

**FOR PUBLICATION**

**FILED**

**UNITED STATES COURT OF APPEALS**

NOV 16 2016

**FOR THE NINTH CIRCUIT**

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

**RETAIL DIGITAL NETWORK, LLC,**

No. 13-56069

Plaintiff-Appellant,

D.C. No.

v.

2:11-cv-09065-CBM-PJW  
Central District of California,  
Los Angeles

**TIMOTHY GORSUCH, as Director of  
the California Department of Alcoholic  
Beverage Control,**

**ORDER**

Defendant-Appellee.

**THOMAS**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be heard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and 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 Owens did not participate in the deliberations or vote in this case.