



November 21, 2023

Jeff Gennette  
Chairman and Chief Executive Officer  
Macy's, Inc.  
151 West 34th Street  
New York, NY 10001

**Re: Violations of Fiduciary Duty/Failure to Maintain Internal Controls**

Dear Mr. Gennette:

We write to you in your capacity as the Chief Executive Officer and Chairman of the Board of Macy's, Inc. (the "Company"). The purpose of this letter is to alert you and the other members of the Company's Board of Directors to apparent mismanagement that threatens the waste of Company assets, institutional disregard for and violations of federal civil rights laws, and breaches of fiduciary duty.

The evidence is that the Company's management is engaging in employment and contracting policies and practices that facially violate federal and state civil rights laws, including Title VII of the Civil Rights Act of 1964, prohibiting employment discrimination based on race, color, national origin, sex, and religion, and 42 U.S.C. § 1981, prohibiting the Company from contracting based on race. The employment and contracting programs and policies described in the Company's 10-K and Schedule 14a, including but not limited to paying managers to meet racial, national origin, and sex-based hiring "goals," facially discriminatory training and career advancement through the "MOSAIC" program for "ethnically diverse" individuals, spending Company funds to advance management's idiosyncratic "social justice and racial equity causes," the Company's "ethnic representation goal[s]" for managers, "systemic racism" programming, paying "spot bonuses" to "Employee Resource Group" leaders who exclude white males, and overtly discriminatory grant and contracting practices, demonstrate a disturbing disregard for the law.<sup>1</sup> Anti-discrimination mandates are an essential and mission-critical regulatory compliance requirement, and the Board, among its other fiduciary obligations, has a duty of oversight and must put into place a reasonable board-level system of compliance monitoring and reporting relating to compliance with non-discrimination mandates. *See Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc.*

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<sup>1</sup> See Macy's, Inc., Form 10-K at 5-6 (Jan. 28, 2023), <https://bit.ly/3R36jUd>; Macy's, Inc., Notice of Annual Meeting and Proxy Statement 2023 at 43 (last accessed Nov. 20, 2023), <https://bit.ly/3MOQKgg>.

*Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at \*12 (Del. Ch. Oct. 1, 2019).

Also, the evidence is that the Board has failed to appropriately recognize the legal and market risks associated with management's ESG and diversity, equity, and inclusion policies. Contrary to what a reasonable investor would understand, and unlike the boards of other public companies, the only "risk" the Board acknowledges is that institutional investors might be dissatisfied with the Company's racial policies and political and social funding choices.<sup>2</sup> The risk of damage to the Company's customer base due to such policies is neither acknowledged nor addressed.

Also, the evidence is that the Board has failed to appropriately respond to share price losses caused by shoplifting. These losses are significant.<sup>3</sup> However, the Company's Form 10k and Schedule 14a seemingly do not acknowledge the problem or describe the measures that the Board is taking to protect customers, employees, and shareholders by increasing security, demanding the aggressive prosecution of all shoplifters, and closing stores in jurisdictions that refuse to do so, such as San Francisco, New York, Los Angeles County, and Chicago.

To prevent the waste of the Company's assets, to repair and safeguard the Company's reputation among its core customers, and to protect the Company's shareholders, you and your fellow Directors immediately take the following steps.

1. Retain outside counsel to identify and investigate the person[s] responsible for the Company's discriminatory employment and contracting practices. The Board should transparently disclose to the Company's employees and shareholders, by releasing contemporaneous emails and other communications, how and why, precisely, management believed such conduct would create shareholder value and enhance brand reputation. Among other things, all communications to or from the Company's General Counsel regarding this matter should be made available, and the Company should promptly and transparently publish all studies and analytic data demonstrating that the Company's ESG and diversity, equity, and inclusion measures enhance the Company's brand reputation and promote alignment between its business and the tastes and preferences of its core U.S. customers.
2. Immediately ensure that the Board acknowledges, measures, and manages the adverse reputational risk associated with the Company's ESG and diversity, equity, and inclusion policies.

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<sup>2</sup> *Id.* at 35, 40-44.

<sup>3</sup> According to published reports, the Company reduced its earnings expectations due to record levels of shoplifting in 2022 and advised analysts that shoplifting losses will be even higher in 2023. Gabrielle Fonrouge, "Shrink and theft losses near \$1 billion at Lowe's — here's how much they're costing other retailers," CNBC (Sep. 8, 2023), <https://cnb.cx/3G45NiF>.

