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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

**CRUISE LINES INTERNATIONAL
ASSOCIATION'S AND CRUISE LINES
INTERNATIONAL ASSOCIATION
ALASKA'S OBJECTIONS AND
RESPONSES TO CBJ'S SECOND SET OF
REQUESTS FOR ADMISSION AND
FIFTH SET OF REQUESTS FOR
PRODUCTION**

Pursuant to Fed. R. Civ. P. 26(b)(1), 34, and 36 and LCvR 26.1, Plaintiffs Cruise Lines International Association (“CLIA Global”) and Cruise Lines International Association Alaska (“CLIA Alaska”) and collectively with CLIA Global, “CLIA”), by and through undersigned counsel, responds to the Second Set of Requests for Admissions (each, an “RFA” and collectively, the “RFAs”) and Fifth Set of Requests for Production (each, an “RFP” and collectively, the “RFPs”) served by Defendants City and Borough of Juneau, Alaska and Rorie Watt, in his official capacity as City Manager (together, “CBJ”).

OVERARCHING OBJECTIONS

I. In accordance with Fed. R. Civ. P. 26-36, CLIA objects to and declines to be bound by CBJ's "INSTRUCTIONS" and "DEFINITIONS" to the extent they exceed the Federal Rules of Civil Procedure and/or purport to require of CLIA more than the Federal Rules of Civil Procedure require. In particular, but in no way limiting CLIA's objections, CLIA objects and declines to be bound by the following:

- A. *CBJ's instruction regarding explanation of denials and objections.* This instruction purports to require CLIA to "state the reasons for [its] objection or denial" in the event that CLIA "objects to or denies any Request or portion of a Request." CLIA objects to this instruction as it is outside the scope of Fed. R. Civ. P. 36(a)(4).
- B. *CBJ's instruction regarding from whom each RFA solicits information.* This instruction purports to impose on CLIA the obligation to "solicit all information obtainable by Plaintiff from Plaintiff's members, attorneys, investigators, agents, employees, and representatives" in response to each RFA. CLIA objects to this instruction as outside the scope of Fed. R. Civ. P. 36. CLIA's members are not subject to CLIA's control. CLIA further objects to this instruction as outside the scope of Fed. R. Civ. P. 36 to the extent it requests information from parties that are not within CLIA's control.
- C. *CBJ's instruction regarding CLIA's "reasonable inquiry."* This instruction purports to require CLIA to "describe any and all efforts [CLIA] made to inform [itself] of the facts and circumstances necessary to answer or respond" whenever CLIA lacks sufficient information to admit or deny an RFA. CLIA objects to this instruction's use of the phrase "any and all," as this is outside the scope of Fed. R. Civ. P. 36. Further, CLIA objects to this instruction because it violates multiple privileges, including but not limited to the attorney-client privilege and protections afforded by the work-product doctrine.

D. *CBJ's definition of "Plaintiffs."* CLIA objects to this definition because it contains cruise lines who are members of CLIA. The cruise line members of CLIA are not plaintiffs in this litigation. CLIA further objects to this definition insofar as "Plaintiffs" is defined as any person except for CLIA Global and CLIA Alaska.

II. To the extent CBJ intended to incorporate by reference instructions and definitions from previous CBJ Requests for Production to CLIA, CLIA objects and declines to be bound as follows:

A. *CBJ's prior Production instruction regarding privilege.* CLIA objects to this instruction as outside the scope of Fed. R. Civ. P. 26 and 34. CLIA will produce a privilege log with the information required by Fed. R. Civ. P. 26(b)(5)(A).

B. *CBJ's prior Production instruction regarding absence of documents "in the . . . custody or control of a Member. . ."* CLIA objects to this instruction on the grounds that it imposes obligations outside the scope of Fed. R. Civ. P. 34, as CLIA has no responsibility to search for, obtain, or produce documents outside of the possession, custody, or control of CLIA.

C. *CBJ's prior Production instruction regarding document labeling.* CLIA objects to this instruction. CLIA states that it will produce documents as they are kept in the usual course of business pursuant to Fed. R. Civ. P. 34(b)(2)(E)(i). Further, CLIA will produce documents in a format that adheres to the parties' agreement in the Scheduling and Planning Conference Report ("Rule 26(f) Report") (ECF No. 43, filed 12/08/16).

