



March 27, 2024

Robert A. Iger  
Chief Executive Officer  
Mark G. Parker  
Chairman of the Board of Directors  
The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521

## **Notice of Mismanagement, Breach of Fiduciary Duty, and Waste**

Dear Mr. Iger and Mr. Parker:

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 to you in your capacity as Chief Executive Officer of the Walt Disney Company and Chairman of the Board of Directors, respectively, and on behalf of the Walt Disney Company (the “Company,” “Disney”) shareholders and customers to notify you of mismanagement, including but not limited to intentional violations of federal civil rights laws, breaches of fiduciary duty, and the wasting of Company assets.

Specifically, the Company has implemented facially illegal diversity, equity, and inclusion (“DEI”) programs and policies. Workplace anti-discrimination mandates are an essential and mission-critical regulatory compliance risk. You and the Board, among your other fiduciary obligations, have a duty of oversight and the responsibility for putting in place a reasonable and effective system of compliance monitoring and reporting relating to these mandates. However, the fact that Disney has adopted facially illegal DEI policies is *prima facie* evidence that the Company’s internal controls have failed.

Also, the evidence is that Disney’s Board and management team are sacrificing the Company’s reputation and goodwill to serve a highly idiosyncratic and controversial political agenda that is offensive to the vast majority of the Company’s core customers. This conduct, which is motivated by something other than the best interests of the Company’s shareholders, lacks a rational business purpose. Notably, the Company’s Form 10-K and proxy statements do not properly disclose the fact that management’s decision to enlist Disney’s brand and properties into the culture wars risks harming shareholder value.

Once, Disney strived for excellence. Now, it blackballs talented writers, illustrators, artists, actors, and creators solely because these individuals do not “check” the Company’s favored race, sex, religion, or national origin “boxes.” The Company’s brand and properties, customer goodwill, and share value have suffered substantially as a result. Accordingly, the Board and its management team appear to have breached duties of care, loyalty, and disclosure, wasted Company assets, and damaged Disney’s shareholders.

## **I. Background**

Disney is a publicly traded corporation incorporated under the laws of the State of Delaware, with its principal executive offices located at 500 South Buena Vista Street, Burbank, California, 91521.<sup>1</sup>

### **A. The Board must ensure federal civil rights law compliance**

Disney is subject to, *inter alia*, Title VII of the Civil Rights Act of 1964, codified at 42 U.S.C. § 2000e et seq. Title VII prohibits Disney from discriminating against applicants and workers because of race, color, religion, sex, or national origin, and from limiting, segregating, or classifying such persons in any way that would or tend to deprive them of employment opportunities or otherwise adversely affect their employment status, including in job training programs. 42 U.S.C. §§ 2000e-2(a), (d). If race, color, religion, sex, or national origin is *a* motivating factor in hiring, promotion, or training, then Disney has violated the law. 42 U.S.C. § 2000e-2(m). Thus, *any* racial, ethnic, and sex-based “balancing” practices, including “voluntary” quotas and “goals” in hiring, training, compensation, and promotion, are facially unlawful. *See* 42 U.S.C. §§ 2000e-2(a).

Disney is also subject to the Civil Rights Act of 1866, codified at 42 U.S.C. § 1981. Section 1981 prohibits race-based contracting and procurement practices. *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 304 (1994). As the late Justice Ginsburg noted, § 1981 is a “‘sweeping’ law designed to ‘break down all discrimination between black men and white men’ regarding ‘basic civil rights.’” *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S.Ct. 1009, 1020 (2020) (Ginsburg, J. concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968)). Company contracting and procurement policies and programs favoring “diverse” suppliers and independent contractors because of race are therefore unlawful.

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<sup>1</sup> The Walt Disney Company, Form 10-K (Nov. 21, 2023), <https://tinyurl.com/mr2uywjk> [hereinafter Disney Form 10-K].

Among its other fiduciary obligations, the Board has a duty of oversight and must put into place a reasonable board-level system of compliance monitoring and reporting relating to these non-discrimination mandates.<sup>2</sup>

## **B. The Board must maximize shareholder value**

Delaware courts will find the Board has failed to act in good faith where it intentionally acts with a purpose other than that of advancing the best interests of the corporation, with the intent to violate applicable positive law, or where it intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for its duties.<sup>3</sup> Here, management admits that Disney’s success “depends on our ability to successfully predict and adapt to changing consumer tastes and preferences” and that “consumers’ perceptions of [management’s] position on matters of public interest, including our efforts to achieve certain of our environmental and social goals, often differ widely and present risks to our reputation and brands.”<sup>4</sup>

Disney is obliged to disclose and mitigate risks from the “misalignment with public and consumer tastes and preferences for entertainment, travel, and consumer products, which impact demand for [its] entertainment offerings and products and the profitability” of the Company.<sup>5</sup> The evidence, however, is that it has failed to do so. On February 12, 2021, the Company’s market capitalization was approximately \$340.67 billion.<sup>6</sup> Today, it is approximately \$212.54 billion.

The loss correlates closely with management’s aggressive implementation of DEI policies and its decision to infuse controversial political and social principles into the Company’s products and operations that are utterly misaligned with the preferences and tastes of Disney’s core customers – traditional families and children.<sup>7</sup> The damage to shareholder value from such misalignment was predictable. Nevertheless, it appears that the Board has failed to meet its duties of care and fair disclosure under sections 10(b) and 14(a) of the Securities Exchange Act of 1934 and rules 10b-5 and 14a-9 promulgated thereunder.

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<sup>2</sup> See *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).

<sup>3</sup> *In re Walt Disney Co. Derivative Litig.*, 906 A.2d 27, 67 (Del. 2006).

<sup>4</sup> *Id.* at 18-19.

<sup>5</sup> Disney Form 10-K at 18.

<sup>6</sup> The Walt Disney Company (DIS), Valuation Measures, YAHOO! FINANCE (last visited Mar. 24, 2024) <https://tinyurl.com/2pr9vmcm> (data viewable after clicking “Monthly”).

