



November 21, 2023

Timothy Riera, Acting Director
Jeffrey Burstein, Regional Attorney
New York District Office
U.S. Equal Employment Opportunity Commission
33 Whitehall Street, 5th Floor
New York, NY 10004

Investigation Request: Macy's, Inc.

Dear Mr. Riera and Mr. Burstein:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write under 29 C.F.R. § 1601.6(a) seeking a Commissioner’s charge for an inquiry into individual or systemic discrimination by Macy’s, Inc. (“Macy’s”).¹ Macy’s is a privately held company, incorporated in the State of Delaware, with its corporate headquarters located at 151 West 34th Street, New York, NY, 10001.

Based on existing evidence, there are strong reasons to believe that Macy’s is intentionally and systemically violating Title VII of the Civil Rights Act of 1964 by unlawfully conditioning hiring, promotion, training, and other functions on race, color, national origin, and/or sex.

As you know, Title VII prohibits employers from discriminating against any prospective or current employee because of his or her race, color, religion, sex, or national origin.² It also prohibits discrimination because of race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.³ Despite clear federal law, Macy’s has set explicit racial and other quotas for hiring and similar functions that appear to facially violate federal law.

For example, in a 2019 press release entitled “Bold Vision To Advance Diversity and Inclusion and Ensure The Company Reflects The Diversity Of The Customers and Communities Served,” Macy’s details a five-point plan with specific directives focused

¹ Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them under 29 C.F.R. § 1601.6(a).

² 42 U.S.C. § 2000e-2(a).

³ 42 U.S.C. § 2000e-2(d).

on achieving greater diversity for all aspects of the company’s business model.⁴ Among other directives, the plan explicitly instructs Macy’s management to “[a]chieve more ethnic diversity by 2025 at senior director level and above, with a goal of 30 percent,” as well as to initiate a “12-month program designed to strengthen leadership skills for a selected group of top-talent managers and directors of Black/African-American, Hispanic-Latinx, Native American and Asian descent.”⁵ This language appears to be an undisguised commitment to hiring and training quotas based on race, color, and national origin.

Other aspects of Macy’s five-point plan appear equally problematic. One of the points, labeled “Reflect and reach the full spectrum of our customers in our imagery, messages and experience,” states that Macy’s will:

“[r]equire 50 percent representation of gender/gender identity, ethnicity, age, size and differently abled subjects in our advertising by 2020.... This begins by changing the way models are cast, increasing diverse representation in vendor-provided imagery, and increasing representation among hired stylists, photographers, directors, producers, agencies, content providers and event partners.”

Another point of the plan, labeled “Drive growth with under-represented suppliers,” explicitly calls for limiting Macy’s relationships with supply companies based on the immutable characteristics of the owners of those companies:

“Achieve a diverse supplier spend of at least 5 percent by 2021. Macy’s aims to increase expenditures with suppliers who bring unique merchandise and perspectives, contribute to the economic health of local communities, and help grow the number of diverse suppliers in the retail industry. Our Supplier Diversity Program is designed to connect suppliers that are more ethnically diverse, women-, veteran- and LGBTQ-owned businesses to opportunities within Macy’s, Inc. by ensuring they are integrated into merchandising and business development strategies.”⁶

While we understand that the Committee’s jurisdiction does not include companies’ contracting policies and practices, this clear immutable characteristic-based preference for contractors is nevertheless relevant for two reasons. First, it demonstrates a pervasive commitment to violating federal law. Second, it is unclear

⁴ See generally Macy’s, Inc., *News Details: Macy’s, Inc. Creates Bold Vision To Advance Diversity and Inclusion and Ensure The Company Reflects The Diversity Of The Customers and Communities Served* (Sep. 10, 2019) (last accessed Nov. 17, 2023), <https://tinyurl.com/m5mzner2>.

⁵ *Id.*

⁶ *Id.*

to what degree Macy's commitment to cosmetics-based contractor recruitment is connected to its own internal retention, recruitment, hiring, and training practices.

In the last year, Macy's has only reinforced its commitments to recruitment and hiring policies that likely violate federal law. In its inaugural 2022 "Diversity, Equity & Inclusion Annual Report," Macy's took great pains to emphasize the degree to which Macy's is committed to a "systemic approach to achieving full representation" within its workforce.⁷ The 29-page report includes, among other things, statistics highlighting the sex and "Non-White" membership ratio of its corporate board,⁸ acknowledgment of how they apply diversity, inclusion, and equity requirements to the company's "talent pipeline (retention, promotion, hiring),"⁹ and promotion of the fact that Macy's "now include[s] our ethnic representation goal for director level and above as part of our Company-wide annual incentive calculation."¹⁰ Macy's even stresses at several points in its report that the goal of Macy's leadership is to "embed" diversity, inclusion, and equity principles in all aspects of how Macy's "think[s], act[s], and operate[s]."¹¹ The combination of its explicit comments about retention, recruitment, and hiring based on immutable characteristics and its fixation on internal employment statistics that focus on employees' immutable characteristics demonstrates a facial violation of Title VII.¹²

Macy's discriminatory retention, recruitment, hiring, and training programs, based on their own public-facing materials, are not only patently illegal, but are deeply harmful on several levels. Discrimination against job applicants or employees based on immutable characteristics such as race, color, national origin, or sex "generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone."¹³ In addition, the company's employment practices foment contention and resentment and are therefore "odious and destructive."¹⁴ It truly "is a sordid business, this divvying us up" by race or sex.¹⁵

Macy's has created a significant legal dilemma for itself. Either Macy's claims regarding the steps it has taken to achieve diversity within its workforce based on

⁷ Macy's, Inc., *2022 Diversity, Equity & Inclusion Annual Report*, 2 (last accessed Nov. 17, 2023), <https://tinyurl.com/2rwnhz4c>.

