

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

<p>STEVEN FISHER, <i>Plaintiff-Appellee,</i></p> <p style="text-align: center;">and</p> <p>SANDRA FISHER, <i>Plaintiff,</i></p> <p style="text-align: center;">v.</p> <p>CITY OF SAN JOSE, <i>Defendant-Appellant,</i></p> <p style="text-align: center;">and</p> <p>CITY OF SAN JOSE POLICE DEPARTMENT; OFFICER BOLER; OFFICER BARNETT; OFFICER CORREA; OFFICER ESQUIVEL; OFFICER HONDA; OFFICER KINSWORTHY; OFFICER O'BRIEN; OFFICER RYAN; OFFICER NGUYEN, <i>Defendants.</i></p>	<p>No. 04-16095</p> <p>D.C. No.</p> <p>CV-01-21192-PVT</p> <p>Northern District of California, San Jose</p> <p><b>ORDER</b></p>
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Filed March 14, 2008

**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.

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