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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 (CBJ) STATEMENT OF
FACTS IN SUPPORT OF CBJ'S CROSS-MOTION FOR SUMMARY JUDGMENT AND
OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN
SUPPORT OF CBJ'S MOTION TO STRIKE CERTAIN EXHIBITS**

The Defendants (hereafter CBJ collectively) provide their Statement of Facts in support of their Cross Motion for Summary Judgment and in support of their Opposition to Plaintiffs' Motion for Summary Judgment.¹

A. Facts about CLIA

The Plaintiff members include: Carnival Cruise Lines, Celebrity Cruises, Crystal Cruises, Disney Cruise Lines, Holland America Line, Norwegian Cruise Line, Oceana Cruises, Princes Cruises, Regent Seven Seas Cruises, Royal Caribbean International, and Silverseas Cruises.² CLIA is a "unified global organization," consisting of 62 cruise lines "representing more than 95% of global cruise capacity," 275 executive partners³, 30,000 travel professionals.⁴ CLIA represents the interests of the "entire cruise industry."⁵ CLIA has 15 offices globally.⁶

The cruise industry is very successful; in 2010 the yearly profits of just one company, Carnival cruises⁷, was \$2 billion.⁸ The same year the economic recovery of the nation allowed

¹ This Statement of Facts supports the Motion to Strike Certain Exhibits and the Cross Motion and Opposition along with CBJ's Objections to Plaintiffs' Statement of Facts, filed separately.

² 2016 annual report, Exh. FQ, page 4.

³ See Exh. FQ, page 2. Many of these "Executive Partners" are tour companies with whom the Plaintiffs have contracts for the provision of tours in Juneau from which the Plaintiffs derive significant profits. See list of cruise ship excursions available for purchase from cruise line websites, Exh. A and Exh. B, McDowell group study "Economic Impacts of the Cruise Industry in Alaska 2011", Exh. C, page 11 (176369), detailing Holland America, Princess Cruises, and Royal Caribbean International operating land tours). CLIA represents the interests of the tour groups. These tour companies are part of the overarching "cruises" offered to the passengers from whom the fees are collected. (See contracts with passengers limiting liability and defining cruises to include on-shore tours, bate stamped as Exhs. D and E.)

⁴ Exh. FQ, 2016 annual report, page 2 published by CLIA.

⁵ Id.

⁶ Exh. FQ, at 2.

⁷ According to CBJ's research, Princess Cruises became part of Carnival Corporation in 2013.

⁸ See CLIA004336 attached as Exh. JN; See also CLIA002269C, REDACT [REDACTED] attached as Exh. JO). Carnival Corporation did not have to pay any federal income tax for most of this profit. (See Exh. JP, page 31 of Carnival's 2016 U.S. SEC form 10K for Carnival Plc and Carnival Corporation, where they admit that "substantially all of Carnival Corporation's income is exempt from U.S. federal income and branch profit taxes.").

the industry to raise their ticket prices, [REDACTED].⁹ In 2016, Carnival Corporation & plc (the parent company of Carnival Cruises Line, Holland America Line, and Princess Cruises), had revenue of \$16.4 billion dollars; which was 40% higher than 2015.¹⁰ CLIA's members admitted that passenger fees do not prohibit commerce or impact what ports they visit. In response to the City of Sitka, Holland America admitted that consumer demand and time are considerations for ports, as well as speed and tides, but "the tax is not," and explained that "So the tax is paid by guests, not Holland America line... So it has no impact on our profitability, and thus would not be a reason for us to consider that."¹¹ The Juneau fees do not prevent passengers from traveling,¹² do not have more than a small burden on interstate commerce, if any, [REDACTED]

[REDACTED].¹³

CLIA's large cruise line companies are registered as foreign corporations.¹⁴ CLIA's members have successfully lobbied as foreign companies to not have to pay corporate income tax on the money they make from passenger voyages that embark or disembark in the United

⁹ Exh. JN; JO (CLIA002269C).

¹⁰ See Exh. JQ, Carnival Corporation Investor information.

¹¹ Exh. AV "Cruise Ship Tax falling short of financial expectations in Sitka", April 8, 2012. [REDACTED]

[REDACTED].
CLIA's members representative admitted 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 Habeger, [REDACTED] see Exh. BB, CLIA3909-3910C.)

¹³ Exh. JN; JO (CLIA002269C).

¹⁴ Carnival Corporation & plc (which includes Holland America, Princess Cruises, and Carnival Cruise Line), is incorporated in Panama, see Exh. JP a portion of 2016 U.S. SEC form 10K for Carnival Plc and Carnival Corporation; Royal Caribbean (which includes Celebrity Cruises), is incorporated in Liberia, Exh. JR, Norwegian Cruise Line Holdings, Ltd (which includes Norwegian Cruise Line and Prestige Cruise Holdings (parent company of Oceana Cruises and Regent Seven Seas Cruises) is incorporated in Bermuda, Exh. JS; Seven Seas Cruises is incorporated in Panama, see Exh. JT. Disney Cruise Line is part of the Magical Cruise Company Limited, incorporated in the United Kingdom, see Exh. JU. Silverseas Cruises is privately owned with headquarters in Monaco, see Exh. JV. Crystal Cruises operates under a parent company "Genting Hong Kong" incorporated in Bermuda with headquarters in Hong Kong. (See Genting Hong Kong profile, attached as Exh. JW.)

States; they also pay little corporate income tax in their home countries.¹⁵ Congress unsuccessfully recently proposed changing this, to help the federal government pay for the costs of the industry, including the costs for sending the United States Coast Guard to service vessels and costs with port maintenance.¹⁶ Congress eventually passed the tax bill without requiring CLIA's members to pay income tax.¹⁷ CLIA's members do pay income taxes for their land-based income from tour operations.¹⁸

CLIA's members bring foreign-flagged ships to Juneau. Despite the large group of ships that arrived in 2017,¹⁹ none were CLIA member ships registered/flagged in the United States (as listed in order of the 2017 calendar):

- Nieuw Amsterdam, Holland America²⁰, 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,

¹⁵ See "Sen. Wants Cruise Lines to Pay 'Fair Share' of US Tax." by Nathan Hale, Law 360, Miami, and attached as Exh. JX; See also Exh. JP, Carnival's SEC filing, page 31 "substantially all of Carnival Corporation's income is exempt from U.S. federal income and branch profit taxes.;" See also Exh. LC.

¹⁶ See Exh. JZ article "Proposed US tax bill could cost lines estimated \$70m a year;" Exh. KA, Anchorage Daily News Article "Alaska Senators vote for tax bill, with extras for ANWR, cruise industry, Native Corporations" (Binkley's sons own the ADN); See also Exh. JX, "Sen. Wants Cruise Lines to Pay 'Fair Share' of US Tax." by Nathan Hale, Law 360, Miami; See article "Cruise Lines escape new US levy, ports worry about parts of tax overhaul", attached as Exh. JY.

¹⁷ The cruise lines provided over \$3 million each year in lobbying money to Congress in 2016 and 2017 and spent higher than usual amounts in 2016 for campaign spending. (See Exh. KB.)

¹⁸ See Exhs. JP, KA.

¹⁹ The CBJ hereby provides the correct 2017 Cruise Ship Calendar 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; Juneau had ships(s) almost every day in 2017, with the majority of days having two or more ships.

²⁰ The owners of these ships are taken off Plaintiff's 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.

- 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, also 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 Bermuda,²¹
- World of Residensea, "The World", owned by Resideansea, not a CLIA member,²²
Registered in Bahamas.²³

The flagging of the vessel in foreign countries means that they are exempt from many U.S laws including labor laws for their crew.²⁴ This has kept CLIA's members costs down and their profits high.

²¹ See marine traffic profiles for these ships, provided as Exhs. H-Z, AA-AF, AH-AM. There are two ships named Millennium. See Exhs. AI and AJ.

²² 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 Exh. AP.

²³ There were a few non CLIA-member ships who came to Juneau in 2017 (see CLIA's Cruise line member list, available on the world wide web at: <https://www.cruising.org/cruise-vacationer/member-cruise-lines>, last accessed on 11/28/17, and provided with Exh. 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.