⁸ *Id.* at 7.

⁹ *Id.*

¹⁰ *Id.* at 10.

¹¹ *Id.* at 1, 2, and 6; *see also id.* at 10 (noting how Macy's is "dedicated to removing systemic inequities and embedding DE&I in all talent strategies as we strive to be the preferred employer in retail").

¹² To be clear, this would be especially true if it can be demonstrated that Macy's has developed and/or implemented internal systems, particularly within its human resources functions, that engage in procedural or algorithmic discrimination against any persons based on race, color, national origin, or sex.

¹³ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

¹⁴ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

¹⁵ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

race, color, national origin, and sex are mere puffery, or the company is intentionally violating Title VII and its core principle that individuals are to be judged on merit and not on their immutable characteristics. Unfortunately for Macy's, there is no plausible third alternative.

Because of the totality of the information presented above, we believe a Commissioner's charge is particularly appropriate here because there is ample evidence suggesting that the company has knowingly and intentionally violated federal law and will continue to do so.

Thank you in advance for your consideration of this important legal matter, and please do not hesitate to contact me if you have any questions.

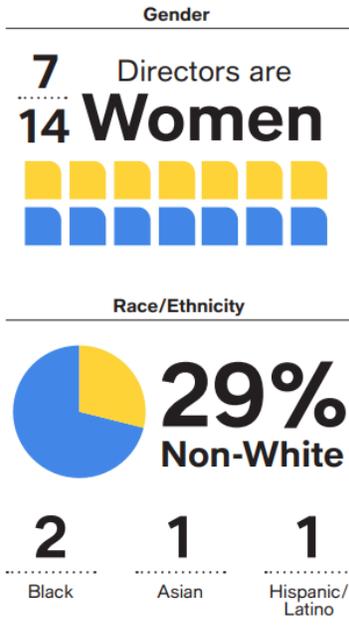
Sincerely,

/s/ John A. Zadrozny

Deputy Director of Investigations
America First Legal Foundation

cc: The Honorable Charlotte A. Burrows, Commission Chair
The Honorable Jocelyn Samuels, Commission Vice Chair
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner
The Honorable Kalpana Kotagal, Commissioner

APPENDIX



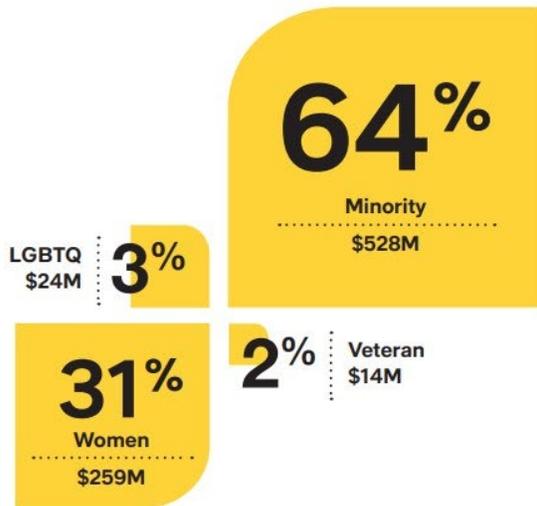
Macy's, Inc. Board of Directors

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.

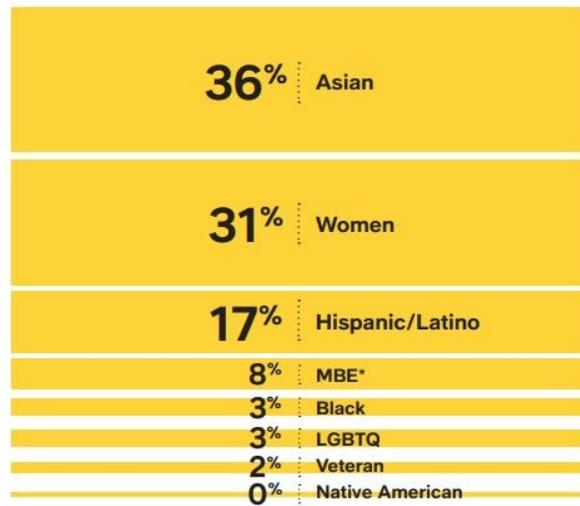
We meet with the Board of Directors annually to review our progress related to DE&I. We look at diverse representation, diverse supplier spend, talent pipelines (retention, promotion, hiring), and colleague feedback from Culture Pulse Surveys and other listening mechanisms.

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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13

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, enterprise-wide 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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5

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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10

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