<sup>7</sup> Tim Meads, ‘Not-At-All-Secret Gay Agenda’: Disney Employees Break Down ‘Adding Queerness’ To Children’s Show, Degenderizing Theme Parks, DAILY WIRE (Mar. 30, 2022), <https://tinyurl.com/2nrvvx8k>.

## II. Intentional and Systematic Violations of Civil Rights Laws

As explained below, the evidence is that Disney is intentionally engaging in systematic violations of federal civil rights laws. The Company at least tacitly admits to shareholders, investors, and the Securities and Exchange Commission (“SEC”) that it is in violation of, and will continue to violate, these laws by continuing to make employment decisions based on individuals’ race, color, national origin, or sex.<sup>8</sup>

### A. The Form 10-K reports unlawful employment practices

Fairly read, Disney’s Form 10-K establishes that race, color, religion, sex, or national origin is a motivating factor, if not the motivating factor, in the Company’s hiring, promotion, and training.<sup>9</sup> Management states that its “key human capital management objectives are to attract, retain and develop the highest quality talent.”<sup>10</sup> However, management also states that its Diversity, Equity, and Inclusion initiatives are designed “to build teams that reflect the life experiences of our audiences while employing and supporting a diverse array of voices in our creative and production teams.”<sup>11</sup> It lists specific programs to achieve this goal: the Executive Incubator, Creative Talent Development and Inclusion, and the Disney Launchpad: Shorts Incubator. These programs are purportedly “designed to create a pipeline of next-generation creative executives from underrepresented backgrounds.”<sup>12</sup> However, the evidence is that Disney uses these programs to unlawfully deprive whites, men, heterosexuals, Jews, and American citizens of European ancestry of employment opportunities because of their race, color, sex, religion, or national origin. This is patently unlawful.

### B. Disney uses race and sex quotas for board seats and bonuses

Disney appears to consider prohibited characteristics, like race and sex, in its selection process for its Board of Directors. In 2020, Disney admitted that “[o]ne criteria with which the Board evaluates new members is ‘the extent to which the prospective nominee helps the Board reflect the diversity of the Company’s shareholders, employees, customers and guests, and the communities in which it operates.’”<sup>13</sup> This method of evaluation has achieved the expected result. In 2020,

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<sup>8</sup> Reimagine Tomorrow, DISNEY (last visited Feb. 12, 2024), <https://tinyurl.com/24psdwfc>.

<sup>9</sup> *Id.*

<sup>10</sup> Disney Form 10-K at 2.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* (“Reimagine Tomorrow, [] is the Company’s digital destination for amplifying underrepresented voices and features some of Disney’s DE&I commitments and actions ... Executive Incubator, Creative Talent Development and Inclusion, and the Disney Launchpad: Shorts Incubator, [] are designed to create a pipeline of next-generation creative executives from underrepresented backgrounds ... Employee development programs and fellowships for underrepresented talent”).

<sup>13</sup> THE WALT DISNEY COMPANY, 2020 Corporate Social Responsibility Report at 6 (Feb. 24, 2021), <https://tinyurl.com/mrxwucm9>.

only three of ten Directors were racially or ethnically diverse.<sup>14</sup> In 2023, “six out of 12 [Director] nominees represent[ed] diverse gender, ethnic, or racial backgrounds.”<sup>15</sup>

### C. Disney maintains illegal diversity, equity, and inclusion quotas

Disney’s “Reimagine Tomorrow” website is the Company’s digital destination for “Disney’s DE&I commitments and actions.”<sup>16</sup> The website showcases the Company’s unlawful quotas, rebranded, in Orwellian disinformation fashion, as “diversity and inclusion policies” that amplify “underrepresented voices and untold stories as well as championing the importance of accurate representation in media and entertainment.”<sup>17</sup>

The stated pretext for the Company’s unlawful conduct is “to broaden access and diversity in our industry.”<sup>18</sup> Disney has done so “by adopting inclusion standards across Disney General Entertainment and live-action Studio productions by the end of 2022, with the goal of advancing representation in front of and behind the camera, in marketing and more.”<sup>19</sup> Disney General Entertainment encompasses essentially all content produced across Disney, so the unlawful requirements listed below in Disney’s Inclusion Standards apply companywide and have been in place for Disney’s ABC Entertainment productions since 2020.<sup>20</sup> As discussed below, the “Inclusion

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<sup>14</sup> *Id.*

<sup>15</sup> THE WALT DISNEY COMPANY, 2023 Sustainability & Social Impact Report at 13 (Mar. 2024), <https://tinyurl.com/5adfzj7> [hereinafter Disney SSI Report].

<sup>16</sup> Disney Form 10-K at 2.

<sup>17</sup> DISNEY, *supra* note 8.

<sup>18</sup> Our Intentions, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024), <https://tinyurl.com/mv9cxcka>; Disney’s “diversity, equity, and inclusion” justification for such conduct evokes the justification given for Soviet and Maoist socialist realism. Paraphrasing the Soviet operative Andrei Zhdanov:

To show these great new qualities of the [antiracist] people, to show our people not only as they are today but to glance into their future, to help light the road ahead — such is the task of every conscientious [Disney] writer. The writer cannot jog along behind events; he is obliged to march in the front ranks of the people, to point out to the people the path of their development. Guiding himself by the method of [diversity, equity, and inclusion], conscientiously and attentively studying our life, trying to gain a deeper understanding of the processes of our development, the writer must educate the people and arm them ideologically. While selecting the finest feelings and qualities of the [anti-racist person] while disclosing [their] future...we must at the same time show our people what they should not be like, we must scourge the survivals of yesterday, survivals which hinder the progress of [diverse] people.

*Andrei Zhdanov, The Duty of a Soviet Writer, August 21, 1946, Seventeen Moments In Soviet History* (last visited Mar. 4, 2024), <https://tinyurl.com/49e83ban>.

<sup>19</sup> Our Intentions, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024).

