

FILED

JUN 08 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NYKEYA KILBY, individually and on  
behalf of all others similarly situated,

Plaintiff - Appellant,

v.

CVS PHARMACY, INC.,

Defendant - Appellee.

No. 12-56130

D.C. No. 3:09-cv-02051-MMA-  
KSC

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Michael M. Anello, District Judge, Presiding

Argued December 2, 2013  
Submitted June 8, 2016  
San Francisco, California

Before: SILVERMAN, CALLAHAN, and N.R. SMITH, Circuit Judges.

We reverse and remand to the district court to reconsider in light of the  
California Supreme Court's opinion in *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554  
(Cal. 2016).

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

All pending motions for judicial notice are denied as moot.

**REVERSED and REMANDED.**