²⁴ See newspaper article "Below Deck" attached as Exh. AN; Exhibit KD, newspaper article "A private justice system leads to secrecy and mistreatment on the high seas." CBJ has found numerous other articles with similar facts.

B. Facts about the City and Borough of Juneau

Juneau is a town with approximately 32,000 year round residents.²⁵ CBJ receives approximately 1,000,000 cruise ship passengers per year during a period from approximately May 1 to September 30.²⁶ This amount has fluctuated, but in recent years the number has been steadily increasing, and ships have started coming earlier and later, extending the season.²⁷ It is estimated that 1.2 million passengers will arrive in Juneau next season, an increase of 200,000 passengers.²⁸ The Plaintiffs' project larger and more ships and record years in 2018 and 2019.²⁹

REDACT.³⁰ CLIA's members agree that Alaska is currently seeing the most growth.³¹ As the cruise ship passengers continue to come in record numbers, Juneau's fees at issue do not unfairly burden the passengers who pay the fees or the CLIA members who collect the fees from the passengers and remit the fees to CBJ.

There is an additional influx of people through crew members who leave the ships while in port. **REDACT**

REDACT.³² The number of individual crew who disembark in Juneau several times a summer was estimated in 2009 as 25,000.³³ It seems reasonable these numbers

²⁵ Exh. KE, American Community Survey, 2012-2016.

²⁶ Exh. CG, FY18 Passenger Fee Proceeds Recommendation Memo

²⁷ See Exh. CH, proposed 2018 calendar, with ships starting April 30, 2018 and ending October 2, 2018. In 2011 ships arrived on May 6th, with the last ship on September 24, 2011 (Exh. CI).

²⁸ Affidavit of Bartholomew.

²⁹ See Exh. KF, page 23, CBJ180948, PowerPoint presentation by CLIA.

³⁰ See Exh. KG, CLIA005370C, **REDACT**

³¹ See Exh. KH, page 5, September 2017 cruise ship outlook.

³² See Exh. KI, CLIA003484C, **REDACT**

REDACT AJ Dock LLC which is privately owned by Holland America (See Corporation filing attached as Exh. B1).

³³ Exh. KJ, page from 2009-05-11 Tourism Survey.

are substantially higher today as the number of cruise passengers, size of ships, and number of ships has increased significantly.³⁴

C. The passengers use many different areas of the CBJ and utilize CBJ's services and facilities throughout the CBJ

CLIA members own tour companies providing land-based tours for their passengers or are directly affiliated with these tour companies.³⁵ CLIA's members have been known to off-load passengers who have booked tours through the ship before they have off-load passengers who booked independent tours; thereby negatively impacting the efficiency of commerce of these independent tourists.³⁶

CLIA's members collect commissions from other tours that the passengers purchase through them³⁷ and these tours appear to be covered under the cruise line limit of liabilities to their passengers.³⁸ An older (2000) McDowell study gave an example of a cruise ship collecting 25% of the sales commission for adventure tours.³⁹ CBJ has no evidence that this amount has lowered.

According to CLIA's expert, the largest category of cruise passenger spending is on these tours and activities.⁴⁰ A large percentage of the tours by cruise ship passengers are purchased from the cruise ship companies before departure or during the cruise.⁴¹ Those commissions go

³⁴ See Exh. CH, proposed 2018 cruise ship calendar.

³⁵ See Exh. CJ, page 3; Exh. IW, email from Princess Cruises that only their passengers who book tours through Princess Cruises will be allowed to be picked-up at the pier, and that the only signs allowed will be "Princess shore excursions;" and Exh. C, page 7-8, discussing but not detailing the cruise line assets and land tours.

³⁶ See Exh. KL.

³⁷ See Exh. A; See also Exh. KM, Disney Cruise Line website recommending passengers book the Alaska tours on the website as soon as possible, and providing booking for 51 Alaska tours.

³⁸ Exh. D, 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;"; See also Exh. E the Holland America Line Cruise Contract, section 14(G).

³⁹ Exh. CJ, page 4.

⁴⁰ Calvin Affidavit, P. 20.

⁴¹ See Exh. KN, page 11, CBJ055677, Juneau Visitor Profiles 2004 Traveler's survey.

directly to the CLIA member and do not account for any spending or revenue in Juneau.⁴²

CLIA's members directly profit from these tours through their own companies who provide the tours as well as profiting through commissions of other companies' sales. The commissions that the CLIA members extract for the sale of Juneau tours are not taxable under Juneau sales tax.⁴³

REDACT.⁴⁴

These tour companies are part of the overarching "cruises" offered to the passengers from whom the fees are collected.⁴⁵ CLIA members benefit from services provided by CBJ that improve transportation for the tour groups, whether owned by a CLIA member affiliate, or from a tour vendor which the CLIA members take a commission.

The cruise ship passengers visit many areas of the CBJ, with the most popular public area being the Mendenhall Glacier (which requires transport from the docks, a distance of approximately 12 miles). According to a 2005 survey, 42% of all cruise passengers booked a glacier tour provided by a tour group-this number does not include the passengers undertaking their own trip to the glacier.⁴⁶ Other popular areas utilized by cruise ship passengers are the Juneau-City Museum, hiking trails in North Douglas, Mendenhall Lake, and Mount Roberts, and the City owned Arboretum (23 miles from downtown), the fisheries center DIPAC (9% of visitors in 2005), the Tram (14% of visitors in 2005), the Alaskan Brewery in Lemon Creek, the two ziplines on Douglas Island, and Glacier Gardens (7% in 2005).⁴⁷ These are areas throughout the CBJ. With the increase in passengers, CBJ has no information that these uses have decreased.

⁴² Exh. CJ, page 3.

⁴³ Affidavit of Bartholomew; Calvin Affidavit.

⁴⁴ Exh. KO, CLIA005383C.

⁴⁵ See Exh. D Princess Cruise Lines, Ltd. Passage Contract; Exh. E, Holland America Line Cruise Contract.

⁴⁶ See Exh. KP, page 5, Alaska Travel Survey Juneau Cruise Visitor Profile 2005.

⁴⁷ See Exh. KP, page 5.

Many of the cruise passengers are shuttled out to these facilities by large buses operated by CLIA's cruise line members or by those affiliated companies who have contracts or sales agreements with CLIA's cruise line members, many of whom are likely also CLIA members.⁴⁸ Holland America is a primary operator of the large coaches at Statter Harbor;⁴⁹ other CLIA members have buses to transport passengers.⁵⁰ Cruise ship passengers also use CBJ public buses to visit many of these sites.⁵¹

The CBJ has provided some MPF funds to locations frequented by the cruise passengers which is a benefit to interstate commerce as well as CLIA's members and passengers. For example, in FY01 CBJ provided funds to upgrade a road at Amalga Harbor that was being used by cruise ship tour groups for kayaking, the improvement allowed buses to access the area to bring kayakers, which was an increase in cruise ship commercial activity.⁵²

The cruise ship passengers and crew use roads throughout the CBJ, as well as the sidewalks and walkways. Of particular importance to CLIA's allegations about CBJ expenditures for a seawalk along the docks, as far back as 2005, cruise ship passengers that visited Juneau cited a continuous walkway along the waterfront as the most needed waterfront improvement, with 78% of all cruise ship passengers finding this as important or very important.⁵³ Not only do the cruise ship passengers use the continuous walkway complained of by CLIA, the cruise ship

⁴⁸ Exh. CY, the 2011 CLIA sourcebook, pages 1-12, many travel agents and tour groups are CLIA members.

⁴⁹ See Exh. CZ email from Holland America representative regarding the bus drop offs at Statter Harbor and admitting they were the primary operator of the large coaches.

⁵⁰ Exh. DA, Princess describing bus services they do and do not provide; See Exh. B, media release documenting the transportation divisions of the cruise lines.

⁵¹ See Exh. DB; Exh. DC.

⁵² See Exh. BV, page 11.

