

EXHIBIT 1

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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

**STIPULATION AND PROTECTIVE
ORDER GOVERNING THE
PRODUCTION AND EXCHANGE OF
CONFIDENTIAL INFORMATION**

Plaintiffs Cruise Lines International Association Alaska and Cruise Lines International Association (collectively, “Plaintiffs”) and Defendants the City and the Borough of Juneau, Alaska and Rorie Watt, in his official capacity as City Manager (together “CBJ” or “Defendant”) agree to the following protective order.

1. Scope of the Order.

A. This Stipulation and Protective Order Governing the Production and Exchange of Confidential Information (“Order”) shall apply during discovery and pre-trial proceedings to all documents and information obtained in discovery or pre-trial proceedings in this action and designated as Confidential or Highly Confidential pursuant to this Order. This Order applies only to documents and information furnished by parties that are not publicly available. **This Order will not apply to the use or disclosure of documents and information at trial.**

B. This Order governs the above-captioned case and any appeals or further actions in the above-captioned case (the “Litigation”), all parties named as plaintiffs or defendants in the Litigation, and shall be entered pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and Local Rules 26.1 and 37.1 of the United States District Court for the District of Alaska.

C. Until this Order is entered by the Court, any documents and information designated as Confidential or Highly Confidential that are produced in this Litigation shall be protected from disclosure pursuant to the terms of this Order. If this Litigation is transferred to another Court, the terms of this Order shall remain in effect unless modified by written agreement of the parties who are signatories hereto or by order of the Court.

D. This Order shall remain in effect until modified, superseded, or terminated by consent of the parties who are signatories hereto or by order of the Court. This Order shall not prevent any party from applying to the Court for further or additional protective orders or from agreeing to modifications of this Order, subject to approval of the Court.

2. Confidentiality Designations.

A. Documents and Information That May Be Designated as Confidential

Documents and information that may be designated as “Confidential” under this Order shall be limited to:

- i. Documents and information that contain non-public technical, commercial, or financial information, or private or sensitive data; and
- ii. Documents and information that could result in substantial harm, embarrassment, inconvenience, or unfairness to a person or entity if lost, compromised, or disclosed without authorization.

B. Documents and Information That May Be Designated as Highly Confidential

Documents and information that may be designated as “Highly Confidential” under this Order shall be limited to (i) documents and information containing extremely sensitive confidential information that is reasonably believed to contain proprietary and/or trade secret information and (ii) documents or information containing personally identifiable information (“PII”). In this Order, PII means any information that can be used alone or in combination with other information to identify the subject(s) of that information or that is linked or linkable to an individual (i.e., social security numbers; telephone numbers or addresses; medical, educational, financial, income, or employment information).

C. Additional Categories of Confidential and Highly Confidential Information

By stipulating that the categories of documents and information listed above may be designated as Confidential or Highly Confidential under this Order, the parties who are signatories hereto do not concede that such documents and information are discoverable,

relevant, material, or admissible at trial. The parties also agree that the categories of documents and information listed above may not constitute an exhaustive list of documents and information in which either party may have a legitimate interest in confidentiality. If either party wishes to designate additional categories of documents and information as Confidential or Highly Confidential, the parties shall negotiate in good faith in an attempt to resolve whether such categories of documents or information can be so designated. Nothing in this Order prohibits the parties from jointly filing a stipulation with the Court that identifies additional categories of documents and information that can be designated as Confidential or a party from moving the Court to include additional categories of documents and information that may be designated as Confidential.

3. Process for Designating Confidential or Highly Confidential Information.

A party producing documents or information (a “Producing Party”) shall designate documents and information as containing Confidential or Highly Confidential Information as follows:

A. Documents. A Producing Party shall designate hard copy and non-natively produced electronic documents by marking the first page and each subsequent page of the produced copy or image of such document with the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” The impracticality or inadvertent failure to designate each page of a document as Confidential or Highly Confidential pursuant to this paragraph shall not constitute a waiver of the confidential nature of the document or page(s).

B. Redaction. A Producing Party may redact PII from any document produced, regardless of the document’s designation. Objection(s) to the redaction of PII shall be subject to resolution pursuant to the procedures outlined in Paragraph 8 below.

