

**FILED**

JAN 26 2010

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

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**BYRON CHAPMAN,**

Plaintiff - Appellee,

v.

**PIER 1 IMPORTS (U.S.) INC., dba  
PIER 1 IMPORTS #1132,**

Defendant - Appellant.

No. 07-16326

D.C. No. CV-04-01339-LKK

**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.