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20 REED, and COASTAL PROTECTION
RANGERS, INC.
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22 **UNITED STATES DISTRICT COURT**
23 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
24

25 CORY SPENCER, an individual;
26 DIANA MILENA REED, an
individual; and COASTAL
27 PROTECTION RANGERS, INC., a
28 California non-profit public benefit

CASE NO. 2:16-cv-02129-SJO (RAOx)
**PLAINTIFFS' SUPPLEMENTAL
ADDITIONAL MATERIAL FACTS IN
OPPOSITION TO DEFENDANTS
CITY OF PALOS VERDES ESTATES
AND CHIEF OF POLICE JEFF**

Case No. 2:16-cv-02129-SJO (RAOx)

PLAINTIFFS' SUPP. ADDITIONAL MATERIAL FACTS IN OPP. TO DEFTS. CITY AND KEPLEY'S MOTION
FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

1 corporation,

2 Plaintiffs,

3
4 v.

5 LUNADA BAY BOYS; THE
6 INDIVIDUAL MEMBERS OF THE
7 LUNADA BAY BOYS, including but
8 not limited to SANG LEE, BRANT
9 BLAKEMAN, ALAN JOHNSTON
10 AKA JALIAN JOHNSTON,
11 MICHAEL RAE PAPAYANS,
12 ANGELO FERRARA, FRANK
13 FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

14 Defendants.

**KEPLEY'S MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION**

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

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1 Plaintiffs Cory Spencer, Diana Milena Reed and Coastal Protection Rangers,
 2 Inc. (collectively referred to as "Plaintiffs") hereby submit these Supplemental
 3 Additional Material Facts in Opposition to Defendants City of Palos Verdes Estates
 4 and Chief of Police Jeff Kepley ("Defendants") Motion for Summary Judgment or,
 5 in the Alternative, Summary Adjudication before this Court.

6
 7 **Issue #3: Palos Verdes Estates Has A Long-Established Custom Or Practice**
 8 **Of Unlawful Exclusion Of So-Called Undesirables From Its**
 9 **Boundaries, And Otherwise Discouraging Undesirable Outsiders**
 10 **From Coming To The City.**

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
11 12 13 199. The City has been aware of local 14 surfers' exclusion of outsiders by 15 violent means for years, and despite 16 numerous pledges to address the 17 problem, it has been permitted to persist 18 for decades. 19 20 21 22 23 24 25 26 27 28	199. Decl. Franklin ISO Pltfs.' Supp. Opp'n, Ex. 4 (Memorandum to Mayor and City Council from Jeff Kepley Re: Localism in Lunada Bay, dated May 21, 2015: "Although our Police Department does not receive surfing related complaints frequently, we do occasionally receive a call or complaint regarding harassment, intimidation, or vehicle tampering." (CITY022991)); Ex. 5 (12/31/15 Email from Chief Kepley to "PDALL" and City Manager Dahlerbruch: "You can see that some of these folks have heard other chiefs take a stand against the surfer bullying without success. We need to really make a

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>difference and set the tone for a new day in Lunada Bay.” CITY023007); Ex. 6 (8/1/16 Emails with Chief Kepley, City Manager Dahlerbruch, and Wolcott Company (PR firm): Wolcott discusses the PVE PD’s goals to provide positive updates to the community and secure broader public support; says they don’t want their PR to look like they’re trying to “hide the blemishes” (CITY023081-2)); Ex. 7 (6/19/14 Email to Sheri Repp Loadsman from Joe Mendoza: “I have received a complaint that the area where this structure is located is off limits to non-locals (surfers).”).</p>

Issue #4: Palos Verdes Estates Admits It Does Not Want Outsiders Coming To The City.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>200. Non-locals anticipate harassment at Lunada Bay.</p>	<p>200. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 3 (Memorandum to Patrol Personnel from Captain Tony Best Re: Lunada Bay Event 1/20/14, dated January</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	17, 2014: “The surfer [who came from outside the area to support the ‘anti-localism’ surf movement] explained that the surf was good and he took a little verbal harassment from the locals, but it was to be expected.” CITY023472.)
201. The Palos Verdes Estates Police Department prepared for the 2014 MLK Day Event by assuming outsiders would instigate trouble.	201. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 3 (Memorandum to Patrol Personnel from Captain Tony Best Re: Lunada Bay Event 1/20/14, dated January 17, 2014, reminding officers that “the police are to maintain an impartial, non-personal position and to protect the rights of those individuals who are exercising their rights to free expression” but also noting “we must keep in mind that the laws enforced are designed to protect society from those who would express themselves irresponsibly and with no regard to the rights of others.” (CITY 023467).

