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12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
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15 **VERNELL LUNDBERG, et al.,** **No. C-97-3989-SI**

16 Plaintiffs,

**PLAINTIFFS' PROPOSED
SPECIAL JURY INSTRUCTIONS**

17 vs.
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19 **COUNTY OF HUMBOLDT, et al.,**)
20 Defendants.)
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Pre-trial Date: March 29, 2005
Time: 3:30 p.m.
Judge ILLSTON
Trial Date: April 11, 2005

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(No. 9) CAUSES OF ACTION

On September 25, 1997, plaintiffs Vernell (Spring) Lundberg, Jennifer Schneider, Molly Burton and Eric Samuel Neuwirth were arrested by deputies of the Humboldt County Sheriff's Department at the offices of Pacific Lumber Company in Scotia, California. On October 3, 1997, plaintiffs Michael McCurdy and Noel Tendick were arrested by deputies of the Humboldt County Sheriff's Department at Bear Creek, in Humboldt County, on property owned by Pacific Lumber Company. On October 16, 1997, plaintiffs Terri Slanetz, Lisa Sanderson Fox, Maya Portugal and Jennifer Schneider were arrested by officers of the City of Eureka Police Department and deputies of the Humboldt County Sheriff's Department at the offices of then-Congressman Frank Riggs in Eureka, California.

The parties have stipulated that defendants had probable cause to place plaintiffs under arrest. Plaintiffs claim, however, that defendants used **unnecessary or** excessive force in effecting the arrests and that the arrests therefore were unreasonable in violation of the Fourth Amendment to the United States Constitution. You are called upon decide whether or not defendants caused **unnecessary or** excessive force to be used to effect the arrests of the plaintiffs.

You must also decide whether or not defendants Lewis and Philp violated the constitutional rights of any plaintiff by authorizing the optional use of pepper spray to effect plaintiffs arrests.

(No.13) FOURTH AMENDMENT - UNREASONABLE SEIZURE

The Fourth Amendment to the United States Constitution prohibits the unreasonable seizure or arrest of a person. In this case, the plaintiffs claim that the defendants used **unnecessary or** excessive force in making otherwise lawful arrests and thereby deprived the plaintiffs of their right under the Fourth Amendment to be free from an unreasonable seizure.

Because the Fourth Amendment applies to all seizures or arrests, you must consider each arrest separately. You must evaluate each arrest in light of all the circumstances surrounding that arrest.

(No.14) EXCESSIVE FORCE DEFINED

An unreasonable seizure occurs when a law enforcement officer uses **unnecessary or excessive** force in making an otherwise lawful arrest. Whether force is reasonably necessary or excessive is measured by the force a reasonable and prudent law enforcement officer would use under the circumstances.

A law enforcement officer is not required to use the least possible amount of force where force is reasonably needed to effect an arrest. However, if no force is necessary, no force is reasonable. Thus you must consider whether alternative means of effecting an arrest were reasonably available to the officer, in determining whether the force used was reasonably necessary under the circumstances.

(No.15) DUTY TO EFFECT ARREST

A law enforcement officer who has probable cause to make an arrest has the right to use such force as **is** reasonably necessary under the circumstances to make the arrest, to prevent escape or to overcome resistance. **However, if no force is necessary, no force is permissible.** In this case, the officers had probable cause to arrest plaintiffs.

A law enforcement officer has a duty under California law to effect the arrest of any person who refuses or fails to leave the property of another person when the officer has been requested to do so by the lawful owner or occupant of the property, and the person refusing or failing to leave is interfering with the lawful enjoyment of the property by the owner or occupant.

The parties have stipulated that the defendants had probable cause to arrest the plaintiffs. So the question before you is whether the defendants caused the arrests to be made with **unnecessary or excessive** force.

(No.17) MUNICIPAL LIABILITY

When a plaintiff is deprived of a constitutional right as a result of the official policy of a city or county, the city or county is liable for **any harm caused by** the violation. The parties have stipulated that the application of pepper spray to the plaintiffs was the result of the official policy of the County of Humboldt and the City of Eureka. **Thus, if you determine that unnecessary or excessive force was used, Humboldt County is automatically liable for any harm suffered by any plaintiff at Scotia or Bear Creek, and the County or the City of Eureka, or both, would be liable for harm suffered at the Riggs office. The responsibility of defendants Philp and/or Lewis, if any, must be considered separately, as reflected in the Verdict form.**