C. Discovery Responses. A Producing Party shall designate discovery responses by placing the legend “CONTAINS CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER” on each page of the discovery responses containing Confidential Information and “CONTAINS HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO PROTECTIVE ORDER” on each page of the discovery responses containing Highly Confidential Information.

D. Depositions. A Producing Party may designate portion(s) or all of any deposition transcript (including exhibits) as containing Confidential or Highly Confidential Information, if any document or information falling within one of the categories listed in Section 2, above, is used or elicited during the deposition, by making such designation (i) on the record at the deposition or (ii) by letter to all counsel within thirty (30) days of receipt of the final deposition transcript or copy thereof (or written notification that the transcript is available). The entire deposition transcript (including exhibits) shall be treated as Confidential or Highly Confidential Information until the expiration of the thirty (30)-day period for designation.

E. Computerized Material. A Producing Party shall designate information produced in a form rendering it impractical to label (including electronically stored information produced on electronic, magnetic, or other computer readable media) by affixing the legend Confidential or Highly Confidential to the media containing the Confidential or Highly Confidential Information. Whenever a party receiving the Confidential or Highly Confidential Information (a “Receiving Party”) reduces such computerized material designated as Confidential or Highly Confidential to hard-copy form, the Receiving Party shall mark the hard-copy form in accordance with Paragraph 3.A.

F. Inspections. Documents, materials, or other information to be inspected shall be treated as Confidential during inspection. Such documents or other materials or information that are later duplicated by or for the Receiving Party shall be stamped, if designated, “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

G. Documents and Information Produced by Another Party. Any party to the Litigation that is not the Producing Party may designate as Confidential or Highly Confidential documents and information produced by a Producing Party if the documents and information (i) either originated from the designating party (or were generated on the designating party’s behalf) or (ii) contain the designating party’s Confidential or Highly Confidential Information, in which case the designating party shall be deemed a Producing Party for purposes of this Order. Failure to designate any documents or information as Confidential or Highly Confidential pursuant to this paragraph shall not constitute a waiver of any party’s right to make such designation at a later time.

4. Restrictions on the Use and Disclosure of Documents and Information Designated as Confidential.

Documents or information designated as Confidential or Highly Confidential, or information obtained solely from documents or information designated as Confidential or Highly Confidential, may only be used by the parties or persons given access to such documents or information pursuant to Section 6, below, as follows:

A. All information produced or discovered in this Litigation and designated as Confidential or Highly Confidential shall be used solely for the prosecution or defense of this Litigation, unless that information is or has become publicly available without a breach of this Order.

B. In no event shall Confidential or Highly Confidential Information be used for any business, competitive, personal, private, public, or other purpose, except as permitted by law.

C. Subject to rules of evidence, any party may offer Confidential Information or Highly Confidential Information into evidence at any hearing or other pre-trial in-court proceeding upon written notice to all other parties of intention to do so at least five (5) business days in advance of actual disclosure (if such time is available), but in any event with advance notice sufficient to allow the Producing Party to raise the issue with the Court, so that the Court can decide whether the proffered evidence should continue to be treated as Confidential or Highly Confidential Information and, if so, what protection, if any, may be afforded to such evidence at the hearing or other pre-trial in-court proceeding. Any party may move the Court for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary disclosure.

D. If any Receiving Party receives a subpoena or other document request from a non-party seeking disclosure of Confidential or Highly Confidential Information obtained from a Producing Party subject to this Order, that Receiving Party shall, under authority of this Order, object to producing and absent a court order compelling production shall decline to produce the Confidential or Highly Confidential Information and shall give written notice to the Producing Party within seven (7) days of receiving the subpoena or document request, identifying the Confidential or Highly Confidential Information sought and enclosing a copy of the subpoena or document request.

E. Notwithstanding the foregoing, nothing in this Order shall be deemed to limit or restrict any Producing Party from using its own documents, materials, information, or its

own Confidential or Highly Confidential Information for any purpose. The Producing Party may withdraw or modify any designation it has made.

