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November 29, 2012

The Hon. Molly Dwyer
United States Court of Appeals, Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1518

Re: *Richards v. Prieto*
U.S. Court of Appeals, Ninth Cir. No. 11-16255

Notice of Supplemental Authority, Fed. R. App. P. 28(j)

Dear Ms. Dwyer:

With respect to today's order, directing the parties to discuss the significance, if any, of the State of California's absence from the litigation, supplemental citation may obviate the need to do so.

On May 5, 2009, Plaintiffs filed the required notice of unconstitutionality. *See* Dist. Ct. Dkt. 3 (attached hereto as Exhibit 1). Pursuant to then-E.D. Cal. R. 132(b), "[t]hereupon, or *sua sponte*, the Court shall serve a copy of that notice on the Attorney General of the State and on all other parties." *See also* Fed. R. Civ. P. 5.1(b). Plaintiffs subsequently provided that notice to California's Attorney General, via both email (Exhibit 2) and certified U.S. Mail (Exhibit 3).

Plaintiffs (and, it should be presumed, the District Court) having fulfilled the notice requirements, nothing bound the State to enter the case, or to explain its apparent decision to rely upon Defendants' handling of the matter. The 60-day notice provision of Fed. R. Civ. P. 5.1(c) has long since expired. No State of California employee or official was a necessary party, as none are involved in the enforcement of the challenged provision.

Plaintiffs are constrained to note that the Court has entered an identical order in *Peruta v. County of San Diego*, No. 10-56971. *Peruta's* docket does not reflect the filing of the mandatory notice of claim of unconstitutionality. It is unknowable whether the State, properly notified, would have appeared in *Peruta*.

Ms. Dwyer
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Because the cases are not consolidated (as the Court may recall, at *Peruta* Plaintiffs' insistence), any delays inuring in *Peruta* Plaintiffs' failure to file and provide the required notice in their (later-filed) case should not prejudice *Richards* Plaintiffs, who filed and served the required notice over three years ago.

Sincerely,

/s/ Alan Gura

Alan Gura

The body of this letter contains 286 words.

cc: all counsel (via CM/ECF)