<sup>20</sup> *Id.* (clarifying that Disney General Entertainment refers to all “of The Walt Disney Company’s entertainment and news properties across a portfolio of television brands and businesses, including ABC Entertainment, ABC Signature, ABC News, Freeform, ONYX Collective, Twentieth Television

Standards” mandate that each production comply with discriminatory employment requirements. Multiple “Inclusion Standards” establish discriminatory quotas to ensure members of underrepresented groups fill a certain percentage of Disney jobs. Disney has accordingly unlawfully excluded qualified job candidates on the basis of race, national origin, and sex who could provide enhanced value to the Company and its shareholders. These quotas include:

- “50% or more of producer & above on writing staff and 50% or more of Co-Producer & below on writing staff come from Underrepresented Groups;”<sup>21</sup>
- “50% or more of episodic directors come from Underrepresented Groups;”
- “Casting Director is from an Underrepresented Group or has not previously worked on a DGE show in this role;”
- “Meaningful representation of Underrepresented Groups in senior creative leadership;”
- “Promotion of a member of an Underrepresented Group into a role that constitutes career progression for at least one member of the writing staff;”
- “Substantial year-over-year increase in members of Underrepresented Groups as directors and in writing staff.”<sup>22</sup>

Disney maintains similar requirements for its “Below-the-Line” positions, requiring that at least two of the below five standards “must be met,” each of which are patently unlawful race and sex-based quotas:

- “50% or more of line producer and/or production department heads (ie [sic]: DP [director of photography], composer, costume designer, editor, production designer, music supervisor...) come from Underrepresented Groups;”<sup>23</sup>
- “50% or more of other key roles (any mid-level crew and technical positions) come from Underrepresented Groups;”
- “50% or more of the overall crew or project staff come from Underrepresented Groups;”
- “Promotion of member of Underrepresented Group into a role that constitutes career progression for at least one crew/team member;”
- “Hiring a Line Producer and/or Production Department Head who has not been previously employed in that role on a DGE Show.”

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Studios, FX Networks and FX Productions, Hulu Originals, Disney Branded Television (including the Disney Channel networks), and National Geographic. Disney Studios Content is the collection of The Walt Disney Company’s entertainment properties creating content across a portfolio of brands; the live-action brands include Disney Live Action, Marvel Studios, Lucasfilm, 20th Century Studios, and Searchlight Pictures”).

<sup>21</sup> Disney General Entertainment Content: Inclusion Standards, *Reimagine Tomorrow*, DISNEY (last visited Mar. 24, 2024), <https://tinyurl.com/2cxxb5jf>.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

Disney also requires productions to satisfy three of the following requirements to facilitate unlawful hiring, promotion, and development practices:

- “Paid employment opportunities such as apprenticeships, internships, expert advisers to facilitate union eligibility for members of Underrepresented Groups;”<sup>24</sup>
- “Training opportunities and/or skills development (craft, creative and business), including one-off, work-experience opportunities for students from underrepresented groups (to be coordinated through Current Executive & Corporate Social Responsibility);”
- “‘First job’ for member of Underrepresented Group in a role that constitutes career progression from prior;”
- “50% or more of outside vendors or contractors employed by production provide industry access or opportunities to members of Underrepresented Groups;”
- “Producer or Department Head participation in DGE Talent Development Initiative, guild or other approved mentorship program;”
- “Producer develops/executes a show-specific D&I program subject to Network approval.”

A leaked Frequently Asked Questions (“FAQ”) document on Disney’s “Inclusion Standards” describes the Company’s intention “to increase training and development opportunities for members of underrepresented groups” in a racially exclusionary manner.<sup>25</sup> The FAQ states that the “expectation is the Inclusion Standards will serve as a catalyst for those involved in the creative and hiring processes to become even more engaged in inclusive hiring and employment practices” and to “address” barriers “to equal employment opportunities [] for underrepresented groups.”

Disney admits that an example of an “inclusive hiring and employment practice” is “improving access to training and development opportunities for members of underrepresented groups.”<sup>26</sup> The company thus admits to a pattern and practice violation of 42 U.S.C. § 2000e-2(d).

#### **D. Disney engages in illegal racial balancing**

Disney admits engaging in unlawful race and sex-based workforce balancing. It claims:

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<sup>24</sup> *Id.*

<sup>25</sup> Elon Musk (@elonmusk), X (Feb. 8, 2024, 2:44 AM), <https://tinyurl.com/ms8hz6dd>.

<sup>26</sup> *Id.*

- From FY 2020 to FY 2021, the percentage of “people of color” working as directors for Disney rose by 6% – the percentage of white directors dropped by 6%.<sup>27</sup>
- The percentage of Disney directors who are women also increased by 2% from FY 2020 to FY 2021 – the percentage of male directors dropped by 2%.<sup>28</sup>
- Over the same period, the percentage of people of color as Disney series regulars and leads grew 4% – the white percentage dropped 4%.<sup>29</sup>
- The percentage of people of color and women producers also increased by 3% – white and male producers dropped by 3%.<sup>30</sup>
- The percentage of writers who are people of color grew by 3%, as the white percentage dropped by 3%.<sup>31</sup>
- From FY 2021 to FY 2022 – the percentage of white Disney workforce companywide dropped by 3.6%.<sup>32</sup>

Disney also runs a program called the Black Talent Network, which, since 2020, “expands exposure for Black talent across the Company and helps to increase representation in senior-level roles.”<sup>33</sup> Disney maintains similar Talent Networks for Women, Asian American & Pacific Islander, and Latina employees.<sup>34</sup>

It is patently unlawful to consider racial, ethnic, and sex-based characteristics in hiring, training, compensation, and promotion. *See* 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that policies that impose racial balancing or quotas in employment, training, or recruitment, such as those presented on Disney’s websites, are prohibited. Indeed, the Supreme Court recently clarified that “[a] benefit provided to some ... but not to others necessarily advantages the former group at the expense of the latter.”

