁵

No. 16 and No. 17. These allegations are misleading and attempt to evade the truth: the MPF is paid by the cruise passengers as part of or an addition to their cruise ticket package price. The CBJ ordinance only requires that the owner of the ship or its agent remit the fee, such that the individual passengers have no liability directly to CBJ. But that does not escape the truth as to who pays the fees, the passengers.

The CLIA member passenger contracts make clear that all government fees, including passenger fees, dockage fees, and wharfage fees, are added to the total ticket price.²⁶ The CLIA members pay nothing to CBJ as the Marine Passenger Fee and Port Development Fee is collected and paid from the passengers.²⁷ CLIA has admitted this in their public press releases.²⁸

²³ Exh. 120 at 8.

²⁴ Exh. 120 at 11.

²⁵ Exh. 120 at 12.

²⁶ Exh. D, page 1; Exh. E, page 1.

²⁷ CLIA’s Objections and Responses to CBJ’s First Requests for Admissions, Response to RFA 54, provided with Exh. AS. CLIA objected to answering whether the CLIA members charge the fees to the passengers on the basis they do not know what its members do about the fees and apparently CLIA did not ask its board members, who are representatives of the CLIA members who bring cruise ships to Juneau and did not read its member cruise passenger contracts which are available on line. CLIA did admit that generally the members collect the fees from the passengers. CBJ views this as non-responsive and the RFA should be deemed admitted.

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CBJ attempted in discovery to find out whether any CLIA members incur any expenses at all related to the Marine Passenger Fee or Port Development Fee, but CLIA declined to answer or provide any discovery.²⁹ The truth is that the MPF does not affect CLIA's members' operating expenses or profits.³⁰

No. 19. The allegation as to what can happen if an owner or agent does not remit the Marine Passenger Fees to the CBJ is misleading as it has never happened in 17 years.³¹ This is also misleading as it does not include the provisions in place that allow an owner or agent the right to a hearing before the manager to object to a notice of delinquency before payment of fees.³²

No. 20. The Plaintiffs cite to the original purpose statement in the ordinance for 1999 code establishing the Marine Passenger Fee. The purpose provides that the fees can be used for services not provided directly to the physical vessel. The Plaintiffs never challenged the

²⁸ See CLIA000039C, provided as Exh. AT, statements by President John Binkley: "Juneau is a great port and a community of people who take excellent care of our guests. In turn, it's important that we ensure that the fees our guests pay to visit Juneau are used in a responsible and legal way;" See also Exh. AU, CLIA Alaska's press release that "the litigation is about the use of a specific tax, the \$8 local entry fee tax, each passenger pays to visit Juneau." See also Exh. AV, Article "Cruise Ship Tax falling short of financial expectations in Sitka, April 8, 2012, statement made by CLIA's member representative regarding the state CPV tax, that it is not paid by the cruise lines and that the tax has no bearing on choosing their destination. [REDACTED]

²⁹ Exh. AS, CLIA's response to RFA 54; Exh. AX, CLIA's response to Interrogatory No. 19 where CLIA refused to identify any economic damage as the result of the fees; Exh. AY, CLIA's response to Interrogatory No. 25, where CLIA refused to respond to the request to identify every expense it has occurred as a result of the Marine Passenger and Port Development Fees; Exh. AZ, CLIA's response to RFP 33, where CLIA was asked to produce all documents showing any damages as alleged in paragraph 30 of the First Amended Complaint, in which CLIA claims economic damages; CLIA refused to produce and has not produce any documents showing any administrative costs, expenses, or any expenses or economic damages at all related to the MPF and PDF.

³⁰ CLIA's members representative admitted in public forum that the CBJ fees did not make the Juneau port any more expensive than at least half the ports in North America; instead it was the original \$50.00 state CPV tax which caused any financial burden CLIA can claim their members suffer. (See Exh. BA; CLIA0004035 written by Royal Caribbean Don Habeger³⁰ [REDACTED]); See also Exh. AV.

³¹ Affidavit of Watt

³² (CBJ Code 69.20.090).

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constitutionality of this ordinance or its purpose between 1999 and the date of filing this lawsuit. CBJ has filed a motion requesting a dismissal of the claims that the code as written is unconstitutional, and dismissing the claims that the collection of the fees are unconstitutional, as the Plaintiffs waited 17 years from the date of the ordinance to file the lawsuit.³³ The purpose of the fee in the ordinance was amended in 2012, as shown in Plaintiff's Exhibit 011, p.1 and the prior purpose is no longer valid.

No. 21. The allegations in No. 21 are based on minutes from an assembly work session in 2012 and a reference to an alleged statement by then city attorney, John Hartle. As discussed in No. 11 above, the opinions of Mr. Hartle are not binding on the CBJ or this Court. CBJ requests the Court strike the exhibit or not consider references to Mr. Hartle's opinions. If the Court does not strike the exhibit or not consider Mr. Hartle's opinions, the minutes go on to say that given the "significant number of ships and passengers, CBJ would find it necessary to mitigate impacts, and hopefully the courts would agree."³⁴ Mr. Hartle opined that the fees could be spent on "passengers," not limiting expenditures to the physical vessel.³⁵ Mr. Hartle correctly pointed out that each expenditure had to be reviewed on a case by case basis, which is the burden of proof the Plaintiffs seek to avoid in their Summary Judgment Motion by failing to identify any actual expenditures the Plaintiffs claim to unconstitutional.³⁶ Mr. Hartle correctly opined that the Seawalk project and the planned Statter Harbor project both "met case law."³⁷ The Exhibit notes

³³ See Cross Motion.

³⁴ Exh. 35 at 1.

³⁵ Exh. 35 at 2.

³⁶ Exh. 35 at 2.

³⁷ Exh. 35 at 2.

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that at least two cruise ship industry representatives were at the meeting: Kirby Day with Princess Cruises³⁸ and Drew Green with Cruise Line Agencies of Alaska.³⁹

Port Development Fee

No. 25. This allegation addresses the adoption of resolution Res No. 2294(b)am adopted in 2005. CLIA fails to inform the Court that the fee was developed with public input from CLIA's predecessors and members, and was amended based on their comments before adoption.⁴⁰ This allegation also addresses the adoption of the current \$3.00 per passenger Port Development Fee (also referenced as "PDF") in 2007. The Plaintiffs fail to tell the Court that CLIA's predecessor and the CLIA member representatives agreed with and did not object to the imposition of the Port Development Fee and did not object to the same fee for both private and public facilities.⁴¹ Specifically the minutes record that:

Don Habeger "clarified that his letter was addressed from Royal Caribbean and Celebrity Cruises, however, he had checked with his colleagues in the industry about his comments, and all including John Hanson of the Northwest Cruise Association supported his comments. They support the \$3.00 fee."⁴² ⁴³

³⁸ Mr. Day is and has been a Princess Cruise Director since at least 2000 and has been the designated representative of the CLIA members throughout that period of time. For example, the NWCA notified CBJ that Mr. Day was its representative. Exh. BC. This is just one example; CBJ will make many other references to Mr. Day acting on behalf of the CLIA members. CBJ also notes that this Exhibit directly contradicts CLIA's response to RFAs Nos. 1 and 2 (provided with Exh. AS) as the NWCA continued to represent the CLIA members after 2007.

³⁹ Cruise Line Agencies works with the cruise lines on their needs in ports and acts as an agent to the CLIA member vessels [REDACTED]

⁴⁰ See minutes of 1/24/05 discussing the proposed adoption, and shelving the adoption until it was possibly amended and put up for later discussion, CBJ06034 attached as Exh. BF.

⁴¹ See attached minutes of industry representative supporting the \$3.00 fee for resolution 2423(b)am and that the fee would be in harmony with any project in the waterfront plan, attached as Exh. BI.

⁴² Exh. BI, Page 3. Mr. Habeger went on to say the funds should be used for the benefit of all users, such as "the parking lot." (Exh. BI, Page 3.)

⁴³ The Northwest Cruise Association was the predecessor of the Plaintiffs and acted as the industry representative in communications with the CBJ. (See CLIA's response to RFA No. 2, provided with Exh. AS). CLIA's response was equivocal, but CLIA did not deny that NWCA was the industry representative at the time of the letter and comments by Mr. Habeger and Mr. Hanson supporting the \$3.00 Port Development Fee.

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No. 27. The allegation that the vessel owners or agents pay the PDF is misleading as noted above for the MPF. CBJ incorporates its objections to Nos. 16 and 17 above.

No. 28. The Plaintiffs misquote the Resolution attached as Exh. 16. The Resolution actually says:

Whereas the primary user of downtown waterfront facilities is the cruise line industry; and Whereas, the safety and efficiency of interstate and foreign commerce will be enhanced by planning, designing and constructing facilities implementing the Long Range Waterfront Plan; and Whereas, the Port Development Fee is a fair and equitable method of allocating costs for the waterfront development projects among the various cruise lines and other users of the downtown waterfront...It is the intent of the Assembly that the proceeds of the Fund shall be used for capital improvements to the downtown waterfront for the provision of service to the cruise ship industry. It is further the intent of the Assembly that the projects paid for by the Port Development Fund shall be selected to benefit all entities which remit the fee...It is the intent of the Assembly that the process for making expenditures from the Port Development Fund shall include consultation with representatives of the cruise ship industry.⁴⁴

CBJ has used the Port Development Fees consistent with the resolution and in doing so has consulted with CLIA's predecessor and cruise line representatives or gave them the opportunity to consult.⁴⁵ Until CLIA filed its lawsuit, CLIA had never objected to or challenged the collection of the Port Development Fee and never objected to or challenged any use of the Port Development Fee other than specific design components relating to 16B that were discussed by the 16B advisory group which included John Binkley.⁴⁶

No. 29. This is a legal conclusion, not a fact. All of the PDF expenditures have provided services to the vessel through the capital projects and infrastructure directly used by the

⁴⁴ Exhibit 16, Resolution 2552.

⁴⁵ Affidavit of Watt; Affidavit of Bartholomew. For examples, see Exh. BJ, email setting up meeting cruise ship dock alternatives between K. Day with Princess, Drew Green with Cruise Line Agencies and D. Habeger with Royal Caribbean and the CBJ Port Director; See also Exh. BK, memo regarding meetings with CLIAA Executive Director John Binkley; Exh. BL, memorandum of the Advisory Group on the new dock, which included John Binkley, Exh. BM; the Work Session agenda with NWCCA, and Exh. BN; list of attendees.

⁴⁶ Affidavit of Watt; Affidavit of Bartholomew; Affidavit of Botelho.

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vessels.⁴⁷ CBJ disputes this allegation and there is a genuine issue of material fact if CLIA is alleging any misuse of the Port Development Fee and that factual dispute precludes the grant of summary judgment for the Plaintiffs.

Revenues Generated by the Entry Fees

No. 32. CBJ objects to this statement as being a "fact". The CBJ Code does not have any such statement. CBJ 69.20.005 states as its purpose: "to address the costs to the City and Borough for services and infrastructure rendered to cruise ships and cruise ship passengers visiting the City and Borough."⁴⁸ That purpose is consistent with existing federal law. The use of the proceeds is at 69.20.120, which states:

- (1) Design, construction, enhancement, operation and maintenance of capital improvements;
- (2) Operating funds for personnel, training, commodities, rentals, services and equipment for services provided, made available to, or required as a result of marine passenger ships and marine passengers;
- (3) Projects and programs that promotes safety, environmental improvements, efficiency of interstate and international commerce, or enforcement of laws caused or required by marine passenger ships and marine passengers;
- (4) Acquisition of land required to execute the activities listed in this section;
- (5) Reserved;
- (6) Surveys, analyses, polls, plans, monitoring, and similar efforts to measure, describe or predict, or manage marine passenger ships and marine passengers, for items listed in subsections (a)(1) -(a)(4) of this section.

If the Plaintiffs claim that any expenditures were not consistent with the Code, the Plaintiffs have not yet identified the specific expenditures, and CBJ will dispute those allegations if made by the Plaintiffs. Such identified expenditures would be disputes of material fact that should preclude summary judgment for the Plaintiffs. The CBJ code purpose and stated use of funds are consistent with existing federal law.

⁴⁷ Affidavit of Watt; Affidavit of Bartholomew; See short list of projects paid for with the PDF fee, CBJ198904-198906, attached as Exh. BO.

⁴⁸ Exh. 16 at 1.

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No. 34. See the Objections to No. 32. Also, the allegation in No. 34 is not in quotes, and CBJ is unable to find the purported statement in Exh. 97 at page 11. PDF funds have not been transferred to "general, special revenue or enterprise funds." They have all been transferred to Capital Project or Debt Service Funds.⁴⁹

No. 36. CBJ objects to the second sentence and disputes it because the allegation is not found in the Exhibit reference for support of the allegation, Exh. 25 at 1. What Exh. 25 at page 1 actually says is: "Not all general government expenditures are used in the calculation but only those functions that are available for use by cruise ship passengers."

The calculation and reason for the calculation is consistent with the language of US Supreme Court cases that passengers fees may be used for services "available" to the ships or passengers. The allocation for certain limited government expenses is related to those departments who provide services to the cruise ships and passengers.⁵⁰

Additionally, the allocation to the departments was previously approved by CLIA's representatives.⁵¹ CLIA has not provided any documents that CLIA or its predecessor objected to the allocation method when it was first created, and in fact the minutes in CBJ's possession are that Mr. Hansen was generally favorable.⁵² CLIA did not object to this allocation in FY13, FY14, FY15, FY17, or FY18.⁵³

No. 39. CBJ objects as the departments that are allocated MPF revenues changed over the years. Exh. 25 does not include a date but the list of departments is not currently accurate.

⁴⁹ Affidavit of Bartholomew.

⁵⁰ Affidavit of Bartholomew.

⁵¹ For example, See Exh. BP for FY04, all the committee members including Habeger approved of the allocated amount to the general support; see also Exh. BQ, the allocation explanation for FY04.

⁵² Exh. BR.

⁵³ Exh. BR.

██████████ CBJ has no record of CLIA making any written objections to the FY18 funding. (Affidavit of Watt).

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The departments allocated in FY17 were City Attorney, City Manager, City Clerk, Finance and Administration, Controller, Treasury, Fire, Police, and Streets.⁵⁴

No. 40. CBJ objects to this allegation as CBJ does not allocate funds to all CBJ departments. Furthermore, CBJ has formulas for the allocation that determines the amount each department is allocated from the total amount calculated in the formula on Exhibit 25.⁵⁵

No. 43. The General Government (GG) Fund consists of three funds: a) general fund, b) roaded service area fund and c) fire service area fund. MPF funds are allocated into general fund and roaded service fund (e.g. ambulance service) for use by the specific departments.⁵⁶

No. 45. CBJ objects to this allegation as not relevant to any issue in the Plaintiffs' Summary Judgment Motion. Whether some CLIA members pay a fee to the private owners of the AJ Juneau Dock and the Franklin Dock, which owners in part are CLIA members,⁵⁷ has no relevance or significance to the Plaintiffs' constitutional claims. CBJ is not aware of any federal case, and none was cited by the Plaintiffs where the Federal Court precluded a local government from collecting a passenger fee from vessels or passengers who dock at a private dock.

Non-Assessment of the Entry Fees

No. 47. CBJ objects to this allegation as not relevant to any issue raised in the Summary Judgment Motion. What fees CBJ assesses or not against air or ferry passengers is not relevant to the case. CBJ also further objects because this is not a true fact. The airport does collect, with FAA approval and guidelines, a Passenger Facility Charge (fee) based on passengers; this

⁵⁴ Affidavit of Bartholomew.

⁵⁵ Affidavit of Bartholomew.

⁵⁶ Affidavit of Bartholomew.

⁵⁷ Half of the private AJ dock in Juneau is owned by Holland America Line, Inc. (See Exh. BT, corporation filings for AJ Dock Enterprises, LLC.) While the Franklin Dock Enterprises are listed online as having a mix of trusts and individual owners; the requests for funding and projects at the Franklin Dock come from Princess Cruises. (For example, see Exh. BU, the FY18 request from Princess/Franklin).

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revenue is expended on certain airport infrastructure.⁵⁸ CBJ further objects as the CBJ is limited in the taxes it can charge at the airport in accordance with AS 29.45.820 and 49 USC 40116(e) and 40117. REDACT

REDACT ⁵⁹

No. 48. CBJ objects to this allegation as not relevant to any issue raised in the Summary Judgment Motion. The Alaska Marine Highway ferries do not dock or enter the port of Juneau downtown.⁶⁰ CBJ further objects as CBJ does not have the authority or power to impose passenger fees on State ferry vessels.⁶¹

General Objection to Nos. 49-52. CLIA alleges various other fees, such as wharfage, are assessed by CBJ against vessels. CBJ objects to any consideration of any of these allegations and moves to strike exhibits 12, 13, 66, 59, 61, 62, and 111. CBJ moves to strike that portion of the Calvin affidavit referenced in No. 52. None of the other fees assessed by CBJ has any relevance to any issue in the Plaintiffs' First Amended Complaint or to the Summary Judgment Motion. None of the fees alleged in Nos. 49-52 are being challenged by the Plaintiffs. The Plaintiffs did not cite to any case, and CBJ is not aware of any federal case law, where the Court looked to other revenue sources to determine whether the plaintiff met their burden of proof under the Tonnage Clause or Commerce Clause or the Rivers and Harbors Act. There is no federal case law that requires a local government to use other potential revenue sources to fund services to cruise ships and cruise passengers before imposing a constitutionally proper passenger fee. What the Plaintiffs must prove as to each allegedly unconstitutional expenditure

⁵⁸ Affidavit of Bartholomew. See also Exh. BV, page 3 which is an example of some projects paid for by PFC in FY2001.

⁵⁹ See CLIA's responses to RFA 34 and 35, attached with Exh. AS; REDACT

⁶⁰ Affidavit of Watt.

⁶¹ See AS 19.05.040(11) providing the State Department of Transportation and Public Facilities the authority to establish fees for use of highways and ferries in Alaska.

[PROPOSED]

is that the fees do not bear a reasonable relationship to the cost of the services and do not fit within the requisite test as determined by this court. Plaintiffs cannot under any existing federal law meet their burden of proof by identifying other possible revenues sources to use rather than marine passenger fees. Budgetary decisions are properly within the discretion of the Assembly, and no federal case says otherwise, and none was cited by the Plaintiffs in their Motion for Summary Judgment.

