

Leonard J. Porto III
xxxxxxx
P.O. Box 354
Corona Del Mar, CA 92625
xxxxxxx
In Propria Persona

**United States District Court
Central District of California
Southern Division**

Leonard J. Porto III,
Plaintiff,

v.
CITY of LAGUNA BEACH, a political
entity;
**CITY of LAGUNA BEACH MARINE
SAFETY DEPARTMENT**, a political
entity;
MARINE SAFETY CHIEF MARK
KLOSTERMAN,
LIFEGUARD TRAVIS LOWREY,
LIFEGUARD THOMAS F. McGERVEY,
LIFEGUARD MIKE SCOTT,
individually and in their official capacity;
**CITY of LAGUNA BEACH POLICE
DEPARTMENT**, a political entity;
POLICE OFFICER ALFRED COLLAZO,
POLICE OFFICER RYAN DOMINGUEZ,
POLICE OFFICER ZACH MARTINEZ,
individually and in their official capacity,
POLICE OFFICER MICHAEL DONOHUE,
in his individual capacity;
DOES 1 through 10,
Defendants.

Case Number:

SA CV 08547 DOC (MLGX)

**PLAINTIFF'S
SECOND AMENDED
COMPLAINT
FOR:**

**DAMAGES;
INJUNCTIVE RELIEF.**

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, Leonard J. Porto III, In Propria Persona,
and hereby complains of the Defendants, and each of them, jointly and

severally, upon information and belief, and respectfully alleges before this honorable Court:

JURISDICTION and VENUE

1. This Complaint is for damages in an amount to be decided at trial, and injunctive relief, against Defendants for violation of Plaintiff's **Fourth**, **Fifth**, and **Fourteenth** Amendment federal constitutional, state constitutional, civil, and common law rights pursuant, but not limited to:

42 U.S.C § 1983 (civil action for deprivation of rights)

42 U.S.C § 1985 (3) (conspiracy)

42 U.S.C § 1986 (negligence).

2. Jurisdiction is based on 28 U.S.C. § § 1331, & 1343, 1 through 4.

3. Supplemental jurisdiction of this honorable Court is invoked to hear and decide claims arising under state law pursuant to 28 U.S.C § 1367.

4. Venue is proper under 28 U.S.C. 1391, as a substantial part of the events or omissions giving rise to the claim occurred within this honorable court's judicial district.

STATE NOTICE OF CLAIM

5. "Notice-of-claim rules are neither universally familiar nor in any sense indispensable prerequisites to litigation, and there thus is no reason to suppose that Congress intended federal courts to apply such rules, which significantly inhibit the ability to bring federal actions".

Felder v. Casey, 487 U.S. 131 (1988).

6. "State claim presentation requirements cannot be applied to federal civil rights actions" *Ford v. Long Beach Unified School District*, 461 F.3d 1087 (9th Cir. 2006).

7. Defendants had been aware of Plaintiff's good faith attempts to

1 warn them of intent to sue over several years in conversation with Marine
2 Safety Officer Calla Allison, lifeguards, and police, on two or more
3 occasions.

4 8. Plaintiff warned Defendants of litigation, recorded on police audio
5 files, in the city's possession for almost one year, prior to the filing of this
6 complaint. (EXHIBIT E: audio file DM-10023_238 at time index 1:20)

7 **PARTIES**

8 **Plaintiff**

9 9. Plaintiff Leonard J. Porto III is a U.S. citizen residing in Orange
10 County, California. Mr. Porto is an experienced rescue certified scuba diver.

11 **Defendants**

12 10. Defendant City of Laguna Beach is a political entity in the County of
13 Orange, California, that on information and belief, receives federal funds.

14 11. Defendant City of Laguna Beach Police Department is a political
15 entity in the County of Orange, California.

16 12. Defendants Alfred Collazo, Ryan Dominguez, Michael Donohue, and
17 Zach Martinez are City of Laguna Beach Police Officers.

18 13. Defendant City of Laguna Beach Marine Safety Department is a
19 political entity in the County of Orange, California.

20 14. Defendant Mark Klosterman is the employed chief of the City of
21 Laguna Beach Marine Safety Department.