F. Nothing in this Order shall bar or otherwise prevent any counsel from rendering advice to his or her client with respect to this Litigation and, in the course of doing so, from relying upon his or her examination or knowledge of Confidential or Highly Confidential Information; provided that in communicating with his or her client, counsel shall not disclose the contents or source of any Confidential or Highly Information produced by another party to any person who is not authorized to receive such information under this Order.

5. Filing of Confidential or Highly Confidential Information.

A. A party that seeks to file any pleading, motion, brief, memoranda, or other paper that contains Confidential or Highly Confidential Information must comply with Local Rules 5.4(a) and 5.3(g). The filing party shall serve the sealed filing upon counsel for the parties. Such service may be accomplished by email.

B. If any party objects to identified portions of the materials remaining under seal, it shall state its objections in a faxed or electronically-delivered letter to counsel of record. The interested parties shall promptly meet and confer to attempt to resolve those objections and, if they cannot be resolved, the objecting party shall bear the burden of raising the issue with the Court, should it choose.

C. Notwithstanding the foregoing, a party is not required to file a document under seal if the Confidential or Highly Confidential Information contained or reflected in the document was designated solely by that party and, with respect to Highly Confidential Information, such party complies with Federal Rule of Civil Procedure 5.2(a).

6. Persons Entitled to Have Access to Confidential or Highly Confidential Information.

A. The attorneys of record are responsible for employing reasonable measures, consistent with this Order, to control access to and distribution of information designated as Confidential or Highly Confidential pursuant to this Order.

B. Access to information designated as Confidential pursuant to this Order shall be limited to:

i. Any party to this Litigation, subject to the requirements outlined below at Paragraph 6.B.ii;

ii. In the case of a party in this Litigation that is an entity, such persons within the entity that counsel for such party deems necessary to have access for the prosecution or defense of this action or otherwise for assisting counsel in their representation of the entity;

iii. In-house and outside counsel for the parties in this Litigation, as well as their paralegals, investigative, technical, secretarial, and clerical personnel who are assisting in this Litigation;

iv. Outside photocopying, document storage, data processing, document review, graphic production, jury research, or trial preparation services employed by the parties or their counsel to assist in this Litigation, including contract attorneys and paralegals;

v. The Court and all court personnel who have need to read, review, or file Confidential or Highly Confidential Information as a result of a party acting in accordance with Paragraphs 4.C or 5 above;

vi. Mediators or other individuals engaged or consulted in settlement of all or part of this Litigation;

vii. Any expert, consultant, or expert consulting firm retained by counsel of record pursuant to a formal, written retention agreement that binds the expert, consultant, or expert consulting firm to this Protective Order in connection with this Litigation;

viii. Any person who (a) authored or is listed as a recipient of the particular material sought to be disclosed to that person; (b) was a custodian of the document; or (c) is a witness (1) to whom disclosure is reasonably necessary for this Litigation and (2) who counsel in good faith believes has personal knowledge of the specific matters set forth in the documents and information marked Confidential or Highly Confidential; and

ix. Any other person to whom (a) the Producing Party agrees in writing or on the record in advance of the disclosure or (b) the Court directs should have access, provided that the requirements of Paragraph 7 of this Order are met.

C. Access to information designated as Highly Confidential pursuant to this Order shall be limited to:

- i. Persons identified in Paragraphs 6.B(iii)-(viii);
- ii. Any other person to whom the Producing Party agrees in writing or on the record in advance of the disclosure.

7. Notification of Protective Order.

A. Counsel for the respective parties shall be responsible for obtaining, prior to disclosure and as a condition thereof, the written agreement of any person to whom any Confidential or Highly Confidential Information is disclosed (other than persons identified in Paragraphs 6.B(i), (iii)-(v)) to be bound by the terms of this Order in the form attached hereto

as Exhibit A. The signed originals of such Agreements shall be maintained by counsel for the party who obtained them until the final resolution of this Litigation.

B. In the event information designated as Confidential or Highly Confidential is to be shown to a witness at a deposition, the witness shall be provided with a copy of this Order at the start of the examination and shall be advised on the record that he or she will be subject to sanction, including contempt, for violating the terms of this Order.

