



December 19, 2023

Mr. Ynon Kreiz, Chairman and Chief Executive Officer
Mattel, Inc.
333 Continental Blvd.
El Segundo, CA 90245

Re: Violations of Federal Law and Waste of Corporate Assets

Dear Mr. Kreiz,

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.

The purpose of this letter is to alert you to apparent mismanagement that threatens the waste of Mattel, Inc.’s (the “Company”) assets and breach of the Board’s fiduciary duty to shareholders. Substantial evidence suggests that management is systematically violating federal civil rights laws. Given that the Company acknowledges, “[u]favorable resolution of, or adverse developments in, legal proceedings, or regulatory matters could have an adverse effect on Mattel’s business, financial conduction, and results of operations,”¹ and that if its “goodwill becomes impaired, Mattel’s results of operations could be adversely affected,”² and also given that workplace anti-discrimination mandates are an essential and mission-critical regulatory compliance risk, the Board, among its other fiduciary obligations, has a duty of oversight and must put into place a reasonable system of compliance monitoring and reporting.³ Corrective action is both required and appropriate.

I. Unlawful Employment Practices

The Company describes itself as “a leading global toy company and owner of one of the strongest catalogs of children’s and family entertainment in the world.” It purports to create “innovative products that inspire, entertain, and develop children through play.”⁴ The Company lists its operating segments as North America, International, and an “American Girl.”

¹ Mattel, Inc., Annual Report 23 (Form 10-K) (Dec. 31, 2022) (available at <https://tinyurl.com/2s3cyjzj>).

² *Id.* at 20.

³ *See, e.g., Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at *12 (Del. Ch. Oct. 1, 2019).

⁴ *Id.* at 4.

Title VII of the Civil Rights Act of 1964 prohibits the Company from discriminating against an employee or an applicant for employment because of race, color, religion, sex, ethnicity, or national origin; to limit, segregate, or classify employees or applicants in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of race, color, religion, sex, ethnicity or national origin; or to discriminate against any individual because of his race, color, religion, sex, ethnicity or national origin in admission to, or employment in, any program established to provide apprenticeship or other training. Yet, the Company openly acknowledges—even touts—its unlawful discrimination on the basis of sex and ethnicity in its recruitment, hiring, and retention programs.

Specifically, management admits to using unlawful “diversity, equity, and inclusion” criteria and practices with respect to employment, promotion, and training on the Company’s website and in its filings with the Securities and Exchange Commission. For example, the “Diversity, Equity, & Inclusion Goals” section on the Company’s website explicitly states that management is working to increase “representation of women” and “representation by ethnicity [sic]” at all levels.⁵ It presents the year-over-year difference from 2020 to 2021 in the number of women and “ethnically diverse [sic] employees.”⁶ and highlights how it is making “progress on those goals” in its most recent Form 10-K filing.⁷ The Company’s 10-K reports that its employment practices have led to women filling 58% of the Company’s global workforce and 47% of all management positions and that the percentage of “ethnically diverse employees at all levels of the organization in the United States” is now 44%.⁸ In its 2022 Citizenship Report, the Company states that it “continued to make progress on its DE&I initiatives during 2022” and goes on to present year-over-year statistics from 2020, 2021, and 2022 tracking its progress in the hiring and advancement of employees based on their sex or “ethnicity.”⁹

These statistics suggest that management is unlawfully “balancing” its workforce based on race, color, national origin, and sex and that such “balancing” has a disparate impact on disfavored groups. More than fifty years ago, the Supreme Court made it clear that Title VII prohibits such balancing. Job qualifications are the only permissible “controlling factor”; “race, religion, nationality, and sex” must be “irrelevant.”¹⁰ Management’s obvious disregard for this fundamental legal requirement demonstrates both a significant breakdown in the Company’s internal

⁵ *Diversity, Equity & Inclusion Goals*, MATTEL, <https://tinyurl.com/36m5d2a4> (last visited December 6, 2023).

⁶ *Id.*

⁷ Annual Report at 10, *supra* note 1.

