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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

**THE CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S (CBJ) REPLY TO  
PLAINTIFFS' RESPONSE TO CBJ'S STATEMENT OF FACTS IN SUPPORT OF  
CROSS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT<sup>1</sup>**

**I. REPLY TO PLAINTIFFS' "STANDARD" SECTION**

The Plaintiffs do not cite to any portion of Federal Rule of Civil Procedure 56 that precludes a party from offering a Statement of Facts in the manner submitted by CBJ. CBJ did

<sup>1</sup> The Plaintiffs filed a Reply to CBJ's Objections to the Plaintiffs' Statement of Facts. CBJ similarly files this Reply to the Plaintiffs' Response to CBJ's Statement of Facts.

cite to the facts in CBJ's statement of facts with citations to the Exhibits and Affidavits submitted.<sup>2</sup>

The cases cited by the Plaintiffs do not cast any aspersion upon the CBJ submission. *Finjan, Inc. v. Blue Coat System*, explained how a party should not rely on portions of cited documents or testimony if the court cannot discern the portion of the citations referred, but found that the documents and citations did cite to the evident in support.<sup>3</sup> *Baldwin v. Colley* reiterates the requirement for a party opposing summary judgment to supply specific evidence, taking issue with a facts section that contained no evidence (such as no affidavits or exhibits) in support.<sup>4</sup> CBJ's Statement of Facts contains specific citations to the evidence provided to the Court, and complies with the holding in *Finjan* and *Baldwin*.<sup>5</sup>

The decision in *Orr v. Bank of America*<sup>6</sup> does not support the Plaintiffs' chastisement of CBJ. The reference in *Orr* to submitting evidence "responsibly" was specifically related to the Plaintiff filing deposition transcripts without any citation to the page and lines relied on.<sup>7</sup> The court said that if a party submits transcripts in that fashion the court "may", in its discretion, exclude the deposition transcripts. CBJ has not submitted deposition transcripts.<sup>8</sup>

As with *Orr*, the Plaintiffs do not accurately cite the decision in *Zoslow v MCA Distributing Corp.*<sup>9</sup> All of CBJ's exhibits can be and would be admissible at trial.<sup>10</sup> *Zoslow*

<sup>2</sup> These Exhibits and Affidavits are Dkts. 118-137.

<sup>3</sup> *Finjan, Inc. v. Blue Coat Sys., LLC*, 15-cv-03295, 2017 U.S. Dist. LEXIS 220192 at \*9 (N. D. Cal. July 28, 2017).

<sup>4</sup> *Baldwin v. Colley*, 15-cv-02762-KAW, 2017 U.S. Dist. LEXIS 55422, \*8-9 (N. D. Cal. April 11, 2017).

<sup>5</sup> The court in *Baldwin* faulted the plaintiffs for not providing any evidence to support their opposition to the defendant's motion for summary judgment. *Id.* at \*9-10. *Baldwin* cited other cases for the proposition that a defendant's motion for summary judgment could arguably be granted based solely on the plaintiff's failure to cite to evidence in the record. CBJ does note for the Court that CLIA failed to provide citations to specific evidence in their opposition to CBJ's Cross Motion for Summary Judgment.

<sup>6</sup> 285 F. 3d 764 (9<sup>th</sup> Cir. 2002). CBJ notes this case was decided before the 2010 amendments to Rule 56.

<sup>7</sup> 285 F. 3d at 775.

<sup>8</sup> The second reference by CLIA to the *Orr* decision is not in quotes and cannot be found in the decision.

<sup>9</sup> 693 F. 2d 870 (9<sup>th</sup> Cir. 1970). CBJ notes this case was decided before the 2010 amendments to Rule 56.

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

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

THE CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S (CBJ) REPLY TO PLAINTIFFS' RESPONSE TO CBJ'S STATEMENT OF FACTS IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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involved the submission of unidentified masses of “files,” with no reference to the pleadings. That situation has no applicability to CBJ’s submission of exhibits and affidavits which are cited in the pleadings.

## II. REPLY TO THE PLAINTIFFS’ “ARGUMENT” SECTION

In the main, the Plaintiffs provide their opinions of the CBJ Statement of Facts and exhibits, which opinions are of no legal or factual significance.