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1 **Issue #5: Lunada Bay Is "Inexplicably" An Underutilized Los Angeles**
 2 **Beach: Lunada Bay Should Have Far More People From The**
 3 **Outside Using It Given Its Proximity To Densely Populate Los**
 4 **Angeles, And Illegal Exclusion Is A Reason Few People Are There.**

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
202. Despite offering one of the most beautiful beaches with prime surfing conditions in all of Southern California, the beach is underutilized.	202. Decl. Franklin ISO Pltfs.' Supp. Opp'n, Ex. 3 (Memorandum to Patrol Personnel from Captain Tony Best Re: Lunada Bay Event 1/20/14, dated January 17, 2014: "There were a few more surfers in the water (~25-30) than on an average surf day . . . [and] more people in the area (~25-35 cliffside)" (CITY023471))

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 16 **Issue #6: Illegal Exclusion Is A Longstanding Problem In Lunada Bay.**

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
203. The City admits the Bay Boys resemble a gang but chooses not to address it as one at the risk of angering City residents support of the Bay Boys.	203. Decl. Franklin ISO Pltfs.' Supp. Opp'n, Ex. 8 (8/12/15 Email from Chief Kepley to Mayor Goodhart: "I'm reluctant to pursue some of his suggestions at this point, until we pursue our planned response – mainly because this problem has a gang 'mentality' similarities (territorial bullies), but is not a true gang;

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		does not meet established gang criteria,
4		and moving forward with gang injunctions
5		could complicate the matter.”
6		(CITY022993).)
7	204. The City has made false promises	204. Decl. Franklin ISO Pltfs.’ Supp.
8	to address surfing localism at Lunada	Opp’n, Ex. 3 (Memorandum to Patrol
9	Bay, meanwhile the problem has	Personnel from Captain Tony Best Re:
10	persisted for decades.	Lunada Bay Event 1/20/14, dated January
11		17, 2014: “Going forward, patrol has been
12		instructed to provide extra patrol in this
13		and other surf areas to help deter surf
14		related incidents or crimes from
15		occurring” (CITY023472); Ex. 10
16		(9/24/15 email from Chief Kepley to City
17		Manager Dahlerbruch, Captains Best and
18		Velez, and Sergeant Barber regarding
19		“Update on Surfing Localism”: “While
20		much more work needs to be done,
21		[Deputy District Attorney Angie
22		Christides of the LADA’s Office,
23		Hardcore Gang Division] believes that the
24		future crimes related to surfer localism
25		can, and should, be prosecuted with gang
26		enhancements. This is welcome news! I
27		firmly believe that if we prosecuted only
28		

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>one case in this fashion, with publicity, <i>it would be the first and strongest effort to date to dissuade others from committing similar offenses.</i>” (emphasis added, CITY018158).</p>
<p>205. Instead, the City contracted with a public relations firm to address localism as a “perception” issue.</p>	<p>205. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 6 (7/12/16 Email from Dennis Wolcott to with Chief Kepley and City Manager Dahlerbruch: Wolcott discusses the PVE PD’s goals to provide positive updates to the community and secure broader public support; says they don’t want their PR to look like they’re trying to “hide the blemishes” (CITY023081-2)).</p>
<p>206. Despite initially indicating a strong desire to eradicate the Bay Boys from Lunada Bay upon his appointment as Chief of Police of Palos Verdes Estates, Chief Kepley suddenly went on leave from the city without a public explanation in late April 2017. The City initially issued a statement that Chief Kepley would return after five weeks, but after four months of leave, the City announced Chief Kepley’s</p>	<p>206. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 11.</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
resignation on August 28, 2017.	

Issue #7: The City Does Not Take Seriously The Problem Of Illegal Exclusion At Lunada Bay.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
207. The City has made a number of promises throughout the years to address its localism problem without any impact.	207. Decl. Franklin ISO Pltfs.' Supp. Opp'n, Ex. 3 (Memorandum to Patrol Personnel from Captain Tony Best Re: Lunada Bay Event 1/20/14, dated January 17, 2014: "Going forward, patrol has been instructed to provide extra patrol in this and other surf areas to help deter surf related incidents or crimes from occurring" (CITY023472)); Ex. 5 (12/31/15 email from Chief Kepley to PVE PD and City Manager Dahlerbruch: "You can see that some of these folks have heard other chiefs take a stand against the surfer bullying without success. We need to really make a difference and set the tone for a new day in Lunada Bay.") (CITY023007); Ex. 9 (4/19/16 Memorandum from Det. Charles

