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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 OBJECTIONS AND
RESPONSES TO CBJ'S AMENDED
FIRST SET OF INTERROGATORIES TO
CRUISE LINES INTERNATIONAL
ASSOCIATION**

Pursuant to Fed. R. Civ. P. 26(b)(1) and 33, Cruise Lines International Association ("CLIA"), by and through undersigned counsel, responds to Defendants' City and Borough of Juneau, Alaska and Rorie Watt, in his official capacity as City manager (together, "CBJ"), Amended First Set of Interrogatories to Cruise Lines International Association ("Interrogatories").

OVERARCHING OBJECTIONS

I. In accordance with Fed. R. Civ. P. 26-36, CLIA objects to and declines to be bound by the "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 overarching objections, CLIA objects to and declines to be bound by the following:

- A. *CBJ's Interrogatory instruction F.* CLIA objects to this instruction as outside the scope of Fed. R. Civ. P. 26 and 33. CLIA will produce a privilege log with the information required by Fed. R. Civ. P. 26(b)(5)(A).
- B. *CBJ's Interrogatory instruction E.* CLIA objects to this instruction as compound and violative of the 25-interrogatory rule in the Federal Rules and the D. Alaska Local Civil Rules.
- C. *CBJ's Interrogatory instruction D.* CLIA objects to this instruction as containing a requirement not contained in the Federal Rules or in any agreement between the parties: that "Document shall be free of electronic usage restrictions of any type, including, without limitation, time, date, organization, corporate, office, site, domain, users, printing, deleting, forwarding, viewing, copying, opening, password (provide), properties or metadata." 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 Interrogatory instruction C.* CLIA objects to this instruction to the extent it suggests that proper relief for a failure to supplement is necessarily exclusion of evidence, particularly but not solely in the event that CBJ otherwise possessed or had access to the relevant information or documents.
- E. *CBJ's Interrogatory instruction B.* CLIA objects to this instruction to the extent its request for "information and documents known or available to you, your employer, agents, attorneys, investigators, representatives and consultants" is outside the scope of information and documents covered by Fed. R. Civ. P. 26 and 33 and to the extent it requests privileged information and documents.

F. *CBJ's Interrogatory 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 and Cruise Lines International Association Alaska ("CLIAA").

II. The maximum number of interrogatories that CBJ can pose, including all discrete subparts, is twenty-five. Fed. R. Civ. P. 33(a); LCvR 33.1. The Interrogatories exceed this limit of twenty-five:

A. Interrogatory No. 1 is no fewer than four interrogatories. Interrogatory No. 1 reads:

1. If your answer to Requests for Admissions No. 1 or 2 were anything other than an unqualified admission, please identify each and every association for the period between January 1, 1991 and February 7, 2007, that was authorized by its cruise line members to represent its members to governmental agencies, and provide the complete names of each member company for each association identified and the years which that association was authorized to represent its members to governmental agencies.

Each request for admission which CLIA responds with "anything other than unqualified admissions" is at least a "discrete subpart," in fact really its own separate interrogatory, requiring a discrete, separate response. Because CLIA is responding to Requests for Admission Nos. 1 and 2 with responses that are "anything other than unqualified admissions," Interrogatory No. 1 contains two discrete interrogatories and thus requires two detailed, explanatory responses by CLIA. Interrogatory No. 1 further contains no fewer than two discrete subparts within itself, asking CLIA to (1) "identify each and every association...that was authorized by its cruise line members to represent its members to governmental agencies" and (2) "provide the complete names of each member company for each association identified" As such, Interrogatory No. 1 requires four separate, discrete, responses.

