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18 Attorneys for Plaintiffs
CORY SPENCER, DIANA MILENA
19 REED, and COASTAL PROTECTION
RANGERS, INC.
20

21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
23

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

CASE NO. 2:16-cv-02129-SJO (RAOx)

**DECLARATION OF JOHN
MACHARG IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

Judge: Hon. S. James Otero
Date: February 21, 2017

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Plaintiffs,

v.

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

Defendants.

Time: 10:00 a.m.
Crtrm.: 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

I, John MacHarg, declare as follows:

1. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I was born and raised in Palos Verdes Estates and attended Lunada Bay Elementary through Palos Verdes High School. I moved away from the Lunada Bay area in 1999 and currently reside in Ventura with my wife and child.

3. I surfed Lunada Bay regularly from the sixth grade until the present. Although a regular at Lunada Bay, growing up I did not have a desire to be a part of that culture because it involved a lot of heavy drinking, and to a lesser extent the use of drugs and other illegal activities. I just wanted to surf and enjoy the ocean.

1 4. After moving away from Lunada Bay I visited the area less
2 frequently. I noticed as time passed that my presence went from being
3 tolerated to being un-tolerated in many cases.

4 5. I was surfing Lunada Bay the morning of Jan. 29, 2016. The
5 waves were big and my surfboard leash broke. My surfboard drifted to shore
6 by the rocks near the patio. When I reached my board, David Melo walked
7 down the patio stairs and immediately started harassing me by making
8 statements like “You only come around here when the waves are good.” I
9 responded by telling David that he had no right to question how or when I
10 surf the Bay and that localism in general was wrong headed, unfair and
11 illegal. At that point, Sang Lee butted in and began to argue with me. I told
12 Sang that Lunada Bay was public property and did not belong to him. Sang
13 poured out a portion of the beer that he was holding onto my head. I asked
14 Sang if he was trying to start a fight and said “There is a cop right here.”
15 Sang replied “It’s just beer.” There were several officers on the patio deck
16 and one was observing from just a few feet to my right while I argued with
17 Sang and David. This prompted me to send an email to Chief Kepley
18 regarding what I considered to be a major problem at Lunada Bay – alcohol
19 consumption. Attached as **Exhibit “1”** to this declaration is a copy of the
20 email sent to Chief Kepley and the response that I received from Mark
21 Valez.

22 6. A couple of weeks later, I returned to surf Lunada Bay. I
23 immediately began receiving push back over the opinions that I had
24 expressed weeks before. After I was in the lineup, Alan Johnston aka Jalian
25 Johnston was the first to paddle over and start harassing me. Johnston is
26 one of the more aggressive individuals out there and made many unsolicited
27 comments. I responded by stating “it is a public beach” and that localism is
28 unfair and illegal. In response, Johnston said: “I don’t know what hippy

1 commune you're from." Johnston told me how sacred the place was and
2 how outsiders should not be allowed. Johnston then started to threaten me
3 stating: "What you are saying makes me want to twist your head off."

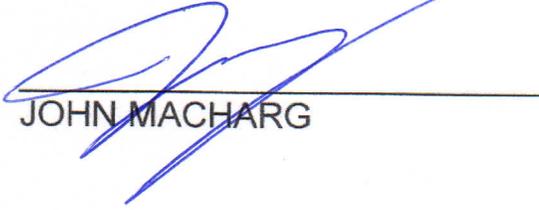
4 7. Having watched the localism issue over the years, I am
5 frustrated and discouraged by the way the City of Palos Verdes Estates and
6 the police have handled it. Until just recently, City officials have publicly
7 stated that the Bay Boys and localism were an "urban legend." I believe if
8 they enforced the ban on alcohol most of those guys would not show up to
9 go surfing. I would like to be able to visit Lunada Bay to surf without fear of
10 physical and verbal attack or the hassle of dealing with the Bay Boy bullies.
11 I would like to be able to visit the Lunada Bay bluff, shoreline, and water to
12 explore and surf without the fear of my property being vandalized. I want the
13 Bay Boys and other locals to be barred from using this beach for sufficient
14 time to change attitudes and to give access to the beach back to the public.

