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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 INDIVIDUAL
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT OR, IN THE**

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

PLAINTIFFS' SUPP. ADDITIONAL MATERIAL FACTS IN OPP. TO INDIVIDUAL DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT OR, IN THE ALTERNATIVE, SUMMARY ADJUDICATION

1 corporation,

2 Plaintiffs,

3 v.
4

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.
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**ALTERNATIVE, SUMMARY
ADJUDICATION**

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

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 Sang Lee, Brant Blakeman,
 4 Alan Johnston aka Jalian Johnston, Michael Rae Papayans, Angelo Ferrara, Frank
 5 Ferrara, and Charlie Ferrara’s (hereinafter “Individual Defendants”) Motions for
 6 Summary Judgment or, in the Alternative, Summary Adjudication before this Court.

7
 8 **Issue #3: The Individual Defendants Are Engaged in a Conspiracy to**
 9 **Exclude Outsiders from Lunada Bay.**

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
13 89. Over the years, the Bay Boys, 14 including the individual Defendants, 15 have perfected their approach to 16 excluding outsiders. Typically, rather 17 than directly confront an “outsider,” the 18 Bay Boys will simply block them from 19 catching any waves while in the water, 20 ensuring that the non-local has such a 21 miserable experience, he/she never 22 returns. 23 24 25 26 27	89. Decl. Franklin ISO Pltfs.’ Supp. Opp’n to Defs.’ Mots. Summ. J. (Decl. Franklin), Ex. 13 (text messages exchanged between Defendant Papayans and a co-conspirator, Brandon Lamers, on 1/22/16: [Lamers to Papayans] “My mom just said undercover cop at the bay”; “And this cop car pulls up and has full on conversation with the undercover guy” (MP 00416); [Lamers to Papayans] “Pathetic we had two kooks out two days ago when I surfed and me and jack just sat right on his ass”; “He didn’t catch a single wave” (MP 00416, MP 00415); [Papayans to Lamers] “That’s the way to do it bro

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>[sic] no reason to confront anybody does not [sic] let him get waves and they never come back” (MP 00415); [Lamers to Papayans] “Exactly that’s how it has to be [sic] kooks come out then no fun waves [sic] so simple”; “The guy split so fast” (MP 00415); [Papayans to Lamers] “Haha, they are easy to spot too” (MP 00415); [Lamers to Papayans] “Hell yeah just funny as shit” (MP 00414-MP 00415); Ex. 20 (text message to Angelo Ferrara from Randy Walton on 1/16/17: “By the way I heard today is one of those ‘surf the bay days’!!!! Boogie boarders and everybody!!! There is a little bit is [sic] Surf, there’s some swell out there but nothing spectacular but I hope it’s packed in those kooks are getting stuffed and burned and that’s about it no further than that. You know what I mean!?!?!”). (p. 192); Exs. 27 & 28 (Defendant Johnston told Sufer Magazine that “outsiders will get nothing except maybe a shitty one or two....so good luck. Wouldn’t any normal, self-respecting dude just go check</p>