D. *CBJ's prior Production instruction regarding refusals and/or objections.* CLIA objects to this instruction as outside the scope of Fed. R. Civ. P. 34, which only requires that "the response . . . state with specificity the grounds for objecting to the request, including the reasons." Fed. R. Civ. P. 34(b)(2)(B).

E. *CBJ's prior Production instruction regarding lost, destroyed, or mutilated documents.* CLIA objects to this instruction as beyond the scope and requirements of Fed. R. Civ. P. 34.

F. *CBJ's prior Production definition of "Plaintiffs."* CLIA objects to this definition because it contains cruise lines who are members of CLIA. The cruise line members of CLIA are not plaintiffs in this litigation. CLIA further objects to this definition insofar as "Plaintiffs" is defined as any person except for CLIA Global and CLIA Alaska.

III. CLIA submits these responses without conceding the relevancy or materiality of the subject matter of any request and without prejudice to CLIA's right to object to further discovery or to the admissibility of any additional proof on the subject matter of any response at the time of trial.

IV. CLIA's responses and objections are based on information currently known to CLIA. CLIA reserves the right to supplement its responses as its investigation and discovery continues; CLIA, however, assumes no obligation to supplement its responses beyond that imposed by the Federal Rules of Civil Procedure or court orders.

OBJECTIONS AND RESPONSES TO REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION

REQUEST FOR ADMISSION NO. 58: Admit that on May 10, 2000, the Assembly Finance Committee approved a formula that continues to be used in part to determine an amount of Marine Passenger Fees to be transferred to the General Government Fund for department operation expenses for those departments providing services cruise ships, passengers and/or crew. See Attached Exhibit A, Bates CLIA10705-10706.

RESPONSE: CLIA objects to this RFA as compound because it seeks admission as to multiple facts, *i.e.*, the Assembly Finance Committee's approval of a formula, the continued use of that formula, and the manner in which that formula is used.

Subject to and without waiving this objection and CLIA's Overarching Objections, CLIA denies this RFA except as follows: (1) CLIA admits that the Assembly Finance Committee approved a formula for allocating marine passenger fee proceeds to CBJ's general government fund on or about May 10, 2000; and (2) CLIA further admits that the formula for allocation of the marine passenger fee funds to "general government" are "only [for] those functions that are available for use by cruise ship passengers", *see* CBJ01494; CLIA010708. In further response, CLIA states that the functions referenced in CBJ01494

contents of a referenced or unreferenced statute or regulation. This RFA does not relate to facts, the application of law to fact, or opinions about either—the only permissible subject of an RFA. CLIA has no special knowledge that would enable it to answer the request with any more certainty than CBJ or the court through judicial notice.

Subject to and without waiving its objections and the Overarching Objections, CLIA denies this RFA except as follows: CLIA admits that CBJ Code 69.20.120(a) contains the quoted language in RFA No. 66.

REQUEST FOR ADMISSION NO. 67: Admit that, since 2008, CBJ Code 69.20.120(b) has required the city manager to annually solicit for Marine Passenger Fee project requests by posting on the CBJ website no later than December 1.

Response: CLIA objects to this RFA on the grounds that it calls for a legal conclusion. CLIA objects to this RFA because it impermissibly relates to law—simply asking that CLIA confirm the contents of a referenced or unreferenced statute or regulation. This RFA does not relate to facts, the application of law to fact, or opinions about either—the only permissible subject of an RFA. CLIA has no special knowledge that would enable it to answer the request with any more certainty than CBJ or the court through judicial notice.

Subject to and without waiving its objections and the Overarching Objections, CLIA denies this RFA except as follows: (1) CLIA admits that CBJ Code 69.20.120(b)(1) states that the “manager shall annually solicit for marine passenger fee project requests”; (2) CLIA further admits that CBJ Code 69.20.120(b)(1) states that the “solicitation will be posted on the CBJ website no later than December 1”; and (3) CLIA further admits that CBJ amended CBJ Code 69.20.120 through approval of CBJ Ordinance 2008-07 on or about March 10, 2008.

