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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

CRUISE LINES INTERNATIONAL
ASSOCIATION ALASKA, *et al.*,

Plaintiffs,

v.

THE CITY AND THE BOROUGH OF
JUNEAU, ALASKA, *et al.*,

Defendants.

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

**PLAINTIFFS' MOTION TO STRIKE
THE AFFIDAVIT OF BRUCE
BOTELHO (ECF NO. 131)**

Plaintiffs Cruise Lines International Association and Cruise Lines International Association Alaska (“Plaintiffs” or “CLIA”) respectfully request that this Court strike the affidavit of Bruce Botelho (“Mr. Botelho”), ECF No. 131, (the “Affidavit” or “Botelho Aff.”) submitted by Defendants the City and Borough of Juneau and Rorie Watt (collectively, “CBJ”) in support of CBJ’s Cross-Motion for Summary Judgment and opposition to Plaintiffs’ Motion for Summary Judgment. As discussed further herein, CBJ fails to identify the Affidavit by page

and line or paragraph number when citing to the Affidavit in its summary judgment filings. This failure warrants the exclusion of Mr. Botelho's Affidavit.

ARGUMENT

Mr. Botelho's Affidavit should be stricken in its entirety for CBJ's practice of citing to the entirety of Mr. Botelho's Affidavit to support the various factual assertions and legal conclusions in its summary judgment filings. For example, CBJ "supports" the following statements by a summary reference to "Affidavit of Botelho":

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.

CBJ Smt. Facts Supp. Mot. Summ. J. at 13, ECF No. 118-2.

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.

Id.

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.

Id. at 14.

Waiting fourteen years to challenge the adoption of the PDF resolution, eight years after the Plaintiffs affirmatively supported the fee, constitutes an unreasonable and prejudicial delay.

CBJ Mot. Summ. J. at 19, ECF No. 118.

CBJ relied on that statement and conduct by planning and developing numerous infrastructure improvements, including a new dock, using the Port Development Fee supported by the Plaintiffs.

Id. at 19-20.

Moreover, CBJ's failure to cite to specific paragraphs of the Affidavit puts a greater burden on the Court than is permissible and essentially delegates to this Court, and to CLIA, the

responsibility for divining which of Mr. Botelho's statements support the factual assertions in CBJ's filings. "This defect alone warrants exclusion of the evidence." *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 775 (citing *Huey v. UPS, Inc.*, 165 F.3d 1084, 1085 (7th Cir. 1999) ("[J]udges need not paw over the files without assistance from the parties.")); *Goped Ltd v. Amazon.com Inc.*, 2018 WL 834591, at *4 (D. Nev. Feb. 12, 2018) (excluding from considering on summary judgment a declaration that was cited to generally, but not by page or line number); *Wu v. Boeing Co.*, 2012 WL 3627510, at *7 (C.D. Cal. Aug. 22, 2012) (denying summary judgment in part because the movant "provide[d] no page or paragraph citation to the declarations that she cites to support her claim"); *Witherow v. Crawford*, 2006 WL 2462901, at *3 (D. Nev. Aug. 23, 2006) (applying to motion for preliminary injunction). Mr. Botelho's Affidavit should be stricken.

CONCLUSION

For the foregoing reason, CLIA respectfully requests that the Court strike Mr. Botelho's Affidavit in its entirety and further strike, and not consider, all facts in CBJ's proposed Statement of Facts that rely on Mr. Botelho's Affidavit because without Mr. Botelho's Affidavit, such fact statements are unsupported, conclusory, and therefore cannot be considered on Summary Judgment.

DATED: March 23, 2018

Respectfully submitted,

By: /s/ C. Jonathan Benner

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CERTIFICATE OF SERVICE

I certify that on March 23, 2018, I caused a true and correct copy of the foregoing Motion to be filed using the Court's Electronic Case Files System ("ECF"). The document is available for review and downloading via the ECF system, and will be served by operation of the ECF system upon all counsel of record.

/s/ Kathleen E. Kraft