⁸ *Id.*

⁹ MATTEL, INC. PURPOSEFUL PLAY, MATTEL INC. 2022 CITIZENSHIP REPORT, at 24-25 (Sept. 21, 2023) (available at <https://tinyurl.com/2v4dex93>) (last visited December 5, 2023).

¹⁰ *Griggs v. Duke Power Co.*, 401 U.S. 424, 436 (1971).

controls and the Board's apparent failure to take seriously its duty to mitigate risk and ensure legal compliance.

II. Management Threatens Customer Goodwill

The Company acknowledges that “[g]oodwill accounts for a significant amount of Mattel’s assets,” and that if such goodwill were to become impaired, “Mattel’s results of operations could be adversely affected.”¹¹

Nevertheless, management, using the Company’s “American Girl” brand, publishes and sells a book to children entitled “Body Image,” which embraces and promotes the idea that biological sex is fluid and is not determined at birth.¹² The book goes on to introduce children to controversial and unscientific concepts, such as being transgender, nonbinary, and the use of pronouns to claim a gender different from biological sex.¹³ Shockingly, management instructs a child who “knows for sure” that he or she is “trans or nonbinary,” but has not yet entered puberty, to see a doctor who “might offer medicine to delay your bodies [sic] changes, giving [the child] more time to think about [his or her] gender.”¹⁴ It is further notable that this book, published by a toy company, usurps and undermines parental rights. “If you don’t have an adult you trust, there are organizations across the country that can help you. Turn to the Resources on page 95 for more information.”¹⁵

Management’s decision to sell this book as a branded product of the Company risks alienating a significant segment of the Company’s customer base, namely the parents who purchase the Company’s products for their children. One recent poll found that 60% of Americans believe gender is determined at birth,¹⁶ and, in another recent survey, 55% of Americans said that they believed changing one’s gender was morally wrong.¹⁷ By marketing this book to young children, management is risking significant and potentially irreparable damage to the Company’s goodwill and brand, and massive damage to shareholder value.¹⁸

¹¹ Annual Report at 20, *supra* note 1.

¹² Isabel Keane, *American Girl Angers Parents With Book Teaching Kids About Gender Expression*, NY POST (Dec. 7, 2022), <https://tinyurl.com/ybhsrc7j>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Giulia Carbonaro, *Gender is Determined by Birth, Say a Growing Number of Americans*, NEWSWEEK (June 30, 2022), <https://tinyurl.com/55zhzfnf>.

¹⁷ Jeffrey Jones, *More Say Birth Gender Should Dictate Sports Participation*, GALLUP (June 12, 2023), <https://tinyurl.com/2rr2rmjb>.

¹⁸ Matthew Bultman, *Target Case Charts Path for ‘Go Woke, Go Broke’ Securities Suits*, BLOOMBERG LAW (August 24, 2023), <https://tinyurl.com/65kjbh7y>; Hank Berrien, *Woke Disney Lost Almost \$990 Million On Last 8 Films: Report*, DAILY WIRE (July 27, 2023), <https://tinyurl.com/ycev4krp>; Suzanne O’Halloran, *Target, Bud Light Investors Lose Billions on Marketing Misses*, FOX BUSINESS (May 26, 2023), <https://tinyurl.com/ycev4krp>.

III. Conclusion

Therefore, to prevent the waste of the Company's assets, to safeguard the Company's brand, goodwill, and reputation, to protect the Company's shareholders, to fulfill your fiduciary duties to the Company and its shareholders, and to ensure compliance with civil rights laws, we demand that you immediately take the following steps:

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management's decision to explicitly focus on a clear pattern of unlawful hiring, training, promotion, and contracting practices for admittedly ethnicity-based and sex-based purposes. To avoid the expense and disruption of court action enforcing the Company's disclosure obligations under 8 DEL. CODE § 220, the Board should affirmatively and transparently disclose all of management's contemporaneous emails and other communications on this topic to the Company's employees and shareholders. Among other things, all communications to or from the Company's General Counsel regarding this matter should be made available. The Company should promptly and transparently publish all studies and analytics data that it possesses demonstrating that these policies enhance the Company's brand reputation and promote alignment between its business and the tastes and preferences of its core customers.
2. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management's decision to publish and market to children the book "Body Image." To avoid the expense and disruption of court action enforcing the Company's disclosure obligations under 8 DEL. CODE § 220, the Board should affirmatively and transparently disclose all of management's contemporaneous emails and other communications on this topic to the Company's employees and shareholders. Among other things, all communications to or from the Company's General Counsel regarding this matter should be made available. The Company should promptly and transparently publish all studies and analytics data that it possesses demonstrating that these policies enhance the Company's brand reputation and promote alignment between its business and the tastes and preferences of its core customers.
3. Compel the Company to: (a) immediately cease and desist from all employment and contracting practices that discriminate based on sex or ethnicity, and/or that are designed to hire or promote individuals on the basis of sex, or ethnicity; (b) immediately cease and desist from making any statements or representations promoting or promising employment outcomes or contracts based on sex, and/or ethnicity; and (c) retain an independent counsel to conduct a compliance audit of the Company's hiring, promotion, and recruitment practices to ensure compliance with federal civil rights laws, and to ensure that the Company is not risking its shareholders significant value by making

unnecessarily controversial product and marketing decisions that alienate a majority of the Company's customer base. Again, to avoid the expense and disruption of court action enforcing the Company's disclosure obligations under 8 DEL. CODE § 220, the compliance audit and all relevant emails and other management communications should be made promptly and fully available. In anticipation of litigation, direct the Company to 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.

Thank you in advance for your cooperation.

Sincerely,

/s/ Ian D. Prior
Senior Advisor
America First Legal Foundation

Cc: R. Todd Bradley, Board of Directors
Adriana Cisneros, Board of Directors
Michael Dolan, Board of Directors
Diana Ferguson, Board of Directors
Noreena Hertz, Board of Directors
Soren Laursen, Board of Directors
Ann Lewnes, Board of Directors
Roger Lynch, PhD, Board of Directors
Judy Olian, PhD, Board of Directors
Dominic Ng, Board of Directors

APPENDIX



Diversity, Equity & Inclusion Goals

Mattel is committed to fostering a culture where all employees have the opportunity to realize their full potential. Through our DE&I goals, we are cultivating a work environment that promotes equality, inclusion and empowerment.

Goal:

Increase representation of women at all levels of the organization.

Representation of Women by Level (GRI 405-1) (in %)	2020	2021 ¹
Total Representation of Women ²	56%	58%
Executive Vice President	33%	33%
Senior Vice President	29%	26%
Vice President	24%	29%
Senior Director / Director	43%	45%
Senior Manager / Manager	48%	47%
Associate Manager / Supervisor	52%	52%
Professional / Staff	54%	56%
Women Board Members	30%	40%

Goal:

Increase representation by ethnicity at all levels of the organization

Representation of Ethnicity by Level (GRI 405-1) (in %)	2020	2021 ¹
Total Representation of Ethnically Diverse Employees ²	42%	44%
Executive Vice President	11%	8%
Senior Vice President	19%	14%
Vice President	16%	22%
Senior Director / Director	27%	26%
Senior Manager / Manager	35%	38%
Associate Manager / Supervisor	31%	34%
Professional / Staff	38%	45%
Representation of Ethnically Diverse Board Members	30%	30%



Diversity, Equity, & Inclusion (DE&I)

Mattel is at its best when every member of our team feels respected, included, and heard. We are committed to fostering a culture where all employees can reach their full potential. By pursuing our goals on pay equity and increased workforce representation, we are cultivating an environment that promotes equality, inclusion, and empowerment.

Mattel continued to make progress on its DE&I initiatives during 2022.