The State CPV Tax

General Objection to Nos. 54-65. These allegations pertain to the State of Alaska statute that assesses a tax of \$34.50 per passenger on ships spending more than 72 hours in Alaska waters. The Plaintiffs' original complaint alleged that the State CPV tax was unconstitutional. The Plaintiffs' filed a First Amended Complaint, which dismissed the claim that the State CPV tax was unconstitutional. As the CPV tax is no longer being challenged, there is no issue to CBJ receiving those funds nor any issue as to how CBJ spends those funds. As noted as to Nos. 49-52 above, how CBJ spends unchallenged CPV revenue is not relevant to any constitutional issue in the First Amended Complaint and not relevant to the Motion for Summary Judgment. CBJ incorporates by reference its objections to Nos. 49-52. CLIA's Executive Director has publically admitted that the state CPV had no bearing on this lawsuit.⁶² CBJ respectfully requests the Court strike exhibits 17, 19, 18, 50, 11, 14, 15, 16, 20, 34, 106, 69, and 100 as not relevant:

As an additional objection, a legislative audit was conducted on CBJ's use of the CPV monies, and the audit determined that CBJ had not misused or improperly spent, under state

⁶² Exh. BX, April 22, 2016 article "Audit: No Misuse of Juneau's head taxes".

[PROPOSED]

statute or constitutional law, any of the CPV monies.^{63 64} The CPV money was spent to pay for part of the cruise ship docks. If the Court does not strike this portion of the Plaintiffs' Statement of Facts and the exhibits identified in those paragraphs, CBJ disputes any misuse of the funds and further disputes that these funds have any bearing on how CBJ uses the MPF and PDF or the amount of those fees, which constitutes a material fact in dispute.⁶⁵

CBJ further objects to the statement No. 58 that the statutory provision was intended to ensure CPV revenues were used to benefit vessels. This statement by CLIA is not found in Exh. 50, which is a memo from a Tax auditor which states that it is not a controlling decision, and that the statutes and regulations control. In fact Exh. 50 says that the CPV amount shall be "reduced by the total amount of a tax on the passenger." CBJ directs the Court to the Legislative CPV Audit, which states that the majority of the funds were spent on services for vessels or passengers, including public safety and emergency response services, public transportation, and visitor center operations, and finding that use of the fees for services to vessels or *passengers* was appropriate, and recommending communities specifically justify the use of CPV funds for vessels or *passengers* and also requesting communities develop cost allocation methodology to support the use of CPV monies to pay for municipal services.⁶⁶

If the Court does not strike this section, REDACT

⁶³ See Exh. BY, page 19, the Juneau portion of CPV Audit.

⁶⁴ REDACT

⁶⁵ Affidavit of Watt.

⁶⁶ Exh BY, CBJ185211; CBJ0185218; 185219-220; See also AS 43.52.230(b) and (d) which requires funds to be used for port facilities, harbor infrastructure, and other services to the vessels *and passengers*.

[PROPOSED]

REDACT .⁶⁷ REDACT

REDACT

REDACT .⁶⁸ REDACT

REDACT

REDACT .⁶⁹ REDACT

REDACT

REDACT

CLIA Title: Cruise Industry in Juneau

No. 71. CBJ objects to CLIA's statement that the cruise season runs only through September 15. The cruise season is steadily extending each year. In 2017 it ran from approximately May 1 to September 30,⁷⁰ but 2018 is scheduled to run from April 30 to October 2nd.⁷¹ The number of passengers has also increased each year. 2018 and 2019 passenger counts are headed towards 1.2 million.⁷² The increase alone is more than six times the population of Juneau.

No. 75. CLIA does not cite to an exhibit establishing this statement. CBJ objects to Exhibit 103 referenced in this manner; Exhibit 103 does not list the origination of the 2017 ships and instead is a list of port codes.

No. 76. CBJ objects to Exhibit 101, 102, and 104 as supporting this statement. Exhibit 101 is a list of Berth codes and Exhibit 104 are lists of ship codes; neither of which supports this statement. CLIA's Exhibit 102 is an inaccurate cruise ship calendar for Juneau for 2017 and is

⁶⁷ See Exh. CC, "the question should be whether all of the passenger who pay the fee will use the facility."

⁶⁸ REDACT

⁶⁹ REDACT

⁷⁰ Exh. CG, FY18 Passenger Fee Proceeds Recommendation Memo.

⁷¹ Exh. CH, proposed 2018 calendar.

⁷² Affidavit of Bartholomew.

[PROPOSED]

missing several ships; most obviously Exhibit 102 is blank during the middle of the week which is CBJ's highest ship days, including all the 5 and 6 ship days; Exhibit 102 should be struck in entirety. Juneau had a ship(s) almost every day in 2017, with the majority of days having two or more ships.⁷³ CBJ also objects to the statement that the ships stay in Juneau "several hours". Cruise ships stay in the Port of Juneau between 6 and 14 hours on average.⁷⁴

No. 78. See CBJ's objections to No. 71 and 77 above. Exhibits 101 and 104 do not support this statement. Also, as noted above, Exhibit 102 is incorrect and is missing the majority of ships who arrived in Juneau.⁷⁵ This allegation does not reflect the true dates of cruise ships which is steadily increasing; the 2018 season is scheduled from April to October.⁷⁶

No. 79. This allegation, based on a statement of Mr. Calvin, is not true. The cruise ship industry does not provide any revenue source to CBJ other than the on-shore tour companies- most of which are subsidiaries of large cruise ship companies and others which may themselves be executive CLIA partners or tour agency partners, who directly benefit from services provided as discussed in objection to No. 3 above. All revenue comes from the passengers who pay for the tours. CLIA has not produced a single document indicating that any CLIA member has contributed even \$1.00 to the revenue of CBJ.⁷⁷ CLIA refused to provide documents detailing the relationship between the cruise ship companies and the tour companies and even failed to provide documents on promotional materials for on-shore excursions, despite these being readily

⁷³ Exh. G, the correct 2017 Cruise Ship Calendar.

⁷⁴ Affidavit of Bartholomew.

⁷⁵ Exh. G.

⁷⁶ See Exh. CH; in comparison in 2011 the first ship arrived on May 6 with the last one leaving on September 24, see Exh. CI.

⁷⁷ CBJ understands that the passengers do pay a sales tax on the private dock fees; there is no record this is paid by the CLIA members. (Affidavit of Bartholomew).

[PROPOSED]

available on their members' websites.⁷⁸ CBJ disputes that the large cruise ship companies who bring ships to the Port of Juneau contribute revenue from their own pocket to CBJ.⁷⁹

No. 80. Whether CBJ receives sales tax from passengers and crew has no relevance to any issue in the Motion for Summary Judgment. As a starting point, CLIA has no standing to allege anything on behalf of the passengers.⁸⁰ As such, CLIA cannot use sales tax spending by those passengers to argue their constitutional claims. Of equal importance is no federal case has analyzed a local government's sales tax revenues in determining the constitutionality of a passenger fee and the use of the fee, and CLIA failed to cite to any case that undertook such an analysis. CBJ moves to strike the allegations in No. 80 and the corresponding references to the affidavit of Mr. Calvin.

No. 81. CBJ incorporates its position in No. 80 above and requests the Court strike No. 81 and the corresponding reference to the affidavit of Mr. Calvin. Again, this allegation is that passenger spending has a significant impact on the CBJ economy, not spending by CLIA members. CLIA has not produced a single document showing that any CLIA member has contributed anything to the CBJ economy.⁸¹

No. 84. As objected above, whether the cruise ship passengers, crew, and cruise lines purchase goods and services in Juneau that generate sales tax is not relevant to the Plaintiffs' Motion for Summary Judgment or the issue of whether the MPF and PDF are constitutional. The Plaintiffs allege that sales tax revenue is generated by "cruise line purchases in Juneau of goods and services." This allegation is attributed to Mr. Calvin, with no backup documentation. There

⁷⁸ See CLIA's response to RFP 29 and 30, provided with Exh. AZ; and Exhs. A and D.

⁷⁹ If CLIA attempts to offer new exhibits or affidavits in its reply, the Court should strike it or allow CBJ a sur-reply.

⁸⁰ CLIA's response to RFA 57, provided with Exh. AS, admitted that CLIA has no authority to bring this lawsuit on behalf of any passengers and did not contact any passengers.

⁸¹ It is important to keep in mind that the CLIA members do not even pay the fees being challenged here—those are paid by the passengers as part of their cruise package fare.

[PROPOSED]

is no legal basis and no case law that would permit the Plaintiffs to claim to generate revenue in Juneau if there is no evidence provided that the cruise ship or company spends money in Juneau and all the evidence is that the spending is by the passengers and crew. CBJ objects to any statements from Mr. Calvin about “spending” by the “cruise lines.” Before the Court allows any of the Calvin affidavit to be considered, CBJ should have a full opportunity to review his work papers and depose him. CBJ disputes that the “cruise lines” generate sales tax revenue. Mr. Calvin has noted in previous studies conducted for CBJ that the cruise line companies take a significant commission from tour vendors to sell the tours to passengers and those commissions go directly to the CLIA member and do not account for any spending or revenue in Juneau.⁸² Much of these tours are purchased online or through travel agents before the passengers arrive in Juneau.⁸³ While the passengers pay sales tax for the tours they purchase on shore or on the boat, the cruise lines do not pay CBJ sales tax on the commission revenue.⁸⁴

Nos. 85-90. As objected above, what sales tax revenue CBJ collects is not relevant to this case nor the Court’s determination regarding the constitutionality of the MPF and PDF. The Plaintiffs’ have not provided any cases that allow the court to evaluate the sales tax in any Tonnage clause issue where the sales tax is not an issue in the case. Before the Court allows any of Mr. Calvin’s affidavit to be considered, CBJ should have a full opportunity to review his work papers and depose him. If the Court is going to consider sales tax revenue on the issue of whether CBJ is spending the passenger fees consistent with the Tonnage Clause, these allegations in paragraphs 79-90 based on statements by Mr. Calvin constitute material facts in dispute that preclude entry of summary judgment for the Plaintiffs.

⁸² Exh. CJ at CBJ019678.

⁸³ See Exh. C at CBJ176369, the 2011 Economic McDowell Study that “cruise tour packages” and “land tours” are included in the “cruise passenger price.”

⁸⁴ Affidavit of Bartholomew.

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No. 88. CBJ's financial director does not have information breaking out sales tax collections from passengers versus crew.⁸⁵ CBJ objects to Mr. Calvin's statements as facts without the evidence provided to CBJ.

No. 89. CBJ's financial director also does not have information on any passenger accommodation spending.⁸⁶ CBJ objects to Mr. Calvin's statements as facts without the evidence provided to CBJ.

No. 90. CBJ's financial director does not have information to support that there has been \$23 million in revenue in the CBJ from cruise related activities in FY16. CBJ collected \$4,957,205 in MPF and \$2,940,285 in PDF in FY16. The State collected CPV and shared \$4,460,365 to CBJ in FY16. CBJ also collects approximately \$500,000 annually for dockage fees and maintenance fees that are not at issue in this case.⁸⁷ CBJ objects to Mr. Calvin's statements as facts without the evidence provided to CBJ, and as such these facts are in dispute. The Court under federal summary judgment standards cannot accept Mr. Calvin's statements of fact as findings of fact where CBJ disputes those facts and should at least be afforded the opportunity to review his work papers and depose him.

CLIA Title: Uses of CBJ Portion of the State CPV Tax

General Objection to Nos. 91-100. How, where, and why the CBJ spends state tax CPV funds is of no relevance to the issues in the First Amended Complaint and the Plaintiffs' Motion for Summary Judgment. As discussed in objections to Nos. 54-65, the Plaintiffs' dismissed the claim in the original complaint that the State CPV statute was unconstitutional and that CBJ spent CPV funds in an unconstitutional manner. There can be no relevance to the use of CPV

⁸⁵ Affidavit of Bartholomew.

⁸⁶ Affidavit of Bartholomew.

⁸⁷ Affidavit of Bartholomew.

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funds based on the Plaintiffs' First Amended Complaint which has been admitted to by CLIA's President.⁸⁸ In the Plaintiffs' Summary Judgment Motion, the Plaintiffs fail to cite a single case where a federal court analyzed state funds received by a local government in determining whether the passenger fees expended by the local government violated the Tonnage Clause, Commerce Clause, or Rivers and Harbors Act. There is no federal case law that has held that a marine passenger fee is unconstitutional, or that the expenditure of the fees was unconstitutional, on the grounds the local government had other revenue sources it could have used. None of the fees challenged here, neither the MPF or the PDF, have been used to construct the improvements at Statter Harbor referenced in the Plaintiffs' allegations Nos. 91-100. CBJ respectfully requests the Court not consider the allegations in Nos. 91-100 and further strike the following exhibits as not relevant: 122, 116, 51, 73, 47, 48, 74, and 28.

If the Court does consider the allegations in Nos. 91-100 and does not strike the exhibits, CBJ disputes the factual allegations in the following ways:

The last year that any money was appropriated from the MPF or PDF for Auke Bay was FY09, well past the statute of limitations for bringing any claims.⁸⁹

Based on industry approval, money was appropriated in FY01, FY02, FY04, FY05, and FY06 for the Auke Bay Commercial Loading Facility and Statter Electrical Upgrade & Other Improvements, which was for the purchase of property for the future project.⁹⁰ A small amount, \$20,000, was appropriated in FY02 for the Statter Harbor Parking & Pedestrian improvements.⁹¹ In 2007 and 2009, the MPF was also used to match an ADF&G grant for environmental

⁸⁸ CLIA's President Binkley has publically admitted that the state CPV had no bearing on this lawsuit, Exh. BX.

⁸⁹ Affidavit of Bartholomew.

⁹⁰ Exh. CK; 2005 resolution 2316.

⁹¹ Affidavit of Bartholomew, Exh. CK.

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documentation and permitting in the Statter Harbor Tourism Staging Area EIS project which was for planning for this Commercial Ramp; this was not objected to by the cruise ship industry.⁹²

These prior appropriations were approved by the industry. Don Habeger with Royal Caribbean was the industry representative on the FY01 Passenger Fee committee that approved \$500,000 for FY01 at Auke Bay to improve the facilities used by charter boat operators, who were noted to "serve many cruise ship passengers" and that this "will reduce congestion and improve services by operators to clients."⁹³ For FY02, the Passenger fee committee, including Habeger, approved and forwarded to the Assembly finance committee funding for the Auke Bay Commercial Loading Facility and Statter Harbor Electrical Upgrade.⁹⁴ The FY04 passenger fee committee was supportive of the Auke Bay Loading Facility and noted that they would recommend that as a "top priority".⁹⁵ The FY05 passenger fee committee approved \$348,400 for Auke Bay Commercial Loading Facility for FY05, although this was reduced.⁹⁶ Don Habeger was on all of these committees.⁹⁷

Drew Green was the industry representative for the FY06 Passenger Fee Committee,⁹⁸ the committee recommended funding for the FY06 MPF for Auke Bay Commercial Loading facility for \$500,000.⁹⁹ Neither Drew Green nor CLIA's predecessors objected to the \$250,000 for the Statter Harbor EIS approved in 2006 for FY07.¹⁰⁰

⁹² See Exh. CL, the 9-24-07 assembly minutes discussing the match, and Exh. CM appropriating the funds with no comments having been received.

⁹³ Exh. CN.

⁹⁴ \$1,000,000 to be in addition to the \$500K from FY01. This was later reduced to \$411,500. (See Exh. CK; this is part of the group of spreadsheets that were disclosed to CLIA on September 22, 2017 as CBJ175882.)

⁹⁵ Exh. CO.

⁹⁶ Exh. CP; CK.

⁹⁷ The FY03 committee including Habeger also recommended \$1,000,000 for the Auke Bay Commercial Loading Facility although this was not funded. (See Exh. CQ; CK).

⁹⁸ See Exh. CR.

⁹⁹ Exh. CS; Exh. CT.

¹⁰⁰ Exh. CU; See also Exh. CV.

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The industry supported these expenditures at Statter Harbor and did not object. CBJ relied on the cruise ship industry not objecting to the purchase of property and the environmental permitting in deciding to move forward with the project. CLIA is barred from objecting to these now.

No. 92. The reference to Statter Harbor being a transient harbor is a reference to moorage, not use. The Statter Harbor staging and parking area is used by the tour companies (many owned or controlled by the CLIA members, and the rest if not all of which pay a portion of their profits to the cruise companies for selling the tours¹⁰¹) to provide whale watching and fishing charters and other boat tours for cruise ship passengers.

In 2015, a study conducted by Sheinberg & Associates reported that an overwhelming majority, 86%, of all passengers on board for-hire commercial charters out of Statter Harbor came from cruise ships.¹⁰² The cruise ship passengers purchase their whale watching and fish charters directly on board ship from the CLIA member, with the CLIA members estimated to keep 20% of the ticket price profit.¹⁰³ In 2015, these onboard sales to cruise passengers for tours originating out of Auke Bay resulted in approximately \$1,200,000 in profit to the CLIA members, which as noted by the McDowell Group above, is money not spent in Juneau, but

¹⁰¹ The cruise companies own tour companies for land based tours for their passengers, and also collect commissions from other tours they sell on board. (See Exh. C, pages 10, 13-14 discussing but not detailing the cruise line assets and land tours; See Exh. A and KM, list of available tours to purchase from cruise websites; See also Exh. D, page 6, the Princess Passage Contract and Terms, section 14(G) "shall be entitled to impose a charge and earn a profit from the sale of such excursions;" Exh. E, page 5, Holland America Line Cruise Contract, section 14(G). (See also page from 1999 McDowell study that gave an example of a cruise ship collecting 25% of the sales commission for adventure tours, bate stamped CBJ019641, Exh. CJ.)

¹⁰² Exh. CW at page 20. The Plaintiffs did not admit this percentage, but could not explain why nor provide any documents as to why it was inaccurate. (See Plaintiffs' response to RFA 94 and RFP 54, provided with Exh. CX.) The CLIA response was: "CLIA does not have any documents responsive to this request." As such, the expert consultant finding by Sheinberg must be accepted as undisputed. As to whether CLIA contested the Sheinberg Report, CLIA declined to respond.

¹⁰³ Exh. CW, page 21. CLIA has refused to provide information to the CBJ on their contracts with the tour companies. (See responses to RFP 29 and 30, attached with Exh. AZ).

