

No. 10-56971 [DC# 3:09-CV-02371-IEG-BGS]

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD PERUTA, et al.,
Plaintiffs-Appellants,

vs.

COUNTY OF SAN DIEGO, et al.,
Defendants-Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

**MOTION FOR CLARIFICATION &
COORDINATION OF APPEALS IN RELATED CASES**

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Counsel for Plaintiffs-Appellants

Pursuant to Ninth Circuit Rule 27-10(a), Plaintiff-Appellants Edward Peruta, Dr. Leslie Buncher, Mark Cleary, James Dodd, Michelle Laxson, and The CRPA Foundation (collectively “*Peruta* Appellants”) hereby move this Court for clarification on the status of the panel assignment and oral argument scheduling in the instant appeal (“*Peruta*”).¹

This Court has deemed that the *Peruta* appeal shall be heard by the same panel as the related case of *Richards v. Prieto*, No. 11-16255 (“*Richards*”) “if practicable.” Order at 1, *Richards*, No. 11-16255 (June 20, 2011); Order at 1, *Richards*, No. 11-16255 (June 29, 2012). The Court subsequently and definitively ordered that the “Clerk shall calendar appeal, No. 12-16258 [*Baker*], before the panel that will be assigned to decide appeal No. 11-16255 [*Richards*].” Order at 1, *Baker*, No. 12-16258 (Sept. 4, 2012), but without qualifying the order with “if practicable.” The Court did not mention *Peruta* in that Order, despite the Court’s previous Order about calendaring *Peruta* and *Richards* together “if practicable,” *id.*, and its other Order stating that briefing is complete in *Peruta* and that the case is “ready for calendaring.” Order at 1, *Peruta*, No. 10-56971 (June 25, 2012).

¹ In accordance with Circuit Rule 27-1(2) and Advisory Committee Note to Circuit Rule 27-1 paragraph 5, *Peruta* Appellants’ counsel contacted counsel for San Diego County Appellees in order to determine whether they oppose this motion. Appellees’ counsel indicated that Appellees do not oppose this motion. (Declaration of Sean A. Brady Supp. Appellants’ Mot. For Clarification ¶¶ 2-3.)

It is *Peruta* Appellants' understanding that the Court currently contemplates that these three cases shall be heard before the same panel, likely on the same day. But, as explained above, there is some ambiguity in the record set by the Court's recent Orders on that score.

With this motion, *Peruta* Appellants seek an Order from this Court clarifying the effect of those previous Orders as to the following:

1. Will the *Peruta* appeal be scheduled before the same panel as the *Richards* and *Baker* appeals?
2. Assuming the answer to the previous question is yes, will oral argument in *Peruta* be heard on the same day, or during the same Court session, as *Richards* and *Baker*?

To the extent oral argument for the related cases of *Richards* and *Baker* may be scheduled prior to that for *Peruta*, *Peruta* Appellants alternatively request the Court – pursuant to its authority provided in Circuit Advisory Committee Note to Rules 34-1 to 34-3 – assign a date for oral argument in the *Peruta* appeal that is no later than the same day (or at least during the same Court session) as the date set for oral argument in *Richards* and *Baker*, or any other subsequently-filed related case, and that the Court assign all three cases to be heard before the same panel.

Respectfully Submitted,
Dated: September 14, 2012

/s/ C. D. Michel
C. D. Michel
Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2012, an electronic PDF of the MOTION FOR CLARIFICATION & COORDINATION OF APPEALS IN RELATED CASES was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: September 14, 2012

/s/ C. D. Michel _____
C. D. Michel
Attorneys for *Plaintiffs-Appellants*

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**DECLARATION OF SEAN A. BRADY IN SUPPORT OF APPELLANTS'
MOTION FOR CLARIFICATION & COORDINATION OF
APPEALS IN RELATED CASES**

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DECLARATION OF SEAN A. BRADY

I, Sean A. Brady, declare as follows:


1. I am an attorney at law duly licensed to practice in the State of California and before the Ninth Circuit Court of Appeals. I am an Associate attorney at Michel & Associates, P.C., attorneys of record for Appellants. I am familiar with the facts and pleadings herein. The following is within my personal knowledge and if called and sworn as a witness, I could and would competently testify thereto.

2. On September 14, 2012 at approximately 3:30 pm, I contacted counsel for Defendants-Appellees, Mr. James Chapin, by email to inquire whether Appellees would oppose this motion.

3. On September 14, 2012, at approximately 3:45 pm, Mr. Chapin responded via e-mail indicating that Appellees do not oppose this motion.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 14th day of September 2012 at Long Beach, California.


Sean A. Brady
Counsel for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2012, an electronic PDF of DECLARATION OF SEAN A. BRADY IN SUPPORT OF APPELLANTS' MOTION FOR CLARIFICATION & COORDINATION OF APPEALS IN RELATED CASES was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: September 14, 2012

/s/ C. D. Michel
C. D. Michel
Attorneys for Plaintiffs-Appellants