22 15. Defendants Travis Lowrey, Thomas McGerver, and Mike Scott, are all
23 lifeguards employed by the City of Laguna Beach Marine Safety Dept.

24 16. DOES 1 through 10 refer to persons or entities that engaged in, were
25 aware of, participated in, and/or directed the acts alleged herein. Plaintiff is
26 unaware of the true names and capacities of Defendants DOES 1 through
27 10, therefore sues those defendants by fictitious names. Plaintiff will seek
28 leave to amend this Complaint to reflect true names and capacities.

INTRODUCTION

17. At all times relevant to this complaint, including the time span from the year 2002 to the present, all Defendants were acting within the scope of their employment for the City of Laguna Beach, and under color of law.

18. They are sued in both their official and individual capacity for damages, excluding officer Michael Donohue, who is sued in his individual capacity only.

19. They acted recklessly, negligently, and in bad faith, knowing their conduct violated well established and settled law, and demonstrated a callous indifference to the state and federally protected rights of Plaintiff.

20. Plaintiff was engaged in the pursuit of happiness, travelling under the navigable waters of Laguna Beach, in association with another recreational scuba diver.

21. Plaintiff is entitled to recover compensatory and punitive damages against them individually.

22. As a result of deprivation of constitutional rights by these “stalking horses”, Plaintiff suffered damages in the form of pain and suffering, for which he seeks compensatory and punitive damages against defendants in their official as well as individual capacity, excluding officer Michael Donohue, who is sued in his individual capacity only.

23. All Defendants are persons.

FACTUAL ALLEGATIONS

24. On Monday, July 2nd, 2007, at approximately 4 p.m., nearing low tide, Plaintiff and a friend, Mr. James Dodge, travelled underwater from Boater’s Canyon (also known as Fisherman’s cove) to Shaw’s cove in Laguna Beach, California. Plaintiff and Mr. Dodge are both advanced and rescue certified divers, trained by multiple internationally recognized agencies, and are insured members of the Divers Alert Network (DAN).

1 Each has completed over 300 dives. Plaintiff and Mr. Dodge initiated
2 contact with and advised the lifeguard on duty they would not be returning
3 to Boater's canyon after their dive, and would be exiting at Shaw's cove.

4 25. Plaintiff and Mr. Dodge were confronted and detained upon their exit
5 from the ocean by lifeguards, police, and other individuals. Plaintiff
6 suggested conversation continue at Laguna Sea Sports, where Plaintiff's
7 vehicle was parked. After Plaintiff walked to his parked vehicle at Laguna
8 Sea Sports to remove his scuba gear, the Defendants, and Mr. Dodge,
9 arrived at Laguna Sea Sports parking lot.

10 26. Four separate demands were made by Plaintiff to contact his
11 attorney, Mr. Robert A. Garretson, by cell phone. Plaintiff was permitted to
12 contact his attorney by a police officer after the fourth demand.

13 27. Officer Michael Donohue then removed Plaintiff's cell phone out of
14 Plaintiff's hand and placed him in a "pain compliance" hold on the hot
15 trunk lid of a patrol car.

16 28. After Plaintiff's attorney arrived on the scene, Officer Alfred Collazo
17 cited Plaintiff for violating Laguna Beach Municipal Code (LBMC) §
18 18.21.030B, recorded on the Notice to Appear # LG57510 as "failure to obey
19 lifeguard (diving)", a misdemeanor violation. (EXHIBIT A).

20 29. Officer Collazo was not present during the alleged violation at
21 Boater's Canyon. Mr. Thomas F. McGerver, the lifeguard alleging "failure to
22 obey" was not present during issuance of the citation at Laguna Sea Sports.

23 30. At Laguna Sea Sports, Mr. Garretson, a licensed California attorney
24 and certified diver, observed the citation process. On a subsequent day, a
25 lifeguard present during the citation process admitted to Mr. Garretson
26 that Plaintiff was intentionally targeted for citation. (EXHIBIT B).

27 31. The City Police Department refused two requests for a police report
28 made in person by Plaintiff and Mr. Garretson. Plaintiff has been required

1 to appear at two arraignment hearings; August 15th, and October 3rd, 2007.
2 (EXHIBIT C). On both dates, the City did not provide the necessary
3 paperwork to the court, preventing Plaintiff from “having his day in court”,
4 resulting in the misdemeanor charge left “as a hanging fire” over Plaintiff.