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rather pure profit to the CLIA members.¹⁰⁴ Whale watching tours have the vast majority of their customers from cruise ships.¹⁰⁵ In support of the project often referred to as Statter Harbor Phase III, directed at providing a loading and unloading zone for the buses carrying cruise ship passengers, Mr. Ward owner of Dolphin Tours, LLC stated: "I cannot imagine a more qualified proposal for a facility that will be built for and used by cruise ship passengers."¹⁰⁶ Mr. Janes of Gastineau Guiding stated plainly that the Phase III Statter Harbor facility is a matter of "safety" and would provide "a much safer experience to the cruise ship passengers."¹⁰⁷

Many of the cruise passengers are shuttled out to these facilities by large buses operated by the Cruise Line companies themselves, or by those who have contracts or sales agreements with the Plaintiffs' cruise lines, many of whom are likely also CLIA members.¹⁰⁸ Holland America admitted they were the primary operator of the large coaches at Statter Harbor.¹⁰⁹ Cruise ship passengers also use the CBJ public buses to visit sites.¹¹⁰

The use of Statter Harbor Commercial Float, as opposed to moorage, is 86% or more cruise ship passengers. This is a project that benefits CLIA's members as well as their passengers. In 2014, CLIA's President Binkley publically told the CBJ Assembly that the project at Auke Bay to alleviate congestion was "exactly the types of things destinations need to

¹⁰⁴ Exh. CW, page 21. The Plaintiffs did not admit this number, but could not explain nor provide any documents as to why this number was inaccurate. (See CLIA's response to RFA 95 and 96, and RFP 55 provided with Exh. CX.)

¹⁰⁵ Exh. CW, page 6-10, letter dated April 13, 2016 from Mr. Ward, owner of Dolphin Tours, LLC, that 99% of his passengers come from cruise ships: "Our passengers almost exclusively originate from visiting cruise ships."; See CW, page 11-12, letter dated April 13, 2016 from Mr. Janes of Gastineau Guiding that 98% of their passengers come from cruises.

¹⁰⁶ Exh. CW, page 6-10.

¹⁰⁷ Exh. CW, page 12.

¹⁰⁸ See Exh. CY, page 1-12, the 2011 CLIA sourcebook which documents that many travel agents and tour groups are CLIA members; Exh. DA, email from K. Day with Princess describing bus services they do and do not provide; Exh. B, the media release documenting the transportation divisions of the cruise lines.

¹⁰⁹ Exh. CZ.

¹¹⁰ See Exh. DB, email among CBJ employees discussing bus use; See Exh. DC FY14 Manager Fee memo.

[PROPOSED]

do and the things that the cruise industry is looking for."¹¹¹ If CBJ expenditures at Statter Harbor are being challenged as unconstitutional, there is a significant factual dispute as to whether the funding of Statter Harbor does or does not provide services to CLIA's members, vessels, and/or passengers, which is material, and as such precludes summary judgment for the Plaintiffs.

No. 93. This allegation comes from a state prepared document, Exhibit 116, not by CBJ, and as such is not admissible against CBJ. CBJ incorporates its objections to No. 92 above. The Statter Harbor project is to address issues relating to the buses carrying cruise passengers to the for-hire tours, and the loading and unloading of these tours, which the Plaintiffs' members either directly operate or they receive substantial income from the sale of these tours; this is a benefit to CLIA's members.¹¹² The CPV, MPF, and PDF have not funded projects intended to benefit non-cruise visitors; prior Statter Harbor projects, (Phases I and II) created a boat launch and parking for non-commercial users, and also worked on the moorage floats; these were funded with sales tax and grants.¹¹³

No. 94. This allegation is misleading and not true. While CLIAA has not provided what percentage of their member's cruise passengers use the tours at Statter Harbor, the fact is that it is not "some cruise vessel passengers" participating in group excursions at Statter Harbor, but 86% of all persons who participate in group excursions at Statter Harbor are cruise ship passengers.¹¹⁴ Essentially all the guests arriving on a coach or bus for group excursions come

¹¹¹ See Exh. DD. Binkley only expressed hesitation at the high price tag for 16B.

¹¹² Affidavit of Watts; Exh. CW, page 20; Exh. DD.

¹¹³ See Exh. DE, page 3.

¹¹⁴ Exh. CW, page 20.

[PROPOSED]

from a cruise ship.¹¹⁵ That is significantly different than “some.”¹¹⁶

No.98. The Statter Harbor project known as the "Statter Harbor Commercial Loading Ramp CIP" has not been funded by the challenged fees and is being funded by the CPV (85%) and CBJ Docks and Harbor Funds.¹¹⁷ CBJ further objects to No. 98 because it is misleading and not accurate. The 800 linear feet of staging area noted will be used almost exclusively for the cruise ship passengers as discussed above.¹¹⁸ CBJ also objects to the Court considering unfunded projects that may be in planning stages. The Plaintiffs did not cite to any federal case law where the Court prohibited a local government from planning for a project, particularly where the project was not being funded by the challenged fees, as here.

No. 99. Exh. 28 is a copy of Assembly minutes from 2007. This is well past the statute of limitations and CLIA should be barred from bringing any claim that this was improper now. In 2007 \$250,000 of the MPF was used to match an ADF&G grant for environmental documentation and permitting for the Statter Harbor Tourism Staging Area EIS project; this was not objected to by the cruise ship industry.¹¹⁹ CLIA and its predecessor did not object to this appropriation and should be barred from doing so now. The boat launch ramp and expansion of parking area for boat trailers referenced in No. 99 was part of prior Statter Harbor phases, and was paid by sales tax and grants.¹²⁰

¹¹⁵ See Exh. CW, page 3. See also the letters from the tour operators Exh. CW, pages 6-12.

¹¹⁶ CLIA bases their allegation on Exh. 51, which is a letter from a private citizen to the mayor in 2005 responding to comments made by another private citizen at a Docks and Harbor Meeting. The letter is hearsay and not admissible against CBJ, in addition to being 12 years out of date and not relevant. CBJ also objects to this allegation and the exhibit as nowhere in Exh.t 51 does it say what the allegation alleges. (See Motion to Strike).

¹¹⁷ Affidavit of Bartholomew; Exh. DE, page 4.

¹¹⁸ See Exh. DE and Exh. CW, page 20 that 86% of all users for this project facility originate from cruise ships.

¹¹⁹ See Exh. CL the 9-24-07 assembly minutes discussing the match; Exh. CM appropriating the funds with no comments having been received.

¹²⁰ See Exh. DE

[PROPOSED]

No. 100. CBJ incorporates all of its objections to Nos. 91-98 as applicable to 100. CBJ further objects as the projects referenced in Plaintiffs' Exhibit 116 and Fact No. 100 is not funded by MPF, PDF, or CPV and are not relevant to this case other than to show that there are no current or planned Auke Bay projects being paid for with MPF or PDF.¹²¹

CLIA Title: Uses of CBJ's Revenues from Entry Fees

General Objection to No. 101-104. CBJ 69.20.005-120 sets out the purpose, procedure and permitted uses for the Marine Passenger Fees. CLIA makes statements, which are not facts, as to CLIA's interpretation of the code and how it has been followed. Those statements are not accurate. CBJ has followed the procedure in the code for developing recommended expenditures and projects for consideration by the Assembly.¹²² Every year the proposed list has been distributed to CLIA, and its predecessors, NWCA and ACA, and to many other cruise lines representatives.¹²³ CLIA and its members every year had months to review the proposed list and make comments. Some years neither CLIA nor its predecessors nor any of its cruise line members commented at all. Some years CLIA or its predecessor or one or more of its cruise line members specifically approved expenditures, including for projects such as crossing guards,¹²⁴ now being challenged in this summary judgment motion. Some years CLIA or its predecessor or one or more of its cruise line members specifically requested CBJ approve the expenditure of marine passenger fees for projects now being challenged, such as the walkway at the private docks and security at the private docks, and the cleaning and maintenance of downtown

¹²¹ Affidavit of Bartholomew.

¹²² Affidavit of Watt.

¹²³ Affidavit of Watt; See also Exh. DF email from K. Day regarding the procedure in which the industry commented on the draft lists.

¹²⁴ See Exh. BV, page 7 where Kirby Day with Princess Cruises requested the CBJ create a crossing guard program. See also the information and exhibits CBJ has provided in objections to No. 144.

[PROPOSED]

restrooms.¹²⁵ For example, see the 12/31/12 email and letter from K. Day with Princess Cruises asking for money from FY14 MPF fees for projects at the Franklin Dock, and the 12/28/12 memo from the A.J. Juneau Dock, LLC, which is 50% owned by Holland America Line, Inc., asking for projects paid from FY14 MPF fees.¹²⁶ The following are just some examples, and CBJ requests the Court note that CLIA's predecessor and cruise line member representatives specifically approved of the expenditures for the Seawalk, which is now a highlight of CLIA's summary judgment motion.¹²⁷

Examples of industry's approval, requests, or non-objections to MPF expenditures

The original manner in which the CBJ solicited input from CLIA's predecessors and industry representatives was through a Passenger Fee Proceeds Committee, of which Mr. Habeger, a Royal Caribbean executive nominated by NWCA to be their representative¹²⁸ was a member.¹²⁹ The first expenditure, FY01¹³⁰ was approved by the Passenger Fee Committee and included construction of a visitor center and restrooms, Auke Bay Commercial Loading Facility, Gold Creek Entrance enhancement, downtown sidewalk, stairway, and street reconstruction, trail maintenance, crossing guards, refinishing the downtown street lights, commercial trail planning,

¹²⁵ Affidavit of Watt.

¹²⁶ Exh. AR, page 1; AQ, page 1. The cruise ship companies have made similar requests at least since FY09, often requesting funding for projects that provide benefits to passengers. (See Exh. DG; 12/31/11 letter from Franklin Dock Enterprises, asking for funding for "decorative banners" to "create a pleasant and welcoming visual affect" to the passengers, for example. While that specific request was not funded, CBJ did fund many projects at the Franklin Dock and AJ dock that has benefitted passengers. (See 3/22/12 MPF recommendation memo, Exh. DH.) Since FY10 CBJ has used MPF funds to partially or wholly fund requests by the industry.

¹²⁷ See Exh. DI, email from K. Day regarding the FY14 proposed list, approving the Seawalk and Exh. DJ email from D. Green regarding the FY14 proposed list stating that money spent on the Seawalk to provide "safety or efficiency to passengers" is appropriate; See also Exh. DK, 2006 minutes where Green specifically "appreciate[d]" the Marine Passenger Fee being used for the waterfront Seawalk.

¹²⁸ See Exh. LC, Habeger worked for Royal Caribbean but was nominated by NWCA to act as their representative.

¹²⁹ Exh. DL.

¹³⁰ CBJ does not agree these old expenditures require the Court's consideration of constitutionality, as any claims regarding those expenditures have long passed the statute of limitations. CBJ provides this history to the Court to clarify the process for the expenditures and to highlight CBJ's reliance on the industry's approval and their lack of objecting.

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funding of a trail monitor position, a tourism coordinator at the CBJ and two assistants, tourism ambassador, and funding for capital transit, local emergency planning committee, funding for baseline noise study, funding for tourism advisory committee and a tourism long range plan, among others.¹³¹ ¹³² This list provided many projects that benefitted passengers, and even included preparation for part of the Seawalk by Gold Creek.¹³³ Kirby Day with Princess Cruises was not a member of the committee, but expressed to the Assembly that congestion downtown was a big issue that needed addressing, including traffic movement, pedestrian movement, and that the CBJ should look at instituting a crossing guard program such as Sitka and Ketchikan.¹³⁴

Mr. Habeger wrote the city manager explaining NWCA's view of how to use the MPF on June 22, 2000 for the FY01 list: "The projects I believe to be of the utmost importance are to organize, revamp and improve the downtown waterfront corridor...Likewise the fees should be concentrated to the areas of greatest impact first then radiating outward."¹³⁵ Mr. Habeger specifically requested concentration to improve Marine Park, purchase land, improve the "waterfront promenade", enhance vehicular traffic patterns, and enhance municipal wharves, the start of a long-range tourism plan, and "enhancement designing" of the downtown.¹³⁶ He also approved of a second wave of projects such as work to trails used by passengers.¹³⁷ Mr. Habeger did not express that the funding should only be for services provided to the physical vessel.

For FY02, the Passenger Fee Committee, including Habeger, approved and forwarded to

¹³¹ Exh. DM; Exh. CN, page 1.

¹³² Mr. Habeger did tell the Assembly on June 6, 2000 he dissented to some items on the list, and that he wanted the fees to be used to "make plans for bringing bigger ships in, creating a waterfront corridor." (Exh. DN). The NWCA also made a general statement that the money should be spent on improvements for the ships and passengers. (Exh. BV, page 6.)

¹³³ See explanation of the list to manager, Exh. CN, page 1.

¹³⁴ Exh. BV, page 7.

¹³⁵ Exh. CN, page 4.

¹³⁶ Exh. CN, page 4.

¹³⁷ Exh. CN, page 4.

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the Assembly finance committee funding for the Auke Bay Commercial Loading Facility and Statter Harbor Electrical Upgrade, construction of a kiosk and pedestrian shelter for passenger traffic, and a visitor center, trail maintenance and new trail construction for cruise ship passengers, historic streetlights, restroom maintenance, city museum staffing, park ranger, crossing guards, 30 minute bus service, emergency services, noise study for flight-seeing operators, planning and policy committee materials and support, and tourism long-range plan.¹³⁸ During the discussion of the proposed projects, Kirby Day with Princess Cruises supported funding for the Marine Park Library and a traffic circulation, as well as crossing guards saying "it works well in Ketchikan and Sitka".¹³⁹ He also opined that if funding was used for Perseverance trail than there should be continued commercial use of it; Perseverance is a trail used by passengers.¹⁴⁰

In 2001, the Passenger Fee Committee continued along the same vein for FY03, and did not discuss requiring projects only for vessels.¹⁴¹ John Hanson, with the NWCA, the predecessor of CLIA, wrote a letter to the City Manager on the proposed list, stating general support for three types of projects: projects that ameliorate the public impact of noise from aircraft in cruise passenger flight excursions; projects related to dock and ship security and minimizing any negative community impact of security measures; and "projects related to the efficient handling of passengers who come ashore, and the safe maneuvering in the harbor and docking of ships at the public docks in Juneau."¹⁴² All members of the committee, including the Plaintiffs'

¹³⁸ Exh. DO.

¹³⁹ Exh. DP.

¹⁴⁰ Exh. DP, page 2.

¹⁴¹ See Exh. DQ with a list of concerns the committee.

¹⁴² Exh. DR.

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representative, Mr. Habeger,¹⁴³ unanimously supported using Marine Passenger Fees for: Bus Transit services, Crossing Guards, and downtown restroom maintenance.¹⁴⁴ On January 28, 2002, the CBJ Manager reported the final recommendations of the Passenger Fee Committee for FY03, indicating the committee, including Mr. Habeger, recommended expenditure of the fees on the following projects: Auke Bay Commercial Loading Facility \$1,000,000, City Museum \$80,000, Crossing Guards \$25,000, Dock Security \$200,000, Downtown Restroom Maintenance \$5,000, Front Street Restrooms \$140,000, Heliport Plan \$75,000, Juneau Convention and Visitors Bureau \$97,000, Local Emergency Planning Committee \$10,000, Planning and Policy Committee \$5,000, Marine Park/Admiral Way/Steamship Wharf \$103,000, Montana Creek Bike Trail \$50,000, Open Space Acquisition \$250,000, Park Rangers \$25,000, Marine Wharf Improvements (insert), Princess Cruises Shore Power \$200,000, Tourism Personnel \$128,700, Trail Maintenance \$50,000, Transit \$205,000.¹⁴⁵

The 2003 Passenger Fee Committee unanimously approved the use of passenger fees in FY04 for: allocation of \$942,000 to reflect the general government services used by passengers, \$10,000 for emergency management, \$9,000 to the Best Management Practices (guidance for cruise and tourism businesses), \$25,000 for a seasonal park ranger for CBJ trails, \$83,000 for Crossing Guards, \$33,000 for downtown restroom maintenance, \$250,000 for Gunakadeet (Pocket Park) restrooms, \$635,000 for alternative heliports/quiet technology and noise abatement, \$25,000 for waterfront planning, \$195,000 for incinerator heat exchanger replacement.¹⁴⁶ The committee also was supportive of funding for Last Chance Well Basin Improvements and for the Auke Bay Commercial Loading Facility, including that they would

¹⁴³ Exh. DS.

¹⁴⁴ Exh. DL.

¹⁴⁵ Exh. CQ.

¹⁴⁶ Exh. CO.

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have recommended this as a "top priority." The committee was also supportive of putting \$100,000 back into the construction of Marine Park/Front Street restrooms.¹⁴⁷

The 2004 Passenger Fee Committee approved the use of passenger fees in FY05 for: allocation of \$1,100,000 to reflect the cost of services provided by certain departments for the passengers or the vessels, \$68,000 to offset the Manager's office for time spent on tourism issues, \$9,000 to the Best Management Practices (guidance for cruise and tourism businesses),¹⁴⁸ \$25,000 for a seasonal park ranger for CBJ trails, \$83,000 for Crossing Guards, \$28,000 for Downtown foot/bike patrol, \$60,000 for restroom maintenance, \$205,000 for Transit Bus Service, \$48,000 for a project on downtown parking improvements, \$100,000 for the Juneau Convention and Visitors Bureau, \$60,000 for the City Museum allowing it to be staffed 7 days a week during the summer, \$10,000 for emergency management, \$45,000 for a way finding plan on pedestrian flow patterns, \$400,000 for waterfront land acquisition, \$254,800 to design Gunakedeit Pocket Park and bathrooms, \$300,000 for float plane noise abatement, \$348,400 for Auke Bay Commercial Loading facility, \$300,000 for an ADA passenger boarding system, \$350,000 for a Steamship Wharf Lightering Ramp/Float, \$74,000 for a waterfront Seawalk, and \$56,000 for Port Security Improvements.¹⁴⁹ The Committee also agreed to defer to the Finance Committee a request from Princess Cruise Lines for funding of an electric hook-up at the private Franklin Dock.¹⁵⁰ At the Assembly Finance Committee, Tom Dow with Carnival Corporation

¹⁴⁷ Exh. CO, which shows which projects were approved by the committee and which were not supported.

¹⁴⁸ Additional industry support was provided for this when on April 18, 2004, Mr. Day, executive for Princess Cruises, sent an email to the CBJ manager stating that "\$9,000 from passenger fees" was a pretty good return on the investment in the Tourism Best Management Practices group. (Exh. DT).

¹⁴⁹ Exh. CP, page 1. These amounts were changed on May 26, 2004 by Rod Swope, then City Manager, moving certain amounts from the Best Management Practices, Crossing Guards, and Auke Bay Commercial Loading Facility.

¹⁵⁰ Exh. CP, page 11. The CBJ declined a request from Drew Green for funding for a road project to the private AJ dock.