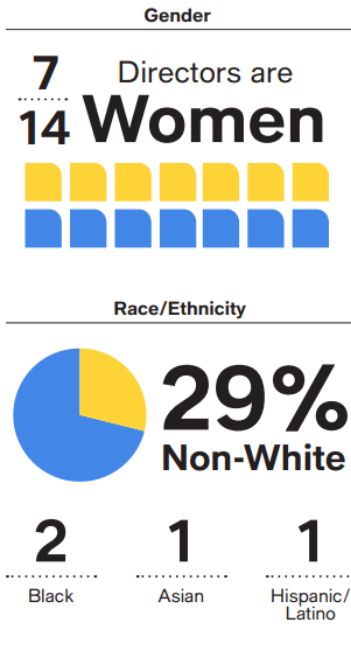
3. Immediately cease and desist from all contracting and employment practices that discriminate based on race, color, national origin, religion, or sex, and/or that are designed to reach demographic “goals” or to racially balance the Company’s workforce. Macy’s should retain an independent counsel to conduct a compliance audit of the Company’s hiring and contracting practices and then make that report fully and transparently available to investors and shareholders.
4. Transparently disclose to shareholders and the Company’s employees all records of and relating to the “MOSAIC” training program and of management’s “systemic racism” and other divisive Company-sponsored training programs. Management should be required to demonstrate how these divisive programs promote shareholder value and enhance the Company’s y’s reputation.
5. In anticipation of litigation, preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars, financial spreadsheets, PDF documents, Word documents, and all other information created and/or stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive.

Sincerely,

/s/ John A. Zadrozny  
Deputy Director of Investigations  
America First Legal Foundation

cc: Emilie Arel  
Francis S. Blake  
Torrence Boone  
Ashley Buchanan  
Marie Chandoha  
Naveen Chopra  
Dierdre P. Connelly  
Jill Granoff  
William H. Lenehan  
Sara Levinson  
Tony Spring  
Paul C. Varga  
Tracey Zhen

## APPENDIX



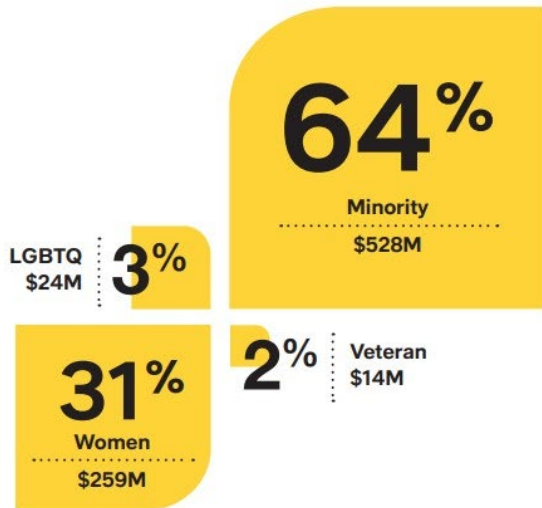
### Macy's, Inc. Board of Directors

The Macy's, Inc. Board of Directors achieved gender parity in 2015 and today, 7 of our 14 directors are women. In terms of ethnicity, 29% of our Board is non-white, including two Black members, one Asian member and one Hispanic/Latino member, and as well as members who identify as part of the LGBTQ+ community, including our Chairman and Chief Executive Officer, Jeff Gennette, who is one of the few openly gay CEOs in the Fortune 500.

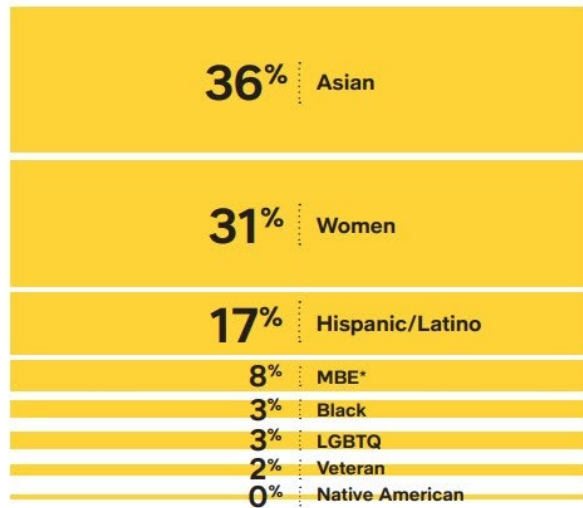
We meet with the Board of Directors annually to review our progress related to DE&I. We look at diverse representation, diverse supplier spend, talent pipelines (retention, promotion, hiring), and colleague feedback from Culture Pulse Surveys and other listening mechanisms.

In January 2023, we created a video series where Jeff Gennette sits down with Macy's, Inc. Board members to interview them about their roles, experiences and perspectives. [Click here](#) to see these interviews.