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<sup>27</sup> Vision, *Reimagine Tomorrow*, DISNEY (last visited Feb. 12, 2024), <https://tinyurl.com/4yem2kd8> (choose “View our data” under “Representation in Our Content,” then choose “Directors”) (Interestingly, Disney’s aggregate workforce data shows that between FY 2021 and FY 2022, the percentage of individuals identified by Disney as “white” dropped by 3.6 percent and as “black” by 0.5 percent. The percentage of individuals identified by Disney as “Hispanic” increased by nearly one percent. However, the largest increase noted is for a category Disney labeled “not disclosed,” which grew by 3.2 percent during the relevant time. Because Disney is not transparent, it is impossible to know precisely what the aggregated data means - for example, it is possible that some individuals who formerly were identified as white or black are now classified as “not disclosed.” Nevertheless, the data seems to support Disney’s claims that race, color, religion, sex, and/or national origin are each a motivating factor in the company’s employment practices).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (choose “View our data” under “Representation in Our Content,” then choose “Series Regular / Leads”).

<sup>30</sup> *Id.* (choose “View our data” under “Representation in Our Content,” then choose “Producers”).

<sup>31</sup> *Id.* (choose “View our data” under “Representation in Our Content,” then choose “Writers”).

<sup>32</sup> *Id.* (choose “View our data” under “Representation in Our Workforce”).

<sup>33</sup> Disney SSI Report at 9.

<sup>34</sup> *Id.*



## E. Unlawful contracting practices

The Company admits to facial violations of and disregard for 42 U.S.C. § 1981.<sup>35</sup> For example, Disney claims it has achieved its goal of spending at least \$1 billion annually with “diverse” suppliers in 2024.<sup>36</sup> Similarly, Disney reports that it pays \$25,000.00 grants to “Underrepresented Directors.”<sup>37</sup> This program unlawfully awards the grants only to “women, AAPI, Black, Indigenous/Native, Latinx, LGBTQIA+, disability-identifying, and religiously marginalized individuals.” Management thus admits contracting based on race and other immutable characteristics instead of on an impartial assessment of value. Such conduct necessarily creates the presumption that Disney is selecting suppliers with higher prices or lower-quality products for “social justice” or restorative purposes. This violates the law, damages shareholder value, and violates the Board’s fiduciary duty.

## III. The Board has Breached its Fiduciary Duties and Committed Waste

The Board owes the Company’s shareholders duties of good faith, care, loyalty, and disclosure<sup>38</sup> It may not irrationally squander assets, and it must act with a rational business purpose.<sup>39</sup> And it may not waste corporate assets.

The Company acknowledges the financial and reputational risk of customer “misalignment.”<sup>40</sup> Yet the Board has allowed management to create a dysfunctional and corrosive corporate culture. At all levels of the Company, decisions in contracting, hiring, and promotion appear to be at least partly based on race and sex rather than on talent and performance, and the Company’s core brands, products, and programs have been infused with an extreme political and socio-sexual agenda.<sup>41</sup> The results have been devastating. Since 2021, customer goodwill has hemorrhaged; the infusion of woke political and social beliefs into the Company’s products and programming has triggered multiple boycotts.<sup>42</sup> Shareholders have suffered a bloodbath. In February

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<sup>35</sup> *Rivers v. Roadway Exp., Inc.*, 511 U.S. 298, 304 (1994) (holding that § 1981 covers all contracts).

<sup>36</sup> Disney SSI Report at 6, 16.

<sup>37</sup> *Sundance Institute and The Walt Disney Studios Launch Project Advancement and Completion Fund to Support Underrepresented Directors, Impact*, DISNEY (last visited Feb. 13, 2024), <https://tinyurl.com/dtttdckxx>; see also *2024 Sundance Institute | The Walt Disney Company Project Advancement and Completion Fund*, SUNDANCE INSTITUTE (last visited Feb. 13, 2024), <https://tinyurl.com/2b88cvhe> (listing these race and sex-based restrictions under the application’s “Eligibility Criteria”).

<sup>38</sup> *In re Caremark Int’l Inc. Derivative Litig.*, 698 A.2d 959, 967 (Del. Ch. 1996).

<sup>39</sup> *In re Walt Disney Co. Derivative Litig.*, 906 A.2d at 74.

<sup>40</sup> Disney Form 10-K at 18.

<sup>41</sup> Meads, *supra* note 7; see also Katherine Donlevy, *Disney Blasted for Allowing Mustachioed Employee to Wear Dress, Makeup*, NEW YORK POST (May 31, 2023), <https://tinyurl.com/t2vscrhe>.

<sup>42</sup> Rachel Dobkin, *‘Star Wars’ Director’s Comment About Men Sparks Calls to Boycott*, NEWSWEEK (last updated Jan. 4, 2024), <https://tinyurl.com/yc8xyrur>; Jamie Burton, *Disney Suffers Fresh Blow Amid LGBTQ+ Controversy*, NEWSWEEK (last updated June 29, 2023), <https://tinyurl.com/2za45h55> (“By and large the results on [approval of transgender and gay and lesbian representation in Disney films]

2021, the Company’s market capitalization was approximately \$341 billion; today, it is approximately \$207 billion – a drop of nearly 40 percent.<sup>43</sup>

Incredibly, the actions that triggered this damage were not advanced for a rational business purpose but instead for woke virtue signaling without appropriate consideration for, or disclosure of, the economic and reputational consequences associated therewith.<sup>44</sup> It seems that the Board and its management team intentionally seek new ways to create and exacerbate misalignment rather than mitigate it.<sup>45</sup> Accordingly, the Board has breached its fiduciary duties and committed waste.

