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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' REPLY IN SUPPORT
OF MOTION TO TAKE JUDICIAL
NOTICE IN CONNECTION WITH
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND
STATEMENT OF FACTS IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Plaintiffs Cruise Lines International Association and Cruise Lines International Association Alaska ("Plaintiffs" or "CLIA") file this reply to address Defendant City and Borough of Juneau and Rorie Watt's (collectively, "CBJ" or "Defendants") Partial Opposition to Plaintiff's Motion to Take Judicial Notice in Connection with Plaintiffs' Motion for Summary

Judgment and Statement of Facts in Support of Motion for Summary Judgment, ECF No. 115-1, (“Partial Opposition” or “Partial Opp.”).

CLIA’s Motion to Take Judicial Notice, ECF No. 79, (“Motion”) asks this Court to take judicial notice of three categories of exhibits: (i) statutes, ordinances, resolutions, and code provisions; (ii) CBJ documents available publicly online; and (iii) documents available publicly online from reliable sources. CBJ does not oppose CLIA’s request for judicial notice of any of the exhibits referenced in CLIA’s Motion. For the reasons set forth in CLIA’s Motion and in this Reply, CLIA’s Motion should be granted.

ARGUMENT

In its Partial Opposition, CBJ does not oppose the legal authority that CLIA cites as the basis for this Court taking judicial notice of the exhibits referenced in CLIA’s Motion. Partial Opp. at 1. Instead, CBJ objects to CLIA’s use of certain exhibits. CBJ does not offer substantive arguments regarding its objection to the use of specific exhibits, instead referring the Court to CBJ’s separately-filed Motion to Strike. CLIA will address those arguments in a separately-filed opposition to CBJ’s Motion to Strike.

Rather, CBJ objects to Paragraph 6 of the Declaration of Kathleen E. Kraft, ECF No. 78, (“Kraft Declaration” or “Kraft Decl.”), a declaration that was not submitted as part of CLIA’s Motion to Take Judicial Notice. Paragraph 6 of Ms. Kraft’s Declaration sets forth the well-taken proposition that documents produced in discovery are self-authenticating, constitute admissions, and are properly considered on a motion for summary judgment. *Welenco, Inc. v. Corbell*, 126 F. Supp. 3d 1154, 1163–64 (E.D. Cal. 2015); *see* Kraft Decl. ¶ 6.

CLIA's Motion to Take Judicial Notice does not reference or rely upon Ms. Kraft's Declaration. *See generally* Motion. The Motion requests that this Court take judicial notice of 78 exhibits filed in connection with CLIA's Motion for Summary Judgment –all of which CLIA obtained from reliable public sources, and none of which are documents that CBJ produced in discovery.¹ There is no reason for this Court to consider CBJ's partial opposition on this point. Authority within the Ninth Circuit supports authentication of documents "by judicial admission, such as . . . production of the items at issue in response to a discovery request." *Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, Ltd.*, 454 F. Supp. 2d 966, 972 (C.D. Cal. 2006). The Court can determine for itself that the documents produced by CBJ in discovery are self-authenticating and admissible in the context of CLIA's Motion for Summary Judgment based on Ms. Kraft's attestation that:

4. On or about December 12, 2016, August 14, 2017, September 15, 2017, and September 22, 2017, Defendant The City and Borough of Juneau, Alaska ("CBJ" or "Juneau") and Defendant Rorie Watt (together "Defendants") transmitted documents listed in their Initial Disclosure Statement and/or documents responsive to CLIA's Requests for Production. Those productions included the following documents that are cited in support of Plaintiffs' Motion: Exhibits 003, 004, 014, 016, 022 through 068, and 135.
5. The documents referenced in Paragraph No. 4 were produced by Defendants pursuant to their initial disclosure obligations and/or in response to discovery requests propounded by CLIA in the above-captioned matter.

Kraft Decl. ¶¶ 4-5. Further, the Court can determine whether any or all of these documents should be treated as admissions by CBJ in accordance with Ninth Circuit authority. *See Corbell*, 126 F. Supp. 3d at 1163 ("[d]ocuments produced in response to discovery requests are admissible on a motion for summary judgment since they are self-authenticating and constitute

¹ It may be that CBJ produced duplicate copies of some of the exhibits referenced in CLIA's Motion to Take Judicial Notice. However, none of the documents for which CLIA seeks judicial notice are documents that CLIA extracted from CBJ's document production.

the admissions of a party opponent”); *see also Maljack Prods., Inc. v. GoodTimes Home Video Corp.*, 81 F.3d 881, 889 n.12 (9th Cir. 1996) (district court did not err in considering documents submitted on a motion for summary judgment where the documents were produced by the nonmovant in discovery, many of the documents were on the nonmovant’s company letterhead, and the nonmovant did not contest their authenticity).²

CONCLUSION

For these reasons, CLIA respectfully requests that the Court grant CLIA’s Motion to Take Judicial Notice as originally requested and provide CLIA with such other and further relief as is just and appropriate under the circumstances.

DATED: March 23, 2018

Respectfully submitted,

By: /s/ C. Jonathan Benner

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² CBJ has not challenged the authenticity of the documents it has produced in discovery in the context of these summary judgment proceedings. “An opposing party may not subsequently challenge an attorney’s ability to authenticate documents attached to her declaration that were previously provided by the opposing party without objection as to their authenticity.” *BP Expl. & Prod. Inc. v. Cashman Equip. Corp.*, No. H-13-3046, 2016 WL 1387907, at *11 (S.D. Tex. Apr. 8, 2016); *Shell Trademark Mgt. BV & Motiva Enters., LLC v. Ray Thomas Petroleum Co., Inc.*, 642 F. Supp. 2d 493, 511 (W.D.N.C. 2009) (same).

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
