

FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 13 2023

FOR THE NINTH CIRCUIT

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

HITOSHI YOSHIKAWA,

Plaintiff-Appellee,

v.

TROY K. SEGUIRANT, Individually,

Defendant-Appellant,

and

CITY AND COUNTY OF HONOLULU;  
GREG TALBOYS; AGT  
CONSTRUCTION, LLC; JAMES A.  
SCHMIT,

Defendants.

No. 21-15970

D.C. No.

1:18-cv-00162-JAO-RT

District of Hawaii,

Honolulu

**ORDER**

**MURGUIA**, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Federal Rule of Appellate Procedure 35(a) and Circuit Rule 35-3. The three-judge panel opinion is vacated.

Judge Bennett did not participate in the deliberations or vote in this case.