## A. Management’s failure to disclose

### 1. Political action

Disney cautions its forward-looking statements by suggesting that the political environment is outside the company’s control. In its most recent Form 10-K, management acknowledged that “consumers’ perceptions of our position on matters of public interest, including our efforts to achieve certain of our environmental and social goals, often differ widely and present risks to our reputation and brands.”<sup>46</sup> Similar statements acknowledging the importance of “consumer acceptance” and the risks of “misalignment” with public and consumer tastes and preferences are present in Disney’s Forms 10-K going back to at least 2019. Disney also asserts that the “profitability of the leisure-time industry may be influenced by various factors that are not directly controllable, such as . . . the political environment[.]”<sup>47</sup> But management has affirmatively created an adverse political (and legal) environment by aggressively elevating extreme social and racial preferences over the quality of its products and programs, the legal interests of its employees, and the values and preferences of its customers.<sup>48</sup>

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remain almost split down the middle, and come at a time when major brands are facing backlash and boycotts for reaching out to LGBTQ+ communities”); Julie Burchill, *Disney’s Woke Crusade Has Gone Too Far*, NEWSWEEK (July 5, 2022), <https://tinyurl.com/5ccysf7d>; Lauren Smith, *Disney: A Billion-Dollar Casualty of Woke*, SPIKED (Feb. 19, 2024), <https://tinyurl.com/268wmeps>; Gitanjali Poonia, *Is Disney Going Broke After Becoming ‘Woke’?*, DESERET NEWS (Nov. 30, 2023), <https://tinyurl.com/mt87x57b>.

<sup>43</sup> YAHOO! FINANCE, *supra* note 6.

<sup>44</sup> Disney Form 10-K at 19 (“Further, consumers’ perceptions of our position on matters of public interest, including our efforts to achieve certain of our environmental and social goals, often differ widely and present risks to our reputation and brands”).

<sup>45</sup> See Alexandra Steigrad, *Disney Exec Cops to Advancing “Gay Agenda” by “Adding Queerness” to Shows*, NEW YORK POST (Mar. 30, 2022), <https://tinyurl.com/4p23pnmr>.

<sup>46</sup> Disney Form 10-K at 19, 23 (emphasis added).

<sup>47</sup> *Id.* at 16.

<sup>48</sup> *Id.* at 18.

In its 2024 Proxy Statement, the Board fails to disclose the risks associated with the misalignment between its political activities and its customers. For example, it suggests that shareholders reject a proposal to require the Board annually publish a report, at reasonable expense, analyzing the congruence of Disney's political and electioneering expenditures during the preceding year against Disney's publicly stated company values and policies and stating whether Disney has made, or plans to make, changes in contributions or communications because of identified incongruencies.<sup>49</sup>

## 2. *DEI risks*

The Disney Form 10-K states:

U.S. and international regulators, investors and other stakeholders are increasingly focused on environmental, social and governance matters. For example, new domestic and international laws and regulations relating to environmental, social and governance matters, including environmental sustainability and climate change, human capital management and cybersecurity, are under consideration or being adopted, which may include specific, target-driven disclosure requirements or obligations. Our response will require increased costs to comply, the implementation of new reporting processes, entailing additional compliance risk, a skilled workforce and other incremental investments.

In addition, we have undertaken or announced a number of related actions and goals, which will require changes to operations and ongoing investment. There is no assurance that our initiatives will achieve their intended outcomes or that we will achieve any of these goals. Consumer, government and other stakeholder perceptions of our efforts to achieve these objectives often differ widely and present risks to our reputation and brands. In addition, our ability to implement some initiatives or achieve some goals is dependent on external factors.<sup>50</sup>

However, there is no disclosure of the patent legal and economic risk created by the Company's DEI programs.<sup>51</sup>

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<sup>49</sup> The Walt Disney Company, Notice of Annual Meeting of Shareholders and Proxy Statement at 102-03 (Feb. 1, 2024), <https://tinyurl.com/yy4xkpkd>.

<sup>50</sup> Disney Form 10-K at 23.

<sup>51</sup> See Letter from the Hon. Kris W. Kobach et al., to Fortune 100 CEOs (July 13, 2023), <https://tinyurl.com/2c8snkn6>; Bill Ackman (@BillAckman), X (Jan 3, 2024, 2:03 AM), <https://tinyurl.com/3rddy65d>; *compare* Tesla, Inc., Form 10-K (Jan. 29, 2024), <https://tinyurl.com/y88n5yrw>.

By contrast, other companies disclose such risks. For example, Yum! Brands, Inc. Form 10-K states:

There has been an increased focus, including from investors, the public and governmental and nongovernmental authorities, on social and environmental sustainability matters, such as...diversity...and other corporate responsibility matters. *At the same time, other stakeholders and regulators have increasingly expressed or pursued opposing views, legislation and investment expectation with respect to sustainability initiatives, including so-called anti-environmental, social and governance (“ESG”) legislation or policies.* We are and may become subject to changing rules and regulations promulgated by governmental and self-regulatory organizations with respect to social and environmental sustainability matters.<sup>52</sup>

Accordingly, it appears that the Board and management have intentionally failed to properly disclose the risks of their ESG and DEI policies as required under applicable Delaware and federal laws and regulations, harming shareholders and exposing the Company to substantial litigation and regulatory risk.

**B. The Company’s manufactured misalignment with its traditional customers lacks a rational business purpose and breaches the duties of care, good faith, and loyalty**

There is ample evidence suggesting that management’s extreme racial and social agenda has warped the Company’s decision-making. As described below, Disney has repeatedly acted on ideological grounds, without a rational business purpose. By turning children’s entertainment programming for political and sexual indoctrination, and by proudly and illegally discriminating based on race, sex, national origin, and/or political viewpoint, management has intentionally alienated millions of its American customers. It is patently irrational for Disney to violate nondiscrimination laws, destroy corporate goodwill, and use its products and programs as tools of political and social indoctrination.

*1. Politicized content aimed at indoctrinating young children*

Disney describes its Disney+ streaming service as primarily offering “general entertainment and family programming.”<sup>53</sup> However, the Disney+ catalog includes unnecessarily controversial and politicized content that is demonstratively misaligned with the Company’s core consumers.

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<sup>52</sup> Yum! Brands, Inc., Form 10-K at 18 (Feb. 20, 2024), <https://tinyurl.com/4veb76sv> (emphasis added).

<sup>53</sup> Disney Form 10-K at 3, 7.