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requested continuation of \$300,000 for the shoreside power project to allow the cruise ships to hook up to Juneau power at the private Franklin Dock.¹⁵¹

Drew Green became the industry representative of the Passenger Fee Proceeds Committee in 10/2004 until 9/30/07.¹⁵² In 2005 the Passenger Fee Proceeds Committee recommended funding from FY06 Marine Passenger Fee Proceeds for: allocation of \$1,430,000 to reflect the general government services used by passengers, \$64,000 for Capital City Fire and Rescue, \$12,000 to the Best Management Practices (guidance for cruise and tourism businesses), \$25,000 for a seasonal park ranger for CBJ trails, \$75,800 for Crossing Guards, \$28,000 for Downtown foot/bike patrol, \$60,000 for restroom maintenance, \$131,000 for Transit Bus Service, \$48,000 for a project on downtown parking improvements, \$100,000 for the Juneau Convention and Visitors Bureau, \$30,000 to Collaboration Juneau, a volunteer group who seeks solutions to impacts in the community by tourism, \$10,000 for emergency management, \$122,000 for a way-finding plan on pedestrian flow patterns, \$1,342,000 for waterfront land acquisition, \$70,000 for a sidewalk sweeper, \$300,000 for float plane noise abatement, \$500,000 for Auke Bay Commercial Loading facility, \$300,000 for a shoreside power project.¹⁵³ Drew Green specifically asked for an increase in dollars to the crossing guards.¹⁵⁴

Additionally in 2005, outside of the Passenger Fee Committee, Drew Green highlighted the shoreside operational needs for vessels for their tours, parking lots, Marine Park, and bus staging areas, which showcases how the vessels require and use parking lots and buses and that

¹⁵¹ Exh. DV.

¹⁵² Exh. CR.

¹⁵³ Exh. DW; See also minutes of 2-18-05 meeting where Drew Green did not object to the expenditures, Exh. CT.

¹⁵⁴ See Exh. DX. Drew Green expressed concerns with the amount for capital transit and the emergency management and the collaboration Juneau.

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any money for these projects is a service to the vessel.¹⁵⁵ The mayor and chair of the Waterfront Development Committee and CBJ staff met with representatives of the cruise ship industry, including Don Habeger, Kirby Day, and Drew Green and discussed the FY06 capital projects including those utilizing the MPF and PDF; the projects funded with the MPF and PDF were approved by the industry at that meeting.¹⁵⁶

In 2006 the Passenger Fee Committee approved funding for the allocated departments (\$1,080,400), CCFR air medivac support (\$65,000), Non-profit Air medivac support (\$50,000), TBMP (\$12,000), Crossing Guards (\$104,400), Downtown Foot and Bike Patrol (\$60,000), Downtown Restroom Maintenance (\$65,000), Downtown Cleaning (\$67,000), Transit Public Bus Service (\$138,000), JCVB (\$100,000), Collaboration Juneau (\$30,000), South Franklin Street Widening (\$100,000), Tourism Community Objection Survey (\$18,500), Port Security Improvements (\$100,000), Shoreside Power Project (\$300,000), Civil Air Patrol Capstone Project (\$3,200), Waterfront Seawalk (\$1,456,500), Statter Harbor EIS (\$250,000), Marine Park Lightering Ramp and Float (\$600,000).¹⁵⁷ Drew Green did not object to anything in this list other than money for transit public bus service, and air medivacs without having more information, and specifically "appreciate[d]" the Marine Passenger Fee being used for the waterfront Seawalk.¹⁵⁸ The category of expenditures from the Passenger Fee Committee were all approved by the Assembly, with a few changes to dollar amounts.¹⁵⁹

¹⁵⁵ Exh. DY, page 3.

¹⁵⁶ Affidavit of Botelho; Exh. DZ, CBJ no longer appears to have the letter that this responds to nor the final signed letter from the City Manager.

¹⁵⁷ Exh. CU

¹⁵⁸ Exh. DK, the minutes to the 3-23-06 Passenger Fee Committee.

¹⁵⁹ Exh. EA.

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In 2006 Kirby Day with Princess supported the use of Marine Passenger Fees to identify tourism impact areas.¹⁶⁰

The Manager's proposed fee list to the Marine Passenger Fee Committee in 2007 included \$1,102,000 for general support, \$26,724 for CCFR medivac support, \$50,000 to Airlift Northwest, \$12,000 for Tourism Best Management Practices, \$104,400 for Crossing Guards, \$60,000 for downtown foot/bike patrol, \$65,000 for restroom maintenance, \$77,200 for downtown cleaning, \$138,000 for transit public bus service, \$100,000 for Juneau Convention and Visitors Bureau, \$125,000 for downtown cruise ship berth enhancement, \$300,000 for shoreside power, \$500,000 for quiet technology and noise abatement, \$1,636,926 for waterfront seawalk, \$500,000 for cruise ship tug moorage rehabilitation, \$56,350 for downtown ambassador program, \$75,000 for downtown circular.¹⁶¹ The Northwest Cruise Ship Association (precursor to CLIAA), wrote a letter only objecting to the downtown bus circular, the Aurora harbor floats, aircraft engine replacement without more linkage to cruise operations; they did not object to the other proposals.¹⁶²

The Passenger Fee Committee was disbanded with CLIA's members agreement, and the process switched to the City Manager presenting his desired list of expenditures to the industry before submitting to the Assembly Finance Committee.¹⁶³ CLIA members were given an opportunity to submit their own requests for funding.

In March 2008 the City Manager met with the cruise industry on his proposed list, and they had no objections to his proposed recommendations for the FY09 proceeds for general support (\$1,500,000), CCFR Air Medivac Support (\$27,400), Non-profit Air Medivac Support

¹⁶⁰ Exh. EB.

¹⁶¹ Exh. EC, page 1.

¹⁶² Exh. EC, page 17-18.

¹⁶³ REDACT

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(\$50,000), Tourism Best Management Practices Support (\$12,000), Crossing Guards (\$118,000), Downtown Foot/Bike Patrol (\$60,000), Downtown Restroom Maintenance (\$65,000), Downtown Cleaning (\$82,300), Transit Public Bus Service (\$138,000), Juneau Convention and Visitors Bureau (\$100,000), Shoreside power project (\$300,000), Downtown Ambassador Program (\$56,350), Tourism Economic Impact Study (\$33,000), Seasonal EMS Transport Program (\$108,750), Cruise Ship Dock Maintenance and Improvements (\$964,200), Downtown Parking Garage/Transit Center (\$1,500,000).¹⁶⁴ Mr. Habeger presented information to the CBJ that the industry supported the establishment of the PDF, and specifically supported the use of the PDF for any project in the waterfront plan, which included the Seawalk.¹⁶⁵

Without the Passenger Fee Committee, the industry had an avenue to request or object to projects and continued to request projects from the CBJ funded with MPF and PDF:

In 2008 Princess cruises requested Marine Passenger Fees be used to construct a covered staging area for passengers while waiting for tours and transport in FY09.¹⁶⁶

In 2010 the industry requested a larger turnaround for buses in the Columbia lot to allow delivery trucks access to the ships; this is evidence that the ships require vehicular access and loading and parking areas.¹⁶⁷

On December 26, 2012, Mr. Day emailed the CBJ manager that in lieu of the Passenger Fee Committee, he and Mr. Green would be the industry representatives to make comments on

¹⁶⁴ Exh. EE.

¹⁶⁵ See Exh. BI, and also referenced in footnote 82 above; See also Exh. BG, showing that the waterfront plan was adopted in 2004 including a discussion of Seawalk alternatives.

¹⁶⁶ Exh. EF.

¹⁶⁷ See Exh. EG, 6/1/10 email from D. Green complaining about access issues; Exh. EH, 6/10/10 email in response.

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proposed uses of the Marine Passenger Fees and Port Development Fees.¹⁶⁸ CBJ relied on that representation and met with Day and Green in reviewing the proposed funding list.¹⁶⁹

Historically, and continuing until the filing of this lawsuit, CLIA and its predecessors and the representatives of its member companies never took the position that the MPF could or should only be used for services to the actual physical vessel.¹⁷⁰ [REDACTED]

[REDACTED]¹⁷¹ the passengers pay the fee with their tickets.¹⁷²

CLIA and its related companies also in fact requested and supported specific projects that were spent on passengers. Here are some examples:

- June 5, 2000, the NWCA stated that "the purpose of the fee is to address the costs to the City and Borough for services and infrastructure usage by cruise ship passengers visiting Juneau, including: emergency service, transportation impacts and recreation infrastructure use, and to mitigate impacts of increased utilization of City and Borough services by cruise ship passengers."¹⁷³
- On January 30, 2006, Mr. Day sent an email to CLIA members and others indicating the industry's support for spending Marine Passenger Fee monies to "widen 300 feet of side walk between the parking garage and the new Timberwolf building on the water side of S. Franklin Street. We believe this is a pro-active step to address some of the concerns over pedestrian congestion in this area."¹⁷⁴

¹⁶⁸ Exh. EI.

¹⁶⁹ Affidavit of Watt.

¹⁷⁰ Affidavit of Watts.

¹⁷¹ [REDACTED]

¹⁷² See objections and exhibits provided above.

¹⁷³ Exh. EK. A representative of NWCA also stated at a later 2000 Assembly meeting that the projects needed to bear relationship to improvements that would directly affect the ships and the passengers. (Exh. BV).

¹⁷⁴ Exh. EL. The pedestrian congestion is the 1,000,000 cruise ship passengers coming into Juneau per season. The passengers are schedule to increase to 1.2 million summer of 2018, a 20% increase. (Affidavit of Bartholomew). A study counted 8,370 pedestrians in one day (over 1,000 during the highest hour of activity) just in one area of the sidewalk- those who crossed from the ship side of Franklin Street to the Alaska Shirt Company, a store only open in the summer for the cruise season, and 5,010 pedestrians at the second highest crosswalk during the same day. (See Exh. EM, CBJ180983, specific pages of the Cruise Ship Dock Uplands Operations Analysis. CBJ has not provided this entire 220 page document but can upon request. It was previously disclosed to CLIA). These numbers peaked following the arrival of the second cruise ship that day. (See Exh. EM, CBJ180983). As shown in Exhibits to objections No. 4 and 78 the majority of days CBJ has 3-6 cruise ships; the amount of people on the sidewalks grows substantially with each ship. (See Exh. CH, the proposed 2018 calendar, with most days having 3 or more ships; 59 days with 4 ships; 24 days with 5 ships, and 9 days with 6 ships).

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- Request from Drew Green for an ADA walkway for passengers to come to shore,¹⁷⁵
- Letter from K. Day with Princess Cruises "It also seems logical that a passenger stepping off of a ship at the Franklin Dock should expect that a portion of the passenger fee he or she has paid would be allocated to provide a service and/or improve their experience at that facility."¹⁷⁶
- 12/31/11 letter from Franklin Dock Enterprises bate stamped CBJ04970, asking for funding for "decorative banners" to "create a pleasant and welcoming visual affect" to the passengers.¹⁷⁷
- On January 28, 2013, Mr. Day emailed the CBJ finance director and manager that "Seawalk is a good project."¹⁷⁸ On the same day, Mr. Green emailed the Manager stating on the proposed FY14 MPF list and said: "Use of MPF funds on seawalks that provide, infrastructure, safety, or efficiency benefit to passengers at or near cruise facilities where they are berthed or lightering is appropriate."¹⁷⁹

REDACT

REDACT

REDACT

REDACT

¹⁸⁰ The Alaska Alliance for Cruise Travel¹⁸¹ wrote a letter to their members after the lawsuit was filed stating that "the passenger entry fee tax paid by every cruise ship customer when they visit Juneau is supposed to be used to provide a direct benefit to the passengers who

¹⁷⁵ Exh. EN.

¹⁷⁶ Exh. EO

¹⁷⁷ Exh. DG. This specific request was not funded by the CBJ.

¹⁷⁸ Exh. DI.

¹⁷⁹ Exh. DJ.

¹⁸⁰

¹⁸¹

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REDACTED.¹⁸² For example, the agent for A.J. Dock which is privately owned with the majority shareholder being Holland America specifically requested MPF funds for restroom cleaning and maintenance in FY2017; the agreement with CBJ for that funding was signed in June 2016 after the Complaint was filed.¹⁸³ Both the AJ dock and the Franklin Dock have similar requests for funding on projects that benefit passengers for FY18 and FY19.¹⁸⁴

PDF expenditures

Since 2011, the PDF has been spent on dock projects and the Seawalk; the last few years the PDF has been spent to pay back debt service on revenue bonds for the new cruise ship dock project, known as 16B.¹⁸⁵ The industry was part of the development of 16B and has publically admitted after it was built that this was a constitutional project.¹⁸⁶

CBJ's defenses of laches, estoppel, quasi-estoppel, waiver, statute of limitations, and

¹⁸² [REDACTED]

¹⁸³ Exh. EW.

¹⁸⁴ Affidavit of Watt; Exh. EX; Exh. EY; Exh. EZ; Exh. FA.

¹⁸⁵ See Exh. BO; Affidavit of Bartholomew. Project 16B exceeded \$50,000,000. The docks are used exclusively by ships that pay the MPF and PDF; all are large cruise ships of the CLIA members with the exception of two National Geographic ships, as noted in No. 4 above. The National Geographic ships pay the fees and are entitled to use the services for the fees. [REDACTED]

[REDACTED] However, during the Assembly Meetings on this issue, CLIA failed to comment on the bid award for construction, see Assembly of Whole minutes 1-27-14, attached as Exh. FD. CLIA then presented at the following Assembly meeting saying that the 16B dock replacement, bus parking reconfiguration, and Auke Bay was just what the industry wanted. (See Exh. DD, Binkley explained that the projects were "things that the cruise industry is looking for", but expressed hesitation at the high price tag). In April 2016 CLIA Alaska President John Binkley said the dock was "really what these fees are supposed to be used for." (Exh. FF). In January 2017, After the City spent in excess of \$50,000,000 to complete the new 16B docks, John Binkley complained it was not big enough and CBJ should have spent more and made the dock even bigger. (Exh. FE.)

¹⁸⁶ Exh. FG; Exh. FE.

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failure to exhaust administrative remedies is addressed in CBJ's Cross Motion highlighted by the facts shown above. The illustrations above establish that there are many genuine issues of fact related to CLIA's allegation that it has "objected" to the now challenged expenditures. That is not true. And those factual disputes preclude entry of summary judgment for the Plaintiffs.

No. 102. This allegation references Exhibit 44 and 46, which are the Manager's recommended MPF lists for FY16 and FY17 pursuant to CBJ 69.20. The FY16 memorandum states: "...no public comments were received on the draft recommendations." CLIA and its member companies chose not to object to any of the expenditures. The FY16 Memorandum correctly states in relation to that portion of the MPF used for certain department expenses that provide services directly to passengers or the ships: "In 2003, a full cost analysis, reviewed by the Northwest Cruise Ship Association and evaluated by Elgee, Rehfield and Mertz, LLC,¹⁸⁷ determined this formula provided a fair and accurate assessment of costs."¹⁸⁸ This statement is similar for the FY17 memorandum. Nearly all of the projects listed on pages 4-6 of Exh. 44 were requested by a CLIA cruise line member or related private dock owner, or approved by a CLIA or cruise line member representative.¹⁸⁹ [REDACTED]

[REDACTED],¹⁹⁰ and the majority on pages 3-7 of Exhibit 46 were requested by a

¹⁸⁷ Elgee, Rehfield and Mertz is an accounting firm that conducts forensic audits. The firm applied standard accounting principles pursuant to federal regulations for analyzing and evaluating the accuracy and fairness of cost sharing of expenses through multi-government departments. (See Exh. FH).

¹⁸⁸ Years later, and continuing today, CLIA claims to have not "approved" the use of the formula. However, CLIA and its predecessors and its cruise ship members did not object to the use of the formula and did not offer or suggest any other method or procedure for fairly distributing some portion of the Marine Passenger Fees to the departments who provide services to the cruise ships and passengers. CBJ's position is that CLIA is estopped from challenging the expenditures under formula, or is barred by laches, waiver and/or quasi-estoppel from challenging those expenditures. CLIA has not produced a single document indicating that at the time NWCA was provided the formula for review—before it was adopted by the Assembly—that NWCA offered any objection to the use of the formula and expenditures under the formula.

¹⁸⁹ Affidavit of Watt.

¹⁹⁰ [REDACTED]

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CLIA cruise line member or related private dock owner, or approved by a CLIA or cruise line member representative.¹⁹¹

No. 103. This allegation, that generally says CLIA has “objected to the City Manager’s recommendations for use of the MPF revenues” is not true. REDACT

REDACT.¹⁹² This allegation is based on Exhibit 42. Exhibit 42 is a self-serving letter from CLIA executive director Binkley to then City Manager dated December 22, 2015. The letter objects to only one expenditure, which is “for the bridge park project.” Nowhere in Exhibit 44 is there funding for “the bridge park project.” CLIA did not object to any of the other 29 recommended expenditures in Exhibit 44 and did not object to any in Exhibit 46.¹⁹³

As outlined above, CLIA, through its members, regularly requested projects and expenditures which the City Manager then recommended for use of the revenues. As for recent expenditures, CBJ does not have any record of written objections to expenditures by CLIA or its predecessors in FY13-FY16 or FY18¹⁹⁴ and only objections to a small group in FY17.¹⁹⁵ CBJ disputes that CLIA has “objected to the City Manager’s recommendations for use of the MPF revenues”, and this is a material fact in dispute that precludes entry of summary judgment for the Plaintiffs.¹⁹⁶

General Objection to Nos. 105-110. CBJ objects to consideration of any other revenue sources on the constitutional issues and Rivers and Harbors Act issues raised by CLIA in its

¹⁹¹ Affidavit of Watt.

¹⁹² REDACT

¹⁹³ Affidavit of Watt.

¹⁹⁴ CLIA did not write a letter objecting to the proposed MPF projects in FY13-FY16. D. Green and K. Day wrote emails on some of the FY14 expenditures but CLIA did not. (Exh. DI). In FY16 CLIA did write a general email on the language of the allocation (Exh. FK) and the funding of the Seawalk.

¹⁹⁵ See CLIA006048C attached as Exh. BS.

¹⁹⁶ Affidavit of Watt.

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summary judgment motion. Only the use of the MPF and PDF are challenged in this lawsuit. As discussed above, CLIA has not cited a single case to the Court where a federal court considered other revenue sources in determining the constitutionality of expenditures of passenger fees under the Tonnage Clause or Commerce Clause.

Nos. 107-110. The “comprehensive picture of the City’s financial condition” is not an issue in this litigation. It is of no relevance to any issue raised in the Plaintiffs’ summary judgment. The Court does not undertake a comprehensive review of the City’s “financial condition” in determining whether CLIA has met its burden of proof under the Tonnage Clause, Commerce Clause and RHA. CLIA has not cited any case to the Court which would allow the Court to consider the City’s financial condition on the constitutional claims.