5 32. Mr. Dodge was not cited, though present with Plaintiff. (EXHIBIT D)

6 33. Defendant lifeguard Mr. McGervey signed a Statement of a Private
7 Person’s Citizens Arrest for violation of LBMC § 05.14.105, “Disobeying a
8 lifeguard”. This code section does not exist. (EXHIBIT F).

9 34. This contrasts with Defendant Officer Colazzo’s citation for violating
10 LBMC § 18.21.030B, “failure to obey lifeguard (diving)”. (EXHIBIT A)

11 35. The County D.A. “declined to prosecute in the interest of justice”.
12 (EXHIBIT G).

13 **CUSTOM, POLICY, AND PRACTICE ALLEGATION**

14 36. From the year 2002 to the present, Plaintiff has consistently warned
15 City tower lifeguards, that are not required to be trained or certified as
16 scuba divers, and police officers acting “as stalking horses”, that their
17 **custom, policy, and practice** of issuing citations to trained and certified
18 scuba divers engaged in the pursuit of happiness while travelling under
19 navigable waters, were in violation of Plaintiff’s federal and state
20 constitutional, civil, and common law rights.

21 37. Defendants as a **custom, policy, and practice** harass and
22 unlawfully detain divers by confrontational questioning, lacking definably
23 clear and compelling safety reasons to do so.

24 38. Plaintiff was cited, lacking any legitimate reason.

25 39. Laguna Beach Marine Safety Officer Calla Allison was present during
26 at least two of these incidents, joining in courteous and polite conversation
27 with Plaintiff in length concerning those rights.

28 40. Defendants have had previous contacts with Plaintiff and each other.

1 41. Defendant's are aware of Plaintiff's criticisms of their enforcement
2 activities against divers from the year 2002 to the present.

3 42. Tower lifeguards, untrained or certified as divers, are not qualified as
4 a **custom, policy, or practice** to decide for a trained and certified diver
5 what unacceptable hazardous conditions are, as diving is a hazardous
6 recreational sport in and of itself.

7 43. No diver can receive air fills for their scuba tank at any facility without
8 showing a certification card from a known agency. All student divers have a
9 minimum of several hours pool training and screening prior to entering the
10 ocean for the first time, not including classroom time.

11 **I**

12 **PLAINTIFF'S CLAIM UNDER 42 U.S.C. §§1983 AGAINST**
13 **OFFICER MICHAEL DONOHUE IN HIS INDIVIDUAL CAPACITY**
14 **FOR EXCESSIVE FORCE**

15 44. Plaintiff alleges again and incorporates herein by reference all prior
16 paragraphs in this Complaint.

17 45. At all times Defendant officer acted under color of state law, as a City
18 of Laguna Beach Police Officer.

19 46. In his individual capacity as a police officer, this Defendant, on July
20 2nd, 2007, intentionally deprived Plaintiff of his Fourth Amendment
21 constitutional right to be free from unreasonable search and seizure.

22 47. Defendant subjected Plaintiff to excessive use of force by inflicting a
23 pain compliance hold upon Plaintiff, and forcibly placing Plaintiff face
24 down on the hot trunk lid of a patrol car. (EXHIBIT H).

25 48. Plaintiff had been given permission by another officer present to call
26 his attorney by cell phone, after the fourth demand by Plaintiff to do so, and
27 was in conversation when officer Donohue forcibly intervened.

28 49. Plaintiff was accused of a relatively minor offense of disobeying a

lifeguard, and offered no physical resistance to the arrest.

50. This unjustified conduct is “shocking to the conscience”, and violates well settled law, as Plaintiff’s action posed no threat to the officer or others.

51. Officer Donohue knew Plaintiff was speaking specifically to an attorney. (EXHIBIT H)

52. “Under the Fourth Amendment, officers may only use such force as is “objectively reasonable” under the circumstances.”

Jackson v. City of Bremerton, 286 F.3d 646, 651 (9th Cir. 2001), quoting *Graham v. Conner*, 490 U.S. 386, 397, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989).