<p>1 <u>Plaintiffs' Additional Material Facts:</u></p> <p>2</p>	<p><u>Evidence in Support of Plaintiffs' Additional Material Facts:</u></p>
	<p>elsewhere? Everyone has a local break and to see it disrespected and slutted out everywhere is just plain f-king dumb.”).</p>
<p>6 90. Defendants Papayans and Sang</p> <p>7 Lee conspired with each other and other</p> <p>8 co-conspirators via cell phone to</p> <p>9 coordinate the actions against outsiders</p> <p>10 trying to visit or surf at Lunada Bay,</p> <p>11 including Plaintiff Spencer and his</p> <p>12 companions, on January 29, 2016.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p>90. Decl. Franklin, Ex. 13 (text messages exchanged between Defendant Papayans, Sang Lee, and 9 others, including Charlie Mowat, on 1/29/16: [2724 to Sang Lee, Papayans, Mowat and 7 others] “The kook is here at the bay right now” (MP 00348); [Mowat to Sang Lee, Papayans, and 7 others] “On my way!!!!” (MP 00348); [Papayans to Sang Lee, Mowat, and others] “I’m up”; “Tell him to wait please” (MP 00348); [2724 to Papayans, Sang Lee, Mowat and 7 others] “There are two kooks he’s got a little baldheaded white guy with them he looks like a boogie board or to fuck [sic] what a joke!” (MP 00347); [Mowat to Papayans, Sang Lee, and 7 others] “Yep. He’s here” (MP 00347); [Papayans to Sang Lee, Mowat and 7 others] “Michelle get to the bay and rouste [sic] those kooks” (MP 00347); [7571 to Papayans, Sang Lee, Mowat and 7 others] “Lol ok I’m on my</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>way ! [sic]” (MP 00347); [Papayans to Mowat, Sang Lee, and 7 others] “Get him charlie, just go shake his hand, tell him we missed him and can’t believe he didn’t make any of these latest headlines, he should be ashamed” (MP 00346-MP 00347); [Mowat to Papayans, Sang Lee, and 7 others] “He’s in the water. Only five guys out. Get down here boys. I’m out there” (MP 00346); [1505 to Papayans, Mowat, Sang Lee, and 7 others] “Fuck give me [sic] hell” (MP 00344); <i>see also Ex. 13</i> (text exchange between Papayans and co-conspirator Brandon Lamers, 1/29/16: [Lamers to Papayans] “Chris Taloa is comming [sic] tomorrow let Benner know and whoever” (MP 00360); [Papayans to Lamers] “How did you find this out???” (MP 00360); [Lamers to Papayans] “I’m at a video little party [sic] at van dyne everyone is saying that” (MP 00360); [Papayans to Lamers] “Oh shizzle [sic], he say it on his site” (MP 00360); [Lamers to Papayans] “Everyone’s talking about it we have to sit</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>on this guy” (MP 00359); [Lamers to Papayans] “Don’t understand man once again ruin a good day with that crap” (MP 00359); [Papayans to Lamers] “We will all be holding it down” (MP 00357); [Papayans to Lamers] “Kooks up there” (MP 00346); [Lamers to Papayans] “Huh”; “Already [sic] up there” (MP 00346); [Papayans to Lamers] “Yup” (MP 00346); [Lamers to Papayans] “Fuck”; “Anyone there already”; “Gosh damn”; “Are they in the water?”; “I hate this guy” (MP 00345-MP 00346); [Papayans to Lamers] “Yea, only 5 guys out and he’s out, I’m going” (MP 00345); [Lamers to Papayans] “Yeah get down there I’ll be up as soon as I can my dad should be going out soon” (MP 00345).</p>
<p>91. Defendant Lee also coordinated the actions against Plaintiff Spencer on January 29, 2016 via cell phone with Brant Blakeman and co-conspirator Charlie Mowat, after receiving texts from Mowat, Papayans, Thiel, and others.</p>	<p>91. Decl. Franklin, ¶ 25 & Ex. 21 (Def. Lee T-Mobile records, indicating on 1/29/16, Sang Lee called Charlie Mowat at 6:56 am PST (14:56 UTC) (p. 0271) and 8:02 am PST (16:02 UTC) (p. 0272), and called Defendant Blakeman (at home) 62 times from 1:30 pm PST (21:30 UTC)</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	(p. 0273) to 2:03 pm PST (22:03 UTC) (p. 0275).
<p>92. Defendant Lee coordinated the actions against Plaintiff Spencer on January 29, 2016 via text message with Angelo Ferrara.</p>	<p>92. Decl. Franklin, Ex. 20 (Angelo Ferrara extraction report, 1/29/16 text from Sang Lee to Angelo Ferrara: “Taloa n his buddies r coming up to the bay today n tomorrow to surf Plz everyone take a day off n surf We need many locals out there today as possible God bless Lunada n all her children (us) [sic]” (at p. 878).</p>
<p>93. Defendants Papayans, Brant Blakeman, and co-conspirators Michael Thiel and Charlie Mowat coordinated their harassment of Plaintiff Spencer and his companions on February 5, 2016 via text message.</p>	<p>93. Decl. Franklin, Ex. 13 (texts exchanged on 2/5/16 between Defendants Papayans, Blakeman, and co-conspirators Charlie Mowat and Michael Thiel: [Mowat to Papayans, Blakeman and Thiel] “Surf looks like it could get epic today. There’s five kooks standing on top of the trail with their own personal photographer taking pictures of them posing. I think it’s the same Taloa crew. This could get ugly today. We all need to surf” (MP 00221); [Mowat to Papayans, Blakeman and Thiel] “It’s definitely Taloa” (MP 00221); [Papayans to Mowat,</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>Blakeman and Thiel] “Yea it’s him, no waves though” (MP 00221); <i>id.</i> [Mowat to Papayans, Blakeman and Thiel] “Too bad this bitch that called the cops on [David Melo] is such a cunt. She sure has a great rack and ass!” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Fuck...she’s still down there????!” (MP 00219); [Mowat to Thiel, Papayans and Blakeman] “No, they are all gone. Ghost town Lunada. Just had an epic sess [sic] with just Sandoval out” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Saw u [sic] get a couple good ones! Good crew down now – Leo, Clyde, Gabron, Chad...” (MP 00219); [Mowat to Thiel, Papayans and Blakeman] “Yep, business as usual. The patio is in good form” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Right on ...” (MP 00219.)</p>
<p>94. Defendants Papayans, Blakeman, and other Bay Boys (including Charlie Mowat and Michael Thiel) coordinated to pressure the City to remove Chief</p>	<p>94. Decl. Franklin, Ex. 13 (text messages exchanged on February 5, 2016 between Michael Thiel, Brant Blakeman, Charlie Mowat, and Michael Papayans, as</p>