⁵³ See Exh. KP, page 12.

passengers overwhelming view the walkway as the most important improvement for Juneau in enhancing their visit experience.⁵⁴

Two very popular activities are whale watching and fishing charters from Statter Harbor in Auke Bay. 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.⁵⁵ The cruise ship passengers purchase their whale watching and fish charters directly on board the ship from the CLIA member, with the CLIA members keeping 20% of the ticket price profit.⁵⁶ 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 rather pure profit to the CLIA members.⁵⁷ Whale watching tours have the vast majority of their customers from cruise ships.⁵⁸ In support of the project often referred to as Statter Harbor Phase III, directed at providing loading and unloading zone for the busses carrying cruise ship passengers, Mr. Ward stated: “I cannot imagine a more qualified proposal

⁵⁴ Exh. KP, page 12. Exh AG; Exh. KQ. The recommendation for a continuous walkway is consistent with cruise ship passengers. McDowell Group did a study for Haines and the most recommended improvement for Haines by cruise ship passengers was a sea walk. (See Exh. KR, page 5, McDowell Group Haines Cruise and Fast Ferry Passenger Survey December 2011).

⁵⁵ Exh. CW, page 20. The Plaintiffs did not admit this percentage, but could not explain why nor provide any documents as to why it was inaccurate. The CLIA response was: “CLIA does not have any documents responsive to this request.” See Plaintiffs’ response to RFA 94 and RFP 54, part of CLIA’s Objections and Responses to CBJ’s Second Set of Requests for Admission and 5th Set of Requests for Production, provided with Exh. CX. As to whether CLIA contested the Sheinberg Report, CLIA declined to respond. As such, the expert consultant finding by Sheinberg must be accepted as undisputed.

⁵⁶ Exh. CW at page 20.

⁵⁷ Exh. CW, page 20. The Plaintiffs did not admit this number, but could not explain nor provide any documents as to why this number was inaccurate. See Plaintiffs’ Response to RFA 96 and RFP 55, provided with Exh. CX.

⁵⁸ See Exh. CW, page 6-19, letter from Dolphin Tours, LLC owner, that 99% of his passengers come from cruise ships; Exh. CW, page 11-12 letter from Gastineau Guiding that 98% of their passengers come from cruises.

for a facility that will be built for and used by cruise ship passengers.”⁵⁹ 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.”⁶⁰

This is a high-ranking activity for passengers; in 2005 16% of all cruise ship passengers said that whale watching tours were the most enjoyable experience in Juneau.⁶¹ The Plaintiffs' members also receive substantial income from the sale of these tours, which are sold on the cruise ships.⁶²

There are more than 25,000 individual cruise ship crew members who come to Juneau multiple times each summer.⁶³ A crew shuttle is provided by various companies which provide rides to the crew members throughout town several times a day.⁶⁴ The crew also frequent the public library for the CBJ provided wifi and the payphones provided by CBJ downtown.⁶⁵

D. The Marine Passenger Fee (MPF) and Port Development Fee (PDF)

The two different fees at issue in this case (the Marine Passenger Fee and the Port Development Fee) are used for services provided by CBJ to the cruise ship passengers, crew, and/or the vessels, as well as for the construction of docks and infrastructure. The CLIA member contracts make clear that all government fees, including passenger fees, dockage fees, and wharfage fees, are added to the total ticket price.⁶⁶ The CLIA members pay nothing to CBJ for

⁵⁹ Exh. CW, page 6-10.

⁶⁰ Exh. CW, page 12.

⁶¹ Exh. KP, page 7.

⁶² Exh. CW, page 20.

⁶³ Exh. KJ.

⁶⁴ See Exh. KS, listing four different crew shuttle companies in 2011.

⁶⁵ Exh. CG; Exh. IU; Affidavit of Watt.

⁶⁶ Exhs. D; E.

the MPF and PDF as both fees are charged by CLIA members to the passengers.⁶⁷ REDACT

CLIA Alaska's press release on the litigation also said that "the litigation is about the use of a specific tax, the \$8 local entry fee tax, each passenger pays to visit Juneau."⁶⁹ ⁷⁰

E. *The Port Development Fee (PDF)*

By Resolution, the CBJ collects a \$3.00 Port Development Fee per arriving passenger. The purpose of this fee is to "provide funding for capital improvements to the downtown waterfront."⁷¹ The PDF has been in place in different amounts since 1990. The first ordinance (Ord. 89-52) expired in 2002, and the assembly adopted resolution 2150 (April 2002, later continued through resolution 2163 (July 2002)), which established different fees for public and private facilities, resolution 2294bam (March 2005) which continued to have different fees for public and private facilities, resolution 2423(b) am (2008) which set the PDF as \$3.00 for both private and public facilities, and resolution 2552 (2010) which repealed the sunset provision. The

⁶⁷ Exh. AS, CLIA's Objections and Responses to CBJ's First Requests for Admissions, Response to RFA 54. 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. Apparently, CLIA chose not ask its board members, who are executives of the CLIA cruise line members who bring cruise ships to Juneau. CLIA chose not to 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.

⁶⁸ Exh. AT (Confidential).

⁶⁹ Exh. AU.

⁷⁰ CLIA members have also been alleged to collect fees from passengers that they claim are port charges, in addition to actual port charges, and then not pay them to government agencies. (See Justice Thomas A. Dickerson, Tulane Maritime Law Journal, Volume 38:1 *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* Volume 38:1, page 37.)

⁷¹ CBJ Resolution 2552.

CLIA members supported the PDF in 2008 and did not object to the same fee for both private and public facilities.⁷² At a January 7, 2008 Assembly meeting:

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.”⁷³

Mr. Habeger went on to say the funds should be used for the benefit of all users, such as “the parking lot.”⁷⁴

CBJ has used the PDF 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.⁷⁵

Until CLIA filed its Summary Judgment Motion, CLIA did not object to or challenge the collection of the PDF and did not challenge the reasonableness of the fee.⁷⁶

The PDF has only been used to fund capital improvements to the downtown waterfront.⁷⁷ The last several years, the PDF was used to pay back bond indebtedness for the 16b cruise ship berth project and the multi-phase Seawalk project.⁷⁸ The 16b Project constructed a public dock and upgraded an existing dock specifically to accommodate the Plaintiffs members’ 1000 foot vessels.⁷⁹ These docks have no other purpose. The CBJ incurred substantial indebtedness to

⁷² See Exh. BI, page 3, 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. The Seawalk was part of the waterfront plan as written at the time of this resolution, See Exh. BG showing that the waterfront plan was adopted in 2004 and starting the discussion of seawalk alternatives.

⁷³ See Exh. BI, page 3. 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, part of 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.

⁷⁴ Exh. BI, at 3.

⁷⁵ Affidavit of Watt; Affidavit of Bartholomew; Affidavit of Botelho.

⁷⁶ Affidavit of Watt; Affidavit of Bartholomew; Affidavit of Botelho.

⁷⁷ See Exh. BO, list of PDF projects.

⁷⁸ Affidavit of Bartholomew; See Exhibit BO.

⁷⁹ Affidavit of Watt.

plan, design and build the dock, with the express intent to repay the indebtedness in large part from the PDF. But for the CLIA's members' need for docks to accommodate larger ships, Juneau would not have undertaken such a massive project.⁸⁰ Similarly, but for the concurrence of CLIA's predecessor and the CLIA members in approving the PDF and its use, CBJ would not have taken on the indebtedness necessary to build 16b. CBJ relied to its detriment on the assurance of CLIA's predecessor and its members that CLIA and its members did not and would not challenge the PDF.⁸¹

REDACT

REDACT.⁸² CLIA members previously agreed to help the CBJ design the 16B project for the industry's needs.⁸³ CLIA has admitted since the construction of 16b that this was a good project.⁸⁴

As outlined above, CLIA's passengers overwhelmingly approved of a continuous walkway in Juneau's waterfront. The Seawalk was also designed and constructed with prior approval of the CLIA member representatives. The Seawalk was identified as a project since at least 2004, when it was part of the 2004 Long Range Waterfront Plan.⁸⁵ Don Habeger represented the CLIA members and stated publicly the cruise ship industry supported any project within the Long Range Waterfront Plan as funded with PDF.⁸⁶ Drew Green as cruise ship industry representative on the CBJ Passenger Fee Committee stated that he "appreciate[d]" the marine passenger fee

⁸⁰ Affidavit of Watt.

⁸¹ Affidavit of Watt; Affidavit of Bartholomew; Affidavit of Botelho.

⁸² See Exh. FT (Confidential), page 14.

⁸³ See Exh. KV.

⁸⁴ Bartholomew Affidavit; See Exh. FE, January 26, 2017 newspaper article. Exh. FF, April 15, 2016 article.