Nos. 111-112. This allegation indicates the amount of Marine Passenger Fees that have been allocated to certain departments for costs of services provided to the passengers and ships. The amounts listed in No. 111 are not an accurate reflection of what was allocated to the CBJ departments for government services; this is reflected in Exh. FL.¹⁹⁷ The high was 1.5 million in FY09 and FY10, not \$2,209,000.¹⁹⁸ What CLIA fails to tell the Court is that the amount so allocated represents about 2% of the annual City Budget for all government and department operations.¹⁹⁹ No federal court has held that an allocation of passenger fees amounting to only 2% of the government’s total operating budget violates the Tonnage Clause, Commerce Clause or RHA. Specifically, the only Court that has undertaken any review of an allocation to the general operating expense of the governmental unit found some of the allocated expenditures to

¹⁹⁷ Affidavit of Bartholomew.

¹⁹⁸ Exh FL.

¹⁹⁹ Affidavit of Bartholomew.

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violate the Tonnage Clause because the entire amount of the collected passenger fees were used for 100% of the operating budget of the governmental agency.²⁰⁰

CLIA fails to inform the court that the Passenger Fee Committee with CLIA's member representative approved the allocation in the past.²⁰¹ CBJ was unable to find any record of CLIA or its predecessor objecting the allocation for FY07-FY11. CBJ does not have any record of objections to the allocation by CLIA or its predecessors or its members in FY13-FY15 or FY18.²⁰² CLIA also fails to inform the court that the allocation formula was evaluated by accountants Elgee Rehfield Mertz and was found to be reasonable.²⁰³

No. 112. The allegation in this paragraph is not true. See discussion above. The Marine Passenger Fees fund less than 2% of CBJ's total operating budget. This allocation of fees goes to those city departments which provide direct services to the ships and passengers.²⁰⁴ The amount funded to the departments that provide services is determined each year for each department.²⁰⁵ CBJ disputes this allegation and it is a material fact which precludes summary judgment for the Plaintiffs. Additionally, CBJ objects to Exhibit 52 as hearsay and it has not been adopted by CBJ and is not an admission by CBJ, as it is a letter from attorney Mr. Geldhof in response to FY12 MPF proposed expenditures; CLIA has not provided any evidence as to

²⁰⁰ *Bridgeport and Port Jefferson Steamboat Company v. Bridgeport Authority* 567 F. 3d 79 (2d Cir. 2009); 566 F. Supp. 2d 81 (D. Conn. 2008).

²⁰¹ Exhs. CQ; CO; CP; DW.

²⁰² FY12 CLIA's predecessors, Alaska Cruise Association, provided one comment on February 14, 2011, but this was over 4 years prior to the filing of the Complaint, and CLIA is barred from bringing allegations against the capital transit on items proposed prior to April 12, 2012. D. Green and K. Day wrote emails on some of the FY14 expenditures but did not object to the allocation. (Exh. DI).

²⁰³ Affidavit of Schachter; Exh. FH. CBJ has not provided as an exhibit the entire 243 page FY04 Marine Passenger Fee Cost Evaluation Plan, bate stamped CBJ175637-175879 but can do so upon request. This document has been disclosed to CLIA in discovery.

²⁰⁴ Affidavit of Bartholomew.

²⁰⁵ Affidavit of Bartholomew. For example, Exh. FM shows the MPF allocation to the CBJ departments in FY16 and Exh. FN shows the FY16 budget for each department.

[PROPOSED]

why Geldhof has any personal knowledge of CBJ's operational expenses.²⁰⁶

No. 113. The allegation in No. 113 is nowhere found in the cited Exhibit 78 page 6. The list of departments who have been allocated money has changed over the years depending on the services that CBJ provides to the industry.²⁰⁷

No. 114. This allegation is misleading. The Marine Passenger Fees allocated were for the cost of services provided by certain departments to the ships and passengers.²⁰⁸ CBJ does not have any record of objections to expenditures by CLIA or its or its members predecessors in FY13-FY15 to the allocation and should be precluded from arguing those allegations are unconstitutional now.

Nos. 115-119. These allegations are that CBJ has allocated some marine passenger funds for some costs of defense in this litigation. CBJ is not currently funding the defense with passenger fee monies.²⁰⁹ No Court has held that such an expenditure is unconstitutional. CLIA's counsel, Thompson Coburn, has specifically taken the position that the use of passenger fees is a constitutional expenditure and advocated that the local government unit can even raise the passenger fees specifically to fund the defense of a lawsuit challenging the constitutionality of the expenditure of the fees.²¹⁰ CBJ agrees with Thompson Coburn that it is constitutionally permissible to use passenger fees to defend a lawsuit challenging the constitutionality of the use

²⁰⁶ CBJ will note that Geldhof believed the expenditures for the medical providers was legal under the constitution and noted the cruise lines inability to care for their employees. (Exhibit 52, p.1). He also agreed with the crossing guards and the downtown cleaning, transit public bus service, the JCVB, EMS, Statter Harbor Passenger for Hire facility. These are all categories that CLIA has listed in the facts and CBJ assumes that CLIA is claiming are now unconstitutional, although CLIA has actually not provided in their motion which expenditures each year they claim is unconstitutional. CBJ is confused as to CLIA's use of Exhibit 52 to establish anything in argument against the allocation plan while CLIA has failed to identify this letter in support of many other expenditures.

²⁰⁷ Affidavit of Bartholomew.

²⁰⁸ Affidavit of Bartholomew; Affidavit of Schachter.

²⁰⁹ Affidavit of Bartholomew.

²¹⁰ *Bridgeport & Port Jefferson Steamboat Co. v. Bridgeport Port Authority*, 2004 U.S. Dist. Lexis 6643, 2004 WL 840140 (D. Conn. April 15, 2004).

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of the fees, and no court has held to the contrary.

No. 119. This allegation references a news article indicating CBJ was using some passenger fees to defend the CLIA lawsuit. Of note is the article states “A cruise line rep could not be reached for comment.” If any CLIA representative or cruise line member represented were to comment, that representative would have to admit that CLIA’s attorneys agree that the use of passenger fees for the defense of the lawsuit is proper.

No. 120. This allegation references an exhibit indicating that CBJ created an Advisory Group for its Docks and Harbors Board and states that Mr. Binkley of CLIA was the cruise lines representative on the Advisory Group. CLIA does not offer the Court any exhibits indicating that Mr. Binkley objected to the design chosen for the project. In fact, Mr. Binkley after the project was built publically proclaimed that the 16B project was exactly the type of project that should have been funded.²¹¹

No. 121. Neither CLIA nor its predecessor²¹² nor its members²¹³ provided written objections to the MPF funding in FY12-FY17 for a portion of docks and facilities operation either through written letters or recorded at assembly meetings. The Area Wide Port Operations requested MPF funding in FY16 was for services that benefit all cruise ship passengers, including maintenance of tour vendor booths, maintenance and operation of tour drop-offs and pick-ups, and port security.²¹⁴ REDACT

REDACT .²¹⁵

No. 122. The port-customs building houses the US Customs and Border Protection and

²¹¹ Exh. FF; Affidavit of Bartholomew.

²¹² CLIA’s predecessors, Alaska Cruise Association, provided one comment on February 14, 2011, but did not object to the use of the money for docks and facilities operation. (Exh. CC). REDACT

²¹³ D. Green and K. Day wrote emails on the expenditures in FY14 but did not object to this. (See Exh. DI; DJ).

²¹⁴ Exh. FO.

²¹⁵ Exh. REDACT

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the Docks & Harbors staff.²¹⁶ Neither CLIA nor its predecessor nor its members provided written objections to the MPF funding for FY13-FY17 for port-customs building maintenance either through written letters or recorded at Assembly Meetings.²¹⁷ CLIA publically advocates for funding for customs and border protections and acknowledges this is needed for efficient and seamless customs processing of cruise passengers.²¹⁸ In fact, the AJ Dock LLC, with majority of owner of Princess, has requested funding from MPF for an additional building for customs inspection.²¹⁹ To the extent that CLIA claims this funding does not benefit their vessels or their passengers, that is a dispute of material fact which precludes summary judgment.

No. 123. Neither CLIA nor its predecessor provided written objections to the MPF funding for FY13 for the cruise dock cathodic protection. CLIA should be barred from objecting to this expenditure now. To the extent that CLIA claims this did not benefit their vessels or passengers, that is a dispute of material fact which precludes summary judgment.

No. 124. Neither CLIA nor its predecessor nor its members provided written objections to the MPF funding for FY14 or FY17 for the real time monitoring and communications system project.²²⁰ CLIA should be barred from objecting to this expenditure now. To the extent that CLIA claims this did not benefit their vessels or passengers, that is a dispute of material fact which precludes summary judgment.

²¹⁶ Exh. FO, page 4; CLIA002693).

²¹⁷ [REDACTED]

²¹⁸ See 2016 annual report, page 25, published by CLIA, marked as Exh. FQ.

²¹⁹ See 12-30-16 request from AJ Dock, Exh. EX; See also 12-29-17 FY19 Marine Passenger Proceeds Project List from AJ Dock Operating Committee, Exh. EZ.

²²⁰ D. Green and K. Day wrote emails on the FY14 expenditures but did not object to this. (See Exh. DI; DJ). [REDACTED]

[PROPOSED]

No. 125. Neither CLIA nor its predecessor nor its members provided written objections to the MPF funding for FY14 for electric winches for the cruise terminal project.²²¹ CLIA should be barred from objecting to this expenditure now. To the extent that CLIA claims this did not benefit their vessels or passengers, that is a dispute of material fact which precludes summary judgment.

No. 126. Exhibit 1 page 44 lists out the PDF projects from FY11-FY17. The Downtown Cruise Ship Berth Enhancements was for upland work that supports the cruise ship docks, and was funded with PDF in FY11-FY12. CBJ does not have any record of any objections from CLIA or its predecessor from FY11 objecting to this project.²²² CLIA's predecessors, Alaska Cruise Association, wrote a letter complaining of certain FY12 projects, but the Downtown Cruise Ship Berth Enhancements was not one of them.²²³ Exhibit 1 also shows \$858,402 from MPF for this project funded between FY11-FY17. The actual MPF funding was in FY11, FY13, and FY17.²²⁴ CLIA does not have any record of CLIA objecting to this MPF funding.²²⁵ CLIA did not previously object to the expenditures for upland work related to the dock project and should be barred from doing so now. To the extent that CLIA claims this does not benefit their vessels or passengers, that is a dispute of material fact which precludes summary judgment.

This project is of the type previously requested or approved by the industry and that the CLIA's members have explained is a service that they benefit from. CLIA's predecessor previously objected to a project for new docks without providing vehicle spaces, specifically that

²²¹ DI; DJ. REDACTED

²²² REDACTED

²²³ See Exh. CC.

²²⁴ See Exh. CK.

²²⁵ REDACTED

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the large ships "typically needs 18-25 vehicle spaces."²²⁶ [REDACTED]

[REDACTED].²²⁷ K. Day expressed to the industry that he believed the plan for the cruise ship vehicle staging area was "one of the most comprehensive and thorough management plans."²²⁸ [REDACTED]

[REDACTED].²²⁹

No. 127. The Cruise Ship Berth Improvements project was for the construction of project 16B, which built two cruise ship docks that are used exclusively by large cruise ships who pay the MPF and PDF.²³⁰ This was funded in FY13-FY16 with PDF.²³¹ CLIA does not have any record of CLIA objecting to this PDF funding. [REDACTED]

[REDACTED].²³² [REDACTED]

[REDACTED].²³³ CLIA's President Binkley has made public statements that this project was the type of project that this money should be used for.²³⁴

No. 128. This allegation is that CBJ has budgeted MPF revenues to expand wireless service at the Marine Park Downtown Public Library. The exhibit to support this allegation, No. 45, is a request for funding, not showing any budgeted funding. This request was due to the use of internet by cruise ship passengers and crew.²³⁵ The money for this project was not

²²⁶ Exh. FS.

²²⁷ [REDACTED]
²²⁸ Exh. FU.

²²⁹ [REDACTED]
²³⁰ Affidavit of Bartholomew.

²³¹ Exh. BO.

²³² [REDACTED]
²³³ [REDACTED]

²³⁴ Affidavit of Bartholomew; Exh. FE.

²³⁵ Affidavit of Watt.

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appropriated prior to the filing of the Complaint.²³⁶ CLIA did not object in writing to this project when it was proposed for the FY18 marine passenger funding list and should be barred from doing so now.²³⁷

Nos. 129-131. The project will allow the passengers and crew the ability to use CBJ's wireless internet free of charge while on the dock and parking area near the library.²³⁸ The Marine Park is used almost exclusively by cruise ship passengers, crew, and food and service vendors during the cruise season, with the exception of the parking garage which is used by CBJ Workers and library users.²³⁹ The library has been a high use area for crew and passengers since at least 2002.²⁴⁰ CLIA did not provide any comments to the FY18 marine passenger list.²⁴¹ To the extent that CLIA claims that it has objected to this project, that is a dispute of material fact which precludes summary judgment. To the extent that CLIA claims this does not benefit their vessels or passengers, that is a dispute of material fact which precludes summary judgment.

No. 133. This allegation references a "project" related to CBJ's Capital Transit service. It cites to Exh. 55. Nowhere in Exh. 55 is there any statement that supports this allegation. Exhibit 55 is a "feasibility study" prepared in 2007 by a private company for the Downtown Business Association, a private association of business professionals, not for the CBJ and includes options to create a new "stand-alone service run by a private sector entity" in addition to

²³⁶ Affidavit of Bartholomew.

²³⁷ Affidavit of Watt.

²³⁸ Affidavit of Watts; Exh. CG.

²³⁹ Affidavit of Watts; See Exh. FY, page 13 discussion at 5-14-17 assembly meeting regarding how Marine Park was closed to parking even when there was no ships in port; See also Exh. FZ draft guidelines from 2003 establishing how Marine Park would be closed when ships were docked; Exh. GA.

²⁴⁰ See Exh. GB memo from library, describing how resident use at the downtown library has gone down while cruise ship passengers and crew has increased. There is no evidence that this has changed.

²⁴¹ See Exh. CG; Affidavit of Watt.

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looking at incorporating a shuttle into existing capital transit.²⁴² Neither the study nor the shuttle described in this study was funded by the MPF or PDF.²⁴³ Besides being 10 years old, and not a CBJ document, the document has no relevance to any issue in the Summary Judgment Motion.

To the extent that CLIAA is claiming CBJ has recently created a Capital Transit project using MPF or PDF funds, this is a dispute of material fact which precludes summary judgment. The funding provided to Capital Transit is not a "project" and instead is used to offset additional demands to the public transit system by the cruise ship passengers and crew.²⁴⁴

No. 134. This allegation references MPF funds budgeted for public bus service in FY2012 through FY17. Historically, CLIA and/or its representative and/or representatives of the member cruise ship companies approved and agree with these expenditures.²⁴⁵ CLIA has not provided any documents that they objected to the spending for capital transit for FY13-FY16.²⁴⁶ CLIA's predecessors, Alaska Cruise Association, provided one comment on February 14, 2011, but this was over 4 years prior to the filing of the Complaint, and CLIA is barred from bringing allegations against the capital transit on items proposed prior to April 12, 2012. The bus fare from summer tourists does not fully offset the costs of providing transit bus service to the summer tourists.²⁴⁷ CBJ also objects to this expenditure being relevant, as CBJ has not proposed

²⁴² See Exh. 55, p.7. The study also describes a meeting with cruise industry representative, and recaps that "[i]ndustry representatives were eager to support any program that would enhance mobility in the downtown area" and that such options should be designed to serve the entire community, not just their passengers." (Exh. 55, p.26).

²⁴³ Affidavit of Bartholomew. The Downtown Business Association submitted a request for MPF funding for a shuttle in FY16, (See Exh. GC; the CBJ denied funding this request with MPF funds. Exh.GD).

²⁴⁴ Affidavit of Watts; Affidavit of Bartholomew.

²⁴⁵ See Exh. DM; Exh. CQ; Exh. CP; Exh. DW. CLIA's predecessor in fact submitted a letter stating that the purpose of the fee was to address transportation impacts. (Exh. EK.) Drew Green did object to this in 2006 when he was on the passenger fee committee, (Exh. DK) but this was after it had been approved in previous years by the industry.

²⁴⁶ In FY16 CLIA wrote a general email on the language of the allocation (See Exh. FK) and [REDACTED]

²⁴⁷ Affidavit of Bartholomew.

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funding for capital transit in FY19.²⁴⁸

Furthermore, CLIA fails to inform the court that the Ketchikan Gateway Borough has used state CPV funds for their public transit, (\$2,034,000) which was found to be constitutional with Alaska statutes in the legislative audit and which CLIA has said they are not concerned with.²⁴⁹ To the extent that CLIA claims the bus does not benefit them or their passengers, that is a dispute of material fact that precludes summary judgment.

No. 135. CLIA has not provided any documents showing that CLIA or their members objected to the use of the MPF fees to fund this repair, despite having notice of this proposed project.²⁵⁰ In REDACTED

REDACTED.²⁵¹ The Marine Park bus parking lot is right near the cruise ship docks and is used by CLIA members tour buses who provide transportation to passengers going on to places such as Statter Harbor, to join whale watching boats, or Mendenhall Glacier for hiking, kayaking, rafting, etc, with tour groups led by CLIA's members or associated companies who CLIA's members retain a commission from.²⁵² This project would not be needed if it were not for the tour buses owned by CLIA's members and associated companies and the over one million cruise ship passengers who visit the CBJ each year.²⁵³ To the extent CLIA claims they objected to this project or that this project does not benefit them or their passengers, that is a dispute of material fact which precludes summary judgment.

²⁴⁸ See proposed list, Exh. GE.

²⁴⁹ See Exh. GF; 4/19/16 article Cruise Association President: Ketchikan Taxes not a concern; Exh. BY, page 23 of audit and Exh. BY, page 44; Appendix B of Audit listing the expenditures by each community.

²⁵⁰ See Exh. GG, draft FY16 passenger fee funding list; see Exh. GH, final FY16 passenger fee funding list. Binkley wrote a general email to CBJ on the language of the allocation and the funding of the Seawalk but chose not to object to this. (See Exh. FK)

²⁵¹ REDACTED

²⁵² Affidavit of Watt; Exh. A; Exh. KM.

²⁵³ Affidavit of Watt.

[PROPOSED]

The Cruise industry also approved of other parking lot projects paid with MPF funds, and should not be able to assert funds for parking lots are unconstitutional now.²⁵⁴ Additionally, the AJ Dock Company has recently submitted a request for a shuttle parking lot; this is a similar use of the fees as the Marine Parking Lot repair.²⁵⁵ By these letters CLIA's members, Princess and Holland America, admit that the use of MPF for parking lot repair is constitutional.