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Plaintiffs' Additional Material Facts:

Evidence in Support of Plaintiffs' Additional Material Facts:

Kepley from office, including by scheduling a meeting with and writing letters to City Manager Dahlerbruch.

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. 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

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>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 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</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>structure and, as with all unauthorized structures in the City's [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 throughout the City, we are first focusing on those that represent safety concerns and block the public's [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 staff's [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</p>

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Plaintiffs' Additional Material Facts:

Evidence in Support of Plaintiffs' Additional Material Facts:

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, 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).

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1 **Issue #4: Public Nuisance**

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>3</p> <p>4</p> <p>5 95. Over the years, the Bay Boys</p> <p>6 have revised and perfected their</p> <p>7 strategy of exclusion, aiming to make</p> <p>8 outsiders' experiences at Lunada Bay</p> <p>9 so miserable that they won't come</p> <p>10 back.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p>	<p>95. Decl. Franklin, Ex. 13 (text</p> <p>messages exchanged between Defendant</p> <p>Papayans and a co-conspirator, Brandon</p> <p>Lamers, on 1/22/16: [Lamers to Papayans]</p> <p>"My mom just said undercover cop at the</p> <p>bay"; "And this cop car pulls up and has</p> <p>full on conversation with the undercover</p> <p>guy" (MP 00416); [Lamers to Papayans]</p> <p>"Pathetic we had two kooks out two days</p> <p>ago when I surfed and me and jack just sat</p> <p>right on his ass"; "He didn't catch a single</p> <p>wave" (MP 00416-MP 00415); [Papayans</p> <p>to Lamers] "That's the way to do it bro</p> <p>[sic] no reason to confront anybody does</p> <p>not [sic] let him get waves and they never</p> <p>come back" (MP 00415); [Lamers to</p> <p>Papayans] "Exactly that's how it has to be</p> <p>[sic] kooks come out then no fun waves</p> <p>[sic] so simple"; "The guy split so fast"</p> <p>(MP 00415); [Papayans to Lamers]</p> <p>"Haha, they are easy to spot too" (MP</p> <p>00415); [Lamers to Papayans] "Hell yeah</p> <p>just funny as shit" (MP 00414-MP</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	00415); <i>see also</i> PAMF No. 75 (Dock. No. 329).
96. The Bay Boys plan their obstruction of non-locals' free use of Lunada Bay via cell phone.	96. Decl. Franklin, Ex. 13 (text messages exchanged between Defendant Papayans, Sang Lee, and 9 others, including Charlie Mowat, on 1/29/16: [2724 to Sang Lee, Papayans, and others] "The kook is here at the bay right now" (MP 00348); [Mowat to Sang Lee, Papayans, and others] "On my way!!!!" (MP 00348); [Papayans to Sang Lee, Mowat, and others] "I'm up"; "Tell him to wait please" (MP 00348); [2724 to Papayans, Sang Lee, Mowat and others] "There are two kooks he's got a little baldheaded white guy with them he looks like a boogie board or to fuck [sic] what a joke!" (MP 00347); [Mowat to Papayans, Sang Lee, and others] "Yep. He's here" (MP 00347); [Papayans to Sang Lee, Mowat and others] "Michelle get to the bay and rouse those kooks" (MP 00347); [7571 to Papayans, Sang Lee, Mowat and others] "Lol ok I'm on my way ! [sic]" (MP 00347); [Papayans to Mowat, Sang