⁸⁵ See Exh. BG; **REDACT**

REDACT (See CLIA02325C-2328C attached as Exh. KW) **REDACT**

Exh. BI, page 3.

being used for the waterfront seawalk.⁸⁷ In 2013, K. Day approved the seawalk funding for FY14 and that this was a “good project.”⁸⁸ D. Green also emailed the City regarding the FY14 proposed list, stating: “Use of MPF funds on sea walks that provide, infrastructure, safety, or efficiency benefit to passengers at or near cruise facilities where they are berthed or lightering is appropriate.”⁸⁹ CLIA did not comment negatively on the Seawalk until they wrote a letter commenting on the funding source in February 2016,⁹⁰ despite the CLIA members past support, and after the seawalk sections starting at industry-owned Franklin Dock and continuing along the CT and AS dock had already being constructed.⁹¹

F. *The Marine Passenger Fee (MPF)*

Juneau's Code (CBJ Code) 69.20.020 imposes a \$5.00 fee per passenger visit, the Marine Passenger Fee. The MPF has been in place at \$5.00 per passenger since 1999 after the voters passed a proposition which the CBJ implemented in Ordinance 2001-01am (Plaintiff's Exh.5) and which was embodied in CBJ Code 69.20. The process for soliciting and deciding projects was amended in 2008 (Ord. 2008-7). The purpose of the MPF is 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."⁹²

⁸⁷ See Exh. DK.

⁸⁸ See Exh. DI. 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 Exh. BC directly contradicts the CLIA response to RFAs Nos. 1 and 2 as the NWCA continued to represent the CLIA members after 2007. (Exh. AS.)

⁸⁹ Exh. DJ

⁹⁰ Exh. KY, CLIA003161.

⁹¹ Affidavit of Watt.

⁹² CBJ Code 69.20.005, as amended in 2012.

CBJ Code 69.20 et.seq. sets out the complete code related to the MPF, including the administrative remedies for protest or challenges to the collection or expenditure of the fees.⁹³ Since 2001, no CLIA member has instituted any action to challenge the constitutionality of the collection or expenditure of the MPF. Since 2001, no CLIA member has availed itself of its administrative remedies to protest and appeal the collection of the MPF.⁹⁴

CBJ's ordinance directs that the MPF is to be spent to support the marine passenger industry, with a detailed list including capital improvements, operating funds for services made available required as a result of the ships, projects and programs that promote safety, environmental improvements, efficiency of commerce, or enforcement of laws, acquisition of land needed for these services, and surveys or similar tools to measure, describe or predict the ships and passengers.⁹⁵

Each year, the City Manager presents a list of expenditures to the CBJ Assembly for approval for the MPF fees. This list is based off of requests from the public and CLIA members and representatives. To facilitate requests, the City Manager annually solicits for projects by posting an announcement on the CBJ website each year, and making a media announcement.⁹⁶ CLIA member representatives have submitted requests, including projects that benefit

⁹³ See Plaintiffs' Exh. 11.

⁹⁴ Exh. AY, Plaintiffs' Response to Interrogatory No. 24. The Plaintiffs refused to respond to the Interrogatory regarding not having invoked the protest and appeal process. Their response repeated the Plaintiffs' conclusion that the fees and expenditures are unconstitutional, which is not a response as to why the protest and appeal process was not invoked. The Plaintiffs have not produced any document or any other evidence that any CLIA member ever file a protest or invoked the protest and appeal process afforded each of them in the CBJ Code.

⁹⁵ CBJ 69.20.120.

⁹⁶ See Exh. KZ.

passengers.⁹⁷ After receiving and reviewing requests, the City Manager prepares a draft list of projects and programs proposed for funding and publishes these on the CBJ website and makes another a media announcement.⁹⁸ The list is also forwarded to the cruise lines representatives and the CBJ Docks and Harbors Board for review and comment.⁹⁹ CLIA members and representatives provided comments; and at times approved of projects benefitting passengers.¹⁰⁰ The manager then publishes the final recommendations on the CBJ website prior to the Assembly Finance Committee and then the Assembly's approval.¹⁰¹ The Assembly makes the final determination as to what is funded.¹⁰²

The CBJ has funded many services to the cruise ships, passengers, and crew, in addition to the dock projects. One such example of this is crossing guards stationed in downtown near the cruise ship docks during the cruise ship season.¹⁰³ The crossing guard schedule is dependent on the ship schedule and the crossing guards are only in place when ships are in port.¹⁰⁴ The crossing guards are not there after the cruise ships leave.¹⁰⁵ The crossing guards are needed due to the high volume of pedestrians coming off the cruise ships; a study in 2009 estimated 447

⁹⁷ For example, see Exh. AR, email and letter from Princess Cruises asking for money from FY14 MPF fees for projects at the Franklin Dock; See also Exh. AQ, the 12/28/12 memo from the A.J. Juneau Dock, LLC, which is 50% owned by Holland America Line, Inc., a CLIA member, asking for projects paid from FY14 MPF fees. CLIA member companies have made similar requests at least since FY2009, often requesting funding for projects that provide benefits to passengers. (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, (see Exh. DH) CBJ did fund many projects requested by CLIA members at the Franklin Dock and AJ dock that have benefitted passengers, not only the physical vessel.)

⁹⁸ CBJ 69.20.120(b); See Exh. LA, FY14 request for comments on proposals, Exh. DC, attached FY14 passenger fee recommendation list from CBJ City Manager January 29, 2013.

⁹⁹ CBJ 69.20.120(b); Exh. DF from K. Day regarding the procedure in which the industry commented on the draft lists.

¹⁰⁰ Exh. DI, K. Day approving the Seawalk; Exh. DJ from D. Green stating that money spent on the Seawalk to provide "safety or efficiency to passengers" is appropriate.

¹⁰¹ CBJ 69.20.120(b); For example, see Exh. LB, FY14 final proposed list.

¹⁰² Affidavit of Watt.

¹⁰³ See Exh. LB

¹⁰⁴ Exh. HP; Exh. HK; Affidavit of Watt.

¹⁰⁵ See Exh. HQ, the MOU for FY2015 season.

passengers per 15 minutes on one sidewalk, and 428 on the other side.¹⁰⁶ The same study counted 8,370 pedestrians in one day (over 1,000 during the 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.¹⁰⁷ The crossings guards help ensure that these cruise ship passengers cross safely and comfortably.¹⁰⁸ CLIA members and representatives consistently recognized the crossing guards as a proper use of the MPF.¹⁰⁹ The City of Ketchikan funds crossing guards for their downtown with their marine passenger fees.¹¹⁰ CLIAA has not sued the City of Ketchikan for the collection or use of their marine passenger fees.¹¹¹ The crossing guards provide a safety and beneficial service to the passengers.¹¹²

CBJ has followed the procedure in the code for developing recommended expenditures and projects for consideration by the Assembly.¹¹³ Every year the proposed list has been distributed to CLIA, and its predecessors, NWCA and ACA, and to many other cruise lines representatives.¹¹⁴ CLIA and its predecessors specifically requested some expenditures, approved of others, objected to some, or did not respond. For example, CLIA specifically approved funding for crossing guards,¹¹⁵ now being challenged in this summary judgment motion. Some years one or more of CLIA's cruise line members specifically requested CBJ

¹⁰⁶ See Exh. EM, page 7, select pages of Cruise Ship Dock Uplands Operations Analysis. CBJ has not provided the entire 229 page study, but will do so upon request. It has been disclosed to CLIA.

¹⁰⁷ See Exh. EM, page 4.

¹⁰⁸ See Exh. EM, page 8.

¹⁰⁹ Exh. HJ; Exh. HK.

¹¹⁰ See Exh. HI.

¹¹¹ Ketchikan has similar fees, charging \$7.00 per passengers, see Ketchikan Municipal Code 13.10.010-13.10.140.

¹¹² See Exh. HY, a video of downtown Juneau when only two cruise ships are in port, compared with no cruise ship.

¹¹³ Affidavit of Watt; Exh. FL, all the expenditures from FY01-FY17.

¹¹⁴ Watt Affidavit; Exh. DF.

¹¹⁵ See Exh. BV, where Kirby Day with Princess Cruises requested the CBJ create a crossing guard program.

