



GURA &
POSSESSKY

105 ORONOCO STREET, SUITE 305
ALEXANDRIA, VIRGINIA 22314
TEL 703.835.9085
FAX 703.997.7665

WWW.GURAPOSSSESKY.COM

June 19, 2015

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
Re-Argued En Banc June 16, 2015

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

Dear Ms. Dwyer:

At argument, Judge Smith inquired as to whether the Court should decide the case considering state law as it exists today, or as it stood when the District Court entered judgment.

It is in the general true that the province of an appellate court is only to enquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied.

United States v. Schooner Peggy, 5 U.S. (1 Cranch) 103, 110 (1801) (Marshall, C.J.). “This same reasoning has been applied where the change was constitutional, statutory, or judicial.” *Thorpe v. Housing Auth. of Durham*, 393 U.S. 268, 282 (1969) (footnotes omitted).

Ms. Dwyer
Page Two

“[W]e are required to apply the law as it exists at the time of our decision.” *Bud Antle, Inc. v. Barbosa*, 45 F.3d 1261, 1273 n.15 (9th Cir. 1995) (citing *Schooner Peggy*); *Clabourne v. Ryan*, 745 F.3d 362, 380 (9th Cir. 2014); cf. *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 140 (1974) (ripeness inquiry: “it is the situation now rather than the situation at the time of the District Court’s decision that must govern”) (footnote omitted).

Sincerely,

/s/ Alan Gura
Alan Gura

This body of this letter contains 210 words.

CERTIFICATE OF SERVICE

On this, the 19th day of June, 2015, I served the foregoing by electronically filing it with the Court's CM/ECF system, which generated a Notice of Filing and effects service upon counsel for all parties in the case.

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

Executed this the 19th day of June, 2015.

/s/ Alan Gura
Alan Gura