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October 3, 2016

Molly C. Dwyer, Clerk of the Court
NINTH CIRCUIT COURT OF APPEALS
The Richard H. Chambers Courthouse
125 South Grand Avenue
Pasadena, CA 91105

Re: *Nijjar Realty, Inc. v. NLRB*, USCA Cases Nos. 15-73921 and 16-70336

Dear Ms. Dwyer:

This letter is in response to the Rule 28(j) letter submitted by the National Labor Relations Board on September 16, 2016. The letter should be stricken because it does not simply attempt to apprise the Court of one of its own recent decisions (which was presumably unnecessary), but attempts to provide additional unauthorized argument that is outside the purpose of the Rule.

If the Court nevertheless decides to consider the letter, it should take note of what the letter did not state about its recent decision in *Morris v. Ernst & Young LLP*, ___ F3d ___, 2016 WL 4433080. After citing authority for the proposition that employers cannot condition employment on a waiver of Section 7 rights under the National Labor Relations Act, the majority stated that:

In contrast, there was no § 8 violation in *Johnmohammadi v. Bloomingdale's, Inc.* because the employee there could have opted out of the individual dispute resolution agreement and chose not to. 755 F.3d 1072, 1076 (9th Cir. 2014).

(*Id.* at * 4, fn. 4.) Because just such an opt out clause existed in the Comprehensive Agreement at issue in this case, that Agreement remained entirely lawful pursuant to this binding precedent. (See Brief in Support Petition for Review, pp. 27-29; Petitioner's Reply, pp. 13-16.)

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Ronald W. Novotny

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