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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

**OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE THE AFFIDAVIT OF BRUCE  
BOTELHO**

Defendants, The City and Borough of Juneau, Alaska, a municipal corporation, and Rorie Watt, in his official capacity as City Manager (hereafter collectively CBJ), hereby file their opposition to Docket 151, *Plaintiffs' Motion to Strike the Affidavit of Bruce Botelho (ECF No. 131)*, that was submitted with the CBJ's Cross Motion for Summary Judgment and Opposition to CLIA's Motion for Summary Judgment.

CLIA's only argument to strike Mr. Botelho's Affidavit is that CBJ failed to identify the Affidavit by page and line or paragraph number when citing the Affidavit in its summary judgment filings.<sup>1</sup> CLIA argues that citing the Affidavit in general puts an impermissible burden on the Court.<sup>2</sup>

CBJ does not agree that the case law required CBJ to cite the specific paragraphs of Mr. Botelho's Affidavit in the Summary Judgment pleadings. Rule 56(c) requires a party to assert a fact as disputed by citing to particular parts of the materials in the record, which can include citations to affidavits.<sup>3</sup> CBJ has not found any District of Alaska cases which require citation to specific paragraphs of an Affidavit in support of an Opposition to Summary Judgment or a Cross Motion for Summary Judgment.

CLIA cited five cases in its motion from other jurisdictions, none of which had factual similarities to Mr. Botelho's Affidavit and the pleadings:

The court in *Orr* found that the party had failed to present any admissible evidence to raise a triable issue of material fact and therefore summary judgment was denied.<sup>4</sup> That case involved the admissibility of exhibits containing hearsay or lack of proper foundation and did not involve an affidavit.<sup>5</sup> The court faulted the plaintiff for referring to a deposition without citing page and line numbers which made the evidence hard to evaluate.<sup>6</sup> The court noted that a decision to exclude evidence is in the trial court's discretion.<sup>7</sup>

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<sup>1</sup> Motion to Strike, at 2.

<sup>2</sup> Motion to Strike, at 2-3.

<sup>3</sup> Civil Rule 56(c)(1).

<sup>4</sup> *Orr v. Bank of America*, 285 F.3d 764, 771 (9th Cir. 2002). The court did find issues with some of the foundations on the exhibits. *Id.* at 772-773.

<sup>5</sup> *Id.* at 772-773.

<sup>6</sup> *Id.* at 775.

<sup>7</sup> *Id.* at 775.

*Huey v. UPS* did not involve an affidavit at all; one party failed to provide any evidence or a list of facts in dispute in response to summary judgment.<sup>8</sup>

*Wu v. Boeing* did not include any discussion on citing to specific lines or paragraphs for affidavits.<sup>9</sup> The court discussed how a court should consider evidence set forth in the moving and opposing papers and the portions of records cited therein.<sup>10</sup>

*Witherow* involved a court adopting the magistrate's opinion.<sup>11</sup> The only evidence provided for a motion for preliminary injunction was a self-serving affidavit of the plaintiff.<sup>12</sup> The court found the affidavit did not support the contention that the plaintiff would prevail on the merits as needed for a preliminary injunction.<sup>13</sup>

These four cases did not involve a motion to strike an affidavit, and as the numerous pleadings in this case show, what issues of fact are outstanding and whether those are material are issues in this case is to be decided upon review of all the pleadings. CBJ has submitted numerous pieces of evidence to support their Opposition to CLIA's Summary Judgment Motion and their Cross-Motion for Summary Judgment and this case does not involve a situation where the CBJ has failed to provide evidence to support its filings.

*Goped Ltd. LLC v. Amazon.com, Inc.*, states that a nonmoving party may not rely on denials in the pleadings but must produce specific evidence, such as affidavits, which must be made on personal knowledge and set out facts that would be admissible as evidence.<sup>14</sup> The court

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<sup>8</sup> 165 F.3d 1084 (7th Cir. 1999).

<sup>9</sup> 2012 U.S. Dist. Lexis 119233, 2012 WL 3627510 (C.D. Cal. Aug. 22, 2012).

<sup>10</sup> *Id.* at \*6.

<sup>11</sup> *Witherow v. Crawford*, No. CV-N-01-0404-LRH (VPC), 2006 U.S. Dist. Lexis 63540 (D. Nev. May 25, 2006) magistrate's recommendation adopted at 2006 U.S. Dist. Lexis 63517 (D. Nev. Aug. 23, 2006).

<sup>12</sup> *Witherow v. Crawford*, 2006 U.S. Dist. Lexis 63540 \*8 (D. Nev. May 25, 2006).

<sup>13</sup> *Id.*

<sup>14</sup> No. 3:16-cv-00165-MMD-VPC, 2018 WL 834591, 2018 U.S. Dist. LEXIS 22975, at \*6 (D. Nev. Feb. 12, 2018).



in that case found the declaration to be "entirely un navigable" and excluded it.<sup>15</sup> Mr. Botelho's affidavit is not entirely un navigable. It is an easily followed chronology of important facts and events related to the PDF and MPF and the expenditures.<sup>16</sup>

CBJ does not agree that the cases require a cite to specific paragraphs of Mr. Botelho's Affidavit in CBJ's pleadings. The citations to Mr. Botelho in the summary judgment pleadings were general citations that involved facts from several paragraphs of Mr. Botelho's Affidavit and CBJ believed citing to Mr. Botelho's Affidavit in entirety was appropriate. However, to remedy any perceived burden on the Court alleged by CLIA, CBJ has taken CLIA's suggestion, and created tables matching up the citations in CBJ's pleadings to the paragraphs in Mr. Botelho's Affidavit as permissible under Rule 56(e). These tables have been provided as Appendix A to this Opposition.

CBJ respectfully requests that the Court deny CLIA's Motion to Strike the Affidavit of Bruce Botelho, and review the facts in Mr. Botelho's Affidavit and CBJ pleadings in their entirety.

HOFFMAN & BLASCO, LLC

Dated: May 1, 2018

By: /s/ Robert P. Blasco  
Robert P. Blasco, AK Bar #7710098  
Attorneys for the City and Borough of  
Juneau, Alaska, a municipal corporation,  
and Rorie Watt, in his official capacity as  
City Manager

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<sup>15</sup> *Id.* at \*11.

<sup>16</sup> The court order in *Goped* is dated after the February 9, 2018 pleadings were filed with Mr. Botelho's Affidavit. If the Court were to find some procedural fault with Mr. Botelho's Affidavit based on the *Goped* decision, CBJ should be permitted a fair opportunity to correct the alleged procedural fault based on an later decided case.

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

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

OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE THE AFFIDAVIT OF BRUCE BOTELHO

HOFFMAN & BLASCO, LLC

Dated: May 1, 2018

By: /s/ Megan J. Costello  
Megan J. Costello, AK Bar #1212141  
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Juneau, Alaska, a municipal corporation,  
and Rorie Watt, in his official capacity as  
City Manager

**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 1, 2018 a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE THE AFFIDAVIT OF BRUCE BOTELHO** was served on the following parties of record via ECF:

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