53. As a proximate cause of said deprivation of constitutional rights, the Plaintiff suffered damages in the form of pain and suffering, for which he seeks compensatory and punitive damages against officer Donohue.

54. The conduct of officer Donohue was reckless, negligent, and demonstrated a callous indifference to the federally protected rights of Plaintiff, entitling Plaintiff to recover punitive damages against him individually.

II.

PLAINTIFF’S CLAIM UNDER 42 U.S.C. §§1983, 1986 AGAINST OFFICER MICHAEL DONOHUE IN HIS INDIVIDUAL CAPACITY, AND ALL OTHER DEFENDANTS IN THEIR OFFICIAL AND INDIVIDUAL CAPACITY FOR NEGLIGENCE

55. Plaintiff alleges again and incorporates herein by reference all prior paragraphs in this Complaint.

56. Officer Donahue was negligent in causing pain to Plaintiff with the use of a “pain compliance hold”, lacking any justifiable reason to do so.

57. Defendants, by negligently allowing the use of such unreasonable and excessive force, and failing to intervene, allowed injury and damage to

1 Plaintiff, in violation of the Fourth , Fifth, and Fourteenth Amendments.

2 58. Defendants were negligent in allowing a citation for violating a non
3 existent LBMC § 05.14.105, allowing multiple arrests of Plaintiff, and
4 ignoring the lack of any reason to cite or arrest Plaintiff.

5 59. Defendants negligently allowed interference with Plaintiff's
6 attorney/client communication and right to privacy by officer Donohue.

7 60. Defendants, with plain view of the ocean from two coves, could
8 visually identify the lack of any present reason for Plaintiff to be forbidden
9 to dive.

10 61. At least two Defendants were aware of the obvious conflict with Mr.
11 McGervey's citation listing an ordinance that does not exist, and the
12 ordinance listed on the citation issued by officer Collazo.

13 62. Mr. McGervey's supervisor was negligent in failing to prevent this
14 cascade of events from unfolding. Approximately one hour passed between
15 Mr. McGervey's citizen's arrest of Plaintiff, and Plaintiff's surfacing at
16 Shaw's cove, allowing supervisory inquiry and verification of a legitimate
17 reason to cite Plaintiff.

18 63. Failure to require tower lifeguards to be trained and certified as scuba
19 divers in a city that is the diving capital of coastal southern California is
20 negligent.

21 64. The investigation by Defendants' questioning of Plaintiff and Mr.
22 Dodge clearly indicated a conflict with Mr. McGervey's claims.

23 65. "California statutes immunizing municipalities and public employees
24 from liability for acts arising from execution of law did not apply to
25 arrestees claim against county for negligence arising from negligent
26 investigation that resulted in false arrest, where no lawfull process was ever
27 instituted."

28 *Drakeford v. County of Orange*, 213 Fed. Appx. 542 (9th Cir. 2006).

1 66. As a proximate cause of said deprivation of constitutional rights, the
2 Plaintiff suffered damages in the form of pain and suffering, for which he
3 seeks compensatory and punitive damages against the Defendants.

4 67. The conduct of Defendants was reckless, negligent, and
5 demonstrated a callous indifference to the federally protected rights of
6 Plaintiff, entitling Plaintiff to recover compensatory and punitive damages
7 against them individually.

8 III

9 **PLAINTIFF'S CLAIM UNDER 42 U.S.C. §§1983 FOR** 10 **FALSE ARREST AND IMPRISONMENT**

11 68. Plaintiff alleges again and incorporates herein by reference all prior
12 paragraphs in this Complaint.

13 69. Defendants violated Plaintiff's Fourth, Fifth, and Fourteenth
14 Amendment guarantees against false arrest, imprisonment, and
15 deprivation of liberty without due process of law.

16 70. Plaintiff was placed under citizen's arrest by Lifeguard Thomas F.
17 McGervey, based on false accusations of disobeying a lifeguard, and
18 violating a non existent LBMC § 05.14.105. (EXHIBIT F) .

19 71. Both Plaintiff and Mr. Dodge had voluntarily communicated their
20 dive plan to Mr. Gervery out of courtesy, yet received no order forbidding
21 them to dive. (EXHIBIT D).

