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**[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE § 6103]**

8 Attorneys for Defendants
9 CITY OF PALOS VERDES ESTATES and
CHIEF OF POLICE JEFF KEPLEY

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA; WESTERN DIVISION**

12 CORY SPENCER, an individual;
13 DIANA MILENA REED, an
individual; and COASTAL
14 PROTECTION RANGERS, INC.,
15 a California non-profit public
benefit corporation,

16 **Plaintiffs,**

17 v.

18 LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF
19 THE LUNADA BAY BOYS,
including but not limited to SANG
20 LEE, BRANT BLAKEMAN,
21 ALAN JOHNSTON aka JALIAN
JOHNSTON, MICHAEL RAE
22 PAPAYANS, ANGELO
FERRARA, FRANK FERRARA,
23 CHARLIE FERRARA and N.F.;
24 CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE
25 JEFF KEPLEY, in his
representative capacity; and DOES
26 1-10,

27 **Defendants.**

Case No. 2:16-cv-02129-SJO-RAO

Assigned to District Judge:
Hon. S. James Otero; Courtroom: 10C
@ 350 W. First Street, L.A., CA 90012

Assigned Discovery:
Magistrate Judge: Hon. Rozella A. Oliver

**[Exempt From Filing Fees Pursuant To
Government Code § 6103]**

**DEFENDANTS CITY OF PALOS
VERDES ESTATES AND CHIEF OF
POLICE JEFF KEPLEY'S RESPONSE
TO PLAINTIFFS' SUGGESTION
UNDER FRCP 25(d) ON RECORD TO
SUBSTITUTE OFFICAL NAMED IN
HIS REPRESENTATIVE CAPACITY
DUE TO RESIGNATION**

Complaint Filed: March 29, 2016
Trial: December 12, 2017

1 **TO THE HONORABLE COURT AND ALL PARTIES OF RECORD:**

2 The City of Palos Verdes Estates and Chief of Police Jeff Kepley
3 (collectively, the “City”) hereby respond to Plaintiffs Cory Spencer, Diana Milena
4 Reed, and Coastal Protection Rangers’ Suggestion Under FRCP 25(d) on Record to
5 Substitute Official Named in His Representative Capacity Due to Resignation.

6 Federal Rules of Civil Procedure Rule 25(d) provides:

7 An action does not abate when a public officer who is a party in an
8 official capacity dies, resigns, or otherwise ceases to hold office while
9 the action is pending. The officers’ successor is automatically
10 substituted as a party. Later proceedings should be in the substituted
11 party’s name, but any misnomer not affecting the parties’ substantial
12 rights must be disregarded. The court may order substitution at any
13 time, but the absence of such an order does not affect the substitution.

14 FED. RULES CIV. PROC. RULE 25(d) (emphasis added).

15 Federal Rule of Civil Procedure 25(d) automatically operates to substitute a
16 named public officer into an action if that official dies, resigns, or otherwise ceases
17 to hold office while the action is pending. Plaintiffs’ “suggestion” is unnecessary
18 as the substitution is automatic.

19 In addition, Plaintiffs are aware that the City’s pending Motion for Summary
20 Judgment (“Motion”) seeks, among other things, to dismiss Chief Kepley as a
21 redundant party in the Plaintiffs’ single cause of action for Section 1983 civil rights
22 liability against a public entity. On July 14, 2017, the City filed its Motion as to
23 Plaintiffs’ single claim entitled 42 U.S.C. § 1983 – Equal Protection on the grounds
24 that (1) the City has no duty to protect Plaintiffs from third party criminal conduct
25 (*De Shaney v. Winnebago County Department of Social Services* (1988) 489 U.S. 189)
26 and (2) Plaintiffs cannot establish a *Monell* claim, which prohibits *respondeat superior*
27 liability against a public entity (*Monell v. Dep’t. of Soc. Servs.* (1978) 436 U.S. 658).
28 [Dkt. 268]. In the alternative, the City provides that the proper *Monell* defendant is

1 the local government entity, and not the local government officer sued in his
 2 official capacity on behalf of the local government entity. *See Luke v. Abbot* (1997)
 3 954 F.Supp. 202; *Kentucky v. Graham* (1985) 473 U.S. 159, 167 n. 14. Plaintiffs
 4 delayed a ruling on the City’s Motion by filing a meritless Motion for
 5 Administrative Relief. [Dkt. 397]. They then filed this “suggestion” which serves
 6 no purpose other than to harass Captain Velez by subjecting him to the publicity of
 7 being named as a defendant in this lawsuit knowing that Captain Velez had no
 8 relevant involvement in the allegations set forth in the Complaint, and knowing that
 9 he will serve at the interim Chief for no more than a matter of weeks until he will
 10 be replaced. The Plaintiffs’ “suggestion” is unnecessary as the substitution is
 11 automatic and the Court need not take any action under Rule 25(d).

12 Dated: September 26, 2017 KUTAK ROCK LLP

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 14 By: /s/ Christopher D. Gos

Edwin J. Richards
 Christopher D. Gos
 Attorneys for Defendants
 CITY OF PALOS VERDES ESTATES
 and CHIEF OF POLICE JEFF KEPLEY

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