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Lee, and others] “Get him charlie, just go shake his hand, tell him we missed him and can’t believe he didn’t make any of these latest headlines, he should be ashamed” (MP 00346-MP 00347); [Mowat to Papayans, Sang Lee, and others] “He’s in the water. Only five guys out. Get down here boys. I’m out there” (MP 00346); [1505 to Papayans, Mowat, Sang Lee, and others] “Fuck give me [sic] hell” (MP 00344); <i>see also</i> Ex. 13 (text exchange between Papayans and co-conspirator Brandon Lamers, 1/29/16: [Lamers to Papayans] “Chris Taloa is comming [sic] tomorrow let Benner know and whoever” (MP 00360); [Papayans to Lamers] “How did you find this out???” (MP 00360); [Lamers to Papayans] “I’m at a video little party [sic] at van dyne everyone is saying that” (MP 00360); [Papayans to Lamers] “Oh shizzle [sic], he say it on his site” (MP 00360); [Lamers to Papayans] “Everyone’s talking about it we have to sit on this guy” (MP 00359); [Lamers to Papayans] “Don’t understand

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>man once again ruin a good day with that crap” (MP 00359); [Papayans to Lamers] “We will all be holding it down” (MP 00357); [Papayans to Lamers] “Kooks up there” (MP 00346); [Lamers to Papayans] “Huh”; “Already [sic] up there” (MP 00346); [Papayans to Lamers] “Yup” (MP 00346); [Lamers to Papayans] “Fuck”; “Anyone there already”; “Gosh damn”; “Are they in the water?”; “I hate this guy” (MP 00345-MP00346); [Papayans to Lamers] “Yea, only 5 guys out and he’s out, I’m going” (MP 00345); [Lamers to Papayans] “Yeah get down there I’ll be up as soon as I can my dad should be going out soon” (MP 00345); [Mowat to Papayans, Blakeman and Thiel] “Surf looks like it could get epic today. There’s five kooks standing on top of the trial with their own personal photographer taking pictures of them posing. I think it’s the same Taloa crew. This could get ugly today. We all need to surf” (MP 00221); [Mowat to Papayans, Blakeman and Thiel] “It’s definitely Taloa” (MP 00221);</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>[Papayans to Mowat, Blakeman and Thiel] “Yea it’s him, no waves though” (MP 00221); <i>id.</i> [Mowat to Papayans, Blakeman and Thiel] “Too bad this bitch that called the cops on [David Melo] is such a cunt. She sure has a great rack and ass!” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Fuck...she’s still down there???” (MP 00219); [Mowat to Thiel, Papayans and Blakeman] “No, they are all gone. Ghost town Lunada. Just had an epic sess [sic] with just Sandoval out” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Saw u [sic] get a couple good ones! Good crew down now – Leo, Clyde, Gabron, Chad...” (MP 00219); [Mowat to Thiel, Papayans and Blakeman] “Yep, business as usual. The patio is in good form” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Right on ...” (MP 00219); Ex. 20 (Angelo Ferrara extraction report, 1/29/16 text from Sang Lee to Angelo Ferrara: “Taloa n his buddies r coming up to the bay today n</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>tomorrow to surf Plz everyone take a day off n surf We need many locals out there today as possible God bless Lunada n all her children (us) [sic]” (at p. 878); Ex. 21 (Def. Lee T-Mobile records, indicating on 1/29/16, Sang Lee called Charlie Mowat at 6:56 am PST (14:56 UTC) (p. 0271) and 8:02 am PST (16:02 UTC) (p. 0272), and called Defendant Blakeman (at home) 62 times from 1:30 pm PST (21:30 UTC) (p. 0273) to 2:03 pm PST (22:03 UTC) (p. 0275).</p>
<p>97. The City has long been aware of the Bay Boys’ obstruction of the public’s free access to Lunada Bay.</p>	<p>97. Decl. Franklin, 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</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>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. 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.)”); 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</p>

1	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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3		localism can, and should, be prosecuted
4		with gang enhancements. This is
5		welcome news! I firmly believe that if we
6		prosecuted only one case in this fashion,
7		with publicity, it would be the first and
8		strongest effort to date to dissuade others
9		from committing similar offenses.”
10		(emphasis added, CITY018158).