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

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

CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S (CBJ) STATEMENT OF FACTS IN SUPPORT OF CBJ'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CBJ'S MOTION TO STRIKE CERTAIN EXHIBITS

Page 17 of 36

approve the expenditure of MPF 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 restrooms.¹¹⁶ Since FY10, CLIA's members have specifically requested projects for their private docks, many of which CBJ has used MPF to fund or partially fund.¹¹⁷

G. CLIA members and their representatives historical requests for expenditures of the PDF and MPF were not limited to providing services only to the physical vessel

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 was a member and industry representative.¹¹⁸ For example, the first MPF expenditures, FY01,¹¹⁹ were 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, 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.¹²⁰ This list provided many projects that benefitted passengers, and even included preparation for

¹¹⁶ Affidavit of Watt.

¹¹⁷ For examples, see Exhs. AR; AQ; DG; GL; GM; GN; GQ; GS; GT; GV; GW; GY; GZ; IP; HB; HD; HF.

¹¹⁸ Exh. DL; Exh DS, NWCA nominated Habeger as their representative and re-nominated for him to be the representative in 2002.

¹¹⁹ CBJ does not agree these past expenditures should be considered by the Court on the Plaintiffs' constitutional claims, as any claims regarding those expenditures have long passed the statute of limitations and are otherwise barred by waiver, laches or estoppel. CBJ provides this history to the Court to clarify the process for the expenditures and to demonstrate CBJ's reliance on the CLIA members' approval and their lack of objection to the expenditures.

¹²⁰ Exh. DM; Exh. CN. 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).

part of the Seawalk by Gold Creek.¹²¹ 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.¹²²

Mr. Habeger wrote the city manager with NWCA's view of how to use the marine passenger fees 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."¹²³ 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.¹²⁴ On behalf of the NWCA members (now CLIA members), he also approved of a second wave of projects such as work to trails used by passengers.¹²⁵ Mr. Habeger did not express that the funding should only be for services provided to the physical vessel.

As another example, in 2001, the Passenger Fee Committee continued along the same vein for FY03, and did not discuss using the fees on projects only for services to the physical vessels.¹²⁶ John Hanson, President of the NWCA, 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

¹²¹ See Exh. CN.

¹²² Exh. BV, page 7.

¹²³ Exh. CN, page 5.

¹²⁴ Exh. CN, page 5.

¹²⁵ Exh. CN, page 5.

¹²⁶ Exh. DQ.

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."¹²⁷ All members of the committee, including the Plaintiffs' representative, Mr. Habeger,¹²⁸ unanimously supported using MPF for: Bus Transit services, Crossing Guards, and downtown restroom maintenance.¹²⁹ 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, City Museum, Crossing Guards, Dock Security, Downtown Restroom Maintenance, Front Street Restrooms, Heliport Plan, Juneau Convention and Visitors Bureau, Local Emergency Planning Committee, Planning and Policy Committee, Marine Park/Admiral Way/Steamship Wharf, Montana Creek Bike Trail, Open Space Acquisition, Park Rangers, Marine Wharf Improvements, Princess Cruises Shore Power, Tourism Personnel, Trail Maintenance, Transit.¹³⁰

On January 30, 2006, Mr. Day sent an e-mail to CLIA members and others indicating the industry's support for spending MPF 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

¹²⁷ Exh. DR.

¹²⁸ Exh. DS.

¹²⁹ Exh. DL.

¹³⁰ Exh. CQ. Drew Green became the industry representative in FY06 (Exh. CR) and approved of similar projects that were not limited to only the physical vessel. The CBJ has provided more examples in its Objections to CLIA's Statement of Facts.

this area.”¹³¹ The pedestrian congestion is the 1,000,000 cruise ship passengers coming into Juneau per season.

The Passenger Fee Committee disbanded **REDACT**

REDACT and the process switched to the City Manager presenting his recommended list of expenditures to the CLIA members before submitting to the Assembly Finance Committee.¹³² CLIA members had an avenue to request, approve, or object to projects and continued to request projects from the CBJ funded with MPF and PDF that were not limited to only the physical vessel. For example:

- In 2008 Princess Cruises requested MPF in FY09 be used to construct a covered staging area for passengers while waiting for tours and transport.¹³³
- In 2010, CLIA members and representatives 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.¹³⁴
- On January 28, 2013, Mr. Day emailed the CBJ finance director and manager that “Seawalk is a good project.”¹³⁵ On the same day, Mr. Green emailed the manager 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.”¹³⁶

Princess Cruises and Holland America, through representatives Kirby Day and Drew Green also have requested funding for expenditures at their private docks since FY2010.¹³⁷

These requests have included funding for covered walkways, security stations, restroom

¹³¹ Exh. EL.

¹³² See Exh. ED (Confidential).

¹³³ See EF.

¹³⁴ See Exh EG and EH.

¹³⁵ Exh. DI.

¹³⁶ Exh. DJ.

¹³⁷ See letters requesting expenditures: Exhs. AR; AQ; GL; GM; GN; GQ; GR; GS; GT; GV; GW; GY; GX; GZ; HB; HD; HF; HH; IP.

maintenance, landscaping, and parking lot maintenance. These requests specifically asked for projects for services to passengers. For example:

- 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."¹³⁸
- 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.¹³⁹
- 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."¹⁴⁰

CLIA's members continue to request funding for services to passengers even after filing this lawsuit¹⁴¹ and after CLIA's Summary Judgment Motion was filed.¹⁴²

H. Medical needs of CLIA's passengers and crew

As the ships have gotten bigger, they have started providing on-board medical staff for when the ships are underway.¹⁴³ There are no universally uniform medical standards used to determine minimum credentials for physicians or medical equipment used on board the ship nor

¹³⁸ Exh. EO.

¹³⁹ Exh. DG. This specific request was not funded by the CBJ.

¹⁴⁰ Exh. HF.

¹⁴¹ Exh. EX, 12/31/16 letter from Franklin Dock requesting \$25,000 for restroom cleaning and maintenance. Exh. EY 12/30/16 letter from AJ Dock LL requesting \$34,000 for restroom cleaning and landscaping.

¹⁴² See Watt Affidavit; See Exhs. EZ; FA.

¹⁴³ Until 2010, the medical providers on the member ships did not have to be licensed in the U.S; under the 2010 Cruise Vessel Security and Safety Act the ships are now required to have a medical professional licensed to handle sexual assault evidence gathering; there are no other licensing requirements that CBJ is aware of. (See Cruise Vessel Security and Safety Act of 2010, Section 3507 (d)(3); John Marshall Law article, *Paradox on the High Seas, Evasive Standards of Medical Care: Duty without Standards of Care, A Call for International Regulation of Maritime Healthcare Abroad ships*, 34 J. Marshall L. Rev Issue 3 Article 4; 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 81, 86-87.)

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

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

CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S (CBJ) STATEMENT OF FACTS IN SUPPORT OF CBJ'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CBJ'S MOTION TO STRIKE CERTAIN EXHIBITS Page 22 of 36

any agency regulating the medical practice on board the cruise ships.¹⁴⁴ CLIA members are not typically found liable for any medical misdiagnosis or mistreatment of their medical staff, who are not certified in advanced medicine, and only agree to provide service on the ship until shore side medical care becomes available;¹⁴⁵ the courts also often deny jurisdiction on claims brought against the doctors.¹⁴⁶

CLIA (in response to a proposed law requiring guarantees for cruise ship passengers in 2013),¹⁴⁷ voluntarily created a "passenger bill of rights" which specifically states that CLIA members will ensure passengers "the right to have available on board ships operating beyond rivers or coastal waters full-time, professional emergency medical attention, as needed *until shore side medical care becomes available.*"¹⁴⁸ Emergency evacuations are often not covered under a passenger's medical insurance and the cruise ship does not pay for this.¹⁴⁹

¹⁴⁴ See Exh. LD, Centers for Disease Control and Prevention "Cruise ship Travel;" footnote above. CBJ notes that in April 2017 there was a proposed bill to create standards for medical care, but that this did not pass. (See Exh. HZ article "Congress introduces legislation to protect cruisers safety rights," The bills H.R.2173 and S.965 proposed amending the Passenger Vessel Security and Safety Requirement, Section 3523, to add a section on medical standards. The cruise lines provided over \$3 million each year in lobbying money to Congress in 2016 and 2017 and spent higher than usual amounts in 2016 for campaign spending. See Exh. KB.)