No. 137-138. These allegations purport to assert that MPF funds were used to fund additional staff positions at the City Museum. The exhibit to support the allegations is No. 23. Exhibit 23 is a memorandum prepared in 2000 that lists "additional projects for consideration." CBJ objects to the relevance of a 17 year-old list of possible projects and this should be barred by the statute of limitations. CLIA failed to offer the Court any exhibit to show CBJ in fact expended MPF for additional staffing at the City Museum or that the CBJ continues to expend MPF for additional staff.²⁵⁶ To the extent that prior funding is relevant, and to the extent CLIA claims it has submitted any objections to funds at the City Museum, this is a dispute of material fact which precludes summary judgment.

No. 139: Exh. 123 is a proposed funding list for CIP projects and is not accurate as to what was actually funded. The assembly did not appropriate items 10, 11, and 12 in Exhibit 123. The amount for MPF was allocated to six different capital projects.²⁵⁷ CLIA did not object to the FY18 proposed passenger fee list and should be barred from objecting to this now.²⁵⁸

²⁵⁴ See Exh. GI; K. Day with Princess agreed that Marine Passenger Fees should be used for work on the Columbia lot and Exh. GJ requesting a covered area around motor coach staging space from MPF; Exh. GK with design requests for the Columbia lot.

²⁵⁵ Exh. EZ.

²⁵⁶ See Exh. FL, documenting the non-CIP projects from FY01-FY17 funded by MPF. There was a one-time grant for maintenance in FY10 but did not pay for staff. (See Exh. CK). \$44,200 was funded to expand a temporary drop-off zone to be able to accommodate a full size bus, demolition and installation of new entrance steps, widened sidewalks, and sitting benches and exterior lighting; these were all for the benefit of cruise passengers.

²⁵⁷ Affidavit of Bartholomew; Exh. LU, Resolution 2791d.

²⁵⁸ Watts Affidavit.

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Nos. 140-145. These allegations pertain to certain use of MPF for certain projects and expenditures. CLIA fails to tell the Court that these expenditures were either requested by CLIA or a CLIA representative or by a cruise line company representative or other authorized cruise line industry representative. (See detailed description in CBJ's Objection to No. 101-104). These projects provide safety and accessibility to CLIA's members and passengers, which was expressed to the CBJ as a concern of CLIA and the industry since the beginning of the MPF and should be funded:

- In 2000, Mr. Habeger wrote the city manager with NWCA's (predecessor of CLIA) view of how to use the marine passenger fees for the FY01 list: "The projects I believe to be of the utmost importance are to organize, revamp and improve the downtown waterfront corridor," specifically requesting concentration to improve Marine Park, purchase land, improve the "waterfront promenade", enhance vehicular traffic patterns, and enhance municipal wharves, the start of a long-range tourism plan, and "enhancement designing" of the downtown.²⁵⁹
- In 2000, the NWCA stated that "the purpose of the fee is to address the costs to the City and Borough for services and infrastructure usage by cruise ship passengers visiting Juneau, including: transportation impacts and recreation infrastructure use, and to mitigate impacts of increased utilization of City and Borough services by cruise ship passengers."²⁶⁰
- In 2001, John Hanson with the NWCA wrote a letter to the City manager on the proposed list, stating general support for "projects related to the efficient handling of passengers who come ashore, and the safe maneuvering in the harbor and docking of ships at the public docks in Juneau."²⁶¹
- In 2002, Mr. Habeger, who worked for Royal Caribbean, supported a project for Marine Park and "wanted to ensure that money from passenger fees go toward the mitigation of impacts, particularly congestion in that area."²⁶²

CBJ relied on the industry's approval in developing projects to address congestion and pedestrian access in the downtown area.²⁶³

²⁵⁹ Exhibit LV, page 5.

²⁶⁰ Exh. EK.

²⁶¹ Exh. DR.

²⁶² Exh. LW

[PROPOSED]

Specifically in response to No. 140: CBJ objects to Exhibit 110 as relevant to this case. Exhibit 110 is a list of all proposed CIP projects from FY2018-2023, not just projects funded by MPF and PDF.²⁶⁴ There are no projects paid for with MPF in 2018 for "reconstruction and repairs to area wide stairs and sidewalks".²⁶⁵ There was a project in FY18 approved for downtown street improvements to include Front Street, North Franklin Street, and a portion of First Street; CLIA did not provide any written objection to the CBJ for this funding for FY18.²⁶⁶ To the extent CLIA claims they objected to this project, that is a dispute of material fact which precludes summary judgment.

Furthermore, this type of project was the type approved of in the past by CLIA or its predecessors and industry as they understood that their tour groups use this street and the passengers flood the sidewalks. The first MPF funding was approved by the Passenger Fee Committee and included funding for downtown sidewalk, stairway, and street reconstruction.²⁶⁷ The explanation for that spending was "to keep the area attractive for the thousands of tourists who walk downtown."²⁶⁸ This project fits within NWCA's description of "projects related to the efficient handling of passengers who come ashore, and the safe maneuvering in the harbor and docking of ships at the public docks in Juneau."²⁶⁹ The Passenger Fee Committee with CLIA's member representatives also approved money from the beginning for plans to design and help with pedestrian flow downtown.²⁷⁰ In 2006, Mr. Day sent an e-mail to CLIA members and others indicating the industry's support for spending marine passenger fee monies to "widen 300

²⁶³ Watt Affidavit.

²⁶⁴ Watt Affidavit.

²⁶⁵ See Exh. CG.

²⁶⁶ See Exh. CG; Affidavit of Watts.

²⁶⁷ Exh DM.

²⁶⁸ Exh. LV, page 1

²⁶⁹ See Exh. DR.

²⁷⁰ See Exhs. CQ; Exh. CP; JC; DW.

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feet of side walk between the parking garage and the new Timberwolf building on the water side of S. Franklin Street. We believe this is a pro-active step to address some of the concerns over pedestrian congestion in this area.²⁷¹ The pedestrian congestion is the 1,000,000 cruise ship passengers coming into Juneau per season.²⁷² After it was built, K. Day expressed how it made the area better for the industry, which D. Green agreed with.²⁷³ CBJ relied on the industry's approval of prior projects that provided pedestrian safety in approving this project. To the extent that CLIA claims they objected to this project and/or that this project does not benefit them, their vessels, or their passengers, that is a dispute of material fact which precludes summary judgment.

No. 141: FY 17 MPF for Front Street and Franklin Street reconstruction: This is the first phase of the project listed in No. 140 and will widen sidewalks, improve crosswalks, and maintain travel lanes. The current sidewalk is too narrow and is not in compliant with ADA requirements.²⁷⁴ Like No. 140 above, this project fits within the descriptions of previously requested and approved projects.²⁷⁵ This project is needed because of 1,000,000 passengers who walk through downtown Juneau on a given summer, and due to the high number of buses that the cruise ship industry drives through downtown when the ships are in port.²⁷⁶ The road portion is needed due to the large number of cruise industry vehicles using the area.²⁷⁷ CLIA did not object to this expenditure when the draft FY18 MPF list was circulated.²⁷⁸ To the extent that CLIA

²⁷¹ Exh. EL

²⁷² See Exh. FM.

²⁷³ See Exhibit FJ.

²⁷⁴ See Exh. IG.

²⁷⁵ (See Exhibits detailed in 140 above).

²⁷⁶ Watts Affidavit.

²⁷⁷ Watt Affidavit; See also 12/13/13 letter from tour operator regarding concerns with proposed work to vehicle staging areas and parking lots at the Tram and Cruise Ship terminal lots, and outlining the number of tour vehicles who access downtown each hour, Exhibit LX.

²⁷⁸ Watt Affidavit.

[PROPOSED]

claims they objected to this project and/or that this project does not benefit them, their vessels, or their passengers, that is a dispute of material fact which precludes summary judgment.

No. 142: sidewalk cleaning FY2012 to present: CLIA did not object to the sidewalk cleaning for FY13, FY14, FY15, FY16, or FY17.²⁷⁹ ²⁸⁰ CLIA's members have also not objected to this.²⁸¹ K [REDACTED]

[REDACTED].²⁸² [REDACTED]

[REDACTED].²⁸³ To the extent that CLIA is alleging they objected to this funding in FY13-FY17, that is a dispute of material fact that precludes summary judgment.

Additionally, this appropriation was previously approved by CLIA's predecessor or representative. The Passenger Fee Committee with CLIA's member agent Drew Green supported use of the MPF to pay for a sidewalk sweeper to clean downtown in FY06.²⁸⁴ Drew Green also approved money for downtown cleaning for FY07 [REDACTED]

[REDACTED].²⁸⁵

No. 143: CBJ repeats its objection to Exhibit 110 as listed in No. 140. The restrooms funded in FY18 with MPF will be built south of the library/parking garage in a location accessed by cruise ship passengers as they travel between the AJ Dock and the Franklin Dock and as they

²⁷⁹ [REDACTED].

²⁸⁰ CLIA's predecessor's Alaska Cruise Association provided one comment on February 14, 2011 for FY12, but this was over 4 years prior to the filing of the Complaint, and CLIAA is barred from bringing allegations on items proposed prior to April 12, 2012. (See Exh. CC).

²⁸¹ D. Green and K. Day wrote emails on the FY14 expenditures but did not object to this. (See Exh. DI; DJ).

²⁸² [REDACTED]

²⁸³ [REDACTED]. The AJ Dock Company with Holland America has recently requested funding for landscaping on their property with MPF funds, which could be categorized as similar to this expenditure. (Exh. EZ).

²⁸⁴ Exh. DW.

²⁸⁵ See Exh. DK; [REDACTED]

[PROPOSED]

travel throughout downtown Juneau.²⁸⁶ These restrooms would not be needed if it were not for the cruise line passengers and they are closed in the winter months.²⁸⁷ The existing bathrooms are used so heavily by the cruise ship passengers that they require cleaning every two hours.²⁸⁸ CLIA did not object to this funding in FY 18. To the extent that CLIA is alleging they objected to this funding in FY18, that is a dispute of material fact that precludes summary judgment.

Additionally, restrooms have been maintained and built for the cruise ship passengers downtown with the support and specific request from the industry and CLIA should not be able to claim that money spent on bathrooms is unconstitutional now. Starting in 2000, 2002, 2003, and 2004 when Habeger with Royal Caribbean, the industry representative on the passenger fee committee, approved and recommended funding for restroom construction and maintenance, and FY06 and FY07 when Drew Green approved this funding.²⁸⁹ More recently, CLIA has not objected to MPF funding of bathroom maintenance and CBJ has relied on this non-objection when continuing to fund bathroom projects.²⁹⁰ [REDACT]

[REDACT]

[REDACT].²⁹¹ [REDACT]

[REDACT]

[REDACT]²⁹²

²⁸⁶ See Exh. CG; Affidavit of Watt.

²⁸⁷ Watt Affidavit.

²⁸⁸ Watt Affidavit.

²⁸⁹ See Exhs. DM; CQ; CP; DW; CO; DK.

²⁹⁰ [REDACT]

[REDACT]. CLIA did not object against spending on bathroom maintenance for FY13, FY14, FY15, FY16 or F17 [REDACT] CBJ does note that ACA sent a letter in 2011 suggesting that funding for the restrooms would not be appropriate because the bathrooms could also be used by the public, but this is a different legal argument that CLIA has made in its Motion for Summary Judgment, and CLIA's members in directly requesting this funding after this date negate any stance in that letter. (See Exh. CC).

²⁹¹ [REDACT]

²⁹² [REDACT]

[PROPOSED]

More recently, the representatives of the private docks owned by the cruise ship industry requested restroom cleaning and maintenance at their docks for their passengers. See provided documents:

- Joint letter from A.J Juneau Dock, LLC, which is 50% owned by Holland America Line, Inc., a CLIA member, and Franklin Dock, which is partially owned by Princess Cruises, asking for \$18,000 for restroom cleaning and landscaping maintenance at the AJ Dock, and \$100,000 for public restrooms at the Franklin Dock.²⁹³
- Email from Franklin Dock Enterprises and Princess requesting \$150,000 from FY09 MP funds to construct restrooms near the dock staging area to be used during the cruise season.²⁹⁴
- 11/24/09 Letter from AJ Dock requesting \$20,000 for restroom cleaning and landscaping from the FY10 MPF funds.²⁹⁵
- 12/27/2010 letter from A.J Juneau Dock, LLC requesting \$20,000 from the FY11 funds for restroom cleaning and landscaping enhancement/maintenance,²⁹⁶
- 1/13/11 letter from Franklin Dock Enterprises requesting \$20,000 for restroom cleaning and supplies.²⁹⁷
- 12/29/11 letter from D. Green of AJ Dock Enterprises, asking for \$20,000 for restroom cleaning and landscaping from FY12 funds.²⁹⁸
- 12/31/11 letter Reed Stoops with from Franklin Dock Enterprises, LLC, requesting restroom cleaning and supplies for cruise passengers/public restrooms.²⁹⁹
- 1/9/12 email from K. Day with Princess Cruises requesting \$12,000 for restroom cleaning at the Franklin Dock.³⁰⁰
- 12/31/12 email and letter from K. Day, Director of Shore Operations for Alaska, Pacific NW, Hawaii, and Central Region, Princess Cruises asking for \$15,000 for restroom

²⁹³ Exh. GL.

²⁹⁴ Exh. GM.

²⁹⁵ Exh. GN. This was funded by the CBJ. (See Exh. GO and Exh. GP, page 5, noting that a similar request was approved from Franklin Dock Enterprises the past year;

²⁹⁶ CBJ03474 attached as Exh. GQ, page 2. This was funded by the CBJ in addition to 8 other projects. (See CBJ03874-3876, attached as Exh. GR.).

²⁹⁷ See Exh. GS.

²⁹⁸ Exh. GT, page 2. This was funded by CBJ, See Exh. GU, page 1.

²⁹⁹ Exh. GV, page 1.

³⁰⁰ Exh. GW.

[PROPOSED]

cleaning, maintenance and supplies for cruise passenger/public restrooms at the Franklin Dock.³⁰¹

- 12/28/12 memo from the A.J. Juneau Dock, LLC, asking for projects paid from FY14 MPF fees.³⁰²
- 1/28/13 memo from D. Green asking for \$20,000 for restroom cleaning.³⁰³
- 12/23/13 request from AJ Dock Juneau, LLC asking for \$20,000 in restroom cleaning and landscaping enhancement/maintenance.³⁰⁴
- 12/31/13 letter from Princess Cruises asking for \$20,000 for restroom cleaning, maintenance, and supplies for cruise passenger/public restrooms at the Franklin Dock.³⁰⁵
- 12/22/14 memo from AJ Juneau Dock LLC requesting \$26,000 for restroom cleaning and landscape enhancement/maintenance from FY16.³⁰⁶
- 12/31/14 letter from Princess Cruises requesting \$25,000 for restroom cleaning and maintenance at the Franklin Dock.³⁰⁷
- 12/21/15 letter from AJ Juneau Dock LLC requesting \$26,000 for restroom cleaning and landscaping enhancement/maintenance, and stating that this request "qualify for funding from the MPF in keeping with the state and federal legal requirements that encumber the use these funds."³⁰⁸
- 12/31/15 letter from Princess Cruises requesting \$25,000 for restroom cleaning and maintenance for the Franklin Dock.³⁰⁹
- 12/31/16³¹⁰ letter from Franklin Dock requesting \$25,000 for restroom cleaning and maintenance.³¹¹
- 12/30/16 letter from AJ Dock LL requesting \$34,000 for restroom cleaning and landscaping.³¹²

³⁰¹ Exh. AR, page 3.

³⁰² Exh. AQ, page 2. This was funded by the CBJ along with 5 other AJ dock projects. (Exh. GX)

³⁰³ Exh. GY.

³⁰⁴ See Exh. GZ, page 2. CBJ funded the request for bathroom cleaning and maintenance. (See as Exh. HA, page 5).

³⁰⁵ Exh. IP. CBJ funded this request. (See Exh. HA, page 6).

³⁰⁶ Exh. HB. CBJ funded this request. (See as Exh. HC, page 1).

³⁰⁷ Exh. HD, page 1. CBJ funded this request. (See Exh. HE, page 1).

³⁰⁸ Exh. HF, page 4). This was funded by the CBJ. (Exh. HG, page 4).

³⁰⁹ Exh. HH). This was funded by the CBJ. (Exh. HG, page 2);

³¹⁰ CBJ does not agree that any expenditures after the filing of the complaint should be reviewed by the Court, but brings forth these exhibits to highlight the inconsistency with the CLIA members and the current requests by their members.

³¹¹ Exh. EX.

[PROPOSED]

- 12/29/17 letter from AJ Dock LLC requesting \$27,000 for restroom cleaning and landscaping maintenance for FY19.³¹³
- 1-5-18 letter from Princess Cruises requesting \$25,000 for twice a day cleaning on cruise ship days.³¹⁴

CLIA members recognized the need for bathroom facilities and the appropriateness of using MPF money for their expenditures and now are claiming that the CBJ should not be spending MPF money at the CLIA member-owned docks and areas used by passengers.

Whether the bathrooms in the downtown area are not needed is a dispute of material fact that precludes summary judgment. Also, whether the bathrooms proposed in FY18 are not a benefit to CLIA members' vessels, crew, or passengers is a dispute of material fact that precludes summary judgment.

Specifically in Response to No. 144: CLIA's representatives have consistently recognized the crossing guards as important to their industry and a proper use of the marine passenger fees. Neither CLIA³¹⁵ nor its members³¹⁶ objected to funding for crossing guards in FY13, FY14, FY15, FY16, FY17. The City of Ketchikan funds similar crossing guards for their downtown with their Marine Passenger Fees.³¹⁷ CLIAA has not sued the City of Ketchikan for the collection or use of their Marine Passenger Fees.³¹⁸

The crossing guards have been funded by the approval and request of the industry. Starting in 2000, 2002, 2003, and 2004, when Habeger with Royal Caribbean, the industry

³¹² Exh. EY.

³¹³ Exh. EZ.

³¹⁴ Exh. FA.

³¹⁵ [REDACTED]

³¹⁶ K. Day and Drew Green wrote emails on the FY14 expenditures and did not object to funding for crossing guards. (See Exhs. DI; DJ.) [REDACTED]

³¹⁷ See Exh. HI, January 22, 2016 memo from Karl Amylon.

³¹⁸ Ketchikan has similar fees, charging \$7.00 per passengers, see Ketchikan Municipal Code 13.10.010-13.10.140.