22 72. Officer Donohue stated in the police report dated May 5th, 2008,
23 Plaintiff was placed under citizen's arrest by Mr. McGervey. (EXHIBIT H).

24 73. Lifeguard Thomas F. McGervey's filing of a citizen's arrest was the
25 primary proximate cause leading to a "domino effect" of abuses against
26 Plaintiff's rights.

27 74. Plaintiff was unlawfully detained in a very threatening manner by
28 a swarm of half a dozen Defendants at both Shaw's Cove and Laguna Sea

1 Sports' parking lot.

2 75. Plaintiff and Mr. Dodge had no choice but to stop and speak to
3 Defendants during arrest at Shaw's cove before proceeding to Laguna Sea
4 Sport's parking lot.

5 76. Plaintiff was arrested by Officer Donohue's "pain compliance hold".

6 77. Plaintiff was detained by and yielded to authority in all three contacts
7 with Defendants.

8 78. "To establish a seizure within the meaning of the Fourth Amendment,
9 there must be an intentional acquisition of physical control, with the state
10 actor restraining the freedom of a person to walk away"

11 *McCoy v. Harrison*, 341 F.3d 600, 601 (7th Cir. 2003).

12 79. The conduct of Defendants was reckless, negligent, and demonstrated
13 a callous indifference to the federally protected rights of Plaintiff, entitling
14 Plaintiff to recover compensatory and punitive damages against them
15 individually.

16 IV

17 PLAINTIFF'S CLAIM UNDER 42 U.S.C. §§1983 18 INTENTIONAL AND NEGLIGENT INFLICTION OF 19 EMOTIONAL DISTRESS

20 80. Plaintiff alleges again and incorporates herein by reference all prior
21 paragraphs in this Complaint.

22 81. Defendant's actions and operation as "stalking horses" caused
23 Plaintiff to suffer severe mental distress and humiliation by:

24 a. Obstructing Plaintiff's movements after exiting the ocean, while
25 Plaintiff was wearing over 75 pounds of scuba gear.

26 b. Surrounding and detaining Plaintiff at Laguna Sea Sports and
27 refusing Plaintiff's first three requests to contact an attorney.

28 c. Forcibly removing Plaintiff's cell phone without warning or reason,

1 knowing Plaintiff was in contact with his attorney.

2 d. Committing assault and battery with a “pain compliance hold”,
3 while searching Plaintiff in public view.

4 e. Refusing to provide a police report to Plaintiff or his attorney.

5 f. Requiring Plaintiff to appear for two arraignments.

6 g. Failing to advise Plaintiff that the District Attorney would not
7 prosecute “in the interest of justice”.

8 h. Requiring Plaintiff to resort to litigation to prevent further abuse.

9 i. Intimidating Plaintiff with a show of force by Defendants on
10 several occasions, resulting in deep anxiety, vulnerability, and loss
11 of reputation, if Plaintiff chose to continue diving in the City.

12 j. Causing the anxiety, anguish, and humiliation, since the year
13 2002, of facing confrontational City lifeguards and police.

14 k. Damaging Plaintiff’s passion for diving in the City’s unique coves.

15 l. Causing Plaintiff to cease diving regularly in the City while the
16 criminal charge against Plaintiff remained as a “hanging fire” over
17 Plaintiff’s head for one year.

18 m. Punishing Plaintiff for criticizing lifeguards.

19 82. Although we agree that emotional damages may be based on
20 “humiliation and emotional distress established by testimony or inferred
21 from the circumstances, whether or not Plaintiffs submit evidence of
22 economic loss or mental and physical symptoms...” *Johnson v. Hale*, 13 F.3d
23 1351, 1352 (9th Cir. 1994).

24 **V**

25 **PLAINTIFF’S CLAIM UNDER 42 U.S.C. §§1983, 1985(3) FOR** 26 **SELECTIVE AND VINDICTIVE ENFORCEMENT, CONSPIRACY**

27 83. Plaintiff alleges again and incorporates herein by reference all prior
28 paragraphs in this Complaint.

1 84. Defendant's actions were obviously discriminatory against Plaintiff in
2 both their "effect and purpose."

3 85. Plaintiff was cited, his "dive buddy" standing nearby, was not.

