

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 03 2017

FOR THE NINTH CIRCUIT

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

**THE VACCINE CENTER, LLC, DBA
The Vaccine Center and Travel
Medicine Clinic, a Nevada limited
liability company,**

Plaintiff-Appellant,

v.

**GLAXOSMITHKLINE LLC, a
Delaware limited liability company;
SOUTHERN NEVADA HEALTH
DISTRICT,**

Defendants-Appellees.

No. 14-17207

D.C. No.
2:12-cv-01849-JCM-NJK

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Argued and Submitted December 12, 2016
San Francisco, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: **KOZINSKI** and **N.R. SMITH**, Circuit Judges, and **GLEASON**,**
District Judge.

The Nonprofit Institutions Act exempts non-profits from liability under the Robinson-Patman Act when they purchase supplies for their “own use.” 15 U.S.C. § 13c. The Supreme Court has interpreted “own use” to mean that which promotes the entity’s “intended institutional operation.” Abbott Labs. v. Portland Retail Druggists Ass’n, Inc., 425 U.S. 1, 14 (1976).

The Southern Nevada Health District’s intended institutional operation is broad: County law empowers it “[t]o take whatever action that is necessary to control communicable diseases,” Clark Cty., Nev., Code § 3.08.070(b). But even activities that conform to an “extraordinar[il]y broad institutional function” can satisfy the “own use” provision. De Modena v. Kaiser Found. Health Plan, Inc., 743 F.2d 1388, 1393 (9th Cir. 1984).

Because the vaccine sales and marketing activities of the Southern Nevada Health District conformed to the intended institutional operation of such a district, the Health District purchased the discounted vaccines for its “own use.” The district court thus properly held that defendants were exempt from Robinson-Patman liability.

** The Honorable Sharon L. Gleason, United States District Judge for the District of Alaska, sitting by designation.

AFFIRMED.