B. Interrogatory No. 2 contains one interrogatory, bringing the subtotal of interrogatories to no fewer than five.

- C. Interrogatory No. 3 requests, *inter alia*, CLIA to (1) explain in detail all communications between a CLIA member and a passenger relating to the entry fees and (2) to identify witnesses who can testify to those communications. Explanation of any and all communications is separate and distinct from the identification of witnesses. Thus, Interrogatory No. 3 is no fewer than two separate interrogatories, adding two to the previous subtotal for no fewer than seven interrogatories.
- D. Interrogatory Nos. 4, 5, 6, 7, 8, and 9 request, *inter alia*, CLIA to (1) provide which part(s) of Requests for Admissions 8, 9, 10, 11, 12, and 13 respectively, is (or are) denied in relation to the unsourced tables found in each Request, (2) provide the complete factual bases for its denial(s), and (3) to identify witnesses in support of each such denial(s). Each of Interrogatory Nos. 4, 5, 6, 7, and 8 thus contain no fewer than 3 interrogatories each. This adds eighteen interrogatories to the subtotal, bringing the subtotal of interrogatories to no fewer than twenty-five. Thus, by Interrogatory No. 9, CBJ has met the limit imposed by Rule 33(a). Even if the subparts of Interrogatory Nos. 4, 5, 6, 7, 8, and 9 do not cause CBJ to exceed the limits set forth in the Federal Rules, their substance easily would. The foregoing does not account for the fact that the tables found in Requests for Admissions 8, 9, 10, 11, 12, and 13 are compound requests, containing multiple data points in unsourced tables and requiring their own discrete, separate inquiries and admissions or denials. For example, the table in Request for Admission 8 seeks CLIA's affirmance or denial of 135 separate data points. The table in Request for Admission 9 seeks CLIA's affirmance or denial of 440 separate data points. If CLIA denies just twenty-three of the 135 separate inquiries of Request for Admission 8, CBJ's Interrogatories exceed the limits set forth in the Federal Rules.

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 INTERROGATORIES

INTERROGATORY NO. 1: If your answer to Requests for Admissions No. 1 or 2 were anything other than an unqualified admission, please identify each and every association for the period between January 1, 1991 and February 7, 2007, that was authorized by its cruise line members to represent its members to governmental agencies, and provide the complete names of each member company for each association identified and the years which that association was authorized to represent its members to governmental agencies.

RESPONSE: CLIA objects to this Interrogatory as irrelevant to any party's claim or defense. This is a case concerning the legality of CBJ's entry fees and use thereof. The corporate history of a third-party entity is irrelevant to the legality of CBJ's entry fees and CBJ's use and misuse thereof. CLIA additionally objects to this Interrogatory as containing multiple subparts and therefore constituting two separate interrogatories. Subject to and without waiving these objections and CLIA's Overarching Objections, CLIA states that for the times between January 1, 1991 and February 7, 2007, the North West Cruiseship Association represented cruise lines in Alaska. The North West Cruiseship Association was renamed the North West & Canada Cruise Association on or about June 15, 2010. Subject to and without waiving these objections and CLIA's Overarching Objections, CLIA further states that, to its knowledge, there is no entity registered to do business in Alaska with the name Northwest Cruise Association.

INTERROGATORY NO. 18: Explain the amount of proceeds you contend has been spent by CBJ on activities that have not provided any benefits to the cruise ship passengers and explain how you arrived at that amount, and specifically identify which activities the proceeds were spent on or for that do not provide any benefit to the cruise ship passengers, as alleged in Paragraph 26 of your First Amended Complaint, and identify by name, address and telephone number all persons who can testify to the activities that do not provide any benefits to the cruise ship passengers and to the amount of proceeds spent on activities that do not benefit the cruise ship passengers and how that amount was derived.