[PROPOSED]

representative on the Passenger Fee Committee, approved and recommended funding crossing guards, and later approved by Drew Green in 2005 for FY06 and in 2006 for FY07.³¹⁹ [REDACTED]

[REDACTED].³²⁰ In fact, Habeger and the FY03 Passenger Fee Committee put the crossing guards in the "priority 1" list to be fully funded.³²¹ Kirby Day with Princess Cruises specifically made a comment supporting funding for the crossing guards saying "it works well in Ketchikan and Sitka".³²² The FY04 committee had "overall support" for the crossing guards.³²³

The industry has continued to support and request crossing guards for the use of their passengers and crew.³²⁴ The crossing guard program is sponsored by the Tourism Best Management Program, of which K. Day of Princess Cruises is in charge.³²⁵ The request for crossing guards is submitted with K. Day's approval.³²⁶

The crossing guards provide a safety and beneficial service to the passengers and are dependent on the ship schedule and are only provided during days that the cruise ships are in town.³²⁷ The crossing guards are needed due to the high volume of pedestrians coming off the cruise ships; a study in 2009 estimated 559 passengers per 15 minutes on one sidewalk, and 535 on the other side.³²⁸ The same study counted 8,370 pedestrians in one day (over 1,000 during the

³¹⁹ See Exhs. DM; CQ; CO; CP; DW; DK.

³²⁰

³²¹ See Exh. DL.

³²² Exh. DP.

³²³ Exh. CO.

³²⁴ See Exhs. HJ, 3/19/07 email from K. Day Princess Tours requesting participation of crossing guards to have them recognized; See also Exh. HK article quoting K. Day promoting the crossing guards, and using them as an example of the visitor industry committing to lesson impacts; See Exh. HL email detailing discussion and training for new crossing guards as requested by K. Day; See Exh. HM the email chain with K. Day setting up the training for the 2015 crossing guards.

³²⁵ See CLIA's Exh. 67: "JCVB administers this program on behalf of the TBMP."; see also Exh. HN, 11/24/09 TBMP request coming from Kirby Day. TBMP has been run by Kirby Day for as long as CBJ has records of.

³²⁶ Exh. HO, See email from JCVB with the request, note K. Day was cc'd on the request.

³²⁷ Affidavit of Watt; See Exh. HP; See HQ, page 1MOU bate for FY2015 season; See Exh. HR 12/19/2009 funding request for reduced expenses due to ship redeployments; See CLIA's exhibit 67.

³²⁸ See Exh. EM, Page 3 of the Cruise Ship Dock Uplands Operations Analysis.

[PROPOSED]

highest hour of activity) who crossed from the ship side of Franklin Street to the Alaska Shirt Company, a store only open in the summer for the cruise season, and 5,010 pedestrians at the second highest crosswalk during the same day.³²⁹ These numbers peaked following the arrival of the second cruise ship that day.³³⁰ The majority of days CBJ has 3-6 cruise ships; the amount of people on the sidewalks grows substantially with each ship.³³¹ For 2018, CLIA predicts a 200,000 passenger increase. The crossing guards help ensure that these cruise ship passengers cross safely and comfortably.³³² There would not be crossing guards in downtown Juneau if it were not for the cruise ship passengers.³³³ Whether the crossing guards in the downtown area are not providing a service to CLIA members' vessels, crew, or passengers is dispute of material fact that precludes summary judgment.

No. 145. The allegation is based upon Exhibit 27, which appear to be draft minutes from the Passenger Fee Proceeds Committee dated March 23, 2006. The Committee included industry representative Drew Green who did not object to this expenditure. The Exhibit does not state that MPF monies were used to fund downtown foot patrol to "alleviate the need" for officers to "sign up for volunteer overtime hours." The moneys were appropriated to provide foot patrol in downtown Juneau.³³⁴ The term "volunteer overtime hours" does not mean that CBJ would not need to pay the overtime hours, and just means that the CBJ did not force the officers to work overtime.³³⁵ The extra downtown police officers would not be stationed downtown if it were not for the high numbers of cruise ship passenger and crew who enter downtown each day that a

³²⁹ See Exh. EM., page 4.

³³⁰ as Exh. EM, page 6.

³³¹ See Exh. CH proposed 2018 calendar, with most days having 3 or more ships; 59 days with 4 ships; 24 days with 5 ships, and 9 days with 6 ships..

³³² See EM, page 8.

³³³ Affidavit of Watt.

³³⁴ Affidavit of Watt.

³³⁵ Affidavit of Watt.

[PROPOSED]

cruise ship is in port, increasing by each cruise ship.³³⁶ CLIA did not object to the funds for patrolling for FY13, FY14, FY15, FY16 and FY17.³³⁷ Furthermore, industry has supported the downtown foot and bike patrol, starting with 2002-2007.³³⁸ CLIA's members continue to support this funding [REDACT]

[REDACT].³³⁹ [REDACT]

[REDACT]

[REDACT].³⁴⁰ To the extent that CLIA alleges this expenditure does not provide their members, vessels, or passengers a benefit is a dispute of material fact that precludes summary judgment.

No. 146. This allegation references Exhibit 26. Exhibit 26 is a May 25, 2004 chart of history and projections for use of MPF. As to the allegation that monies have been used for the "Waterfront Seawalk Project," this exhibit does not show any such monies spent, only a projection for \$74,000 in FY 2005.

No. 147. This allegation asserts that the CBJ Seawalk is "apart from the cruise ship docks." That is not accurate. The Seawalk goes directly along the "cruise ship docks."³⁴¹

Nos. 148-153. It is correct that the Seawalk was part of the 2004 Long Range Waterfront Plan.³⁴² Don Habeger publically represented as a industry representative that the industry supported any project within the waterfront plan as funded with PDF.³⁴³ Neither CLIA, nor its predecessors, nor any CLIA cruise ship member ever challenged the constitutionality of using

³³⁶ Affidavit of Watt.

³³⁷ [REDACT]

³³⁸ Exhs. CO, HS, page 3; DW; DK.

³³⁹ [REDACT]

³⁴⁰ [REDACT]

³⁴¹ Affidavit of Watt.

³⁴² See Exh. BG.

³⁴³ Exh. BI

[PROPOSED]

PDF or MPF for the Seawalk from its inception in 2004. In fact, Drew Green as industry representative for the Passenger Fee Committee stated that he specifically "appreciate[d]" the Marine Passenger Fee being used for the waterfront Seawalk.³⁴⁴ CLIA did not comment on the funding source until December 2015, after industry showed support for the project in the past, and after the Seawalk sections starting at industry-owned Franklin Dock and continuing along the CT and AS dock had already being constructed.³⁴⁵ REDACT

REDACT.³⁴⁶ To the extent that CLIA claims the Seawalk is not used by its passengers and that it is not a benefit to its members, vessels, or passengers, this is a dispute of material fact which precludes summary judgment.

Nos. 154-162. These allegations regard CBJ's use of the passenger fee money to help fund available medical care for CLIA member's passengers. CLIA should be barred from asserting that money spent to provide medical care is improper, as the cruise line industry has recognized that their passengers required medical care in Juneau. In 2006 the industry along with emergency medical staff created a procedure for cruise ship patient transfers, for the purpose to "expedite medical patient transfers from cruise ships in the port of Juneau to Bartlett Regional Hospital, while still maintaining an acceptable level of readiness for the emergency medical needs of other residents and visitors."³⁴⁷ In 2010 the cruise ship industry through Drew Green created their own emergency contact list for medical, fire, police, and first responders in

³⁴⁴ Exh. DK.

³⁴⁵ Affidavit of Watt.

³⁴⁶ CBJ has no record of CLIA ever objecting to this in writing from FY11-FY15 or FY17. REDACT

REDACT
³⁴⁷ Exh. HU.

[PROPOSED]

case of cruise related emergency.³⁴⁸ There would be no need for these if there were not emergencies relating to cruise ship passengers. CBJ also has to invest time and resources into having Juneau Cruise Ship emergency responders available as required by the United States Coast Guard.³⁴⁹ This requires CBJ personnel and equipment in case of an emergency.

Cruise ship passengers use CBJ's ambulances, EMTs, Bartlett hospital, and medical air transport. These services are needed to provide emergency medical services to the cruise ship passengers, which the cruise ship companies are unable or unwilling to provide. CLIA's "Passenger Bill of Rights" only provides for medical care "until shore side medical care becomes available."³⁵⁰ To the extent that CLIA claims that providing emergency medical services is not a service to the vessel or the passenger, this is a dispute of material fact which precludes summary judgment.

No. 154. This allegation asserts certain funding for the Bartlett Regional Hospital. The Exhibit referenced is Ex 41. Exhibit 41 is a budget request for FY 2015, not a record of an expenditure. CBJ did provide some funding to the Bartlett Regional Hospital in FY15 to provide a dedicated part time case manager, a cruise ship liaison, and additional emergency department overtime to serve the logistical and financial needs of the cruise ship passengers.³⁵¹ These services would not be needed if it were not for the cruise ships coming to Juneau.³⁵² CLIA did not object to this spending in FY15. To the extent that CLIA claims it objected to this funding in FY15, that is a dispute of material fact which precludes summary judgment. To the extent that

³⁴⁸ Exh. HV.

³⁴⁹ Exh. HW.

³⁵⁰ See CLIA Passenger Bill of Rights, attached as Exh. HX; See article by Justice Thomas A. Dickerson, Tulane Maritime Law Journal, Volume 38:1, page 13 *The Cruise Passenger's Rights and Remedies 2014: The COSTA CONCORDIA Disaster: One Year Later, Many More Incidents Both on Board Megaships and During Risky Shore Excursions*.

³⁵¹ See Exh. GH.

³⁵² Affidavit of Watt.

[PROPOSED]

CLIA claims that expenditures at the Bartlett Hospital do not benefit their members, vessels, or passengers, that is a dispute of material fact which precludes summary judgment.

No. 155. The services provided by Bartlett Regional Hospital provide emergency medical care to the cruise ship passengers and crew. The passengers who have received these services by the CBJ-owned hospital have not paid 100% of the costs for these services; the amounts requested by medical providers and funded by the MPF is the amount that was unable to be collected from passengers.³⁵³ CBJ would not need to provide these services if the cruise ships emergency care to their passengers when they were docked in Juneau.

No. 156. The dedicated part time case manager, a cruise ship liaison, and additional emergency department overtime were funded to serve the logistical and financial needs of the cruise ship passengers would not be needed if it were not for the cruise ships coming to Juneau.³⁵⁴ Exh. 41 is a budget request for FY15. CLIA did not object to this spending in FY15 and should be barred from doing so now.³⁵⁵ To the extent that CLIA claims it objected to this funding in FY15, that is a dispute of material fact which precludes summary judgment. To the extent that CLIA claims that expenditures at the Bartlett Hospital do not benefit their members, vessels, or passengers, that is a dispute of material fact which precludes summary judgment.

No. 157. CLIA's exhibit concerns a one-time \$50,000 grant to Airlift Northwest. The allegation as to the purpose of the grant is not accurate. What the grant (Exh. 38) says is: "to partially offset seasonal staff and equipment costs related to air transportation of cruise ship passengers or crew to and from Juneau." This grant was for the fiscal year FY14. CLIA did not

³⁵³ Exhibit 32; Affidavit of Watt.

³⁵⁴ See Exh. GH; Affidavit of Watt.

³⁵⁵ CBJ has no records of objection from CLIA in 2015. [REDACTED]

[PROPOSED]

object to money for this in FY14 and is barred from doing so now.³⁵⁶ To the extent CLIA alleges they objected to this expenditure, that is a dispute of material fact which precludes summary judgment. The funding helps ensure the cruise ship passengers have emergency service on shore and to transport to other medical facilities.³⁵⁷ According to CLIA, their medical guidelines include the goal "to facilitate the evacuation of seriously ill or injured patients when deemed necessary by a shipboard physician."³⁵⁸ In fact, CBJ is helping to facilitate this by providing some MPF funding to Airlift Northwest, which CLIA now claims is improper.³⁵⁹

No. 158. See Objections to No. 154-156 above. The funding for Bartlett Regional Hospital is needed as reflected in the letters requesting funding.³⁶⁰ CLIA did not object to funding for Bartlett for FY13, FY14, FY15, FY16.^{361 362}

No. 159. This allegation relates to the use of MPF for CBJ's EMS transport service. This funding is for EMTs to service the passengers from the ships when they are transported by CBJ ambulance from the cruise ships to Bartlett Regional Hospital or the airport for aircraft transport. The large majority of medic transportation by CCFR in the cruise ship season is for cruise ship passengers and crew.³⁶³ The funding also provides for some safety equipment and

³⁵⁶ CLIA's members also did not object to this funding. Both D. Green and K. Day wrote emails on the FY14 expenditures but did not object to this expenditure. (See Exh. DI; DJ).

³⁵⁷ Affidavit of Watt.

³⁵⁸ See Exh IA, statement on CLIA's website.

³⁵⁹ [REDACTED]

³⁶⁰ For example, see Exh. IC.

³⁶¹ [REDACTED]

³⁶² CLIA's predecessors, Alaska Cruise Association, provided one comment on February 14, 2011, but this was over 4 years prior to the filing of the Complaint, and CLIAA is barred from bringing allegations on items proposed prior to April 12, 2012. (See Exh. CC). ACA's arguments were based on an entirely different legal theory than they are trying to advance in their motion. CLIA has not provided any exhibits that CLIA objected to this expenditure after February 14, 2011.

³⁶³ See Exh. ID, FY15 funding request, documenting 73% responses were for cruise ship passengers and crew.

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medical supplies and fuel.³⁶⁴ This additional funding would not be needed if it were not for the cruise ships and their passengers who require medical transport and without this funding CBJ would be unable to respond to all the cruise ship passenger emergencies.^{365 366}

This has been funded every year from 2009-2017. CBJ has been unable to find objections from CLIA to this in 2009, 2010, or 2011. CLIA did not object to this for FY13-FY17.³⁶⁷ Importantly, CLIA's members have admitted and acknowledged the importance of emergency transport in Juneau by creating procedures for cruise ship patient transfers to Bartlett Hospital.³⁶⁸ Drew Green responded to the proposed FY16 list stating that the cruise ship season did "tax this system at times during the summer season."³⁶⁹ CBJ would not need to fund this with MPF if CLIA's members provided their own emergency services to their passengers.³⁷⁰

No. 160. CLIA's representatives have the cruise ship industry relies on ambulances for their passengers and that their passengers have an impact on the medical resources.³⁷¹ The MPF only provided partial funding for the CCFR ambulance that replaced a 2003 ambulance that operated almost entirely to transport cruise ship passengers. The amount funded by MPF did not pay for the entire ambulance although this ambulance is used almost exclusively for cruise ship passengers.³⁷² CLIA did not object to this one time expenditure.³⁷³ To the extent that CLIA's

³⁶⁴ See Exh. IE, FY2015 MPF list.

³⁶⁵ Affidavit of Watt.

³⁶⁶ [REDACTED]

³⁶⁷ [REDACTED]

[REDACTED] CLIA's predecessors, Alaska Cruise Association, provided one comment on February 14, 2011, but this was over 4 years prior to the filing of the Complaint and was a completely different legal theory. (Exh. CC). CLIAA is barred from bringing allegations on items proposed prior to April 12, 2012.

³⁶⁸ See Exh. HU.

³⁶⁹ [REDACTED].
³⁷⁰ Affidavit of Watt.

³⁷¹ See Exh. HU, which includes the industry procedures for cruise ship patient transfers to the Bartlett hospital.

³⁷² Affidavit of Watt.

³⁷³ CBJ does not have records of comments from CLIA for FY13 proposed expenditures.

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members, vessels, and passengers have not benefitted from this ambulance, that is a dispute of material fact that precludes summary judgment.

No. 161. This funding is for unrecoverable costs incurred by the CBJ fire department for the air medivac program, which is used to helicopter injured passengers and crew from the cruise ships. The CCFR medivacs respond to incidents in the upper half of Southeast Alaska, and pick up cruise ship passengers who are left by the cruise ships in the smaller communities that do not have adequate medical facilities or a runway to support large enough aircraft; CCFR picks up these passengers with a helicopter, provides advanced life support on site and transports them to higher level of care.³⁷⁴ CCFR also uses the program to rescue cruise ship passengers from Mt. Roberts and Mendenhall Glacier, allowing them to be treated before departing back on the cruise ships.³⁷⁵ The Fire/Rescue medivac support is needed due to the high volume of cruise-related transport.³⁷⁶ The amount requested by CCFR and granted the Assembly adequately reflects the costs; when there is a reduction in CCFR air medivacs for the cruise industry the amount funded goes down.³⁷⁷ CCFR undertakes these services because it is not provided by the cruise ships.³⁷⁸

The medical transport of the cruise ship passengers is a direct benefit to CLIA's vessels and passengers.³⁷⁹ According to CLIA, their medical guidelines include the goal "to facilitate the evacuation of seriously ill or injured patients when deemed necessary by a shipboard

³⁷⁴ See Exh. ID

³⁷⁵ Exh. ID.

³⁷⁶ In 2005, it was estimated that 42% of all medivacs were cruise ship related; in 2006 54% of all medivacs were cruise ship related while the overall number went down due to private companies having medivac services. See Exh. IF.

³⁷⁷ See attached as Exh. ID.

³⁷⁸ Watt Affidavit.

³⁷⁹ [REDACTED]

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physician." ³⁸⁰ The cruise ship doctors make the call as when a passenger needs emergency evacuation; so these are services that are provided as requested by the vessel. ³⁸¹

Additionally, CLIA did not object to any funding for medivac support regardless of provider for FY13, FY14, or FY15. ³⁸² To the extent that CLIA now claims that having air medivacs available to their passengers is not a benefit to their members or vessels, this is a dispute of material fact which precludes summary judgment.

No. 162. See objections to No.157 and 161 above. The CBJ has provided funding to Airlift Northwest every year between FY07 and FY16. CBJ has relied on the industry's non-objection to this funding in approving for each year. The funding partially offsets the costs for additional summer seasonal staff and equipment costs related to transport of cruise ship passengers and crew. ³⁸³ CLIA has not historically objected to this spending ³⁸⁴, and did not object to money for Airlift Northwest in FY13, FY14, FY15, and FY16. ³⁸⁵ ³⁸⁶ Neither have CLIA's members. ³⁸⁷ Airlift NW stopped receiving MPF funds after FY16. CBJ would not have granted funding for Airlift Northwest if it were not for the cruise ships coming to Juneau and

³⁸⁰ See Exh. IA.

³⁸¹ See above CLIA guideline; See also Leticia M. Diaz, Barry Hart Dubner, and Nicole McKee, *Crimes and Medical Care on Board Cruise Ships: Do the Statistics Fit the Crimes?* 27 Loy. Cons. L. Rev., 40 (2015), page 88.

³⁸² CBJ does not have any records of CLIA objections from these years.

³⁸³ See Exh. IE.

