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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN FRANCISCO DIVISION

18 VERNELL LUNDBERG, et al.,

19 Plaintiffs,

20 v.

21 COUNTY OF HUMBOLDT, et al.,

22 Defendants.
23

) Case No. C-97-3989-SI

) **DECLARATION OF SOPHIA S. COPE**
) **IN SUPPORT OF PLAINTIFFS'**
) **MOTION FOR ENTITLEMENT TO**
) **ATTORNEY'S FEES**

) [42 U.S.C. § 1988(b)]

) Date: July 29, 2005

) Time: 9:00 a.m.

) Courtroom: 10

) Judge: Hon. Susan Illston
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27
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1 I, SOPHIA S. COPE, declare as follows:

2 1. I am a member in good standing of the State Bar of California and a member of
3 the bar of this Court. I am also a Staff Attorney and Environmental Advocacy Fellow at the First
4 Amendment Project. I make this declaration based on my personal knowledge, and if called to
5 testify, could and would testify as stated herein.

6 2. Attached as **Exhibit A** is a true and correct copy of the settlement letter Plaintiffs'
7 counsel Dennis Cunningham sent to Defendants' counsel on January 31, 2003.

8 3. Attached as **Exhibit B** is a true and correct copy of a March 31, 2005, Eureka
9 Times-Standard article by Hazel Lodevico entitled "Acclaimed author Derrick Jensen to speak in
10 So Hum," downloaded from LexisNexis on June 28, 2005.

11 4. Attached as **Exhibit C** is a true and correct copy of a April 23, 2005, The Eureka
12 Reporter article by Diane M. Batley entitled "With previous attempts at settlement unsuccessful,
13 costs in pepper spray case continue to increase," available at:
14 <http://www.eurekareporter.com/PrinterFriendly.aspx?ArticleID=405>, and printed on June 28,
15 2005.

16 5. Attached as **Exhibit D** is a true and correct copy of a November 17, 1997, letter
17 from former California Attorney General Dan Lungren to state Senator Mike Thompson.

18 6. Attached as **Exhibit E** is a true and correct copy of California Commission on
19 Peace Officer Standards and Training's (P.O.S.T.) August 1, 2003, Bulletin No. 03-18
20 announcing proposed regulation 1081(a)(35). Attached to this document is the Notice of
21 Proposed Regulatory Action and the Initial Statement of Reasons. The document is available at:
22 [http://www.post.ca.gov/RegulationNotices/Acts%20of%20Civil%20Disobedience\(7-03\).doc](http://www.post.ca.gov/RegulationNotices/Acts%20of%20Civil%20Disobedience(7-03).doc),
23 and was printed on June 28, 2005.

24 7. On June 15 and 16, 2005, I communicated via electronic mail with a reference
25 attorney at the California Office of Administrative Law about the proposed P.O.S.T. regulation
26 1081(a)(35). After consulting with P.O.S.T., the reference attorney informed me that pursuant to
27 Governor Arnold Schwarzenegger's Executive Order S-2-03 (November 17, 2003), P.O.S.T.
28 withdrew its submission of 1081(a)(35) on December 8, 2003, before the Office of

1 Administrative Law had finished its review and issued its decision. According the reference
2 attorney, P.O.S.T. intends to begin the rule-making process again for regulation 1081(a)(35), “in
3 the next month or so,” meaning July 2005 or sometime thereafter.

4 8. Attached as **Exhibit F** are true and correct copies of information printed from the
5 P.O.S.T. website on June 27, 2005, describing what P.O.S.T. is, <http://www.post.ca.gov/about/>,
6 and listing participating law enforcement agencies,
7 http://www.post.ca.gov/library/other/agency_page.asp.

8 9. Attached as **Exhibit G** is a true and correct copy of a November 5, 1998, P.O.S.T.
9 press release announcing the new Crowd Management and Civil Disobedience Guidelines,
10 November 1998.

11 10. Attached as **Exhibit H** is a true and correct copy of P.O.S.T. *Guideline 10: Use of*
12 *Nonlethal Chemical Agents* from Crowd Management and Civil Disobedience Guidelines,
13 November 1998.

14 11. Attached as **Exhibit I** is a true and correct copy of a November 26, 1998, news
15 brief from the North Coast Journal entitled “Pepper spray guidelines due,” available at:
16 <http://www.northcoastjournal.com/112698/news1126.html>, printed on June 28, 2005.