Disney+ profiles in “Junior Mode,” a setting designed to only show content that is “appropriate for all ages,” hides many classic Disney films but includes controversial content consistent with the Company’s extreme social and political agenda. For example, the *Rise Up, Sing Out* program features short songs “designed to provide an inspiring and empowering message about race, culture, and community, celebrating differences, and providing a framework for conversation.”<sup>54</sup> It contains anti-police and anti-White content.<sup>55</sup> Repeatedly, it shows young children creating protest signs with images of “Black Power” fists – long a symbol of racial and political uprising.<sup>56</sup> Viewers are also told that their skin color is what makes them who they are.<sup>57</sup> The message is a far cry from Martin Luther King, Jr.’s vision that children would be judged by their character, not the color of their skin.<sup>58</sup>

Management has inappropriately sexualized the Company’s content, destroying valuable brands and franchises in the process. To begin with, an executive producer working for Disney discussed how she has implemented a “not-at-all-secret gay agenda” and is “adding queerness” to the children’s content she produces for Disney.<sup>59</sup> Disney also allows grown men who believe and dress like they are women to give makeovers to young girls at its theme parks and has used men to model women’s clothing.<sup>60</sup>

Major Disney films have disappointed at the box office, at a substantial cost to shareholders, at least partly because of management’s obsession with infusing LGBTQ advocacy into mass market entertainment at the expense of the traditional families who have been Disney consumers.

Its animated action film about the *Toy Story* character Buzz Lightyear, Disney’s *Lightyear*, a film aimed at young children, gratuitously featured a lesbian

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<sup>54</sup> *Rise Up, Sing Out*, DISNEY PLUS, <https://tinyurl.com/f4m8pscn> (last accessed Mar. 25, 2024).

<sup>55</sup> Appendix at 1-4. An older Black child tells his friend, a younger Black child, that police might slow down and stop them as they innocently walk down the street; the older child even implies that police will try to approach them under the pretext that they stopped the boys because they thought they were someone else. In another scene in this episode, a white man is boarding up his store with wood planks while the older Black child character tells his young friend that the white man has nothing to be afraid of and “no one is trying to hurt” the white man; Lois Beckett, *At Least 25 Americans Were Killed During Protests and Political Unrest in 2020*, THE GUARDIAN (Oct. 31, 2020), <https://tinyurl.com/4s98nznr>.

<sup>56</sup> Appendix at 4; the protest image of a fist is described by Disney’s *National Geographic* as a “forceful salute [that] is intertwined with some of the 20th century’s most tumultuous events, including conflicts with fascism”; James Stout, *The History of the Raised Fist, A Global System of Fighting Oppression*, NATIONAL GEOGRAPHIC (July 31, 2020), <https://tinyurl.com/yc3j5tss>.

<sup>57</sup> Appendix at 5. The song that this statement comes from is entirely devoted to teaching young children about “microaggressions.”

<sup>58</sup> The Rev. Dr. Martin Luther King, Jr., Speech at “The March on Washington” (Aug. 28, 1963), available at <https://tinyurl.com/5678su4h>.

<sup>59</sup> Christopher F. Rufo, (@realchrisrufo), X (March 29, 2022, 5:03 PM), <https://tinyurl.com/3pyazynw>.

<sup>60</sup> Donlevy, *supra* note 41; Taylor Penley, *Disney Style Partners With Gender-Fluid Influencer to Market Girl’s Clothing: ‘Minnie is ME’*, FOX NEWS (Aug. 9, 2023), <https://tinyurl.com/2s4f7xb6>.

relationship and kiss that caused controversy in the United States.<sup>61</sup> The film disappointed critically and financially.<sup>62</sup> Disney’s live-action remake of *The Little Mermaid*, featured in its SSI Report as a full-page highlight of “Diversity, Equity & Inclusion,” changed the race of the main character from White to Black and disappointed at the box office in summer 2023.<sup>63</sup>

Disney’s latest installment in the *Indiana Jones* franchise also failed to break even; its female lead equated capitalism to theft in its trailer, which has surpassed 16 million views on YouTube.<sup>64</sup> In early 2023, *Ant-Man and the Wasp: Quantumania* failed to return a profit, and in its opening minutes, had a main character describe police officers firing tear gas at “peaceful protestors.”<sup>65</sup> *Strange World*, another animated family film that featured a homosexual relationship subplot also bombed at the box office, losing more than \$100 million.<sup>66</sup> The non-white female co-lead (and the daughter of lesbian parents) in *Doctor Strange: Multiverse of Madness* wore a prominent rainbow flag pride pin throughout the entire film.<sup>67</sup>

Disney has historically selected directors experienced in helming big-budget blockbusters to helm its *Star Wars* films. These directors have led other major theatrical films like *Star Trek*, *Thor: Ragnarok*, *Wonder Woman*, *The Lego Movie*, and *Godzilla*. Disney broke from this pattern, giving 2017’s *Star Wars Episode VIII: The Last Jedi* to director Rian Johnson, whose biggest film was the science fiction thriller *Looper*. *The Last Jedi* divided *Star Wars* fans and sparked major changes to Disney’s *Star Wars* trilogy.<sup>68</sup>

*Disney* recently tapped Sharmeen Obaid-Chinoy, a Pakistani-Canadian director with minimal feature-length directing experience, to direct an upcoming theatrically released *Star Wars* film. She will become the first woman to direct a *Star Wars* film,

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<sup>61</sup> Nick Vivarelli & Patrick Frater, *Pixar’s ‘Lightyear’ Banned in Saudi Arabia, U.A.E. and Malaysia Over Same-Sex Kiss*, VARIETY (Jun. 13, 2022), <https://tinyurl.com/2btacjya>; Em Win, *Pixar’s ‘Lightyear’ Is So Much Queerer Than Just That Hyper-Scrutinized Lesbian Kiss*, AUTOSTRADDLE (June 27, 2022), <https://tinyurl.com/5xs4sjyd>.

<sup>62</sup> Savannah Sanders, *Pixar Boss Breaks Silence on Lightyear Disappointment*, THE DIRECT (Feb. 22, 2023), <https://tinyurl.com/ba7r343j>.

