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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' RESPONSE TO
DEFENDANTS' MOTION FOR
LEAVE TO FILE OVERLENGTH
BRIEF**

Plaintiffs Cruise Lines International Association Alaska and Cruise Lines International Association (“Plaintiffs” or “CLIA”) file the following response to Defendant City and Borough of Juneau’s (“CBJ”) *Motion for Leave to File Overlength Brief* (“Motion”) (ECF No. 101).

CLIA acknowledges that the nature of the claims, defenses, and the factual records on which each side seeks to rely do not lend themselves well to pleadings at or under the page

limitations imposed by Local Rule and that some extension of page limitations is justified on this basis. CBJ, however, seeks leave of this Court to exceed the Local Rule page limitations by 107 pages, a request that more than doubles the number of pages permitted to CBJ under the Local Rules.¹ Motion at 6. CLIA does agree that CBJ has proposed a reasonable addition to the 100 pages permitted CBJ under Local Rule 10.1(m).

CLIA also contests the reasons advanced by CBJ in support of its requested relief. Of the seventeen numbered grounds advanced by CBJ, eight have nothing to do with the necessity of relief from page limitations. Items Nos. 1-5 are undisguised efforts to restate arguments on the merits of the summary judgment issues now before the Court and should be disregarded in the context of a motion seeking relief from page limitations. Item Nos. 8, 10, and 11 are not justifications for an inability to oppose and cross-move in response to a 62-page opening brief and statement of facts within reasonable proximity of CBJ's 100-page allowance.

Item No. 9 mischaracterizes CLIA's position concerning both the structure and applicable length limitations of a combined cross-motion and opposition. CLIA did advise counsel for CBJ that CLIA believed both of these elements could be combined in one pleading. CLIA also sought clarification from counsel for CBJ as to counsel's plans for combining the cross-motion and opposition in a single pleading, the applicable page limitations for such a pleading, and the page limitations that would apply to CLIA's combined response in opposition and reply. Item No. 9, however, implies an obduracy by CLIA that was not present in scheduling negotiations. CLIA is

¹ CBJ asserts that it is seeking only 24 additional pages from the Court by arguing that CBJ's 83-page objections and responses to CLIA's statement of facts should not be counted against CBJ in the page limit calculation. *See* Motion at 6. CLIA, however, structured its summary judgment papers to account for its separate statement of facts in the page limit calculation, and there is no reason that CBJ's responses and objections to CLIA's statement (a typical exercise in any opposition to summary judgment papers) should be excepted from the page limitations set by Local Rule or order of this Court.

not advocating some kind of penalty with regard to page limitations as a result of CBJ's filing of a combined cross-motion and opposition. To the contrary, CLIA sought an agreement on page limitations from CBJ to avoid the necessity of either party making a motion like the instant one. Although the initial page limits CLIA proposed were not as extensive as CBJ now seeks, CBJ declined to even discuss proposing page limitations to the Court. Instead, CBJ advocated that the parties each consent to the filing of overlength briefs, regardless of the extent to which either party sought to exceed the page limitations of the Local Rule. Understandably, CLIA declined to consent to CBJ's proposal, as the discipline of writing to some limitation, wherever set, is a valuable one.

Item No. 16 disregards the inherent prejudice to CLIA arising from CBJ's request to file an overlength brief. CLIA chose to observe discipline and structure in its Summary Judgment filing. In response, however, CBJ has not. Instead, CBJ has filed, on a proposed basis, 207 pages of pleadings to which CLIA is obligated to respond in three weeks' time. CLIA is in possession of CBJ's filings in truncated form only. Without a complete set of exhibits, affidavits, and other supporting materials on which CBJ relies,² CLIA cannot evaluate and prepare its responses and objections to CBJ's arguments and factual assertions. Absent an extension of the briefing schedule, CLIA is hindered in its ability to assess fully CBJ's motion and opposition and to prepare adequately its opposition and reply.

² CLIA recognizes that proper procedure under the Court's Electronic Filing Administrative Policies and Procedures is for a party to seek leave of the Court for an overlength filing by attaching a copy of the proposed overlength filing as an exhibit to the motion for leave, and if the motion for leave is granted, to then file the overlength document with any accompanying support (*i.e.*, exhibits, affidavits, etc.). CLIA followed this procedure when it filed its Summary Judgment motion in October 2017. Given the imminent response deadlines, however, CLIA requested that counsel for CBJ send CLIA all exhibits and other supporting material that CBJ intended to file with the Court if this Motion were granted. CBJ rejected CLIA's request.

In the present posture of the pleadings, there is no assurance that CLIA will have a full and complete set of CBJ's cross-motion and opposition papers before CLIA's response in opposition and reply deadline on February 20, 2018. CBJ's filings necessitate an extension of the briefing schedule as to CBJ's cross-motion and opposition and the related filings to which CLIA must respond.³ This results in additional delay in the resolution of CLIA's Summary Judgment motion and likely will extend the parties' dispute over the constitutionality of CBJ's uses of the Entry Fees into the 2018 cruise season.⁴

Although CLIA does not agree that CBJ's request for an additional 107 pages for its filings is justified, CLIA does not desire to further delay the proceedings by requesting that the Court decline to grant CBJ's request. Thus, in addition to any relief that the Court grants CBJ on its Motion, CLIA respectfully requests that this Court:

(1) Direct CBJ to file its combined cross-motion and opposition along with any and all materials in support of its combined pleading no later than one (1) day following entry of an order from this Court permitting CBJ's overlength filing;

(2) Approve a comparable increase in page limitations afforded CBJ with respect to CLIA's combined response in opposition and reply to CBJ's filing without further leave of Court; and

(3) Extend CLIA's deadline to file CLIA's opposition and reply to CBJ's combined cross-motion and opposition, CLIA's opposition to CBJ's Motion to Strike, and CLIA's reply in support of its Motion to Take Judicial Notice in Connection with CLIA's Motion for Summary

³ Conversely, there is no need for the Court to extend CBJ's March 6 deadline to file its reply in support of CBJ's Motion to Determine the Law of the Case.

⁴ The longer a decision on the merits of this case is delayed, the longer CBJ can collect the Entry Fees from cruise vessels and appropriate the Fee revenue to fund unconstitutional uses.

Judgment by at least three weeks from the date set for CBJ to file its combined cross-motion and opposition.

DATED: February 5, 2018

By: /s/ C. Jonathan Benner
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CERTIFICATE OF SERVICE

I certify that on February 5, 2018, I caused a true and correct copy of the foregoing document 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
Kathleen E. Kraft