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12 **Issue #5: Bane Act**

14	<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
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16	98. The Bay Boys united—through	98. Decl. Franklin, Ex. 13 (text
17	common goals, symbols, and	messages exchanged between Defendant
18	practices—to deprive Plaintiffs of their	Papayans and a co-conspirator, Brandon
19	right to access the bluffs and shoreline	Lamers, on 1/22/16: [Lamers to Papayans]
20	through interference, intimidation,	“Pathetic we had two kooks out two days
21	threats and coercion.	ago when I surfed and me and jack just sat
22		right on his ass”; “He didn’t catch a single
23		wave” (MP 00416-MP 00415); [Papayans
24		to Lamers] “That’s the way to do it bro
25		[sic] no reason to confront anybody does
26		not [sic] let him get waves and they never
27		come back” (MP 00415); [Lamers to

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Papayans] “Exactly that’s how it has to be [sic] kooks come out then no fun waves [sic] so simple”; “They guy split so fast” (MP 00415); [Papayans to Lamers] “Haha, they are easy to spot too” (MP 00415); [Lamers to Papayans] “Hell yeah just funny as shit” (MP 00414-MP 00415.); [Lamers to Papayans] “Chris Taloa is comming [sic] tomorrow let Benner know and whoever” (MP 00360); [Papayans to Lamers] “How did you find this out???” (MP 00360); [Lamers to Papayans] “I’m at a video little party [sic] at van dyne everyone is saying that” (MP 00360); [Papayans to Lamers] “Oh shizzle [sic], he say it on his site” (MP 00360); [Lamers to Papayans] “Everyone’s talking about it we have to sit on this guy” (MP 00359); [Mowat to Papayans, Blakeman and Thiel] “Too bad this bitch that called the cops on [David Melo] is such a cunt. She sure has a great rack and ass!” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Fuck...she’s still down there???!” (MP 00219); [Mowat to Thiel,

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>Papayans and Blakeman] “No, they are all gone. Ghost town Lunada. Just had an epic sess [sic] with just Sandoval out” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Saw u [sic] get a couple good ones! Good crew down now – Leo, Clyde, Gabron, Chad...” (MP 00219); [Mowat to Thiel, Papayans and Blakeman] “Yep, business as usual. The patio is in good form” (MP 00219); [Thiel to Mowat, Papayans and Blakeman] “Right on ...” (MP 00219); Ex. 20 (Angelo Ferrara extraction report, 1/29/16 text from Sang Lee to Angelo Ferrara: “Taloa n his buddies r coming up to the bay today n tomorrow to surf Plz everyone take a day off n surf We need many locals out there today as possible God bless Lunada n all her children (us) [sic]” (at p. 878), (text message to Angelo Ferrara from Randy Walton on 1/16/17: “By the way I heard today is one of those ‘surf the bay days’!!!! Boogie boarders and everybody!!! There is a little bit is [sic]</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	<p>Surf, there's some swell out there but nothing spectacular but I hope it's packed in those kooks are getting stuffed and burned and that's about it no further than that. You know what I mean!?!?!” (at p. 192); Decl. S. Wolff Supp. Pltfs.’ Mot. for Sanctions, Ex. 2 (Bay Boys group text message after lawsuit filed, stating “[t]here is hopefully no evidence that those named barred the plaintiffs from going surfing,”; <i>see also</i> Pltfs.’ PAMF No. 77, Dock. No. 329; <i>see also</i> Pltfs.’ PAMF No. 77, Dock. No. 329.</p>

Issue #6: Assault

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>99. Defendants Papayans and Sang Lee, along with co-conspirators Charlie Mowat and others, planned the assault against Plaintiff Spencer on January 29, 2016.</p>	<p>99. Decl. Franklin, Ex. 13 (text messages exchanged between Defendant Papayans, Sang Lee, and 9 others, including Charlie Mowat, on 1/29/16: [2724 to Sang Lee, Papayans, and others] “The kook is here at the bay right now” (MP 00348); [Mowat to Sang Lee,</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Papayans, and others] “On my way!!!!” (MP 00348); [Papayans to Sang Lee, Mowat, and others] “I’m up”; “Tell him to wait please” (MP 00348); [2724 to Papayans, Sang Lee, Mowat and others] “There are two kooks he’s got a little baldheaded white guy with them he looks like a boogie board or to fuck [sic] what a joke!” (MP 00347); [Mowat to Papayans, Sang Lee, and others] “Yep. He’s here” (MP 00347); [Papayans to Sang Lee, Mowat and others] “Michelle get to the bay and rouste those kooks” (MP 00347); [7571 to Papayans, Sang Lee, Mowat and others] “Lol ok I’m on my way ! [sic]” (MP 00347); [Papayans to Mowat, Sang Lee, and others] “Get him charlie, just go shake his hand, tell him we missed him and can’t believe he didn’t make any of these latest headlines, he should be ashamed” (MP 00346-MP 00347); [Mowat to Papayans, Sang Lee, and others] “He’s in the water. Only five guys out. Get down here boys. I’m out there” (MP 00346); [1505 to Papayans, Mowat,

