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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

HEADWATERS FOREST DEFENSE, et al Plaintiffs, 5. COUNTY OF HUMBOLDT, et al Defendants.	CASE C-97-3989 VRW **PLAINTIFFS' AFFIDAVIT OF BIAS AND PREJUDICE AND CERTIFICATE OF COUNSEL** (28 U.S.C. §144) April 24, 2003

AFFIDAVIT OF VERNELL SPRING LUNDBERG

State of California)
) ss.
County of San Francisco)

VERNELL SPRING LUNDBERG, being duly sworn, deposes and states:

1. My name is Vernell Spring Lundberg. I am over 18 years old. I reside at

in , California. I am fully competent to make this affidavit and I have personal knowledge of the facts stated in this affidavit. To my knowledge, all of the facts stated in this affidavit are true and correct.

2. I am one of the plaintiffs in this matter. I make this affidavit to disqualify the Honorable Vaughn R. Walker from this case on the basis of his bias or prejudice against the claims I and my co-plaintiffs make in this case.

3. The facts that cause me to believe that Judge Walker is biased against the plaintiffs in this case are as follows:

On October 26th, 1998, after Judge Walker had presided over the first trial of this case, he granted the defendants' Motion to dismiss the case in a written opinion.

It is not the fact that Judge Walker dismissed the case that leads me to believe that he is biased and prejudiced. It is the findings and conclusions that he reached in his October 26, 1998 opinion which are completely contrary to, and unsupported by, the facts that were elicited at the trial that took place in his presence in 1998.

In his opinion, Judge Walker made the following findings:

(A) "The uncontroverted evidence presented at trial unequivocally supports the conclusion that the officers acted reasonably in using OC as a pain compliance technique in arresting plaintiffs."

No person who is unbiased could possibly have come to the conclusion that the officers acted reasonably. In fact, as I understand the ruling of the Ninth Circuit Court of Appeals, that Court took issue with this particular finding by Judge Walker. No unbiased person could possibly believe that the officers who inflicted

torture upon me and my co-plaintiffs acted reasonably.

(B) ".....the severity of the intrusion upon the arrestees' personal integrity was minimal".

It is clear to me that any person who could state that he believes, after seeing the videotapes of what was done to me and to the other plaintiffs and hearing testimony regarding this torture, that there was a minimal intrusion upon our personal integrity is an extremely biased person.

(C) "....the testimony established that this risk was "protected against" by closing of the eyes, which of course was the state of the relevant plaintiff's eyes when sprayed."

It is absolutely clear beyond any doubt that, simply by observing the videotapes of these events that there were times when the eyes of the plaintiffs were open when the pepper spray was applied to our eyes. Only an extremely biased person could claim otherwise.

(D) "...plaintiffs failed to present any evidence that the officers had a viable alternative means for effecting arrest.".

Throughout the trial evidence was presented that the officers could have done what they had done many times before: used the Makita grinder to release the devices. There was also evidence that they could have simply waited us out. And there was evidence that they could have collectively carried us out of the premises where e we were protesting. Only a biased person could ignore the fact that there was substantial evidence that the officers had more than one viable alternative.

(E) "The officers, before exposing plaintiffs to the threat of serious physical injury by cutting them out, opted instead to use first a pain compliance technique that posed no significant threat of physical injury to anyone present at the scene. No reasonable juror could conclude that

this decision was unreasonable."

What this case is about is whether a reasonable jury could conclude that the decision of the defendants was unreasonable. Not only was Judge Walker reversed by the Court of Appeals as to this matter, as I understand their opinion, but Judge Walker's finding as to this question unequivocally reveals that he has formed an opinion against me and the other plaintiffs as to the basic issue in this case. I believe that this is the very essence of prejudice ---- a pre-judging — and that there is no way Judge Walker can be fair and impartial in this case.

(F) "The officers' decision not to use such a device [a Makita grinder] was unquestionably reasonable."

Again, Judge Walker has made clear that he believes that the defendants *unquestionably* acted reasonably by choosing not to use a grinder. At best, any unbiased person would acknowledge that there may some dispute about the issue. Judge Walker has revealed how he feels. He has pre-judged this important issue.

(G) "....the videotape footage plainly demonstrates that the officers were not making any attempt to open plaintiffs' eyes."

Nothing could be further from the truth. Time after time, the officers are seen doing just that — attempting to open the eyes of plaintiffs. Only a biased person could state that what was plainly portrayed on the videotapes was not so portrayed.