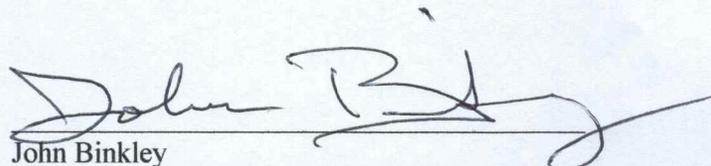
RESPONSE: CLIA objects to this Interrogatory as containing multiple parts (constituting five separate interrogatories), thus exceeding the limits on interrogatories set forth in the Federal Rules. Specifically, this Interrogatory requests that CLIA identify (1) activities that do not provide benefits; (2) how CLIA arrived at that amount; (3) the names, addresses, and phone numbers of persons who can testify to the activities that do not provide benefits to passengers; (4) the names, addresses, and phone numbers of persons who can testify to the amount of proceeds spent on activities that do not benefit passengers; and (5) how this amount was derived. CLIA further objects to this Interrogatory as requiring expert testimony. CLIA further objects to this Interrogatory as premature as discovery is still ongoing and information necessary to CLIA's response is in the possession of CBJ and/or third parties. CLIA further objects to this Interrogatory as overly broad, unduly burdensome, and not proportional to the needs of the case. Specifically, to require the name, address, and telephone number of all persons who could testify to the activities that do not provide any benefits to the cruise ship passengers seeks an untold amount of information. CLIA further objects to this Interrogatory to the extent it seeks privileged information, including but not limited to the attorney-client privilege and the work-product doctrine. Subject to and without waiving these objections and its Overarching Objections, and in lieu of answering this Interrogatory, CLIA will produce responsive, non-privileged documents in its possession, custody, or control. CLIA identifies the bates-labeled documents listed in Appendices B, C and D hereto, among others, as responsive to this Interrogatory.

INTERROGATORY NO. 19: Explain in specific detail each and every "damage" you claim and the amount of alleged "damage" and how you calculated each and every alleged "damage," as alleged in Paragraph 30 of your First Amended Complaint, and identify by name, address and telephone number all persons who can testify to each and every damage you claim and how the amount of each damages was calculated.

RESPONSE: CLIA objects to this Interrogatory as containing multiple parts (constituting five separate interrogatories), thus exceeding the limits on interrogatories set forth in the Federal Rules. Specifically, this Interrogatory requests that CLIA identify (1) each and every damage claimed; (2) the amount of that damage; (3) how CLIA calculated that damage; (4) the names, addresses, and phone numbers of persons who can testify to each and every damage; and (5) the names, addresses, and phone numbers of persons who can testify as to how the amount of each damage was calculated. CLIA further objects to this Interrogatory as requiring expert testimony. CLIA further objects to this Interrogatory as premature as discovery is still ongoing and information necessary to CLIA's response is in the possession of CBJ and/or third parties. CLIA further objects to this Interrogatory as irrelevant and not proportional to the needs of the case because the First Amended Complaint does not request relief in the form of monetary damages other than attorneys' fees. CLIA further objects to this Interrogatory to the extent it construes "damage" as monetary damage only; rather, as used in CLIA's First Amended Complaint, the term "damage" and its cognates should be taken as synonymous with the verbs "to harm" or "to injure" as those terms are used in legally cognizable senses. CLIA further objects to this Interrogatory to the extent it calls for legal conclusions and/or expert testimony. Subject to and without waiving these objections and the Overarching Objections, CLIA states that it and/or its member cruise lines in the Alaska trade have been harmed, and continue to be harmed, by the assessment of unlawful fees that violate constitutional and statutory prohibitions on such fees. CLIA and/or its member cruise lines in the Alaska trade also have been harmed, and continue to be harmed, by the value of funds remitted to CBJ as entry fees that have been spent on items or services that are unrelated to and/or do not bear the legally-required relationship to CLIA's cruise line member's vessels. CLIA and/or its member cruise lines in the Alaska trade also have been harmed, and continue to be harmed, every time CBJ spends the entry fee revenues on unconstitutional and federally prohibited items and services, CBJ is preventing those same revenues from being used for items and services that are related to and do bear the legally-required relationship to CLIA's cruise line member's vessels, both at the Port of Juneau and throughout Alaska. Further, CLIA

has also alleged that entry fee revenues are being used by CBJ to pay for CBJ's outside counsel attorneys' fees in this litigation. This use of entry fee proceeds also violates federal constitutional and statutory proscriptions on the assessment of fees against vessels by states or other non-federal government entities, like CBJ. Without waiver of CLIA's right to identify additional persons to testify regarding the subject-matter of this Interrogatory, CLIA states that John Binkley (identified in CLIA's Initial Disclosures, served 12/12/16) can testify to substance of CLIA's response set forth herein.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 9th day of January, 2017.



John Binkley
In his capacity as President, CLIA Alaska and
agent for CLIA

DATED: January 9, 2017

By: /s/ C. Jonathan Benner

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