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Sang Lee, and others] “Fuck give me [sic] hell” (MP 00344); <i>see also</i> Ex. 13 (text exchange between Papayans and co-conspirator Brandon Lamers, 1/29/16: [Lamers to Papayans] “Chris Taloa is comming [sic] tomorrow let Benner know and whoever” (MP 00360); [Papayans to Lamers] “How did you find this out???” (MP 00360); [Lamers to Papayans] “I’m at a video little party [sic] at van dyne everyone is saying that” (MP 00360); [Papayans to Lamers] “Oh shizzle [sic], he say it on his site” (MP 00360); [Lamers to Papayans] “Everyone’s talking about it we have to sit on this guy” (MP 00359); [Lamers to Papayans] “Don’t understand man once again ruin a good day with that crap” (MP 00359); [Papayans to Lamers] “We will all be holding it down” (MP 00357); [Papayans to Lamers] “Kooks up there” (MP 00346); [Lamers to Papayans] “Huh”; “Allready [sic] up there” (MP 00346); [Papayans to Lamers] “Yup” (MP 00346); [Lamers to Papayans] “Fuck”; “Anyone there allready”; “Gosh damn”;

1 <u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
2 3 4 5 6 7 8 9	“Are they in the water?”; “I hate this guy” (MP 00345-MP00346); [Papayans to Lamers] “Yea, only 5 guys out and he’s out, I’m going” (MP 00345); [Lamers to Papayans] “Yeah get down there I’ll be up as soon as I can my dad should be going out soon” (MP 00345).
10 100. Defendant Sang Lee also 11 communicated with co-Defendants 12 Brant Blakeman and Angelo Ferrara in 13 advance of the January 29, 2016 assault 14 on Plaintiff Spencer. 15 16 17 18 19 20 21 22 23 24 25 26	100. Decl. Franklin, Ex. 21 (Def. Lee T-Mobile records, indicating on 1/29/16, Sang Lee called Charlie Mowat at 6:56 am PST (14:56 UTC) (p. 0271) and 8:02 am PST (16:02 UTC) (p. 0272), and called Defendant Blakeman (at home) 62 times from 1:30 pm PST (21:30 UTC) (p. 0273) to 2:03 pm PST (22:03 UTC) (p. 0275); Ex. 20 (Angelo Ferrara extraction report, 1/29/16 text from Sang Lee to Angelo Ferrara: “Taloa n his buddies r coming up to the bay today n tomorrow to surf Plz everyone take a day off n surf We need many locals out there today as possible God bless Lunada n all her children (us) [sic]” (at p. 878).

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1 **Issue #7: Battery**
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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>3 4 5 101. Defendant Papayans, along with 6 co-conspirator Charlie Mowat and co- 7 Defendant Sang Lee, helped coordinate 8 the actions against Plaintiff Spencer on 9 January 29, 2016. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27</p>	<p>101. Decl. Franklin, Ex. 13 (text messages exchanged between Defendant Papayans, Sang Lee, and 9 others, including Charlie Mowat, on 1/29/16: [2724 to Sang Lee, Papayans, and others] “The kook is here at the bay right now” (MP 00348); [Mowat to Sang Lee, Papayans, and others] “On my way!!!!” (MP 00348); [Papayans to Sang Lee, Mowat, and others] “I’m up”; “Tell him to wait please” (MP 00348); [2724 to Papayans, Sang Lee, Mowat and others] “There are two kooks he’s got a little baldheaded white guy with them he looks like a boogie board or to fuck [sic] what a joke!” (MP 00347); [Mowat to Papayans, Sang Lee, and others] “Yep. He’s here” (MP 00347); [Papayans to Sang Lee, Mowat and others] “Michelle get to the bay and roust those kooks” (MP 00347); [7571 to Papayans, Sang Lee, Mowat and others] “Lol ok I’m on my way ! [sic]” (MP 00347); [Papayans to Mowat, Sang</p>