15 8. I want the City of Palos Verdes Estates to enforce its ordinances
16 fairly and for it to provide signage so people will know Lunada Bay is a
17 public beach. I want the City of Palos Verdes Estates to improve amenities
18 in a fashion that makes it safer, provides improved access to all beachgoers,
19 and is both consistent with this rural spot, the California Coastal Act, and
20 state and federal law. For example, access trails to the shoreline should be
21 clearly marked to make it safer for people visiting to navigate down to the
22 shoreline. And no person should be allowed to block the access trails or to
23 intimidate visitors on the bluff top, on the shoreline, or in the water. I want
24 Palos Verdes Estates police to be available to help when people are
25 unlawfully excluded. In short, I want to be able to visit Lunada Bay without
26 being harassed. And if I am harassed, I want the City of Palos Verdes
27 Estates police to take my complaints seriously.

28 ///

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

3 Executed in Ventura, California on December 28, 2016.

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6 _____
7 JOHN MACHARG

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Exhibit 1

To: John MacHarg
Cc: Jeff Kepley
Subject: RE: Alcohol Consumption

It would be considered a battery. Mark

From: John MacHarg [mailto:johnmacharg@gmail.com]
Sent: Monday, February 01, 2016 3:00 PM
To: Mark Velez <Mvelez@pvestates.org<mailto:Mvelez@pvestates.org>>
Cc: Jeff Kepley <jkepley@pvestates.org<mailto:jkepley@pvestates.org>>
Subject: RE: Alcohol Consumption

We had a had a verbal disagreement and he spilled some beer on me. Prosecution for what?

John

From: Mark Velez [mailto:Mvelez@pvestates.org]
Sent: Monday, February 01, 2016 2:33 PM
To: John MacHarg
Cc: Jeff Kepley
Subject: RE: Alcohol Consumption



I'm sorry to hear about your incident. I will pass this information on to the Supervisors. If you would like to make a crime report about your incident, which will allow us to seek prosecution, please let me know and I can arrange a time for you to talk to an officer. Mark

From: John MacHarg [mailto:johnmacharg@gmail.com]
Sent: Monday, February 01, 2016 2:29 PM
To: Mark Velez <Mvelez@pvestates.org<mailto:Mvelez@pvestates.org>>
Cc: Jeff Kepley <jkepley@pvestates.org<mailto:jkepley@pvestates.org>>
Subject: RE: Alcohol Consumption

Dear Mark,

On Friday, I was standing just under the patio on the rocks arguing up at Sang Lee (local surfer/enforcer) who was standing on top of the patio wall over me. As we argued, Sang poured out a portion of the beer he was holding on to my head. I protested the act and asked Sang if he was trying to pick a fight with me. This happened right in front two officers that were standing 6 feet to my right watching us argue. My point is that the beer was everywhere on the patio that day and it always is. The officers may have had good reason to let the drinking go on in hopes of getting a better arrest, but the drinking significantly contributes to the problem. Many of those guys wouldn't even show up if they couldn't drink down there, and the ones who remained would be more sober in their actions. That's just my opinion, but if you have any questions please feel free to contact me.

Regards,

John

Ps. If you make an arrest and get a conviction, please ask the judge to bar the offender from visiting the Bay. This happened to a local surfer/enforcer in Oxnard many years ago, and it really seemed like poetic justice.

From: Mark Velez [mailto:Mvelez@pvestates.org]
Sent: Monday, February 01, 2016 10:26 AM
To: johnmacharg@gmail.com<mailto:johnmacharg@gmail.com>
Subject: Alcohol Consumption

Hello Mr. MacHarg, my name is Mark Velez and I oversee the patrol division at the PVEPD. Chief Kepley forwarded me your email, and I looked into the situation this morning. We do not approve of, or allow, drinking along the cliff, or at the beach, as it violates the municipal code. I have talked with the supervisor on the shift and he informed me that one officer did not see alcohol being consumed. Two other officers working together said they saw alcohol but were busy with handling a disturbance call involving two people, likely to result in an arrest, so they were unable to address the alcohol issue. Since police often do not see all violations, often due to people hiding their illegal activity, if you happen to witness drinking, or other illegal activity, feel free to call the department at 310-378-4211 and we will respond to investigate and take appropriate action. Mark

From: "John MacHarg" <johnmacharg@gmail.com<mailto:johnmacharg@gmail.com>>
Date: January 29, 2016 at 9:27:12 PM PST
To: <jkepley@pvestates.org<mailto:jkepley@pvestates.org>>
Subject: Lunada Bay
Dear Chief Kepley,

I appreciate the effort your department is making on the localism issue at Lunada Bay. I was surfing at Lunada Bay today. I was also at the patio structure and saw local surfers drinking beer, while at the same time uniformed police officers were on the patio structure. I didn't understand why the drinking in public issue was being overlooked?

Regards,

John MacHarg

johnmacharg@gmail.com<mailto:johnmacharg@gmail.com>