17 12. Attached as **Exhibit J** is a true and correct copy of P.O.S.T.’s Crowd
18 Management and Civil Disobedience Guidelines, December 1998, available at:
19 <http://libcat.post.ca.gov/dbtw-wpd/documents/post/41021760.pdf>, and printed on June 28, 2005.

20 13. Attached as **Exhibit K** is a true and correct copy of P.O.S.T.’s Crowd
21 Management and Civil Disobedience Guidelines, March 2003, available at:
22 http://www.post.ca.gov/PREFACE%20and%20Guidelines%20for%20WEB_032103.pdf, and
23 printed on June 28, 2005.

24 14. Attached as **Exhibit L** is a true and correct copy of P.O.S.T.’s March 11, 2005,
25 Bulletin No. 2005-05 announcing the proposed regulatory action of updating the training and
26 testing specifications for peace officer basic courses and amending regulations 1005, 1007, and
27 1008. This document announces proposed changes to *Learning Domain #20, Use of Force* and
28 *Learning Domain #35, Firearms/Chemical Agents*, available at:

1 <http://www.post.ca.gov/bulletin/doc/2005-05.doc>, and printed on June 28, 2005.

2 15. Attached as **Exhibit M** is a true and correct copy of the proposed language of the
3 changes to *Learning Domain #20, Use of Force* and *Learning Domain #35, Firearms/Chemical*
4 *Agents*, as noticed in Bulletin No. 2005-05, which is referenced in this declaration in paragraph
5 14 as Exhibit L. The document is available at:

6 [http://www.post.ca.gov/RegulationNotices/TexofProposedRegulatoryActionUpdateTrngSpecs7-](http://www.post.ca.gov/RegulationNotices/TexofProposedRegulatoryActionUpdateTrngSpecs7-1-05.DOC)
7 [1-05.DOC](http://www.post.ca.gov/RegulationNotices/TexofProposedRegulatoryActionUpdateTrngSpecs7-1-05.DOC), and was printed on June 28, 2005.

8 _____ 16. Attached as **Exhibit N** is a true and correct copy of the current Eureka Police
9 Department policies entitled “Section 308: Control Devices and Techniques” dated January
10 2005. This document was provided by Defendants on June 21, 2005. Attached as **Exhibit O** is a
11 true and correct copy of the May 20, 1997, Eureka Police Department “General Order Number
12 2.7” on the use of force. This document was obtained by Plaintiffs’ counsel earlier in the
13 litigation.

14 _____ 17. Attached as **Exhibit P** is a true and correct copy of the Humboldt County
15 Sheriff’s Department’s “General Order 92-3” on the use of physical force, last revised on
16 January 27, 2003. This document was provided by Defendants on June 21, 2005. Attached as
17 **Exhibit Q** is a true and correct copy of the Humboldt County Sheriff’s Department’s “General
18 Order 92-3” on the use of physical force dated May 20, 1997. This document was obtained by
19 Plaintiffs’ counsel earlier in the litigation.

20 _____ 18. Attached as **Exhibit R** is a true and correct copy of the Humboldt County
21 Sheriff’s Department’s “General Order 75-5” on the use of chemical agents, last revised on
22 March 10, 1992. This document was provided by Defendants on June 21, 2005. Attached as
23 **Exhibit S** is a true and correct copy of the Humboldt County Sheriff’s Department’s “General
24 Order 75-5” on the use of chemical agents, last revised on March 10, 1992. This document was
25 obtained by Plaintiffs’ counsel earlier in the litigation.

26 _____ 19. Attached as **Exhibit T** are true and correct copies of two news articles. The first is
27 a May 3, 2005, Eureka Times-Standard article by John Driscoll entitled “Air cloudy after pepper
28 spray trial,” downloaded from LexisNexis on June 28, 2005. It includes a quote from Humboldt

1 County Sheriff Gary Philp: “We’re not going to do a practice that is just going to put us back in
2 court.” The article erroneously states that Plaintiffs sought \$10,000 to \$100,000 in damages; as
3 this Court will recall, Plaintiffs’ counsel Dennis Cunningham stated that \$10,000 might be too
4 much money according to some people, while \$100,000 would be too little according to others.
5 The second article is an April 28, 2005, Bay City News Wire article entitled “Update: Third Trial
6 Ends with Verdict of Excessive Force and \$8 in Damages,” downloaded from
7 <http://www.cbs5.com> on June 15, 2005. It includes a quote from Humboldt County Sheriff Gary
8 Philp: “Whatever the final outcome of the case is, we’ll work within it.”

