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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' NOTICE OF
PRE-TRIAL SUBMISSIONS**

17 vs.
18

19 COUNTY OF HUMBOLDT, et al.,

20 Defendants.)
21)

Pre-trial Conference: March 29, 2005
Time: 3:30 p.m.
Judge ILLSTON
Trial Date: April 11, 2005

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23 Plaintiffs by their undersigned counsel essentially re-submit their pre-trial materials
24 herewith, with modifications from the last trial, as follows:

25 **Joint Pre-Trial Statement.** The statement remains as it was (with minor edits and
26 corrections), except that references to the Claim for Punitive Damages have been deleted.

27 **Witness and Exhibit Lists.** The Lists for plaintiffs are unchanged except for the
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1 addition of Anthony Bouza, plaintiffs' police practices expert, as a witness, and his *curriculum*
2 *vitae* and related background materials, as Plaintiffs' Exhibit 47. We are assuming this can be
3 added to the binder(s) the Court already has, and we have previously provided defendants with
4 copies of this material. The Lists are filed separately.

5 **Trial Brief.** The same brief is re-submitted, with various edits, emendations and
6 corrections, and the point on punitive damages deleted; filed herewith.

7 **Jury Instructions.** Plaintiffs are going under the assumption that the Court will give
8 the same Instructions as before, *sans* punitive damages, unless argument about the presence or
9 absence and/or fairness and probity of particular words and usages leads to adjustments.
10 Plaintiffs' great concern in this regard is the deep and abiding conviction that they are entitled to
11 have the Jury instructed on wrongful use of force under the Fourth Amendment in terms that
12 include, and emphasize, the *Graham v. Connor* principle, spelled out by the Court of Appeals in
13 *Headwaters II*, that necessity is the touchstone of reasonableness under *Graham*; if no force is
14 needed, no force is reasonable, and we are clearly entitled under the Law of the Case to
15 Instructions that say so.

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17 Given that this provides a major opportunity to clarify and focus the Question the Jury
18 must decide, plaintiffs implore the Court to re-think this issue — and thereby to reflect on the
19 fair meaning and implication of the Court of Appeals' statement, and decision, in a case that has
20 seen two hung juries — in considering how the Jury should be instructed this time around. We
21 submit, attached hereto, a set of our preferred version of the use of force instructions (Nos. 9
22 and 13-15 in the last trial), together with one which makes explicit the liability of the County and
23 City (in No. 17 from the last trial) in the event a wrongful use of force is found. Plaintiffs also
24 believe the Verdict Form should not leave that question open, as shown..

25 **Proposed Verdict Form.** Attached.

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