REQUEST FOR ADMISSION NO. 68: Admit that CBJ Code 69.20.120(b) requires that the manager annually — and no later than January 1 — prepare a draft list of projects and programs proposed for funding in the City and Borough budget for the following year by revenues from what the Plaintiffs term the "Entry fees" referenced in the Amended Complaint.

Statter Harbor are visiting Juneau on a cruise ship." See attached Exhibit H, Bates CBJ180955-180958.

Response: CLIA objects to this RFA on the grounds that the referenced document speaks for itself. CLIA further objects to this RFA because this RFA violates the best evidence rule in that it seeks to assert what is set forth in a document although the document itself is the best evidence of what is set forth.

Subject to and without waiving this objection and CLIA's Overarching Objections, CLIA denies this RFA except as follows: CLIA admits that the document titled "Statter Harbor Passenger Data, For-Hire Commercial Charters, A Report to CBJ Docks and Harbors, by Sheinberg Associates" contains the quoted language in RFA No. 93. *See* CBJ180955-180958.

REQUEST FOR ADMISSION NO. 94: Admit that you do not contest the accuracy of the Sheinberg Associates "Results: In 2015, approximately 86% of passengers (53,250) onboard for-hire commercial charters using Statter Harbor are visiting Juneau on a cruise ship."

Response: CLIA objects to this RFA on the grounds that the referenced document speaks for itself. CLIA further objects to this RFA because this RFA violates the best evidence rule in that it seeks to assert what is set forth in a document although the document itself is the best evidence of what is set forth. CLIA additionally objects to this RFA on the grounds that a determination of the accuracy or inaccuracy of the quoted statement may require expert testimony. CLIA further objects to this RFA as unduly burdensome because it seeks an admission as to the accuracy of research conclusions made by a professional planning firm after analyzing data that is not readily available to CLIA.

Subject to and without waiving these objections and CLIA's Overarching Objections: (1) CLIA admits that the document titled "Statter Harbor Passenger Data, For-Hire Commercial Charters, A Report to CBJ Docks and Harbors, by Sheinberg Associates" contains the quoted language in RFA No. 94 (*see* CBJ180955-180958); and (2) CLIA further states that after reasonable inquiry, the information CLIA knows or can readily obtain is insufficient to enable CLIA to admit or deny the remainder of this RFA. CLIA's reasonable inquiry included review of available information in its possession, custody, or control,

review of CBJ-produced records, and online searches. By referencing its inquiry efforts in this response, CLIA does not waive and specifically preserves any applicable privilege, including the attorney-client privilege and those protections afforded by the work-product doctrine.

REQUEST FOR PRODUCTION NO. 54: If your answer to Request for Admission 94 is anything other than an unqualified admission, provide all documents of any kind and any nature which you contend or believe demonstrates or show that the Sheinberg Associations result that "In 2015, approximately 86% of passengers (53,250) onboard for-hire commercial charters using Stater Harbor are visiting Juneau on a cruise ship," is not accurate, whether in whole or in part. If you contend you have already provided documents to dispute the accuracy of those Results, identify those documents specifically by Bates number.

Response: CLIA objects to this Request to the extent it seeks documents outside the possession, custody, or control of CLIA and/or reasonably available to CBJ from a more convenient, less burdensome, or less expensive source than CLIA. CLIA further objects to this Request to the extent it seeks to require CLIA to identify documents responsive to the request. Such a request is an interrogatory, not a request for production. Since CBJ has already propounded more than 25 interrogatories on CLIA Global and CLIA Alaska, CLIA objects on the basis of Fed. R. Civ. P. 33(a)(1). *See* D. Ak. L.R. 33.1(b)(2). CLIA also objects to this Request to the extent it requests CLIA to identify those documents responsive to this Request by Bates stamped number because such an exercise is not required by the Federal Rules. *See* Fed. R. Civ. P. 34(b)(2)(B). CLIA additionally objects to this Request to the extent it seeks documents subject to and/or protected by any applicable privileges, including the attorney-client privilege and those protections afforded by the work-product doctrine.