<sup>63</sup> Disney SSI Report at 3, 29, 34; Joseph Wulfsohn, *Disney’s Long Years of Box Office Blunders*, FOX BUSINESS (Dec. 25, 2023), <https://tinyurl.com/3fvr66ym>.

<sup>64</sup> Lucasfilm, *Indiana Jones and the Dial of Destiny | Official Trailer*, YOUTUBE (Apr. 7, 2023), <https://tinyurl.com/33vwae2>; Christiaan Hetzner, *Disney’s Indiana Jones 5 Took in \$300 Million at the Box Office So Far – A Disaster for CEO Bob Iger and Lucasfilm*, FORTUNE (July 19, 2023), <https://tinyurl.com/jhh836na>.

<sup>65</sup> Appendix at 6.

<sup>66</sup> Rebecca Rubin, *Disney’s ‘Strange World’ to lose \$100 Million in Theatrical Run*, VARIETY (Nov. 27, 2022), <https://tinyurl.com/r8vnd63m>.

<sup>67</sup> Appendix at 7.

<sup>68</sup> JV Chamary, *Why You Hated ‘Star Wars: The Last Jedi’ But Critics Loved It*, FORBES (Mar. 16, 2018), <https://tinyurl.com/htwtdbm5>; Kirsten Acuna, *‘Star Wars: The Rise of Skywalker’ Undoes a Few Big Moments From ‘The Last Jedi’ and It Hints at the Larger Difficulty of Making a Cohesive Sequel Trilogy*, BUSINESS INSIDER (Dec. 27, 2019), <https://tinyurl.com/3nzdpu3u>.

and her film will also star a woman and play a major role in the franchise's future.<sup>69</sup> Obaid-Chinoy is best known for directing feminist documentaries and enjoys making films that "make men uncomfortable."<sup>70</sup> Given the revelations of Disney in its "Inclusion Standards," it is likely that Obaid-Chinoy's race and gender played at least some role in her being tapped to direct the film, and Star Wars fans are worried. Furthermore, in making this decision, it appears that Disney does not intend to earn back consumer support by producing the best quality film that the largest number of consumers will spend money to see.

Disney has also already faced backlash stemming from its upcoming live-action remake of *Snow White*, which stars an actress of Colombian descent as the titular character who is called such because her "skin is as white as snow." In this upcoming version, Disney initially appeared to replace its dwarf characters with seven racially diverse men and women actors without dwarfism.<sup>71</sup> At first, Disney initially commented, "To avoid reinforcing stereotypes from the original animated film, [it was] taking a different approach with these seven characters and have been consulting with members of the dwarfism community."<sup>72</sup> Disney also appears to have heard the criticism and has since released an image with Snow White surrounded by the seven dwarfs, each with cartoonish features and still named after their animated counterparts.<sup>73</sup> Disney appears to be aware of the public's criticism of some of its decisions, and in rare cases, Disney adjusts accordingly.

Disney's radical content also permeates its nonfiction programming. A program on Disney+ produced under Disney's scientific *National Geographic* label called *Gender Revolution: A Journey with Katie Couric*, provides a glowing evaluation of transgenderism. The program invokes the radical idea of the "Genderbread Person" and promotes the belief that "external genitalia does not dictate your gender," and it normalizes affirming children's unscientific self-diagnoses of transgenderism and shows an "expert" recommending giving puberty blockers to children.<sup>74</sup> In one interview, Katie Couric visited a couple that allowed its son to begin identifying as a girl *at four years old*.<sup>75</sup> In another interview, friends discuss how one of them is "lucky" to be six months into testosterone treatment already, and the program shows additional videos of young people celebrating taking puberty blockers.<sup>76</sup>

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<sup>69</sup> Conor Murray, *Upcoming 'Star Wars' Film Attacked As 'Woke' By Right-Wing Critics Over Director's Feminist Comments*, FORBES (Jan. 3, 2024), <https://tinyurl.com/mry2wbka>.

<sup>70</sup> *Id.*; Ian Miller, *New 'Star Wars' Director Wants to Make Men 'Uncomfortable' With Her Films*, OUTKICK (Jan. 4, 2024), <https://tinyurl.com/yck2rchr>.

<sup>71</sup> Sarah Little, *5 Biggest Controversies Around Disney's Snow White Remake*, SCREENRANT (Aug. 24, 2023), <https://tinyurl.com/3v69a38x>.

<sup>72</sup> Ryan Parker, *Disney Responds to Peter Dinklage's 'Snow White' Live Action Criticisms (Exclusive)*, THE HOLLYWOOD REPORTER (Jan. 25, 2022), <https://tinyurl.com/5n82scjt>.

<sup>73</sup> *Disney Showcases Magical Look at 'Snow White'*, THE WALT DISNEY COMPANY (last visited Mar. 24, 2024), <https://tinyurl.com/yedk9wzk>.

<sup>74</sup> Appendix at 8-12.

<sup>75</sup> Appendix at 13.

<sup>76</sup> Appendix at 14.

Another program on Disney+ called *Pride from Above* shows a nearly topless transgender individual riding a bike past a young child.<sup>77</sup> In another scene, the program shows a parade in Australia, where the camera prominently shows a handicapped person holding a sign that says, “I Get Horny Too.”<sup>78</sup> Another holds a sign that reads “SUPER PROUD PARENT” among a group of transgender flags and signs.<sup>79</sup> Other visuals from the program show men wearing shirts that are essentially a series of straps and only wearing underwear.<sup>80</sup> The website for this parade describes that one can “expect” to see “[p]eople of all ages” and “[s]ome nudity.”<sup>81</sup> The program also follows a lesbian biker gang called “Dykes on Bikes” and shows another rally where the camera focuses on multiple women twerking.<sup>82</sup> This graphic program, which is entirely misaligned with the vast majority of the Company’s customers, along with *Gender Revolution: A Journey with Katie Couric*, is viewable to all Disney profiles with access to content rated TV-14 – however, there is no warning about the radicalizing nature of the documentary’s gender viewpoints or false portrayals of untested, dangerous, and unapproved “gender-affirming” drugs.