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>Reed to Capt. Velez re: “Undercover Surfer Operation”: “On February 1, 2016, the Palos Verdes Estates PD began to explore the possibility of conducting an undercover surfing operation focusing on the reported ‘localism’ issues occurring in Lunada Bay by individuals, referred to as ‘The Bay Boys’, who commonly frequent the area,” but also noting “that ‘The Bay Boys’ were advised of this operation by unknown means” and so the operation “was canceled for the time being.”</p> <p>(CITY02313-CITY02314); Ex. 10 (9/24/15 email from Chief Kepley to City Manager Dahlerbruch, Captains Best and Velez, and Sergeant Barber regarding “Update on Surfing Localism”: “While much more work needs to be done, [Deputy District Attorney Angie Christides of the LADA’s Office, Hardcore Gang Division] believes that the future crimes related to surfer localism can, and should, be prosecution with gang enhancements. This is welcome news! I firmly believe that if we prosecuted only</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>one case in this fashion, with publicity, <i>it would be the first and strongest effort to date to dissuade others from committing similar offenses.</i>” (emphasis added, CITY018158.)</p>
<p>208. The City has been aware of the Bay Boys’ harassment and acts of exclusion but has done nothing to address it.</p>	<p>208. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 7 (6/19/14 Email from Joe Mendoza to City PMK Sheri Repp Loadman: noting that the patio structure at Lunada Bay was built about 25 years ago [as of 2014] and states that “I have received a complaint that the area where this structure is located is off limits to non-locals (surfers).” (CITY023453).)</p>
<p>209. Despite acknowledging that the Bay Boys share the same characteristics as a criminal street gang, the City has nonetheless failed to take the problem of localism seriously.</p>	<p>209. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 8 (8/12/15 Email from Chief Kepley to Mayor Goodhart: “I’m reluctant to pursue some of his suggestions at this point, until we pursue our planned response – mainly because this problem has gang ‘mentality’ similarities (territorial bullies), but is not a true gang; does not meet established gang criteria, and moving forward with gang injunctions could complicate the matter.”</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	(CITY022993).)
210. Instead, the City focuses on its image, rather than addressing the cause of the exclusion of non-locals.	210. Decl. Franklin ISO Pltfs.' Supp. Opp'n, Ex. 6 (7/12/16 Email from Dennis Wolcott to Chief Kepley and City Manager Dahlerbruch: references goal of PR firm to provide positive updates to the community and secure broader public support and that they do not want their PR to look like they are trying to "hide the blemishes." (CITY023081-CITY023082).)

Issue #8: The City Police Are Complicit In The Problem With The Bay Boys Illegal Activity.

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
211. At the January 17, 2014 Martin Luther King Jr. surfing event, Palos Verdes Estates Police ignored acts of aggression by locals against outsiders.	211. Decl. Franklin ISO Supp. Opp'n, Ex. 3 (Memorandum to Patrol Personnel from Captain Tony Best Re: Lunada Bay Event 1/20/14, dated January 17, 2014, after incident report: "[i]n the water, there were minor acts of wave blocking, splashing, and verbal taunting; however, no physical altercations were observed or reported," "The surfer [who came from

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	outside the area to support the ‘anti-localism’ surf movement] explained that the surf was good and he took a little verbal harassment from the locals, but it was to be expected,” CITY023471-72).)
212. The Bay Boys were tipped off that the Police Department was organizing an undercover operation to arrest local surfers who harassed outsiders, resulting in the cancelation of the operation.	212. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 9 (4/19/16 Memo to Cpt. Velez from Det. Charles Reed re: Undercover surfer operation: notes the operation was canceled because Chief Kepley obtained information from an individual indicating that “The Bay Boys were advised of this operation by unknown means.” (CITY023013-4))
213. The Bay Boys coordinated to pressure the City to remove Chief Kepley from office, including by scheduling a meeting with and writing letters to City Manager Dahlerbruch.	213. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 13 (text messages exchanged on February 5, 2016 between Michael Thiel, Brant Blakeman, Charlie Mowat, and Michael Papayans, as follows: [Thiel to group] “So everybody- all PVE residents write the mayor, city manager and council. Keep it calm and rational, but clearly express your concerns and outrage at the chief’s behavior. Remember, we live here! It’s our city.