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Lee, and others] “Get him charlie, just go shake his hand, tell him we missed him and can’t believe he didn’t make any of these latest headlines, he should be ashamed” (MP 00346-MP 00347); [Mowat to Papayans, Sang Lee, and others] “He’s in the water. Only five guys out. Get down here boys. I’m out there” (MP 00346); [1505 to Papayans, Mowat, Sang Lee, and others] “Fuck give me [sic] hell” (MP 00344); <i>see also</i> Ex. 13 (text exchange between Papayans and co-conspirator Brandon Lamers, 1/29/16: [Lamers to Papayans] “Chris Taloa is comming [sic] tomorrow let Benner know and whoever” (MP 00360); [Papayans to Lamers] “How did you find this out???” (MP 00360); [Lamers to Papayans] “I’m at a video little party [sic] at van dyne everyone is saying that” (MP 00360); [Papayans to Lamers] “Oh shizzle [sic], he say it on his site” (MP 00360); [Lamers to Papayans] “Everyone’s talking about it we have to sit on this guy” (MP 00359); [Lamers to Papayans] “Don’t understand

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Plaintiffs' Additional Material Facts:

Evidence in Support of Plaintiffs' Additional Material Facts:

man once again ruin a good day with that
crap” (MP 00359); [Papayans to Lamers]
“We will all be holding it down” (MP
00357); [Papayans to Lamers] “Kooks up
there” (MP 00346); [Lamers to Papayans]
“Huh”; “Already [sic] up there” (MP
00346); [Papayans to Lamers] “Yup” (MP
00346); [Lamers to Papayans] “Fuck”;
“Anyone there already”; “Gosh damn”;
“Are they in the water?”; “I hate this guy”
(MP 00345-MP00346); [Papayans to
Lamers] “Yea, only 5 guys out and he’s
out, I’m going” (MP 00345); [Lamers to
Papayans] “Yeah get down there I’ll be up
as soon as I can my dad should be going
out soon” (MP 00345); **Ex. 21** (Def. Lee
T-Mobile records, indicating on 1/29/16,
Sang Lee called Charlie Mowat at 6:56
am PST (14:56 UTC) (p. 0271) and 8:02
am PST (16:02 UTC) (p. 0272), and
called Defendant Blakeman (at home) 62
times from 1:30 pm PST (21:30 UTC) (p.
0273) to 2:03 pm PST (22:03 UTC) (p.
0275); **Ex. 20** (Angelo Ferrara extraction
report, 1/29/16 text from Sang Lee to

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<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
	Angelo Ferrara: “Taloa n his buddies r coming up to the bay today n tomorrow to surf Plz everyone take a day off n surf We need many locals out there today as possible God bless Lunada n all her children (us) [sic]” (at p. 878).

Issue #8: Spoliation and/or Suppression of Evidence

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
102. In or around August 15, 2016, Defendant Charlie Ferrara discarded his cell phone and obtained a new phone but failed to preserve any data (including texts and photos) from his prior cell phone.	102. Decl. Wolff ISO Pltfs.’ Mot. for Sanctions, Dock No. 470-16 (Ex. 15).
103. Defendant Charlie Ferrara exchanged at least six text messages with co-Defendant Sang Lee but failed to preserve and produce these text messages.	103. Decl. Wolff ISO Pltfs.’ Mot. for Sanctions, Dock No. 470-18 (Ex. 17).
104. Defendant Sang Lee exchanged at least 67 text messages with co-	104. Decl. Wolff ISO Pltfs.’ Mot. for Sanctions, Dock No. 470-1, ¶ 36 (pages