Progress Toward Goals

- Maintained 100% base pay equity in 2022 for similar work performed in similar markets by gender globally and by ethnicity in the U.S.⁵⁰
- Continued to achieve a high level of representation for women, who comprised 57% of the global non-manufacturing workforce and 50% of manager and senior manager positions in 2022.⁵¹
- Continued to achieve a high level of representation for ethnically diverse employees, who made up 45% of U.S. employees in 2022.⁵²
- Recognized in 2022 for creating an outstanding workplace culture by:
 - + Forbes: World's Best Employers
 - + Forbes: World's Top Female-Friendly Companies
 - + 50/50 Women on Boards: Greater than 30% women on our Board
 - + Fast Company: 100 Best Workplaces for Innovators
 - + Great Place to Work[®] Certified™
 - + Human Rights Campaign Foundation: Best Places to Work for LGBTQ+ Equality
 - + Seramount: 100 Best Companies
 - + Newsweek: Most Trustworthy Companies in America
 - + Healthiest Employers: Healthiest 100 Workplaces in America
- Achieved 93% participation in the 2022 Global Pulse Survey, which invites employees to provide feedback on their experience of working at Mattel.
- Increased Global Pulse Survey measurement of diversity, equity & inclusion at Mattel to 82 in 2022 from 80 in 2021.
- Continued to increase employee engagement and satisfaction with all Global Pulse Survey scores remaining above industry benchmarks.⁵¹

Highlights on Progress

Goal	Base Pay Equity	2020	2021	2022
Achieve and maintain 100% pay equity for all employees performing similar work with comparable roles and experience in similar markets in 2022	Pay Ratio by Gender	100% ⁵²	100% ⁵³	100% ⁵³
	Pay Ratio by Ethnicity ⁵²	100%	100%	100%
Goal	Representation of Women	2020	2021	2022
Increase representation of women at all levels of the organization	Total Representation of Women ⁵¹	56%	58%	57%
Goal	Representation by Ethnicity	2020	2021	2022
Increase representation by ethnicity at all levels of the organization	Total Representation by Ethnicity ⁵²	42%	44%	45%

Table covers employees, excluding manufacturing labor and temporary and seasonal employees. All figures set forth in the table above are as of December 31. Please see [GRI Supplemental Data Appendix](#) for further details.



Our Workforce in 2022

24,354⁶
manufacturing
labor employees

8,658⁷
non-manufacturing
labor employees

35
countries in which
we operate

57%⁷
of employees
are women

45%⁷
of our U.S.
employees are
ethnically diverse

100%⁸
global base
pay equity

40%
of our Board
members are
women

48%⁷
of our managers
and above are
women



Being transgender is not an illness or something to be ashamed of. If you're questioning your gender identity—or if you already know for sure that you're trans or nonbinary—talk with an adult you trust, like a parent or school counselor. That person can connect you with a specially trained doctor, who can help you and your family decide what's best for your body. At first, you and the doctor might talk about wearing the clothes and using the pronouns (like *he*, *she*, or *they*) that make you feel most like the true you. If you haven't gone through puberty yet, the doctor might offer medicine to delay your body's changes, giving you more time to think about your gender identity. And if you've already gone through puberty, a doctor can still help. Studies show that transgender and nonbinary kids who get help from doctors have much better mental health than those who don't.

If you don't have an adult you trust, there are organizations across the country that can help you. Turn to the Resources on page 95 for more information.



Being transgender isn't a medical transition. It's a process of learning to love yourself for who you are.
—Jazz Jennings

If you're transgender or nonbinary, loving your body might feel a bit different than it does for a cisgender person. Parts of your body might make you feel uncomfortable, and you might want to change the way you look.

That's totally OK! You can appreciate your body for everything it allows you to experience and still want to change certain things about it. When you're feeling out of place in your body, do things that make your body feel more like home, like dressing in your favorite clothes and doing something you love. Celebrate the good feelings you have in your body right now. Remember, you deserve love and respect, no matter what your body looks like or how it changes.

3

body in dis...
...when your body like an...
...that affect your body...
...which means they involv...
...your fault. And like any...
...
Body dysmorphia
...worry about their appearance...
...body dysmorphia, that worry...
...them to obsess over an...
...their nose, skin, tummy, or bre...
...the feature of the girl's body...
...the body part or covering...
...with friends and family, pursu...
...school. It can be serious, a...

