### FOR PUBLICATION

**FILED** 

## UNITED STATES COURT OF APPEALS

OCT 24 2022

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

#### FOR THE NINTH CIRCUIT

NOELLE LEE, derivatively on behalf of The Gap, Inc,

Plaintiff-Appellant,

v.

ROBERT J. FISHER; SONIA SYNGAL; ARTHUR PECK; AMY BOHUTINSKY; AMY MILES; ISABELLA D. GOREN; BOB L. MARTIN; CHRIS O'NEILL; ELIZABETH A. SMITH; JOHN J. FISHER; JORGE P. MONTOYA; MAYO A. SHATTUCK III; TRACY GARDNER; WILLIAM S. FISHER; DORIS F. FISHER; THE GAP, INC., Nominal Defendant,

Defendants-Appellees.

No. 21-15923

D.C. No. 3:20-cv-06163-SK Northern District of California, San Francisco

# **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.