8. Challenge to Confidential or Highly Confidential Designation.

A. A party shall not be obligated to challenge the propriety of a Confidential or Highly Confidential Information designation at the time material so designated is produced, and a failure to do so shall not preclude a subsequent challenge thereto, provided, however, that any challenges must be made no later than the close of discovery.

B. In the event a party objects to the designation of any material under this Order, the objecting party shall state its objections in a letter to counsel for the designating party in this Litigation, identifying the specific challenged material and providing the specific bases for its challenge of the confidentiality designations. The interested parties thereafter shall meet and confer in good faith in an attempt to resolve any objection. If the objection is not resolved within seven (7) days of transmission of the initiating letter, the objecting party shall bear the burden of raising the issue with the Court, should it choose. Any documents or other materials that have been designated as Confidential or Highly Confidential shall be treated in the manner designated until the Court rules that they are not, or the designating party agrees to change the designation.

9. No Waiver of Objections.

A. Nothing contained in this Order shall affect the right of any party to make any other available objection or other response to discovery requests, including, without limitation, interrogatories, requests for admissions, requests for production of documents, or questions at a deposition.

B. This Order shall not be construed as a waiver by any party of any right to withhold any Confidential or Highly Confidential Information as attorney work product or based on a legally cognizable privilege, or of any right that any party may have to assert any privilege at any stage of this Litigation.

C. A party's compliance with the terms of this Order shall not operate as an admission that any particular document is or is not (i) confidential, (ii) privileged, or (iii) admissible in evidence at trial.

10. Return of Confidential Items. Within sixty (60) days after the final disposition of this Litigation, including all appeals, a Receiving Party shall return all Confidential and Highly Confidential Information, including all copies of said materials, to counsel for the Producing Party or, in lieu thereof, the Receiving Party shall certify in writing that it has made reasonable efforts to destroy such materials. Counsel shall be entitled to retain pleadings and the exhibits thereto, affidavits, motions, briefs, or other papers filed with the Court, as well as any memoranda, notes, or other work product, even if they contain Confidential or Highly Confidential Information, so long as counsel protects that information consistent with the terms of this Order.

11. Correction of Designation. A Producing Party that fails to designate documents and information as Confidential or Highly Confidential at the time of production shall be

entitled to make a correction to its designation. Any correction and notice of the correction shall be made in writing, accompanied by substitute copies of each item of documents and information, appropriately designated. A Receiving Party has ten (10) days to object to such a late designation. If a Receiving Party does not timely object, then within ten (10) days of receipt of the substitute copies of the documents and information, the Receiving Party shall destroy or return to counsel for the Producing Party all copies of such mis-designated documents. If a Receiving Party timely objects, the parties shall meet and confer and, in the absence of an agreement, the objecting party shall bear the burden of raising the issue with the Court, should it choose. Until the Court rules, the disputed documents and information shall be treated as Confidential or Highly Confidential in accordance with the designation made pursuant to Paragraph 2 and this paragraph.

12. Non-Waiver of Privilege. The production of any privileged or work-product protected document, material, electronically stored information (“ESI”), or information (the “Privileged Material”), whether inadvertent or otherwise and regardless of whether the information was designated as Confidential or Highly Confidential at the time of disclosure, is not a waiver of the privilege or work product protection from discovery in this case or any other federal or state proceeding, unless the Producing Party intentionally waives the privilege or protection by using the Privileged Material in support of its own claim or defense, in which event the scope of any such waiver shall be determined by Federal Rule of Evidence 502(a)(2) and (3). This provision and Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Nothing contained herein is intended to or shall serve to limit a party’s right to conduct a review of documents, ESI, or information (including

metadata) for relevance, responsiveness, and/or segregation of privilege or work product protection before production.

13. Clawback. The Producing Party may, upon discovery of the production of the Privileged Material, request the return of the Privileged Material. Upon receipt of such a request, the Receiving Party shall promptly return or destroy the Privileged Material and any copies; must not use or disclose the Privileged Material until any claim concerning the Privileged Material is resolved; must take reasonable steps to retrieve the Privileged Material if the Receiving Party disclosed it before being notified; and if the Receiving Party objects to the claim of privilege, may present the matter to the Court under seal for a determination of the claim within fifteen (15) days of receipt of the return request.

