

## **APPLE DRAFT RESOLUTION**

### **RESOLVED:**

Shareholders of Apple Inc. (“Apple”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

**SUPPORTING STATEMENT:** Concealment clauses are defined as any employment or post-employment agreement, such as arbitration, non-disclosure or non-disparagement agreements, that Apple asks employees or contractors to sign which would limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination.

### **WHEREAS:**

Apple wisely uses concealment clauses in employment agreements to protect corporate information, such as intellectual capital and trade secrets. However, Apple has not excluded from these clauses their workers' rights to speak openly about harassment, discrimination and other unlawful acts. Given this, investors cannot be confident in their knowledge of Apple's workplace culture.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders 60 percent higher than median companies and 200 percent higher than organizations in the bottom quartile.<sup>1</sup> A study by the *Wall Street Journal* found that over a five-year period, the 20 most diverse companies in the S&P 500 had an average annual stock return that was almost six percentage points higher than the 20 least diverse companies.<sup>2</sup>

A workplace that tolerates harassment invites legal, brand, financial and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism and challenges in attracting and retaining talent.<sup>3</sup> Employees who engage in harmful behavior may also be shielded from accountability.

In California, forthcoming<sup>4</sup> and existing legislation prohibit concealment clauses in employment agreements involving recognized forms of discrimination and unlawful activity. Apple works under a patchwork of state laws related to the use of concealment clauses and may benefit from consistent practices across all employees and contractors.

As hundreds of employees stopped work in protest<sup>5,6</sup> and after years of binding employees who settled discrimination claims to concealment agreements,<sup>7</sup> Pinterest paid \$22.5 million to settle a gender discrimination lawsuit brought by a former executive. Shareholders ultimately sued Pinterest executives alleging a breach of fiduciary duty by “perpetrating or knowingly ignoring the long-standing and systemic

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<https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>

<sup>2</sup> <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>

<sup>3</sup> [https://conference.iza.org/conference\\_files/LaborMarkets\\_2021/sockin\\_j28322.pdf](https://conference.iza.org/conference_files/LaborMarkets_2021/sockin_j28322.pdf)

<sup>4</sup> <https://www.protocol.com/silenced-no-more-assembly>

<sup>5</sup> <https://www.nytimes.com/2020/12/14/technology/pinterest-gender-discrimination-lawsuit.html>

<sup>6</sup> <https://www.washingtonpost.com/technology/2020/07/03/pinterest-race-bias-black-employees/>

<sup>7</sup> <https://www.theverge.com/2020/9/11/21429619/pinterest-workplace-discrimination-finance-team-unequal-culture-bias>

culture of discrimination and retaliation.”<sup>8</sup> Similarly, in 2020, as part of a \$300 million settlement of shareholder lawsuits alleging the company created a toxic work environment, Alphabet agreed to limit confidentiality restrictions associated with harassment and discrimination cases.<sup>9</sup>

Investors have reason to be concerned with Apple, where allegations that the company retaliated against employees complaining of discrimination and potential labor law violations<sup>10</sup> have led workers to organize under the banner #AppleToo.<sup>11,12</sup>

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<sup>8</sup><https://www.institutionalinvestor.com/article/b1phvnsfffr2bp/Retirement-System-Sues-Pinterest-Board-and-Execs-Over-Discrimination>

<sup>9</sup> <https://www.nytimes.com/2020/09/25/technology/google-sexual-harassment-lawsuit-settlement.html>

<sup>10</sup><https://www.theverge.com/platform/amp/2021/8/9/22609687/apple-pay-equity-employee-surveys-protected-activity>

<sup>11</sup> <https://www.theverge.com/2021/8/23/22638150/apple-appletoo-employee-harassment-discord>

<sup>12</sup> <https://appletoo.us/>