Subject to and without waiving these objections and CLIA's Overarching Objections, CLIA states that CLIA does not have documents responsive to this Request.

REQUEST FOR ADMISSION NO. 95: Admit that Shienberg Associates reported as "Results: In 2015, cruise ship companies made an estimated \$1.2 million from onboard sales of excursions that use Statter Harbor." See attached Exhibit H, Bates CBJ180955-180958.

Response: CLIA objects to this RFA on the grounds that the referenced document speaks for itself. CLIA further objects to this RFA because this RFA violates the best evidence rule in that it seeks

to assert what is set forth in a document although the document itself is the best evidence of what is set forth.

Subject to and without waiving this objection and CLIA's Overarching Objections, CLIA denies this RFA except as follows: CLIA admits that the document titled "Statter Harbor Passenger Data, For-Hire Commercial Charters, A Report to CBJ Docks and Harbors, by Sheinberg Associates" contains the quoted language in RFA No. 95. *See* CBJ180955-180958.

REQUEST FOR ADMISSION NO. 96: Admit that you do not contest the accuracy of the Shienberg Associates "Results: In 2015, cruise ship companies made an estimated \$1.2 million from onboard sales of excursions that use Statter Harbor."

Response: CLIA objects to this RFA on the grounds that the referenced document speaks for itself. CLIA further objects to this RFA because this RFA violates the best evidence rule in that it seeks to assert what is set forth in a document although the document itself is the best evidence of what is set forth. CLIA additionally objects to this RFA on the grounds that a determination of the accuracy or inaccuracy of the quoted statement may require expert testimony. CLIA further objects to this RFA as unduly burdensome because it seeks an admission as to the accuracy of research conclusions made by a professional planning firm after analyzing data that is not readily available to CLIA.

Subject to and without waiving these objections and CLIA's Overarching Objections: (1) CLIA admits that the document titled "Statter Harbor Passenger Data, For-Hire Commercial Charters, A Report to CBJ Docks and Harbors, by Sheinberg Associates" contains the quoted language in RFA No. 96 (*see* CBJ180955-180958); and (2) CLIA states that after reasonable inquiry, the information CLIA knows or can readily obtain is insufficient to enable CLIA to admit or deny the remainder of this RFA. CLIA's reasonable inquiry included review of available information in its possession, custody, or control, review of CBJ-produced records, and online searches. By referencing its inquiry efforts in this response, CLIA does not waive and specifically preserves any applicable privilege, including the attorney-client privilege and those protections afforded by the work-product doctrine.

REQUEST FOR PRODUCTION NO. 55: If your answer to Request for Admission 96 is anything other than an unqualified admission, provide all documents of any kind and any nature which you contend or believe demonstrates or show that the Sheinberg Associations result that "In 2015, cruise ship companies made an estimated \$1.2 million from onboard sales of excursions that use Statter Harbor" is not accurate, whether in whole or in part. If you contend you have already provided documents to dispute the accuracy of those Results, identify those documents specifically by Bates number.

Response: CLIA objects to this Request to the extent it seeks documents outside the possession, custody, or control of CLIA and/or reasonably available to CBJ from a more convenient, less burdensome, or less expensive source than CLIA. CLIA further objects to this Request to the extent it seeks to require CLIA to identify documents responsive to the request. Such a request is an interrogatory, not a request for production. Since CBJ has already propounded more than 25 interrogatories on CLIA Global and CLIA Alaska, CLIA objects on the basis of Fed. R. Civ. P. 33(a)(1). *See* D. Ak. L.R. 33.1(b)(2). CLIA also objects to this Request to the extent it requests CLIA to identify those documents responsive to this Request by Bates stamped number because such an exercise is not required by the Federal Rules. *See* Fed. R. Civ. P. 34(b)(2)(B). CLIA additionally objects to this Request to the extent it seeks documents subject to and/or protected by any applicable privileges, including the attorney-client privilege and those protections afforded by the work-product doctrine.

Subject to and without waiving these objections and CLIA's Overarching Objections, CLIA states that it does not have documents responsive to this Request.

DATED: September 22, 2017

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