### 2022 Diverse-owned Spend Breakdown



### 2022 Diverse-owned Spend by Group

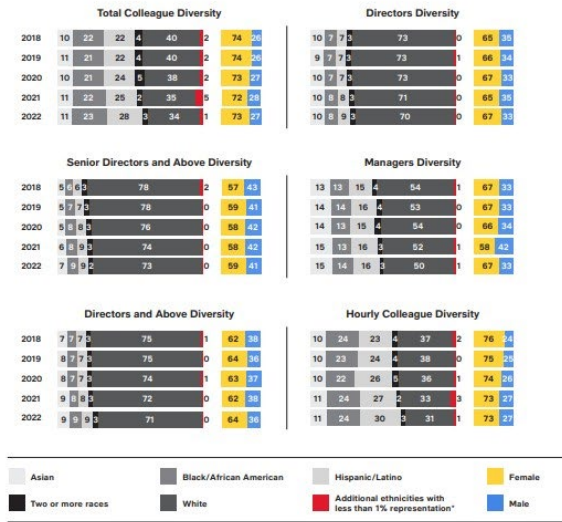


Unaudited as of 1/28/23  
\*Minority Business Enterprises (MBEs) represent companies with certification from a national certifying body, with no specific ethnicity distinction noted.

Since 2021, we have added more than 350 diverse-owned businesses to our portfolio.

# Colleagues

Our ethnic representation continues to improve with retention and promotion rates higher than last year. We are on track to reach our ethnic representation goal by 2025.



Reflects colleague diversity across Macy's and Bloomingdale's only. \*American Indian or Alaska Native, Native Hawaiian or other Pacific Islander.

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Although we have a strong legacy of balanced gender representation, we increased total female leadership over a period when national statistics record more women leaving the workforce.

Starting in 2022, we began sharing our Federal Employer Information Report EEO-1 Component 1, which reflects our U.S. employees. This reporting will follow disclosure guidelines and align to federally mandated job categories that might not align with our organization structure. [Click here](#) to view for reporting periods 2019, 2020 and 2021.

In 2022, Bluemercury announced Dr. Elyse Love, a Black female dermatologist, as their first Dermatologist Adviser. In this role, Dr. Love will offer expert guidance on the product portfolio and help to advance internal education by assisting in the development of product training materials for Bluemercury beauty experts and estheticians.

### Looking Ahead

- Achieve 30% ethnic representation at director+ levels by 2025 to more closely reflect our customer base
- Advance impact of Colleague Resource Groups (CRGs) and expand Stores participation
- Build framework to capture DE&I-related dimensions beyond what is self-identified at time of hire
- Leverage insights from 2022 DE&I simulation-based training to inform future education and training



Dr. Elyse Love  
Bluemercury's Dermatologist Adviser

will help us to further refine, enhance and measure key DE&I skills in order to continually improve colleague and customer interactions.



is our year-long professional development program for top talent at the manager and director levels who self-identify as ethnically diverse. Launched in 2019, this program was established to stem mid-career

attrition of ethnically diverse talent. From 2020 to 2022, approximately 68% of program participants were promoted or moved into a laterally accretive role, with approximately 26% promoted to senior director level.

Through an ongoing partnership with the **McKinsey Connected Leaders Academy**, we nominate colleagues to participate in the program on an ongoing basis. In 2021, Macy's, Inc. was invited to participate in the inaugural class

focused on building functional capabilities, exploring leadership mindsets and strengthening networks. The program allowed more than 300 of our high performing, high potential, ethnically diverse Macy's, Inc. leaders to interact with Asian, Black and Hispanic/Latino executives outside the Company across different industries across North America.

# Our Journey

While our DE&I journey began many years ago, there have been a few important milestones. In 2018, we established a Center of Expertise, identified five focus areas, and put a structure and operating model in place to establish clear ownership and points of accountability around closing the biggest gaps and realizing the most important opportunities. In 2021, we published our first Human Capital Report in which we publicly shared the progress we had made across our DE&I focus areas, goals and KPIs. In 2022, we launched the social purpose platform to unify our work, align and engage our organization on our ambitions and progress as we become a more purpose-driven organization.

**EARLY 2000's**

**Business Case for Diversity**

- Focused on compliance and representation
- Managed brand reputation through relationships with influential community leaders
- Established Security Monitor role to mitigate risk
- Launched Customer Bill of Rights in New York

**2010 TO 2017**

**Established Diversity & Inclusion Center of Expertise**

- Launched holistic, enterprisewide diversity and inclusion vision and mission
- Defined clear goals and KPIs leveraging global benchmarking
- Reinstated DIBC to drive accountability
- Published goals externally to increase transparency

**2018 TO 2019**

**Racial Injustice & Need for Systematic Change**

- Refocused diversity and inclusion strategy to address current climate
- Led change and accountability through five focus areas: Colleague, Customer, Supplier, Community, Marketing
- Joined efforts with CEO Action for Racial Equity to advance scalable and sustainable public policies