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>CHA” (MP 00225); [Mowat to group] “From Sully Can’t find this guys [sic] contact That tony dallenbach [sic] guy is the city commissioner who hired this douche bag” (MP 00225); [Mowat to group] “Tom/everybody- if you go on the PVE website, all addresses are there (Chach sent out screen shots). Send to Mayor, City Manager, and City Council. In this case, residency matters- if you live in PVE, do it and sign your name!” (MP 00224); [Papayans to group] “I’m gonna write them for sure, and my mom is going to as well” (MP 00224); [Thiel to group] “Write on!” (MP 00222); [Mowat to group] “Just proof read and sent my letter to the city. Here are the email addresses for them all. I encourage everybody, and I mean EVERYBODY to write a letter expressing their discontent with police chief Kepley’s policies. You don’t have to be a homeowner or even a resident. Mike Thiel has a meeting scheduled with them on February 11. The more letters sent the better to support our case. Please</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>take a minute and get this done. Our future depends on it” (MP 00212); [Mowat to group on 2/7/16] “Dear Mr. Mowat, Thank you for your email to me and the City Council. It was received by all of us and Im [sic] writing to both acknowledge its receipt and respond. Its [sic] been a long day; sorry for the late response. We all would agree that the press about the local surfing situation is creating un-need [sic] attention about a structure that has existed for a long time; social media has further increased the spread of stories and information. I can assure you that City staff, including the Chief, do not intend any arbitrary action(s) related to the patio, and its removal is not imminent or planned. On the other hand, it is an unauthorized structure and, as with all unauthorized structures in the Citys [sic] parklands, we consider the options of what, if anything, is necessary to do about it. No decisions have been made and of all the unauthorized structures that exist</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>throughout the City, we are first focusing on those that represent safety concerns and block the publics [sic] access to open spaces. We have attempted to convey this information and perspective to the press. The press reports what they want and splices together information for their report(s). Please also be forewarned, we are aware that the press plans additional articles in the near future that may or may not accurately represent the staffs [sic] position and disposition of the structure while calling more attention to the patio. We also have not had wide-spread reports of vandalism or bullying that the press has implied is a prevalent situation. However, we have received a few complaints about the area being protected by local surfers for the exclusive use of select people. In response, the Police Department must assure the publics [sic] safety and public access to the shoreline, as to the shoreline is public space; thus they patrol the area as necessary. While doing so, we are pleased to report that since December,</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>burglaries in the City have sharply declined following intensive work by the Police Department. The Police Chief reports to me and as such, Id [sic] like to invite you to meet and discuss this further. Our meeting will include both the Mayor and the Police Chief so we can together address your concerns and the topics you raise. It is important to talk about them. If you are interested, please let me know your availability; I will coordinate the meeting for all of us. Thank you and we share your frustration with all the reports. I look forward to hearing back from you. Tony” (MP 00188-MP00189).</p>
<p>214. At the 2017 MLK Day Event, a City police officer ogled women and “stalked the cliffs for any female who would give him attention.” After the event, a fellow officer referred to him as “Harambe the Gorilla” and “a roided-out freak of a human being.”</p>	<p>214. Decl. Franklin ISO Pltfs.’ Supp. Opp’n, Ex. 22 (Memorandum to Police Personnel from Sergeant Steve Barber Re: Surfer Protest, dated January 16, 2017, CITY018658-CITY018659); Decl. Wolff Supp. Req. to File Under Seal, Ex. A.</p>

1 **Issue #9: The City Engaged in the Spoliation and/or Suppression of**
 2 **Evidence.**

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
3 4 5 6 215. The City failed to produce 7 relevant and incriminating text 8 messages that were received by 9 Defendant Blakeman on his City-owned 10 phone.	215. Decl. Franklin ISO Pltfs.' Supp. Opp'n, ¶ 22 & see Ex. 13; Decl. Wolff ISO Pltfs.' Mot. for Sanctions, Dock. No. 470-1 at p. 15 (highlighting missing texts exchanged between Defendant Blakeman and co-Defendants).
11 12 216. The City failed to inform 13 Plaintiffs that a co-Defendant's cell 14 phone was within the police 15 department's possession, custody or 16 control. And due to the City's failure to 17 preserve the phone, Plaintiffs were 18 unable to access the contents on the 19 phone as of the date of the filing of 20 their Supplemental Opposition to the 21 City's Motion for Summary Judgment.	216. Decl. Franklin ISO Pltfs.' Supp. Opp'n, ¶ 23 & Exs. 18 & 19.
22 217. The City failed to produce nearly 23 480 pages of relevant documents before 24 Plaintiffs opposed the City's motion for 25 summary judgment. These documents 26 were eventually produced over one 27 week after briefing was complete on the 28 City's motion.	217. See Decl. S. Hubley at ¶¶ 2-3.

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DATED: October 18, 2017

HANSON BRIDGETT LLP

By: /s/ Kurt A. Franklin
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