### 1. Reply to Plaintiffs’ Characterization of CBJ Facts as “Misleading”

CBJ provided the Court with the complete Exhibits AV, AW (identical to AV),<sup>11</sup> BA and BB. The Plaintiffs attempt to argue how they want the Court to interpret what their representatives or members said in those exhibits.<sup>12</sup> Because the Plaintiffs want the Court to interpret the exhibits a different way than CBJ does not make the CBJ statement of facts, quoting to and citing to the exhibits “misleading.”

Similarly, the Plaintiffs offer a different “spin” on Exhibit KB related to CLIA members’ spending on lobbying. This reference is in a footnote at page 4 of the CBJ Statement of Facts. Exhibit KB shows that the money for lobbying spent by the CLIA members in 2016 was the highest spent since 2012. There is nothing misleading about the CBJ exhibit.

These two examples are the only examples offered by CLIA as “misleading” from CBJ’s entire Statement of Facts.

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<sup>10</sup> CBJ’s Exhibits are public government records, business records, and records of party-opponent. CLIA did not file a motion to strike any of these exhibits.

<sup>11</sup> Exh. AW was marked “Confidential” by CLIA, but CLIA in Dkt. 157 states it is no longer confidential. Exh AW shows that the article was supported by Princess Cruises, so at least both Princess Cruises and Holland America (two CLIA members) supported this article and admit that the taxes are paid by the passengers, and do not impact their decision on where to dock. CLIA also cites that Exhibit AF is the same (Dkt. 148-2, at 4), however that must be a typo by CLIA. Exhibit AF shows the foreign flag of a Disney ship, and is not an article about the fees.

<sup>12</sup> Plaintiffs’ Response, p. 4, Dkt. 148-2.

2. Reply to Plaintiffs' Assertion of Unsupported Factual Assertions and Conclusions

CLIA attempts to take all of these sentences out of context, failing to acknowledge that these are sentences supported by the paragraphs they are in, and the exhibits cited by the supporting sentences.

*CLIA Reference page 6:* The statement CLIA takes issue with is not located in CBJ's page 6, but is actually listed on page 5 of the Motion. CBJ's statement is a true statement and is supported by multiple exhibits cited in the same paragraph: CG, CH, CI, KF, KG, KH and KI. CLIA has admitted that there will be a record number of 1,300,000 passengers in Juneau next year and CLIA has never denied that its passengers pay the fees in ticket prices, which range from \$600 into the thousands of dollars, all of which is shown by the passenger contracts provided by CBJ for the Court.<sup>13</sup>

*CLIA Reference page 8:* This information is directly supported by a report prepared by the Plaintiffs' expert, Exhibit CJ. This statement is also supported by the proceeding three paragraphs in the statement of facts, the remainder of the paragraph the sentence is in, and the exhibits cited therein.<sup>14</sup>

*CLIA Second Reference page 8:* This statement is supported by the same proceeding paragraphs and exhibits above.<sup>15</sup> This information also comes from the Affidavit of the Plaintiffs' expert, and Exhibit KO.<sup>16</sup>

*CLIA Reference pages 13-14:* This sentence is supported by the four proceeding sentences in that paragraph, and the exhibits cited therein. CBJ did in fact incur substantial

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<sup>13</sup> See Exhibit D and E, and Exhibit AS, response to RFA 54, as well as Exhibits AW and AV discussed above.

<sup>14</sup> See the paragraphs located in Dkt. 118-2, page 7, and Exhibits cited: CJ, C, KL, A, KM, D, E, KN.

<sup>15</sup> See the paragraphs located in Dkt. 118-2, page 7, and Exhibits cited: CJ, C, KL, A, KM, D, E, KN.

<sup>16</sup> Marked by CLIA as "Confidential."

indebtedness with the express intent to pay the indebtedness with the PDF, and CBJ provided citations for that information.<sup>17</sup> CBJ also attaches Exhibit MM, the actual Ordinance that incurred the bond indebtedness that specifically references the use of the PDF.<sup>18</sup>

*CLIA Reference page 18:* CLIA's complaint is about an introductory sentence supported by an entire section that fully supports the statement with 18 specific exhibits.<sup>19</sup>

*CLIA Reference page 23, fn. 143:* CBJ cited to the Federal Statute immediately after the sentence in the footnote as well as law review articles in support.