(H) "Giving full credence to plaintiffs' factual testimony and to the reasonable inferences flowing from that evidence, this court concludes that, on the record of the case as tried and presented, there is no reasonable basis for jurors to find that the officers' use of OC was objectively unreasonable in light of the facts and circumstances confronting them."

As to this finding by Judge Walker, it is without

doubt that he has pre-judged the central issue in this case. Not only is Judge Walker biased, but it is also clear that any reasonable person would conclude that Judge Walker is biased in this case.

(I) "In finding that there is no evidentiary basis for concluding that plaintiffs' arrests involved the use of excessive force, the court has determined as a matter of law that neither the officers nor, implicitly, the policies of defendants caused any deprivation of the plaintiffs' Fourth Amendment rights."

Again, Judge Walker has expressed his views regarding the central issue in the case. Judge Walker is biased and prejudiced against me and my co-plaintiffs.

On January 23rd, 2003, at a Case Management Conference, Judge Walker announced that he was going to have the re-trial of the case in Eureka, California. Based upon what I have observed and upon what my attorney and the other attorneys in the case have set forth in a Motion they are filing on Monday, April 14th, 2003, (which asks that the case be re-tried in San Francisco), it is clear to me that Judge Walker's decision to try the case in Eureka demonstrates his bias against me and my co-plaintiffs.

Certainly Judge Walker became aware long before January 23rd, 2003, of the extreme hostility that many citizens in timber country feel about environmental activists such as the plaintiffs in this case. In fact, Judge Walker presided over a trial at which the fact of the hostility was undeniable.

In my opinion, only an extremely biased judge would direct that we try this case in Eureka. Any person of reasonable intelligence understands that the hostility of the community makes it very very unlikely, if not impossible, for plaintiffs to achieve a unanimous verdict in

Eureka. So many people are associated with the timber industry and/or have many friends and relatives whose livelihood is related to that industry that the feeling of hostility pervades Humboldt and the surrounding counties.

There is no question in my mind that Judge Walker is fully aware of the hostility in the community and that he has decided to try the case in Eureka so that the plaintiffs will not prevail. It is my belief that, human nature being what it is, Judge Walker hopes to be proven right as to his finding that no reasonable jury could find for the plaintiffs in this case.

I am informed that at a hearing in this case with Judge Walker on March 27th, 2003, Attorney Tony Serra informed Judge Walker that he had recently been in Humboldt County and that tensions were very high and that local timber supporters, antagonists of environmentalists, were behaving in a physically threatening manner. Judge Walker made no effort to inquire further into the question of whether it would be a good idea to change his mind and return the case to San Francisco.

Judge Walker is fully aware that Humboldt jurors would be very reluctant to find for plaintiffs because they know that such a finding would be, in effect, a finding that they and their families would have to pay plaintiffs' damages.

And he is fully aware that local jurors would favor the local officers, defendants, and attorneys (as they would be likely to do anywhere in the country).

Judge Walker gave my attorney and the other attorneys no opportunity to be heard prior to his decision to move the trial to Eureka. Only a biased judge would behave in that manner.

I have read the Motion that plaintiffs' lawyers are filing with regard to the venue. There are so many arguments in that Motion that, in my opinion, demonstrate to me that Judge Walker is completely biased against our case. There is no escaping the clear conclusion that Judge Walker believes that the plaintiffs "got what was coming to them", and that it is this view that has prejudiced him against us. But, whatever the reason, it is clear to me, and I believe that it is clear

to any person who knows that facts, that Judge Walker is extremely biased and prejudiced against me and the other plaintiffs.

I signed this affidavit on April 14th, 2003, at San Francisco, California.

Vernell Spring Lundberg

VERNELL SPRING LUNDBERG

SUBSCRIBED AND SWORN TO BEFORE ME on April 14th, 2003

RAJEEV VERMA
Commission # 1331008
Notary Public - California
Alameda County
My Comm. Expires Nov. 19, 2005

Notary Public in and for the State of California.

My commission expires NOV 19, 2005

CERTIFICATE OF COUNSEL

As required by the provisions of Section144 of Title 28, U.S.C., I, as counsel of record for Plaintiff Vernell Spring Lundberg, certify that this affidavit of prejudice is submitted in good faith and not for purposes of delay.

April 14 2003

ROBERT BLOOM

Attorney for Vernell Spring Lundberg