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>1 2 3 Defendants Alan Johnston, Charlie 4 Ferrara, Brant Blakeman, and Frank 5 Ferrara but failed to preserve and 6 produce any of these text messages.</p>	<p>13-17).</p>
<p>7 105. Defendant Sang Lee destroyed 8 incriminating text messages. 9</p>	<p>105. Decl. Wolff ISO Pltfs.' Reply Re: Mot. for Sanctions, Dock. No. 477-1 at ¶ 3 & Ex. 2.</p>
<p>10 106. Defendant Frank Ferrara 11 destroyed and failed to produce at least 12 nine text messages that he exchanged 13 with co-Defendant Sang Lee.</p>	<p>106. Decl. Wolff ISO Pltfs.' Mot. for Sanctions, Dock. No. 477-1, at ¶ 36 (pages 13-17).</p>
<p>14 107. Defendant Frank Ferrara 15 obtained a new cell phone in or around 16 November 2016. He failed to preserve 17 any communications on his cell phone 18 that occurred on or around the relevant 19 timeframe in this action, from January 20 to March 2016.</p>	<p>107. Decl. Wolff ISO Pltfs.' Mot. for Sanctions, Dock. No. 477-1, at ¶ 28 & Exs. 16 & 17.</p>
<p>21 108. Although Defendant Brant 22 Blakeman received at least a half-dozen 23 incriminating texts from co-Defendants 24 and/or co-conspirators on February 5, 25 2016, when Plaintiff Spencer was 26 harassed, he failed to preserve and 27 produce any of these text messages. He 28</p>	<p>108. Decl. Franklin, ¶ 22.</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>1 2 3 similarly failed to preserve and produce 4 four text messages that he exchanged 5 with Sang Lee.</p>	
<p>6 109. The City of Palos Verdes Estates 7 had possession, custody, and/or control 8 over Defendant Blakeman's cell phone 9 but similarly failed to preserve and 10 produce any of the incriminating text 11 messages that Defendant Blakeman 12 received from co-Defendants and/or co- 13 conspirators on February 5, 2017, when 14 Plaintiff Spencer was harassed.</p>	<p>109. Decl. Franklin, ¶¶ 20-22.</p>
<p>15 110. Defendant Alan Johnston failed 16 to preserve and/or produce at least 45 17 text messages that he exchanged with 18 Defendant Sang Lee.</p>	<p>110. Decl. Wolff ISO Pltfs.' Mot. for Sanctions, Dock. No. 477-1, ¶ 36 at pp. 13-17.</p>
<p>19 111. Even to this date, there are 20 numerous gaps in what Defendants 21 produced. Most telling, there are huge 22 gaps in Defendants' production of their 23 text messages, with some producing 24 records with several months of text 25 messages missing—or omitting 26 messages that they obviously sent or 27 received, as shown by records from 28</p>	<p>111. See Decl. Wolff ISO Pltfs.' Mot. for Sanctions, Dock No. 470-16 (Ex. 15) (Defendant Charlie Ferrara obtained a new cell phone in August 2016 and did not preserve any of his texts or photographs on his previous phone); Decl. Wolff ISO Pltfs. Mot. for Sanctions, Dock. No. 477-1, ¶ 36 (Defendant Sang Lee's extraction report does not include at</p>

<u>Plaintiffs' Additional Material Facts:</u>	<u>Evidence in Support of Plaintiffs' Additional Material Facts:</u>
<p>3 other Defendants.</p>	<p>least 67 text messages that he exchanged with co-Defendants; Defendant Frank Ferrara deleted nine text messages exchanged with co-Defendants, which are now unrecoverable; Defendant Brant Blakeman failed to produce four texts he exchanged with Defendant Lee; Defendant Johnston failed to produce 45 texts he exchanged with Defendant Lee); Decl. Franklin, ¶ 22 (Defendant Brant Blakeman failed to produce a string of incriminating text messages received on February 5, 2016 from co-Defendant Papayans and co-conspirators).</p>
<p>17 112. Despite the existence of 18 numerous text communications which 19 were exchanged with co-Defendants, 20 Defendant Papayans testified under 21 oath that he did not recall ever 22 participating in any text messages 23 talking about outsiders coming to 24 Lunada Bay or anything like that.</p>	<p>112. Decl. Franklin, Ex. 24 (Papayans Depo. at p. 66:21-25).</p>
<p>25 113. Despite the existence of 26 numerous text communications which 27 were received from co-Defendants,</p>	<p>113. Decl. Franklin, Ex. 25 (Blakeman Depo. at p. 241:5-9).</p>

<p>1 <u>Plaintiffs' Additional Material Facts:</u></p> <p>2</p>	<p><u>Evidence in Support of Plaintiffs' Additional Material Facts:</u></p>
<p>3 Defendants Blakeman testified under</p> <p>4 oath that he only used his cell phone to</p> <p>5 receive texts from his wife, not others.</p>	

7 DATED: October 18, 2017

HANSON BRIDGETT LLP

10 By: /s/ Kurt A. Franklin

11 KURT A. FRANKLIN

12 LISA M. POOLEY

13 SAMANTHA D. WOLFF

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17 CORY SPENCER, DIANA MILENA

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19 RANGERS, INC.