14. Retrieval of Unauthorized Access to Confidential Information. In the event that a party discovers that Confidential or Highly Confidential Information it has received has been disclosed to someone not authorized under this Order to receive such information, counsel of record for the party responsible for the unauthorized disclosure shall promptly give written notice to counsel of record for the designating party. If a party fails to treat documents designated as Confidential or Highly Confidential in the manner provided herein, that party will immediately take such steps as are necessary to have such items placed under seal and/or restored to their confidential status.

15. Addition of New Parties. Any party appearing in the case following entry of this Order shall be subject to its provisions. Within ten (10) days of (a) entry of an appearance by a new party to this Litigation, counsel for the Plaintiffs (in the case of a new party plaintiff) or counsel for Defendants (in the case of a new party defendant) shall serve a copy of this Order on the new party's counsel who have filed an appearance.

16. Modifications to this Order. Any party may move to modify this Order for good cause shown, including without limitation to seek further, greater, or lesser protection with respect to the use of any Confidential or Highly Confidential Information, or to seek to prevent Confidential or Highly Confidential Information from being provided to the persons described in Paragraph 6 of this Order. Furthermore, this Order may be amended without leave of the Court by agreement of the parties in the form of a Stipulation filed with the Court.

17. Applicability to Non-Parties. Non-parties to this Litigation who produce documents or information or give testimony pursuant to third-party discovery propounded by any party to this Litigation shall be entitled to produce such documents or information and give such testimony on condition of the protections of this Order. A non-party's production of documents or information or provision of testimony in this Litigation on condition of the protections of this Order shall not entitle such non-party access to any Confidential or Highly Confidential documents or information produced by any party to this Litigation or any other non-party to this Litigation, except as provided in Paragraph 6.B.viii-ix or Paragraph 6.C.

APPROVED AND SO ORDERED this ___ day of _____, 2016.

Honorable H. Russel Holland
U.S. District Court Judge

Respectfully submitted,

DATED: December 8, 2016

By: /s/ C. Jonathan Benner
C. Jonathan Benner (*pro hac vice*)
Kathleen E. Kraft (*pro hac vice*)
THOMPSON COBURN LLP

Herbert H. Ray, Jr. (Alaska Bar No. 8811201)
KEESAL, YOUNG & LOGAN, LLC

*Attorneys for Plaintiffs Cruise Line
International Association Alaska and Cruise
Lines International Association*

DATED: December 8, 2016

By: /s/
Robert P. Blasco, AK Bar # 7710098
HOFFMAN & BLASCO, LLC

*Attorneys for the Defendants
The City and Borough of Juneau, Alaska, a
municipal corporation, and Rorie Watt, in his
official capacity as City Manager*

CERTIFICATE OF SERVICE

I certify that on December 8, 2016, 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/ C. Jonathan Benner

C. Jonathan Benner

EXHIBIT A

**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

**ACKNOWLEDGEMENT AND
AGREEMENT TO BE BOUND TO
PROTECTIVE ORDER BY:**

[Name]

I, _____, acknowledge and agree that I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone, or discuss the substance or nature of material and information designated "CONFIDENTIAL" other than to or with persons specifically authorized by the Protective Order, and I will not copy or use in any manner or for any purpose, except for purposes of this action, any documents, materials, or information designated as CONFIDENTIAL or as HIGHLY CONFIDENTIAL that I receive in this action.

By executing this acknowledgement, I acknowledge that I am bound to the terms of the Protective Order in this matter and agree to submit to the jurisdiction of the United States District Court for the District of Alaska for purposes of enforcement of the terms of the Protective Order, including, the right of the opposing party, or the Court, *sua sponte*, to seek sanctions against me for contempt of Court arising from any act of mine in violation of the Protective Order.

Executed this ____ day of _____, 201_ at _____.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

_____ Name (Print)

_____ Company

_____ Title