9 20. ___ Attached as **Exhibit U** is a true and correct copy of a July/August 2003 The
10 Police Marksman article by Dave Grossi entitled “The Impact of Headwaters Forest v. Humboldt
11 County: An OC Training Perspective.” This article was obtained from the P.O.S.T. library
12 through inter-library loan with the Alameda County Law Library.

13 21. ___ Attached as **Exhibit V** is a true and correct copy of an April 2005 Police Chief
14 magazine article by Edmund Zigmund entitled “Chief Counsel: Police Use of Force: The
15 Problem of Passive Resistance,” available at: <http://www.policechiefmagazine.com>, and printed
16 on June 27, 2005.

17 22. Attached as **Exhibit W** is a true and correct copy of the agenda and minutes of a
18 November 2, 1998, San Francisco City and County Board of Supervisors meeting, containing
19 Resolution No. 941-98, available at: <http://www.sfgov.org/site/bdsupvrs>, and printed on June 24,
20 2005.

21 23. Attached as **Exhibit X** is a true and correct copy of a November 1, 1997 San
22 Francisco Chronicle article by Jaxon Van Derbeken, George Snyder and Sabin Russell entitled
23 “FBI Probes Pepper Spray ‘Swabbing,’ Furor over video of cops smearing protesters’ eyes,”
24 available at: <http://www.sfgate.com>, and printed on June 24, 2005. This article states that
25 Senator Diane Feinstein sent a letter to Humboldt County Sheriff Dennis Lewis calling the use of
26 pepper spray against Plaintiffs “unwarranted and unnecessary.” In June 2005, I made three
27 separate document requests to Senator Feinstein’s Washington, D.C., office, one by electronic
28 mail and two by telephone. An aide of Senator Feinstein’s informed me that a copy of this letter

1 would be faxed to my office, but I did not receive a copy by the motion filing date.

2 24. Attached as **Exhibit Y** are true and correct copies of six articles. The first is a
3 November 1, 1997, San Francisco Chronicle editorial entitled “Pepper Spray Torture,” available
4 at: <http://www.sfgate.com>, and printed on June 28, 2005. The second is the Letters to the Editor
5 of the San Francisco Chronicle on November 4, 1997, available at: <http://www.sfgate.com>, and
6 printed on June 28, 2005. The third is the Letters to the Editor of the San Francisco Chronicle on
7 November 5, 1997, available at: <http://www.sfgate.com>, and printed on June 28, 2005. The
8 fourth is a September 22, 2004, New York Times article by Carolyn Marshall entitled “Pepper-
9 Spray Case Goes to Jury in California,” downloaded from LexisNexis on June 28, 2005. The
10 fifth is an April 29, 2005, Santa Rosa Press Democrat article by Mike Geniella entitled “Split
11 Decision in pepper spray case: In third trial, Humboldt officers guilty of excessive force, but
12 activists awarded just \$1 each,” printed from <http://www.pressdemocrat.com>. The final is a May
13 5, 2005 North Coast Journal article by Judy Hodgson entitled “About that Goose,” available at:
14 <http://www.northcoastjournal.com/050505/pub0505.html>, and printed on June 28, 2005.

15 Searches for media coverage of this case on LexisNexis, Google.com, and individual newspaper
16 websites return hundreds of results.

17 25. Pursuant to Northern District Local Rule 54- 6(b)(1), James Wheaton and I met
18 telephonically with Defendants’ counsel Nancy Delaney on several occasions to discuss the
19 substantive issue of Plaintiffs’ entitlement to attorney’s fees and, having a good faith difference
20 of opinion, agreed to stipulate to the bifurcation of the issues of entitlement to and amount of
21 attorney’s fees. The parties have also begun informal discovery.

22 I declare under penalty of perjury that the foregoing is true and correct to the best of my
23 knowledge.

24 Executed this 30th day of June 2005, in Oakland, California.

25
26 _____
27 Sophia S. Cope
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