*CLIA Reference page 28:* CBJ acknowledges this statement is a reason for the Assembly action as opposed to a statement of fact.

Although CLIA claims there are other unsupported assertions of facts, none were provided for CBJ to offer a response. As demonstrated above, what CLIA has done is taken an introductory or summary statement out of context and ignored the actual exhibits cited to support the entire section being addressed by CBJ. The statements are fully supported.

### 3. Reply to Plaintiffs' Assertion that the Exhibits Contradict the CBJ Statement of Fact

The Plaintiffs' complaints here are again their opinions or their spin of the exhibits, not what the exhibits actually say. CBJ cites to certain exhibits. CLIA lifts partial quotes from those exhibits, offers their interpretation, and then says their interpretation contradicts CBJ.<sup>20</sup> CBJ will

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<sup>17</sup> CBJ cited the Affidavit of Bartholomew and Watt as supporting the sentences in this paragraph. The specific paragraphs are Para. 26-39; and Affidavit of Watt, Para. 24-34

<sup>18</sup> CBJ submits Exhibit MM pursuant to F.R.C.P. 56 (d)(1) and (e)(1).

<sup>19</sup> See CBJ's Statement of Facts, pages 18-19, and footnotes 115-117.

<sup>20</sup> For example, CLIA misquotes and leaves out the remainder for Exhibits BI. As shown in Exhibit BI, Mr. Habeger did not limit his approval to the maintenance of the docks, in fact, he was asked if he viewed the fee as authorized for existing maintenance, to which the exhibit notes "Mr. Habeger said he viewed this \$3 fee to be in harmony with any project that was in the waterfront plan." The new projects in the waterfront plan would necessarily mean more than just existing maintenance. (Exhibit BG shows that the Seawalk and new docks were part of plan.)

rely on the Court reviewing the entire exhibits in the context provided and on the issues as presented by CBJ.

4. Reply to the Plaintiffs' Statement that CBJ's Facts are Immaterial, Unsupported or Both

CBJ disagrees, which is why CBJ provided the Court with such a detailed statement of facts and the necessary volume of exhibits. CLIA's entire effort is to get the Court to ignore that the PDF and MPF are different fees, with different purposes, and different uses, and there is an extensive history involving the CLIA members support of the expenditures of both fees. CLIA seeks to have the Court ignore CLIA's burden of proof to identify what expenditures are allegedly unconstitutional and why so that the Court can analyze each allegedly unconstitutional expenditure as the court did in *Bridgeport*.<sup>21</sup> CBJ's Statement of Facts sets out the context of the different fees, the involvement of the CLIA members in the implementation and the expenditures, which are vital aspects of the CBJ defenses and its Opposition to CLIA's Summary Judgment Motion.<sup>22</sup>

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>21</sup> *Bridgeport and Port Jefferson Steamboat Company v. Bridgeport Port Authority*, 567 F. 3d 79 (2nd Cir. 2009); *Bridgeport and Port Jefferson Steamboat Company v. Bridgeport Port Authority*, 566 F. Supp. 2d 81, 103 (D. Conn. 2008).

<sup>22</sup> CLIA agrees they are not asking for a ruling on the sentences in Exhibit B, which CLIA claims are not supported by the record or are objected to. As CLIA does not ask for a ruling, CBJ will not provide the Court with unnecessary responses. CBJ reserves the right to respond to CLIA's Exhibit B allegations, should CLIA ask for a ruling at a later date.

Dated: May 1, 2018

By: /s/ Megan J. Costello  
Megan J. Costello, AK Bar #1212141  
Attorneys for the City and Borough of  
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 **THE CITY AND BOROUGH OF JUNEAU AND RORIE WATT'S (CBJ) REPLY TO PLAINTIFFS' RESPONSE TO CBJ'S STATEMENT OF FACTS IN SUPPORT OF CROSS MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT** was served on the following parties of record via ECF:

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