

May 28, 2019

Via CM/ECF

Molly C. Dwyer
Clerk of the Court
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1526

Re: *Kelsey Cascadia Rose Juliana, et al. v. United States, et al.*, No. 18-36082, Scheduled for Oral Argument, June 4, 2019, Before Judges Murguia, Hurwitz, and Staton

Dear Ms. Dwyer,

Pursuant to Federal Rule of Appellate Procedure 28(j) and Circuit Rule 28-6, Plaintiffs-Appellees submit *Martin v. City of Boise*, 920 F.3d 584 (9th Cir. 2019) as supplemental authority in the above-captioned matter. This opinion supersedes the opinion of *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), which was cited in Plaintiffs-Appellees Answering Brief. *Answering Brief*, Doc. 37 at 10. *Martin* continues to be pertinent to the issue of whether the district court appropriately concluded that Plaintiffs' proffered sufficient evidence of genuine issues of material fact to defeat summary judgment as to standing.

In *Martin*, on remand from a previous appeal, the district court granted summary judgment to the City of Boise on the plaintiffs' § 1983 claims. 920 F.3d at 607. As to Article III standing, this Court concluded "that there are sufficient opposing facts in the record to create a genuine issue of material fact as to" plaintiffs' injury in fact. *Id.* at 608. The Court stated that "[t]o defeat a motion for summary judgment premised on an alleged lack of standing, plaintiffs need not establish that they in fact have standing, but only that there is a genuine question of material fact as to the standing elements." *Id.* at 609.

Here, the district court appropriately found that Plaintiffs-Appellees "have gone beyond the pleadings to submit sufficient evidence to show genuine issues of material facts on whether they satisfy the standing elements" and "have met their burden to avoid summary judgment at this time." ER 45; *Answering Brief*, Doc. 37 at 10-29 (describing factual evidence presented on each element of standing).

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Respectfully submitted,

s/ Julia A. Olson
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