¹⁴⁵ See article by Justice Thomas A. Dickerson, Tulane Maritime Law Journal, Volume 38:1 "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" Volume 38:1 515-581, page 13, 26, 41, 58-59.

¹⁴⁶ The passengers often are denied jurisdiction for claims against cruise ship doctors because the ships hire foreign medical providers. (See 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). The jurisdiction issue is reflected in several cases, including most recently *Terry v. Carnival Corp.*, 2018 U.S. Dist. Lexis 8943 (Florida Southern District Court, January 18, 2018). CBJ does note that at least one court has found that a cruise line could be liable for their medical personnel not determining when evacuation was appropriate. *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1248, (11th Cir. 2014).

¹⁴⁷ See Exh. LE, article "Cruise industry adopts a passenger bill of rights." See Exh. LF, article "Does the cruise industry need regulation?"

¹⁴⁸ Exh. HX, CLIA "International Cruise Line Passenger Bill of Rights."

¹⁴⁹ See Exh. LD.

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."¹⁵⁰ CBJ is helping CLIA members meet their own guidelines by providing some MPF funding to CCFR and Airlift Northwest. This funding helps ensure the availability of emergency airlifts from the cruise ships and the smaller ports the ships call that do not have medical facilities.¹⁵¹ The cruise ship doctors make the call as to when a passenger needs emergency evacuation; the airlift is provided as requested by the vessel.¹⁵² CLIA's members have promoted the ability to have emergency evacuation and shoreside facilities in their public documents regarding the cruise ship benefits; the evacuations and shoreside medical facilities to passengers are a service to the ship.¹⁵³

While the information regarding the medical care may seem unrelated to this lawsuit, it is in fact related and relevant because the CBJ has used some of the MPF funds to provide medical care to passengers and crew while they are in Juneau as well as for emergency evacuations.¹⁵⁴ CLIA's lawsuit claims that services to passengers are unconstitutional; CLIA has also listed the medical expenditures in their statement of facts, which CBJ presumes is because they allege these specific expenditures are unconstitutional uses of the passenger fees. Providing medical care to the passengers and crew when they are onshore, and otherwise do not have access to medical care, is a service that the passengers who pay the CBJ fees benefit from and would not

¹⁵⁰ Exh. LG.

¹⁵¹ Watt Affidavit; Exh. ID; IE; LH.

¹⁵² Exh. LG; 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.

¹⁵³ See Exh. IM, Royal Caribbean's 2010 Stewardship Report, 8.

¹⁵⁴ See Exh. GH; IE; ID; LH; Watt Affidavit.

object to. CLIA's members have decided to not provide onshore medical care.¹⁵⁵ Providing emergency airlift and medical services is a service to the vessel as it is requested by the vessel and as it means the vessel does not need to provide such services. It is a benefit to CLIA's members' passengers, crew, and their vessels that CBJ uses some of the MPF to ensure that emergency responders, ambulances, airlift aircraft, and the Bartlett Regional Hospital are available and equipped for the 1,000,000 passengers who come to Juneau¹⁵⁶

I. Examples of other security programs funded by MPF

The CBJ uses some of the MPF to fund additional police downtown Juneau to protect the influx of passengers. No additional foot patrol would be necessary for the 30,000 residents of Juneau—the additional foot patrol is directly related to over 10,000 passengers disembarking per day.¹⁵⁷ This is a service to passengers, as well as a service to the vessel as it provides protection that the vessel does not.¹⁵⁸ CLIA's members publicly state that they have a dedication to security, including in ports of call.¹⁵⁹ CLIA members have supported the downtown foot and bike patrol.¹⁶⁰ **REDACT**

¹⁵⁵ CBJ notes that Royal Caribbean publicly promoted the fact that they did provide on-shore medical facility centers in the Dominican Republic, and so presumably CLIA members could provide their own on-shore medical facilities in Juneau, but have chosen not to. (*Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1248, (11th Cir. 2014), citing Royal Caribbean's 2010 Stewardship Report, 8 (2010), provided as Exh. IM, page 4.)

¹⁵⁶ CBJ also notes that CLIA's members may in fact have a duty to provide medical transportation off the ship and are not doing so. This is an unresolved legal issue in the 9th Circuit. See *Casorio v. Princess Cruises*, 2015 U.S. Dist. Lexis 100576 (California Central District Court, July 30, 2015); See *Franza v. Royal Caribbean Cruises, Ltd.*, 772 F.3d 1225, 1254, (11th Cir. 2014) and *Wohlford v. Carnival Corporation*, 2017 U.S. Dist. Lexis 72901, *11-12 (Florida Southern District Court, May 10, 2017), allowing negligence claims for failing to evacuate in a timely manner.

¹⁵⁷ Affidavit of Watt.

¹⁵⁸ CBJ understands that the cruise ships do employ security for on board the boats; this security has mixed reputation as to whether the effectively prevent or investigate crimes on board. See 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, 48-61 (2015).

¹⁵⁹ See Exh. IM, page 6, Royal Caribbean 2010 Stewardship report.

¹⁶⁰ Exhs. CQ; CO; HS; DW page 2; DK, page 2.

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162

J. Services to passengers with physical challenges

CBJ used a portion of the funds for the SAIL program (Southeast Alaska Independent Living) in FY14-FY16 to provide services allowing disabled cruise ship passengers to be able to enjoy Juneau and the various tours offered by CLIA's members as part of the cruises. This spending improves accessibility and transportation for CLIA members' passengers by providing training to cruise and tour companies on accessibility.¹⁶³ This expenditure seems particularly important as up until 2010, the CLIA members, although required to comply with ADA, were not subject to regulation and were not known for particularly accessible ships or excursions.¹⁶⁴ The 2010 Regulations require cruise vessels to communicate tour limitations to passengers and requires cruise vessels to provide accessible transportation to and from the vessel;¹⁶⁵ the SAIL training helps the vessel in determining whether there are any limitations that need to be communicated to passengers and whether the transportation needs improvement. CLIA did not object to this expenditure. REDACT

¹⁶¹ Exh. FX, CLIA006063C.

¹⁶² Exh. FP, CLIA002710C.

¹⁶³ Exh. IY; IX

¹⁶⁴ Title 49 U.S. Code of Federal Regulations, Part 39 Transportation for Individuals with Disabilities: Passenger Vessels (became effective November 3, 2010) contains a list of 128 specific guidelines and changes related to service and policy issues involving guests with disabilities. See also article by Justice Thomas A. Dickerson, Tulane Maritime Law Journal, Volume 38:1, 515-581, pg 39-40. *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.*

¹⁶⁵ Title 49 US Code of Federal Regulations, Part 39 Transportation for Individuals with Disabilities: Passenger Vessels, Section 39.53(d) and 39.81.

Princess Cruises used SAIL to assist their customers with deciding what tours to take—a benefit to commerce and CLIA's members bottom lines.¹⁶⁷ K. Day with Princess Cruises admitted that the SAIL request "will provide a service to passengers and be good for the community."¹⁶⁸

K. CBJ's allocation of MPF to reimburse certain departments for services provided to the passengers and/or vessels comprising less than 2% of the CBJ total operating budget

CBJ reserves a portion of the MPF to pay back specific CBJ departments who provide services to ships and/or passengers, for services that cannot be tracked by time records or invoices.¹⁶⁹ The CBJ determined it is reasonable and constitutional to allocate a portion of the fees collected to its general fund to distribute that portion of the fees to certain departments for those services for which it is not possible to minutely track all the cost elements of each service program.

In 2003, CBJ developed formulas for that portion of the fees to be allocated to the general fund and then subsequently allocated to its departments.¹⁷⁰ The amount allocated to the CBJ general fund has increased, as related directly to increased passenger counts of the CLIA members and increases to the costs of those services, from about \$900,000 to \$1,400,000.¹⁷¹

In Paragraph 29 of the Amended Complaint, the Plaintiffs allege that CBJ has collected more than \$35,000,000 in "Entry Fees" for the period of 2012 through 2016. The total marine

¹⁶⁶ Exh. IZ CLIA002651-53C; Exh. JA CLIA002654-57C REDACT

¹⁶⁷ See Exh. IX, admitting that "we have continued to find this service to be helpful on a number of occasions."

