

**FILED**

**FOR PUBLICATION**

**JUL 29 2009**

**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.