**2020 TO 2021**

**Accelerate Progress on Diversity, Equity & Inclusion**

- Launched new enterprise-wide social purpose platform, *Mission Every One*
- Drove action, transparency and accountability in the five focus areas
- Delivered on published goals, including publication of EEO-1 Report
- Launched S.P.U.R. Pathways: Shared Purpose, Unlimited Reach for greater access to capital, education and customers

**2022**

**Merchandising Strategies to Address Emerging Markets**

- Established retail and non-retail supplier diversity offices
- Launched The Workshop at Macy's designed to educate Women and Minority-owned brands to do business at scale
- Organized Diversity & Inclusion Business Council (DIBC) to drive accountability

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# Colleagues



Market by Macy's store colleagues in Evergreen Park, IL

## Where We Are Today

We believe that the demographics of our organization—from the selling floor to the boardroom—should reflect those of our customer. Everything starts with and is fueled by our colleagues, and every colleague has a role to play in helping us to achieve meaningful, lasting change. Because of this, we are working to build a workforce that represents all the communities we serve and creating structural changes, practices and processes that foster equity, opportunity and a culture of belonging.

**We believe that by empowering colleagues to harness and unleash the power of their individuality, we can drive better business decisions and greater innovation.**

Our people leaders also play an important role in driving an inclusive culture. In 2020, we incorporated People Leader Commitments and DE&I into our annual performance review process. In 2021, we took this a step further by including common DE&I goals into annual reviews for director level and above. Beginning in 2022, we now include our ethnic representation goal for director level and above as part of our Company-wide annual incentive calculation.

Over the past several years, we have made investments in **Company-wide programming and learning opportunities** for all colleagues to experience deeper connections, professional growth, holistic well-being and greater flexibility. We will continue to provide a safe space for awareness, education and conversation on a wide range of topics for all colleagues.

One such program is our annual **Week of Understanding**. Since 2021, our colleagues have been invited to participate in content and dialogue around topics ranging from inclusive digital body language and psychological safety to systemic racism, LGBTQ inclusivity in the workplace and anti-Asian hate. Engagement and feedback on these discussions has been positive and here's what a few of our colleagues had to say about this program:

As a result of discussion in one of our programs, **we made the decision to add pronouns to colleague name badges and email signatures** as a visible symbol of inclusivity for colleagues and customers.

**"As a people leader, I will incorporate the discussion in my personal and team workings. This was a great session and the discussion was therapeutic."**

**"I have a team touch base after each session to gauge how the session was received and talk about any concerns. I'm super proud of the work my company is doing in leading these conversations."**

**"Actionable, engaging, interactive, personal. I really felt like I left knowing what I needed to work on to be a better ally."**

Quotes reflect anonymously provided colleague feedback

**"Diversity is a powerful organizational strength and when we include what everyone brings to the table, we access every opportunity for growth and innovation. We expect every one of our leaders and colleagues to contribute to this culture- and business-driving work."**

**Danielle Kirgan**  
Chief Transformation & Human Resources Officer

## Our Aspiration

**We are committed to creating a diverse workforce with bold representation at leadership levels that reflect the communities we serve. We will drive an inclusive environment by developing culturally aware and emotionally intelligent leaders who cultivate the mental and emotional well-being of our colleagues so they can realize their full potential. We will leverage Employee Resource Groups to strengthen belonging. We are dedicated to removing systemic inequities and embedding DE&I in all talent strategies as we strive to be the preferred employer in retail.**

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# Diversity, Equity & Inclusion

## **Our Vision**

is to be the beacon of diversity, equity & inclusion for our colleagues, customers and communities

## **Our Mission**

is to embed diversity, equity & inclusion into how we think, act and operate

## **Our Focus Areas**

are colleagues, customers, suppliers, communities and marketing

When we introduced *Mission Every One*, we committed to direct \$5 billion of the Company's spend through 2025 to the partners, products, people and programs that help to create a more equitable and sustainable future.

This work includes diversifying our leadership, inspiring the next generation of designers and creators, designing a more inclusive future of style, and supporting youth well-being, learning and leadership.

Behind this 'signature commitment' as well as each one of the DE&I-specific initiatives you will read about in this inaugural report, are the strength and participation of our leadership team, the power of our external partnerships, the support of our Board of Directors and the engagement of our colleagues.

Today—several years into our DE&I journey and one year since the launch of *Mission Every One*—I am proud to say that we have made admirable progress towards achieving our objectives, and there is still so much more to come. I believe that the brightest future for Macy's, Inc. will be realized through a firm commitment and systemic approach to achieving full representation, so we will continue pursuing this important goal. Seeing the positive impact on our colleagues, our customers, our communities and our business reinforces the importance of this work. My thanks to our DE&I leaders, champions and partners, as well as our colleagues and customers who are the reason this journey matters so much.

I appreciate your interest in our Company's objectives, progress and ongoing commitment to this important work.



Jeff Gennette  
Chairman & Chief Executive Officer