¹⁶⁸ Exh. DI.

¹⁶⁹ Affidavit of Bartholomew.

¹⁷⁰ Affidavit of Bartholomew.

¹⁷¹ Affidavit of Bartholomew.

passenger fees and port development fees collected per year is approximately \$8,000,000.^{172 173}

For context on the over-all size of the fees collected, the CBJ recently completed the construction of two new cruise ship docks at a design, engineering and construction cost in excess of \$54,000,000. These new docks are used nearly exclusively by the CLIA cruise ship member companies.¹⁷⁴

The total departmental operating expenses for the CBJ are approximately \$68,300,000 for 2017 and the CBJ total budget approaches \$90,000,000.¹⁷⁵ Using the Plaintiff's amount from paragraph 27 of the Amended Complaint, the amount of the "Entry Fees" allocated to the departmental operating services is approximately 2% of CBJ's total budget for departmental operating expenses.

This allocation provides certain services to the cruise ships, crew and cruise passengers which CBJ would not provide but for the presence of the cruise ships, crew and cruise passengers. One example is the hiring of road crossing guards in the downtown area during the cruise season. The City would not need seasonal crossing guards but for the 1,000,000 annual passengers and approximately 200,000 additional crew members coming into the port. The CBJ funds the crossing guards with MPF funds routed to the organization that contracts the crossing guards: historically this has been the Tourism Best Management Program through the Juneau Visitors and Convention Bureau.¹⁷⁶ While the program is administered by a third-party, there

¹⁷² Affidavit of Bartholomew.

¹⁷³ In comparison to the profit that the cruise lines make (see above) and the amount of federal income tax that CLIA's members do not pay, estimated at \$70 million a year, Exh. JZ, article "Proposed U.S. Tax Bill could cost lines estimated \$70m a year".

¹⁷⁴ Affidavit of Watt.

¹⁷⁵ Affidavit of Watt. The City Budget is available on line at the City's website, juneau.org.

¹⁷⁶ See CLIA's Exh. 67: "JCVB administers this program on behalf of the TBMP"; See also Exh. HN, TBMP request coming from Kirby Day.

are costs to the CBJ in funding the program. The CBJ has not directly allocated the full cost of delivering the crossing guard service for the benefit of the cruise passengers and crew. The CBJ both directly funds the cost of providing the crossing guards from the collected fees and provides indirect funding of a portion of the collected fees through an allocation formula to the Manager's office and the Finance Department to provide for the costs of administering the program and associated payments.¹⁷⁷ Other examples include services that the Fire Department provides for training, which is not directly funded.¹⁷⁸ The funding also accounts for time the City spends reading and responding to cruise ship passenger emails.¹⁷⁹

For the City to provide services without the administrative costs related to tracking every second spent by every city employee providing a service to the cruise ships or passengers or crew, the CBJ developed an allocation formula. The application of the formulas to the total fees collected results in the amount allocated to the CBJ general fund for those departments that provide services.¹⁸⁰ The yearly operating budget of every CBJ department comes out of the general fund, and the MPF money for the nine¹⁸¹ CBJ departments is allocated through the General Fund.¹⁸² CBJ then uses additional formulas to calculate how much each department will get out of the entire allocation.¹⁸³

¹⁷⁷ Affidavit of Watt

¹⁷⁸ See for example, Exh. LI, the fire drill in 2009 that JFD was part of for the cruise industry; Exh. LJ email documenting a cruise ship meeting at the Juneau Fire Hall training room; Exh. LH.

¹⁷⁹ See Exh. LM for examples.

¹⁸⁰ This is evaluated each year to ensure only the departments that provide services are funded. (Affidavit of Bartholomew).

¹⁸¹ There are currently nine CBJ departments allocated marine passenger fee money. (See Affidavit of Bartholomew). This number has changed throughout the years for various reasons related to the services provided to the cruise ships, crew and cruise passengers.

¹⁸² Affidavit of Bartholomew.

¹⁸³ Affidavit of Bartholomew.

L. CLIA's inconsistent positions on the use of the MPF, requesting and approving projects and services for passengers, and now claiming all uses of funds not for the physical vessel are unconstitutional

The CBJ listened to and considered and relied on comments by CLIA and its predecessors and representatives in evaluating proposed projects and services each year. For example, the CBJ wrote letters in response to NWCA on the proposed FY07 list.¹⁸⁴ The CBJ also responded to NWCA in explaining the allocation in 2005; NWCA did not bring a lawsuit at that time.¹⁸⁵ As outlined above, many of the expenditures that CLIA lists in their Statement of Facts were requested, approved, or not objected to by CLIA and/or its members.¹⁸⁶ Neither CLIA nor its predecessor nor their representatives claimed that projects and services must only be for the physical vessel. In 2011, CLIA claimed that funding could only be expended for services to the specific passenger who paid the fees, not for passengers generally.¹⁸⁷

Since FY2010, CLIA's members have directly requested MPF funding for projects on their own private dock facilities, which often include components not just to the physical vessel.¹⁸⁸ CLIA's members have continued to request funding for services which relate to the passengers.¹⁸⁹ On January 5, 2018, CLIA members Princess Cruise lines wrote a letter to the City Manager requesting that \$1,777,000 of MPF be used for projects at the Franklin Dock including bathroom maintenance.¹⁹⁰ On December 29, 2017, the AJ Dock owned by Holland

¹⁸⁴ See Exh. LN. **REDACT**

[REDACTED]. This was in response to the letter from ACA which only objected to a small number of expenditures, and did not object to the expenditures for passengers such as crossing guards and bathrooms. See Exh. CV.

¹⁸⁵ See Exh. LO.

¹⁸⁶ See CBJ's Objections to CLIA's Statement of Facts for detailed explanation for each expenditure listed.

¹⁸⁷ See Exh CC.

¹⁸⁸ See Exhs. AR; AQ; DG; GL; GM; GN; GQ; GR; GS; GT; GV; GW; GY; GX; GZ; HB; HD; HF; HH; IP.

¹⁸⁹ Watt Affidavit; Exh. EZ; FA.

¹⁹⁰ Exh. FA.

America wrote a letter requesting money for projects at their dock including those that benefit their passengers, such as bathroom maintenance.¹⁹¹

CLIA has not historically taken the stance that projects can only be used to fund the physical vessel in dealings outside of Juneau. REDACT

REDACT
REDACT¹⁹² REDACT

REDACT¹⁹³ CLIA has not sued the City of Ketchikan or the Ketchikan Gateway Borough, despite these communities having similar fee structures, and similar uses of the fees, such as crossing guards.¹⁹⁴

M. CLIA's inconsistencies on their allegations and legal positions

In preparing this Statement of Facts, CBJ faced the conflicting positions of CLIA from its First Amended Complaint, other pleadings, discovery, and its Motion for Summary Judgment. The history and difficulty with CLIA's conflicting position is set out for the Court to understand that the facts have different import depending on which theory CLIA asserts to the Court. This history of continually conflicting factual and legal positions justifies CBJ's long time detrimental reliance on CLIA's historical requests and approvals of funding for services and projects benefitting the passengers.

In the Amended Complaint, CLIA alleges¹⁹⁵:

- That the revenues bear no reasonable relationship to the actual costs incurred by CBJ to provide services to the cruise vessels and *the passengers* paying the fees.¹⁹⁶

¹⁹¹ Exh. EZ.

¹⁹² See Exh. LP, CLIA002642-2645C. Binkley has been a director of Alaska Railroad Corporation since 1995 to the present. (See LinkedIn page, Exh. LQ.)

¹⁹³ See CLIA002737HC, attached as Exhibit LR.

¹⁹⁴ Watt Affidavit.

