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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**

13
14 VERNELL LUNDBERG, et al.,

No. C-97-3989-SI

15 Plaintiffs,

**PLAINTIFFS' NOTICE OF MOTION &
MOTION FOR EXPANDED VOIR DIRE**

16 vs.

17 COUNTY OF HUMBOLDT, et al.,)
18)
19 Defendants.)
_____)

Date: February 18, 2005
Time: 9:00 a.m.
Judge ILLSTON
Trial Date: April 11, 2005

20
21 **NOTICE OF MOTION**

22 TO: The Defendants and their Attorneys:

23 PLEASE TAKE NOTICE that, on Friday, February 18, 2005, at 9:00 a.m., or as soon
24 thereafter as counsel can be heard, I shall appear before the Hon. Susan Illston at the US
25 Courthouse in San Francisco and then and there present the within Motion for Expanded Voir
26 Dire; at which time you may appear if you so desire.

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1 **MOTION**

2 Plaintiffs hereby request that the Court approve the proposed jury questionnaire attached
3 hereto, and direct that, well in advance of the trial date, the Jury Clerk mail copies of the
4 questionnaire to all the prospective jurors who will be called for the trial of this matter, now
5 scheduled to begin April 11, 2005.

6 Plaintiffs further request that the Court set a schedule for mailing the questionnaire, for
7 jurors to return the questionnaire by mail, and for the Jury Clerk to make the returned
8 questionnaires available for to the parties, so that the completed questionnaires can be in the
9 hands of counsel for the parties no later than April 1, 2005.

10 Plaintiffs further request that the Court allow the parties enough time — perhaps without
11 setting a rigid time limit — for oral, in-person voir dire, to permit reasonable follow-up inquiry
12 about the information provided in the completed questionnaires.

13 This Motion is supported by:

- 14 1. The within Discussion (P & A);
15 2. The Declaration of trial consultant Karen Jo Koonan of the National Jury Project/West;
16 3. Plaintiffs' proposed jury questionnaire.

17 **DISCUSSION**

18 Needless to say, all parties in federal litigation are entitled to have their claims heard by
19 fair and impartial jurors, whose minds are open to a fair consideration of the evidence and
20 arguments of the parties, through their counsel. Here, based on discussions with some of the
21 jurors who heard the evidence in the prior trial, it appears that there were two jurors in that trial
22 whose minds were unalterably closed to the claim that defendants' use of force as recorded in the
23 police videotapes was unnecessary and (therefore) unconstitutional.

24 Plaintiffs have no knowledge as to whether the minds of the two jurors were closed in
25 this regard before the trial began, or became closed during the trial. But, whatever the origin or
26 cause of the rationale of these two jurors, plaintiffs' counsel now very strongly believe it is
27 necessary — and indeed, essential for a fair trial — that the examination of prospective jurors be
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1 substantially expanded, in line with plaintiffs' twin requests herein, so that the parties and their
2 attorneys are better able to detect the potential in any given juror for what may be described as
3 inflexible attitudes such as those that appear to have prevented the last jury from reaching a
4 verdict the last two times around.

5 As discussed more fully in the attached Declaration of plaintiffs vastly experienced jury
6 consultant, Karen Jo Koonan of the National Jury project/West, it is critical that the parties be
7 able to reasonably explore juror attitudes and biases about issues central to the case. Plaintiffs
8 believe, most respectfully, that the jury selection procedures at the last trial, both the
9 questionnaire and the oral examinations, were not adequate and permitted two closed-minded
10 jurors to be seated on that jury. Plaintiffs propose herein what we believe to be two reasonable,
11 simple and efficient changes in the jury selection process: an expanded questionnaire, to be
12 completed and reviewed by the parties before the trial, in preparation for the voir dire, and
13 adequate (additional) time to question each juror about the matters stated in their questionnaire
14 answers. We believe Court time will be used much more efficiently this way, because counsel
15 will be able to prepare their questioning of particular jurors, focusing on the particular areas of
16 concern that are signaled by the responses in the questionnaires.

17 Indeed, we believe this procedure will actually save court time. At the last trial, the
18 jurors came to the courthouse early on the date of jury selection, and were asked to complete the
19 questionnaires in the morning. By the time the questionnaires were completed, turned in to the
20 clerk, copied and analyzed by the parties, it was well after noon, and, as a result, the jury
21 selection process was not completed until very late in the day. If the Court grants this Motion,
22 questioning of the jurors can begin soon after court convenes in the morning, and — even
23 allowing substantial additional time for follow-up questions — should be completed by mid-
24 afternoon; certainly we would be able to finish in one day. Most importantly, and aside from the
25 issue of judicial economy and efficient use of time, it will be much more likely that both sides
26 will be able to detect and exclude jurors who may be unreasonably inflexible, and prevent the
27 jury from reaching a verdict.
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1 Plaintiffs feel it is manifest in the “visceral” nature of the issues here, as they emerged in
2 the trial just completed and the trial before that, that extended, careful individual inquiry, based
3 on information compiled by the prospective jurors while at ease and in privacy, before the time
4 for their public appearance in the venire, offers the best chance of breaking the cycle of
5 polarization which seems to beset this case. As with many issues that arise in the course of
6 litigation, it is best if the parties can agree on what should be done, and plaintiffs will seek such
7 agreement before the hearing. In the event the parties do not agree, however, it is up to the
8 Court, as always, to make an independent decision about the best way to ensure a fair and
9 impartial jury, and one which will be more likely to reach a verdict.

10 WHEREFORE, Plaintiffs respectfully but earnestly request that the Court, reflecting on
11 the enormous burden on all concerned of multiple trials, possibly without end, adopt the
12 reasonable measure of a thoroughgoing, previously completed questionnaire — replete with
13 questions about feelings, beliefs and attitudes related to the issues in the case, as in the attached
14 proposed form, and complemented by reasonably ample follow-up questioning in person — in
15 the attempt to ensure, as fully as possible, that the jury in the third trial be composed of people
16 who have shown themselves to be impartial and open-minded. And we ask for such other and
17 further relief as may appear just and appropriate in the premises of the case.

18
19 DATED: January 14, 2005

Respectfully submitted,

20 Robert Bloom
21 Dennis Cunningham
22 J. Tony Serra
23 William M. Simpich
24 Attorneys for Plaintiffs

25 CERTIFICATE

26 I certify that I served the within Motion re: Voir Dire on defendants by FAX and mail to
27 Nancy Delaney and Wm. Mitchell, Esqs. at their offices in Eureka, CA on Jan. 14, 2005.

28 Dennis Cunningham