4 86. Plaintiff and Mr. Dodge both came into contact simultaneously with
5 Defendants three times, yet Plaintiff was the only one cited.

6 87. Mr. Garretson, present on the rocks adjacent to Boater's cove prior to
7 Plaintiff entering the water, was not cited for any safety violations, though a
8 temporary white plastic sign stating "rocks closed" was present.

9 88. Mr. McGervey filed a citizens arrest naming Plaintiff, and excluding
10 Mr. Dodge.

11 89. Officer's Michael Donohue and Zach Martinez were involved with this
12 filing of a citizen's arrest, and knew, or should have known, LBMC §
13 05.14.105 does not exist.

14 90. Defendant's continued in bad faith, knowing unsafe conditions were
15 not present, and that Mr. Dodge was not placed under citizen's arrest or
16 going to be cited as Plaintiff was.

17 91. Defendant's stated in police audio file DM-10023_238 at time index
18 4:10 that "We know all about this guy" in reference to Plaintiff, indicating a
19 "meeting of the minds" by Defendants. (EXHIBIT E).

20 92. Plaintiff was in engaged in the pursuit of happiness derived from
21 recreational sport activity while travelling under navigable waters from
22 Boater's cove to Shaw's cove, in association with another diver.

23 93. Defendants have had previous contacts with Plaintiff and each other.

24 94. All Defendant's are aware of Plaintiff's criticisms of their enforcement
25 activities against divers from the year 2002 to the present.

26 95. Defendants were present at both Boater's and Shaw's cove during this
27 incident, and were able to observe a lack of clearly defined or compelling
28 safety reasons to cite Plaintiff.

1 96. Defendants collectively work together to cite divers as a **custom ,**
2 **policy, and practice**, lacking any clearly defined or compelling safety
3 reason.

4 97. This ongoing and continuing violation of divers engaged in the
5 pursuit of happiness is the proximate cause of the violation of Plaintiff's
6 state and federally protected rights.

7 98. Further discovery will clearly indicate citations against divers are
8 routinely declined for prosecution by the court or District Attorney.

9 99. Plaintiff and Mr. Dodge were associating in the pursuit of happiness
10 as divers to travel under the navigable waters of the City between two
11 adjacent coves.

12 100. Plaintiff and Mr. Dodge entered and exited the ocean together, were
13 both confronted at Shaw's Cove and the parking lot of Laguna Sea Sports
14 together, yet Plaintiff only was placed under citizen's arrest and cited.

15 101. On a subsequent day, a lifeguard present at Laguna Sea Sports during
16 the citation process admitted to Mr. Garretson that Plaintiff was specifically
17 and intentionally targeted for citation.

18 102. Several Defendants knowingly conspired to have Plaintiff cited by
19 police, lacking any legitimate public safety issue at the time.

20 103. Plaintiff was targeted for punishment for exercising free speech in
21 criticizing lifeguard and police actions spanning several years.

22 104. Plaintiff was required under threat of arrest to face two arraignments.

23 105. The County D.A. had refused to prosecute "in the interests of justice."

24 106. Defendants were aware that at the time of this incident that Mr.
25 James Dodge stated a lifeguard was not disobeyed.

26 107. Mr. James Dodge and Mr. Robert Garritson had stated there were no
27 safety concerns present at the time of this incident.

28 108. "While it is not necessary under § 1983 to prove that each participant

1 in conspiracy knew exact parameters of plan, they must at least share
2 general conspiratorial objective.” *Fonda v. Gray*, 707 F.2d 435 (9th Cir. 1983)
3 109. [It is also clear that government enforcement intended to discourage
4 or punish the exercise of a constitutional right, especially the right to
5 criticize the government, is sufficient basis for § 1983 relief. The availability
6 of § 1983 relief for what we have called “vindictive enforcement,” *U.S. v.*
7 *Anderson*, 923 F.2d at 453, seems a necessary corollary to the defense
8 recognized in free speech cases like *Cf. Wayte v. United States*, 470 U.S. 598.]
9 *Futernick v. Sumpter Township*, 78 F.3d, 1051 (6th Cir. 1996)

10 VI

11 STATE CLAIM PURSUANT TO 28 U.S.C § 1367 12 VIOLATION OF THE CALIFORNIA CONSTITUTION AND 13 CALIFORNIA COASTAL ACT

14 “....Access to the navigable waters of this state shall be always attainable
15 for the people therof”.