³⁸⁴

³⁸⁵

³⁸⁶ CLIA's predecessor, Alaska Cruise Association, provided one comment on February 14, 2011, but this was over 4 years prior to the filing of the Complaint, and CLIAA is barred from bringing allegations on items proposed prior to April 12, 2012. (See Exh. CC). The comment was based on a new legal theory, that CBJ could not spend passenger money to defray the costs of services provided to passengers the past year. (See Exh. CC). That is a legal standard that has never been applied in the courts and is not the argument CLIA makes today. CLIA never made the argument that this money could not be spent because it was for passengers and not the vessel.

³⁸⁷ D. Green and K. Day wrote emails on the FY14 expenditures but did not object to the allocation. (See Exh. DI; DJ).

REDACT

[PROPOSED]

their passengers needing emergency medical care.³⁸⁸

No. 163. CLIA fails to tell the Court that the MPF money was used to help fund the customs and border protection functions that operated out of the airport, who was estimated to spend 70% of their time on cruise ship passengers and crew, including the cargo to ships and crew members going home and for costs associated with the float plane flight-seeing passengers that do not pay other fees to the airport.³⁸⁹ Furthermore, CLIA fails to inform the court that the Ketchikan Gateway Borough has used state CPV funds for their airport, (\$1,297,000), which was found legal in the legislative audit and which CLIA has said they are not concerned with.³⁹⁰

Nos. 164-184. General Objections. These allegations related to funding for projects and services at the AJ Juneau Dock. The AJ Juneau Dock is owned by at least one CLIA cruise line member, Holland America,³⁹¹ which member has never objected to the use of MPF to fund the services, and has specifically requested the funding. As to the alleged expenditures, those expenditures were either requested by CLIA members or approved by CLIA representatives. CBJ incorporates by reference its objections to Nos. 25, 101-104, and 140-145 above and the exhibits cited in those objections.³⁹²

No. 167. This allegation is that CBJ assesses the MPF on the cruise lines who use the private dock. CLIA failed to cite any federal case in its Summary Judgment Motion which would preclude CBJ from assessing a passenger fee on cruise ships docking in the Port of Juneau at a private dock. This allegation has no relevance to any issue in the summary judgment motion.

³⁸⁸ Watts Affidavit.

³⁸⁹ See Exh. IH; Exh. II; IK. (The formula was based on FY10 formula, which came from the FY09 request. (See Exh. IJ; Exh. EE).

³⁹⁰ See Exh. GF; See Exh. BY, page 17 and page 44.

³⁹¹ As previously noted, the AJ Juneau Dock, LLC, is 50% owned by Holland America Line, Inc., a CLIA member.

³⁹²

[PROPOSED]

No. 168. CLIA did not object to money spent on the AJ bathrooms for FY13, FY14, FY15 or FY16.^{393 394} To the extent that CLIA has standing to argue that the bathrooms their member requested does not benefit their members, vessels, or passengers, this is a dispute of material fact which precludes summary judgment.

Nos. 169-171, 175, 180. These allegations relate to funding for security and security related improvements. CLIA did not object to this spending for FY12-17.³⁹⁵ The money for security is based on USCG requirements and its only purpose is to provide a security docking area for the cruise ships and passengers. Under USCG regulations, terminal operators and cruise lines share the primary responsibility for shore-side security of passengers.³⁹⁶ The funding for security provisions is a service to the vessel.³⁹⁷ [REDACTED]

[REDACTED].³⁹⁸ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].³⁹⁹ A member of the NWCA

³⁹³ CBJ does not have records of any objects by CLIA for FY 13 or FY15. In [REDACTED]

³⁹⁴ CLIA's predecessor, Alaska Cruise Association, provided one comment on February 14, 2011 making a comment on bathroom maintenance in general, and claiming that MPF could not be spent for services that are also available to the public (although the bathrooms maintained by MPF are only needed because of the cruise ship passengers and are closed in the winter when there are no cruise ships (Affidavit of Watt), but this was over 4 years prior to the filing of the Complaint, and CLIAA is barred from bringing allegations on items proposed prior to April 12, 2012. (See Exh. CC). CLIA has not provided any exhibits that CLIA objected to this expenditure after February 14, 2011.

³⁹⁵ CBJ does not have records of any objects by CLIA for FY 13 or FY15. [REDACTED] to

³⁹⁶ See USCG Consumer Fact Sheet, Exh. IL.

³⁹⁷ See Exh. IL, "All these security measures are designed to prevent the introduction of unauthorized weapons and persons on the cruise ship."

³⁹⁸ For example, see Exh. IM, Royal Caribbean's Stewardship Report, page 58: regarding the port security that is required and provided; [REDACTED]

³⁹⁹ [REDACTED]

[PROPOSED]

REDACT

[REDACTED]

400 To the extent that CLIA claims they objected to the security projects, that is a dispute of material fact that precludes summary judgment. If CLIA claims that their members, vessels, or passengers do not benefit by these security improvements funded on CLIA's member docks and property, that is a dispute of material fact that precludes summary judgment.

No. 172-184. CLIA did not object to any of these expenditures at their member-owned dock and property, and should be barred from claiming so now. CLIA has not provided any exhibits that CLIA objected to these expenditures. (CBJ directs the Court to the only comments received in FY12-17 as noted above). To the extent that CLIA claims they objected to these AJ dock projects, that is a dispute of material fact that precludes summary judgment. If CLIA claims that their members do not benefit by these improvements, that is a dispute of material fact that precludes summary judgment.

Specific to No. 172, 174, 176, and 177, REDACT

[REDACTED]

[REDACTED]

[REDACTED] 401

Specifically, in objection to No. 172 and 179 and 178: The REDACT

[REDACTED]

[REDACTED] 402 REDACT

REDACT

400 REDACT

401 REDACT

402 REDACT

[PROPOSED]

Nos. 185-207. General Objection. CBJ incorporates its General Objections in Nos. 164-184 above. CLIA did not object to any of these expenditures at their member-owned dock and property other than then a general objection to restrooms in FY12. CLIA should be barred from objecting so now. CLIA has not provided any exhibits that CLIA objected to these expenditures.⁴⁰³ To the extent that CLIA claims they objected to these Franklin dock projects, that is a dispute of material fact that precludes summary judgment. If CLIA claims that their members, vessels, or crew do not benefit by these improvements at their member's dock and property, that is a dispute of material fact that precludes summary judgment.

Specifically, to 187, 193, 196, 197, 205: REDACT

REDACT

REDACT

REDACT⁴⁰⁴

Specifically, to objection to 187, 193, 199, 201, 205: REDACT

REDACT

REDACT⁴⁰⁵ REDACT

REDACT

Nos. 208-212: Private Dock Facilities - Goldbelt Seadrome Marina: The Goldbelt Dock is used by some smaller cruise ships who pay the MPF.⁴⁰⁶ CBJ has allocated some MPF to pay for services that Goldbelt Dock provides to the industry. Drew Green as an agent for the industry sent a memo to the City Manager in 2013 on the FY14 list, stating that he thought "the Goldbelt

⁴⁰³ CBJ directs the Court to the only comments received in FY12-17 as above.

⁴⁰⁴ REDACT

⁴⁰⁵ REDACT

⁴⁰⁶ Watt Affidavit.

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dock should receive some consideration."⁴⁰⁷ K. Day agreed with this as an agent for the Plaintiffs.⁴⁰⁸

No. 210. See above comment. CLIA did not object to this expenditure in FY14 and should be barred from objecting so now.⁴⁰⁹

No. 211. CLIA did not object to this expenditure in FY16 and should be barred from objecting so now.⁴¹⁰

No. 212 . CLIA did not object to this expenditure in FY16 and should be barred from objecting so now.⁴¹¹

CLIA Title: Tourist Infrastructure Beyond the Docks

CBJ objects to this title as it is a legal conclusion of CLIA. The facts are what the expenditures are for. CBJ disputes that the expenditures in 213-221 are "beyond the docks," and/or if not literally on the dock, the expenditures are directly related to the vessels or services to the passengers. "Beyond the docks" is not a term of legal significance in any existing federal case.

Nos. 213-221. The expenditures in these allegations have been approved by CLIA or its representative or its member representatives, or specifically requested by CLIA or its representative or its member representatives, or relate to expenditures for which CLIA is estopped, or barred by laches, waiver, the statute of limitations, failure to exhaust administrative remedies, and/or quasi-estoppel from now bringing a constitutional challenge. An example is No. 221 related to the Last Chance Basin well field project, a project to bring water to the ships,

⁴⁰⁷ Exh. IP.

⁴⁰⁸ Exh. DI.

⁴⁰⁹ CBJ has no record of written objections from CLIA in 2014.

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and which was requested by CLIA representatives. This section is also repetitive to other sections in the statement of facts.

No. 213. The funding listed in CLIA's No. 213 was for visitor information services through manning of a tourist info kiosk on the waterfront for cruise passengers.⁴¹² CLIA did not submit any written objections to spending on the JCVB for FY12, FY13, FY14, FY15, FY16, FY17.⁴¹³ This was also historically approved by the industry.⁴¹⁴ JCVB provided documentation that 88% of all tourists in 2004 were from the cruise industry; this increased to 92% by 2005 and continues to increase as the amount of cruise passengers increased. The amount requested by JCVB is based on the services it provides to the cruise ship passengers.⁴¹⁵ CLIA is barred from objecting to this spending now.⁴¹⁶

No. 214. The Tourism Best Management Practices is run by Princess Cruises Manager Kirby Day. Kirby Day specifically requested money for the industry for this program. [REDACTED]
[REDACTED]⁴¹⁷ CLIA's representative Habeger approved this spending in FY04 and said it would be reviewed for effectiveness and evaluated whether to justify next years.⁴¹⁸ As it continued to be funded, Habeger and the committee must have found it effective.⁴¹⁹ CLIA did not write object against spending on the

⁴¹² Bartholomew Affidavit

⁴¹³ CLIA's predecessor's Alaska Cruise Association provided one comment on February 14, 2011, but it did not object to spending for JCVB. (See Exh. CC). [REDACTED]

this. [REDACTED]

⁴¹⁴ In 2000, 2002, 2003, when Habeger with Royal Caribbean, the industry representative on the passenger fee committee, approved and recommended funding for the JCVB; approval continued by Drew Green in 2005. (See as Exhs. DM; CQ; CP; DW; DK).

⁴¹⁵ See Exhs. IQ; IR; IS; CT.

⁴¹⁶ [REDACTED]

⁴¹⁷ [REDACTED]

⁴¹⁸ See Exh. CO.

⁴¹⁹ [REDACTED]

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TBMP for FY12, FY13, FY14, FY15, FY16, FY17.⁴²⁰ CLIA is barred from objecting to this spending now.

No. 215. CLIA did not object to spending on the payphones in FY14, FY15, FY16, FY17.⁴²¹ Neither did CLIA's members.⁴²² CLIA is barred from objecting to this spending now. The payphones are in place for the crew from the cruise ships, and industry has recognized that the crew use this area.⁴²³ The payphones would not be needed if it were not for the cruise line passengers and crew.⁴²⁴

No. 216. CBJ incorporates its objections and Exhibits to No. 140 and 143 above. Furthermore, CLIA did not object to the bathroom spending for FY13, FY14, FY15, FY16 or FY17.^{425 426} Restrooms have been maintained in built for the cruise ship passengers downtown with the support and specific requests from the industry. CLIA's members have also requested maintenance each year for the bathrooms at their private docks starting in FY09, which CBJ has

⁴²⁰ CLIA's predecessor's, Alaska Cruise Association, provided one comment on February 14, 2011, but it did not object spending to TBMP. (See Exh. CC). [REDACTED]

⁴²¹ CLIA's predecessor's Alaska Cruise Association provided one comment on February 14, 2011, but it did not object to spending for the payphones. (See Exh. CC). [REDACTED]

⁴²² Green and K. Day wrote emails on the FY14 expenditures but did not object to this. (See Exh. DI; DJ). [REDACTED]

⁴²³ See email from D. Green regarding the amount of garbage thrown on the ground from crew at the payphones, Exh IU; see email from K. Day with a sign to remind crew to pick up their garbage at the payphone, Exh. IV; [REDACTED]

⁴²⁴ Watt Affidavit.

⁴²⁵ [REDACTED]

⁴²⁶ CLIA's predecessor, Alaska Cruise Association, provided one comment on February 14, 2011, but this was over 4 years prior to the filing of the Complaint, and CLIA is barred from bringing allegations on items proposed prior to April 12, 2012. This also was based on theory of law that does not match CLIA's motion. (See Exh. CC).

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funded since FY10.⁴²⁷ CLIA should be precluded from arguing that funding for bathroom maintenance and cleaning are not needed for their passengers as CLIA's members have requested maintenance of bathrooms for their passengers and as CLIA's members have benefitted from MPF payments for their bathrooms and as industry and CLIA's members directly approved of this spending.⁴²⁸ CLIA members recognized the need for bathroom facilities and the appropriateness of using MPF money for their expenditures and now are claiming that the CBJ should not be spending MPF money at their own docks and areas used by passengers. These restrooms are closed in the winter months.⁴²⁹ The downtown bathrooms are used so heavily by the cruise passengers that they need to be cleaned and stocked every 2 hours.⁴³⁰ Whether maintenance of the bathrooms in the downtown area is not needed is a dispute of material fact that precludes summary judgment. Also, whether the maintenance of the bathrooms are a benefit to CLIA members' vessels, crew, or passengers is a dispute of material fact that precludes summary judgment.

No. 217. This is duplicative of No. 144. As explained in the objection to No. 144, the crossing guard program was requested and approved by CLIA or its predecessors from the start of the passenger fee program.⁴³¹ CLIA has not submitted any objections to this program in FY13-FY17, and is barred from claiming objections now. These crossing guards would not be needed if it were not for the high volume of cruise ship passengers who walk through downtown Juneau each day that a ship is in port.⁴³² The crossing guards are not in downtown Juneau except

⁴²⁷ See Exhibits listed in objection to No. 143.

⁴²⁸ [REDACTED]

⁴²⁹ Watt Affidavit.

⁴³⁰ Watt Affidavit.

⁴³¹ [REDACTED]

⁴³² Watt Affidavit.

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for during the cruise ship season.⁴³³ Whether the crossing guards provide a service to the passengers or crew is a dispute of material fact that precludes summary judgment.

No. 218. See CBJ's objection to No. 145 above.⁴³⁴

No. 219. This spending is to provide security to cruise ship passengers and crew and the downtown business corridor to allow the cruise ship passengers and crew to have a safe and inviting shopping experience, for many stores that partner with the cruise ships. CLIA did not object to this spending for FY 12, FY13, FY14, FY15, FY16 or F17.⁴³⁵ This program would not be needed if it were not for the high numbers of cruise ship passengers who descend in this area each day a ship is in port.⁴³⁶ What services the security presence downtown provides to the passengers or crew is a dispute of material fact that precludes summary judgment.

No. 220. CLIA did not object to this spending for FY14, FY15, or FY16.⁴³⁷ This funding allows SAIL (Southeast Alaska Independent Living) to provide services to benefit the disabled cruise ship passengers from enjoying Juneau and the various tours offered by CLIA's members as part of the cruises.⁴³⁸ As an example, SAIL provides "low-cost, customized trainings for serving visitors to Southeast Alaska with disabilities."⁴³⁹ This improves accessibility and transportation for CLIA members' passengers and likely increases the

⁴³³ Watt Affidavit.

⁴³⁴ See [REDACTED]

⁴³⁵ CLIA's predecessor Alaska Cruise Association provided one comment on February 14, 2011, but this did not specifically object to the security program provided to their businesses. [REDACTED]

⁴³⁶ Watt Affidavit.

⁴³⁷ CBJ does not have any written objections from CLIA in FY 14 or FY 15 [REDACTED]

⁴³⁸ See Exh. IW, email from K. Day regarding how Princess Cruises allows those with mobility challenges pickups from independent tours.

⁴³⁹ Exh. IX, page 3.

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commerce spent by CLIA's members' passengers.⁴⁴⁰ [REDACTED]

[REDACTED]

[REDACTED].⁴⁴¹

Princess Cruises uses SAIL to assist their customers with deciding what tours to take—a benefit to commerce and CLIA's members bottom lines.⁴⁴² K. Day with Princess Cruises admitted that the SAIL request "will provide a service to passengers and be good for the community."⁴⁴³ To the extent that CLIA claims they objected to the SAIL expenditures, that is a dispute of material fact which precludes summary judgment. If CLIA claims that their members do not use SAIL or do not benefit from the services SAIL provides to the passengers or crew, that is a dispute of material fact that precludes summary judgment.

No. 221. CLIA did not object to this spending in FY15. The Last Chance Basin well field project, a project to bring water to the ships, was requested by CLIA representatives and provides a clear service to the vessel.

The Last Chance Well Basin was first designed to allow for water to be provided to the cruise ships during the summer as well as to have enough water for fire protection in downtown Juneau.⁴⁴⁴ The Plaintiffs' representative Habeger was on the Passenger Fee Committee and approved this project the first time it came up, in fact the passenger fee committee was "very supportive of this project and encouraged funding to be restored."⁴⁴⁵

The FY15 spending was to partially fund the development of two new well fields because the fields were diminishing in production capacity, and therefore there was no water available at

⁴⁴⁰ Exh. IY.

⁴⁴¹ [REDACTED]

⁴⁴² See Exh. IX, admitting that "we have continued to find this service to be helpful on a number of occasions.

⁴⁴³ See Exh. DI.

⁴⁴⁴ See Exh. JB regarding the FY04 request.

⁴⁴⁵ Exh. CO; Exh. JC.

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times; the new wells were funded to increase the capacity and provide for predictable water to the ships.⁴⁴⁶ Why this upgrade was needed is evident in the records of water shortages to ships; increasing capacity is a benefit directly to the cruise ships.⁴⁴⁷ The industry was part of the planning decisions for the this project and was supportive of the project.⁴⁴⁸ To the extent that CLIA claims this project does not provide a benefit to their members, vessels or passengers, that is a dispute of material fact which precludes summary judgment.

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⁴⁴⁶ See Exh. HA with the AFC final FY15 recommendations; See Exh. JD the grant application to ADEC; Exh. JE

⁴⁴⁷ See Exh. JF, requesting that the ships reduce the amount of water due used in port; Exh. JG, regarding which ships needed water and restricting others; Exh. JH and Exh. JI requiring the ships to stop all water use; Exh. JK, regarding rationing water.

⁴⁴⁸ See as Exh. JK, setting up a meeting with Day and Green to go over the cruise ship water needs; See Last Chance Basin request Exh. JL; Watt Affidavit; [REDACTED]

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CERTIFICATE OF SERVICE

The undersigned certifies that on January 30, 2018 a true and correct copy of the foregoing **CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S OBJECTIONS AND RESPONSES TO PLAINTIFFS' STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** was served on the following parties of record via ECF:

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