¹⁹⁵ *Emphasis added.*

- That CBJ has spent money from the entry fees on activities that are unrelated and/or have not provided any benefits to *passengers* and vessels.¹⁹⁷
- That some of the cruise passengers will not visit Alaska again, and therefore the *passengers* will derive no benefit from projects CBJ builds.^{198 199}
- A violation of the Tonnage Clause, claiming that the fees do not bear reasonable relation to the actual costs of services provided by CBJ to the Cruise Lines, Cruise Line vessels, or *passengers*.²⁰⁰
- That the fees exceed those reasonably necessary to compensate CBJ for expenditures for services to the Cruise Lines' vessels and *passengers*.²⁰¹ CLIA reiterates this point under the Fourth Cause of Action, alleging that by charging entry fees that exceed the value of services rendered to the "Cruise Lines and their *passengers*," CBJ deprived and continues to deprive CLIA of its rights under the Tonnage Clause.^{202 203}
- That the collection and use of the fees violate the Rivers and Harbors Appropriation Act of 1884, 33 USC §5 as amended by the Maritime Transportation Security Act of 2002, Pub. L. 107-295 (November 2, 2002).²⁰⁴ That the fees violate the Act because they do not constitute reasonable fees charged on a fair and equitable basis; are used for purposes other than to pay the cost of services to the cruise ships operated by the Cruise Lines, or to their *passengers*; do not enhance the safety and efficiency of interstate commerce; and impose more than a small burden on interstate or foreign commerce.²⁰⁵

CLIA seeks a decision barring use of the fees that "are unrelated to and do not benefit the Cruise Lines vessels and *passengers* or that do not reflect the direct cost of providing services to

¹⁹⁶ Amended Complaint, P. 25.

¹⁹⁷ Amended Complaint, P. 26; P. 27.

¹⁹⁸ Amended Complaint, P. 28.

¹⁹⁹ In surveys of cruise ship passengers, a large percentage have said they will return to Juneau. This number was 55% in 2004 (Exh. KN, page 17); 46% in 2005 (Exh. KP, page 16.). CLIA admitted this in a presentation on May 18, 2017, that 41% of cruise passengers are repeat visitors to Alaska. (See page 6 of Exhibit KF.)

²⁰⁰ Amended Complaint, P. 36.

²⁰¹ Amended Complaint, P. 37. CLIA's Third Cause of Action brings a Commerce Clause claim, based on the same allegations that the CBJ's collection and use of the fees violates the Commerce Clause because the amounts and collection of the fees are not based on a fair approximation of the use of local government services by the vessels and passengers. (Amended Complaint, P. 52).

²⁰² Amended Complaint, P. 60.

²⁰³ *Emphasis in this paragraph has been added.*

²⁰⁴ Amended Complaint, Second Cause of Action.

²⁰⁵ Amended Complaint, P. 45, *emphasis added.*

cruise vessels."²⁰⁶ They also seek a permanent injunction barring CBJ from using fees to fund "activities that are unrelated to and do not benefit the Cruise Lines' vessels and *passengers*, or approximate their use of CBJ's port."^{207 208}

REDACT

REDACT²⁰⁹

While CLIA admits in the First Amended Complaint that the use of passenger fees for services to passengers are allowed under the Tonnage Clause and Rivers and Harbors Act, the Plaintiffs' began to limit their view of the Tonnage Clause and RHAA to asserting the fees may only be used on services and projects to the physical vessel:

- "[B]ear no relationship to costs imposed by the vessels' activities or value of any services provided by CBJ to the vessels."²¹⁰
- "[T]he Entry Fee revenues are not properly apportioned to the needs of the vessels being serviced."²¹¹
- "[T]he entry fees are not reasonable fees charged on a fair and equitable basis used solely to pay the cost of a service to a vessel or water craft." and "[T]he entry fees are not solely compensatory for services rendered to and enjoyed by the vessel."²¹²

Yet, the Plaintiffs have not been consistent in this new theory:

- "[O]nly to the extent they are excessive or unlawfully applied to uses that exceed the value of the services provided to cruise ships and cruise ship passengers."²¹³

²⁰⁶ Amended Complaint, judgment requested No. 1(d)

²⁰⁷ Amended Complaint, Judgment requested No. 2(b).

²⁰⁸ *Emphasis in this paragraph has been added.*

²⁰⁹ See Exh. AU; see also Exh. AT (Confidential); **REDACT**

Introduction to the Plaintiff's Opposition to the Motion to Dismiss Complaint.

²¹¹ Opposition to the Motion to Dismiss Complaint, page 15.

²¹² Scheduling and Planning Conference report, page 2.

²¹³ Opposition to the Motion to dismiss Complaint, pg. 24.

- "CLIA states that one example of CBJ's use of entry fees to fund projects that have no relationship to any costs imposed on CBJ by cruise visitors and vessels is CBJ's use of entry fees revenues to fund a man-made recreational island..."²¹⁴
- "CBJ has continued to use the entry fee revenues for projects and services that do not bear the legally required relationship to cruise vessels and their passengers."²¹⁵
- **REDACT** 216

N. CBJ's use of fees to defend this lawsuit

In paragraph 27 of the First Amended Complaint, the Plaintiffs allege certain identified expenditures they claim were improper, including the payment of attorneys' fees to outside counsel to defend this litigation. The CBJ did fund some of the defense of this lawsuit by the MPF.²¹⁷ The CBJ is not currently using MPF funds for this lawsuit.²¹⁸

The Plaintiffs have not filed suit against Ketchikan for a declaration that Ketchikan's passenger fees are unlawful and for a permanent injunction against the collection of those fees.²¹⁹ The Plaintiffs are assessed passenger fees in ports throughout the United States.²²⁰ To CBJ's knowledge, the Plaintiffs have not filed any action against any of these government entities seeking a declaration that the fees are unlawful and a permanent injunction to enjoin the

²¹⁴ Response to Interrogatory No. 20, and 23 provided with Exhibit AY.

²¹⁵ Response to Interrogatory No. 24, provided with Exhibit AY.

²¹⁶ Exh. KT, page 3 **REDACT** bate stamped CLIA023666C. **REDACT**

No passengers are listed as plaintiffs
in this case and CLIA has admitted they do not have any complaints from passengers regarding the fees. (See CLIA's response to Request For Admission 67, provided as part of Exh. CX).

²¹⁷ Bartholomew Affidavit.

²¹⁸ Bartholomew Affidavit.

²¹⁹ The same marine passenger fees and port development fees are collected by the City of Ketchikan, although the total is \$7.00 in Ketchikan, where it is \$8.00 in Juneau.

²²⁰ See CBJ's Request for Admission No. 15 and CLIA's Response to No. 15, attached as part of Exhibit AS. The table shows the port fees and the source document for each port fee. CBJ submitted a Request for Admission to CLIA to admit the accuracy of the fees for each port. CLIA asserted many and varied objections to the Request and ultimately refused to answer saying it did not have sufficient information to admit or deny the Request. CLIA's members do know what fees they pay in the ports where they bring cruise ships; See also Exh BA, CLIA0004035 written by Royal Caribbean Don Habeger.

collection of all the fees. CBJ asserts the Court can take judicial notice that these other ports have populations which far exceed the year-round population of Juneau.

The Juneau fees are a small fraction of the total passenger ticket prices.²²¹ To protect the benefits and services for those very companies, crew and passengers, the Assembly has determined the importance of defending its right to charge a nominal passenger fee of \$5.00 and nominal port development fee of \$3.00 (when compared to the passenger and dock fees charged by other ports in the United States) justifies the use of the marine passenger fees to fund the defense and preserve the benefits those fees provide to the CLIA members, their crews and passengers.

HOFFMAN & BLASCO, LLC

Dated: February 9, 2018

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Watt, in his official capacity as City Manager

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Dated: February 9, 2018

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Watt, in his official capacity as City Manager

CERTIFICATE OF SERVICE

The undersigned certifies that on February 9, 2018 a true and correct copy of the foregoing **CITY AND BOOUGH OF JUNEAU AND RORIE WATT'S (CBJ) STATEMENT OF FACTS IN SUPPORT OF CBJ'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO**

²²¹ Request for Admission No. 11 and CLIA's Response, part of Exh. AS. It is not believable that the CLIA members have no knowledge as to what ticket prices they advertise for and charge their passengers.

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

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

CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S (CBJ) STATEMENT OF FACTS IN SUPPORT OF CBJ'S CROSS-MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CBJ'S MOTION TO STRIKE CERTAIN EXHIBITS Page 35 of 36

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF CBJ'S MOTION TO STRIKE CERTAIN EXHIBITS was served on the following parties of record via ECF:

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