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**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3

HEADWATERS FOREST DEFENSE, *etal*,

Plaintiff-Petitioners,

vs.

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

(Real Parties in Interest: County of
Humboldt, City of Eureka, Dennis Lewis,
and Gary Philp),

Respondents.

Case No. _____

N.D.C.A. Case No. C-97-3989 VRW

**EMERGENCY MOTION TO
CONSIDER AND DECIDE
PETITION FOR WRIT OF
MANDAMUS ON SHORTENED
TIME (Circuit Rule 27-3)**

Plaintiff-petitioners request that the Court consider and decide their
“Petition for Writ of Mandamus and Exercise of Supervisory Authority,”
filed herewith, on an emergency time basis, in order to prevent irrevocable

harm resulting from the district judge's decision to move the retrial of this case, scheduled to begin in just one week, on May 12, 2003, from the neutral place of San Francisco — where the first trial occurred, all papers have been filed, and all hearings have been held — to Eureka, a community pulsing with active, current, overt hostility toward plaintiffs and their interests.

Plaintiffs have exhausted all remedies in the district court.

The district court has articulated no good reason for changing the place of trial. It is readily apparent that plaintiff environmental activists cannot get a fair trial and an impartial jury in Eureka, a community where logging interests predominate, and daily radio, print, and television ads by the Pacific Lumber Company (the main object of plaintiffs' protests) equate environmentalists with "terrorists", and exhort the community to band together to "defend" itself against them. Plaintiffs have submitted numerous press clippings and declarations, including one from the Mayor of Arcata, attesting to the community's hostility toward environmental activists.

Plaintiffs respectfully request that this Court intervene swiftly, in order to prevent a miscarriage of justice and a waste of everyone's resources, and direct the district court to return the trial to San Francisco, the site chosen by plaintiffs in order to *avoid* the very prejudice they now face. In addition, plaintiffs request that the Court order the case to be reassigned to a different

district judge, in order to curtail his actual and apparent bias, manifested by a series of rulings which have no rational purpose except to ensure plaintiffs' defeat, and thereby vindicate his dismissal of the case in October 1998, after the first jury deadlocked, before he was firmly reversed by this Court.

Plaintiffs are eager to begin the retrial of this case, but only if they can hope to actually resolve it, before a fair and impartial jury. The course set by the district judge, however, portends an unfair trial and another appeal. Therefore, plaintiffs are willing to suffer a delay in the trial schedule in order to prevent the impending miscarriage of justice.

The Court is familiar with the history of this remarkable civil rights case, based on its double-opinion reversing the district court's dismissal, and remanding for a new trial. Headwaters Forest Defense v. County of Humboldt (“Headwaters I”), 240 F.3d 1185, 1209 (9th Cir. 2001), *vacated and remanded*, 122 S.Ct. 24 (2001), with order to conform opinion to Saucier v Katz, 121 S.Ct. 2151, 2155 (2001), and conformed in Headwaters II, 276 F.3d 1125 (9th Cir. 2002), affirming the reversal and remand for a new trial.

Plaintiffs suggest that it might be expeditious to refer their Petition to one or more of the Judges comprising the panel which decided the prior

appeal — Judges Bright, Pregerson, and Fletcher —who are therefore the most familiar with the history of the case.

WHEREFORE, plaintiffs pray that this honorable Court will consider and decide their Petition on an emergency time basis.

DATED: May 6, 2003

Respectfully submitted,

Ben Rosenfeld
Dennis Cunningham
Robert Bloom
William Simpich
J. Tony Serra
Brendan Cummings

Attorneys for Plaintiff-petitioners

CIRCUIT RULE 27-3 CERTIFICATE OF COUNSEL

1. Addresses and Telephone Numbers of Attorneys/Parties

The undersigned counsel certifies the following addresses and telephone numbers.:

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Respondent:

UNITED STATES DISTRICT COURT
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2. Facts showing the existence and nature of the claimed emergency

The undersigned counsel re-incorporates the facts stated in the foregoing Motion — particularly that the retrial of this case is set to begin in just one week, on May 12, 2003.

3. Notice and Service

The undersigned counsel certifies that he served the within Motion, along with the “Petition for Writ of Mandamus and Exercise of Supervisory Authority” on the respondent, Honorable Vaughn R. Walker, U.S. District Court Judge, Northern District of California, by delivering true copies to the Clerk’s Office, in an envelope addressed to Judge Walker, and on the real parties in interest, defendants in the underlying case, by emailing, and thereafter mailing true copies to their attorneys of record, Nancy K. Delaney and William F. Mitchell, at their office at 814 7th Street, Eureka, CA 95501, on May 6, 2003.

4. Notice and Service

The undersigned counsel certifies that the grounds advanced in the Petition were advanced in the district court, and that the district court has denied the relief sought.

DATED: May 6, 2003

BEN ROSENFELD

Attorney for Plaintiff-
Petitioners