16 *Article 10, § 4, California Constitution.*

17 “....Maximize public access to and along the coast and maximize public
18 recreational opportunities in the coastal zone”.

19 *California Public Resources § 30001.5(c)*

20 110. Plaintiff alleges again and incorporates herein by reference all prior
21 paragraphs in this Complaint.

22 111. Plaintiff’s rights to access beaches and navigable waters, as protected
23 by the California Constitution and California Coastal Commission
24 regulations, were violated when the lifeguards closed the beaches of the
25 City for an indefinite period of time, lacking any legitimate or definably
26 clear and compelling safety issue at the time of Plaintiff’s dive, and at other
27 times spanning several years.

28 112. Plaintiff’s right to access public trust lands was violated by the

1 citation and arrests on July 2nd, 2007.

2 113. Plaintiff's right to access public trust lands is violated by the issuance
3 of a citation for diving, lacking any definably clear and compelling reason.

4 114. The City of Laguna Beach lacks permit authorization from the Coastal
5 Commission to close beaches for indefinite periods, lacking clear and
6 compelling safety reasons.

7 115. The Coastal Commission retains original permit jurisdiction over
8 submerged and public trust lands.

9 **PRAYER FOR RELIEF**

10 **I. Damages**

- 11 a. Compensatory damages in an amount to be determined at trial.
- 12 b. Punitive damages in an amount to be determined at trial, sufficient
13 in sum to deter Defendants from further abuse of Plaintiff.
- 14 c. Costs and reasonable attorney fees.
- 15 d. Additional and further relief as the Court deems just and equitable.

16 **II. Injunctive Relief**

17 Enjoin Defendants from enforcing the following LBMC ordinance:

18 **a. Disobeying a Lifeguard - LBMC (§ 18.04.105)**

19 " No person shall willfully resist, delay, interfere or
20 disobey any lifeguard in the discharge or attempt to
21 discharge any duty of his or her position.

22 (Ord. 1369 § 2, 2000)."

23 116. This ordinance is unconstitutionally vague, as it does not identify any
24 specific safety concerns, nor does it restrict the reach of a lifeguard's
25 authority.

26 117. Based on this wording, if a lifeguard orders a person to remove his
27 sandals, or cease throwing a foam football, and they disobey, they are facing
28 a misdemeanor for a relatively minor infraction!

1 118. A person of ordinary intelligence would interpret this as stifling to any
2 speech directed at a lifeguard.

3 119. Speaking with a lifeguard for the purpose of clarifying or responding
4 to a lifeguard's orders could easily be feared as being treated as delay or
5 interference with that lifeguard. As there is also another ordinance for
6 disobeying a lifeguard, (LBMC § 18.21.030B), it is confusing to understand
7 what ordinance would apply in a situation.

8 120. The relaxation of enforcement of dive restrictions referred to in an
9 Orange County Register article adds further uncertainty.(EXHIBIT I).

10 121. The article states the enforcement of carrying a snorkel or having a
11 dive buddy will be "relaxed", however, the lifeguard still has unbridled
12 discretionary authority to order a diver otherwise.

13 122. The article does not identify any specifics.

14 123. Courts have long recognized a person's right to calmly walk away
15 from a police officer lacking definable probable cause.

16 124. A police officer is known to question or initiate contact with persons
17 in the performance of their duties, yet that alone is not an absolute
18 requirement for a person to respond under threat of a misdemeanor!

19 125. A person choosing not to respond to a lifeguard does not have that
20 option.

21 126. "In short a statute is unconstitutionally vague if a person of
22 reasonable intelligence would not understand what conduct is prohibited."
23 *United States v. Williams*, 441 F.3d 716,724 (9th Cir. 2006).

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5 Dated December 9th, 2008

DEMAND FOR JURY TRIAL

6 Respectfully submitted:

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8 BY _____
9 Leonard J. Porto III, Plaintiff, *pro se*
10 leonard@computernetsupport.com
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