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December 16, 2011

Molly Dwyer, Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 941103
VIA E-FILING

**Re: *Peruta v. County of San Diego*, Case No. 10-56971
Appellants' Citation of Supplemental Authority Pursuant to Rule 28(j)**

Dear Ms. Dwyer:

On November 28, 2011, rehearing en banc was ordered in *Nordyke v. King*, 644 F.3d 776 (9th Cir. 2011),¹ a case cited in briefs submitted by both parties in this matter. Accordingly, the three-judge panel opinion may no longer be cited as precedent by or to any court of the Ninth Circuit. *See Nordyke v. King*, No. 07-15763, 2011 WL 5928130 (9th Cir. Nov. 28, 2011).² A copy of the Order is attached as Exhibit A.

Date: December 16, 2011

Respectfully submitted,

/s C. D. Michel
C. D. Michel
Attorney for *Plaintiffs-Appellants*

¹ *Nordyke v. King* is Ninth Circuit Case No. 07-15763.

² *See also* Ninth Circuit Rules 35-1 to 35-3 advisory committee's notes.

Peruta v. County of San Diego
Case No. 10-56971
EXHIBIT A

FILED

FOR PUBLICATION

NOV 28 2011

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSELL ALLEN NORDYKE; ANN SALLIE NORDYKE, dba TS Trade Shows; JESS B. GUY; DUANE DARR; WILLIAM J. JONES; DARYL N. DAVID; TASIANA WESTYSCHYN; JEAN LEE; TODD BALTES; DENNIS BLAIR, R.L. ADAMS; ROGER BAKER; MIKE FOURNIER; VIRGIL MCVICKER,

Plaintiffs - Appellants,

v.

MARY V. KING; GAIL STEELE; WILMA CHAN; KEITH CARSON; SCOTT HAGGERTY; COUNTY OF ALAMEDA; COUNTY OF ALAMEDA BOARD OF SUPERVISORS,

Defendants - Appellees.

No. 07-15763

D.C. No. CV-99-04389-MJJ

ORDER

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Judge Rawlinson did not participate in the deliberations or vote in this case.