Meanwhile, classic Disney films like *Peter Pan*, *Dumbo*, and *The Aristocats* each have mandatory, unskippable twelve-second warnings about the “harmful impact” of certain portrayals of people and cultures that “were wrong then and are wrong now.”<sup>83</sup> Through omission, it appears that Disney does not find these radical, antiscientific, and dangerous positions on gender to be “harmful” or “wrong,” yet the topic continues to divide the public.<sup>84</sup>

Additionally, “Junior Mode” profiles can view an episode of the children’s show *Muppet Babies*, where Gonzo – a male character – is hesitant to tell his friends that he wants to wear a dress to a party.<sup>85</sup> He ultimately rejects societal norms and his biology by cross-dressing as the princess named “Gonzo-rella,” whom the other Muppets celebrate. The episode’s plot is a variation of the classic *Cinderella* plot, yet “Junior Mode” profiles that can watch this episode promoting transgenderism cannot even watch the classic *Cinderella* cartoon or other classic Disney films like *Mary Poppins*, *Robin Hood*, and *The Jungle Book*, all of which are rated “G” for general audiences of all ages.<sup>86</sup>

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<sup>77</sup> Appendix at 15.

<sup>78</sup> Appendix at 15.

<sup>79</sup> Appendix at 16.

<sup>80</sup> Appendix at 17.

<sup>81</sup> Appendix at 18.

<sup>82</sup> Appendix at 19.

<sup>83</sup> Appendix at 20.

<sup>84</sup> Dobkin, *supra* note 42; Burton, *supra* note 42; Burchill, *supra* note 42; Smith, *supra* note 42; Poonia, *supra* note 42.

<sup>85</sup> Appendix at 21-22.

<sup>86</sup> Appendix at 23.



Disney also published a nearly 35-minute variety show on its Disney+ YouTube page celebrating LGBTQ pride.<sup>87</sup> This “Disney+ ‘This Is Me’ Pride Celebration Spectacular” promotes transgenderism and encourages “young people to find themselves fully without barriers or without limitations on their expression.”<sup>88</sup> In the video, one activist says that “it is our right as humans to feel safe, and be loved, and accepted and supported.”<sup>89</sup> The video also shows a man dressed as a woman with earrings, makeup, and cartoonish, fake orange hair who says, “Pride is really about living authentically in your skin.”<sup>90</sup> The program references many different gender identities as if each is as legitimate as male and female. In one testimonial, a woman describes that she decided in her thirties to identify with the gender identity called “ace.”<sup>91</sup> A transgender activist from another Disney program then describes that laws and policies need to change, and another says that “it is a very scary time right now” and that people need to “show up” for the LGBTQ community “at the polls, and in schools, and in churches.”<sup>92</sup> The program closes with a song featuring the Trans Chorus of Los Angeles.<sup>93</sup>

## 2. *Politicized personnel actions*

### Anti-American and Anti-Conservative Bias

On March 21, 2022, certain of the Company’s American employees issued an open letter laying bare credible and significant compliance issues arising from the alleged violation of domestic anti-discrimination laws and regulations.<sup>94</sup> The Open Letter, posted anonymously to prevent workplace and other retaliation, states in relevant part:

- “The Walt Disney Company has come to be an increasingly uncomfortable place to work for those of us whose political and religious views are not explicitly progressive. We watch quietly as our beliefs come under attack from our own employer, and we frequently see those who share our opinions condemned as villains by our own leadership.”
- “[Company] leadership frequently communicates its commitment to creating an inclusive workplace where cast members feel comfortable sharing their perspectives and being their authentic selves at work. That is not our

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<sup>87</sup> Disney Plus, *Say It With PRIDE: Disney+ Celebrates 365 Variety Show*, YOUTUBE (June 30, 2022), <https://tinyurl.com/ywbxc7fz>.

<sup>88</sup> Appendix at 24.

<sup>89</sup> Appendix at 25.

<sup>90</sup> Appendix at 26.

<sup>91</sup> Appendix at 27.

<sup>92</sup> Appendix at 28.

<sup>93</sup> Appendix at 29.

<sup>94</sup> See *Disney Employees’ Open Letter in Favor of a Politically Neutral Disney* (the “Open Letter”), <https://tinyurl.com/y6d2hpnn>.

workplace experience ... An internal poll within the company went out a few months ago asking us if we felt accepted in the company. Many of us didn't complete it because the nature of the questions made us worry that the results of the poll could be used to target us for quietly holding a position that runs against the progressive orthodoxy that Disney seems to promote."

- "[The Company] has fostered an environment of fear that any employee who does not toe the line will be exposed and dismissed."
- "[A]s much as diversity and inclusion are promoted ... [the Company] doesn't seem to have much room for religious or political conservatives within the company. Left-leaning cast members are free to promote their agenda and organize on company time using company resources. They call their fellow employees 'bigots' and pressure [the Company] to use corporate influence to further their left-wing legislative goals." (Emphasis added.)
- "Employees who want [the Company] to make left-wing political statements are encouraged, while those of us who want the company to remain neutral can say so only in a whisper out of fear of professional retaliation. The company we love seems to think we don't exist or don't belong here. This politicization of our corporate culture is damaging morale and causing many of us to feel our days with [the Company] might be numbered."
- "*[P]oliticization makes its way into our content and public messaging, our more conservative customers will feel similarly unwanted. You can only preach at or vilify your audience for so long before they decide to spend their money elsewhere.*" (Emphasis added.)

On March 29, 2022, a Company insider published a pseudonymous article on the website Quillette.com.<sup>95</sup> He said:

- "In less than two weeks' time, the company had moved from principled neutrality to open advocacy. This new messaging, intended to mollify the company's internal critics, accelerated Disney's meltdown instead. "Brave Space Conversations" are now held at regular intervals—an absurd euphemism for struggle sessions designed to allow activists to vent their frustrations while drowning out dissenting voices. All regularly scheduled company meetings are canceled to make room for these meetings, and park leadership opens the floor to hours-long performative recitations of grievances by hand-picked cast members. They conclude with grandiose statements about inclusion and fairness and understanding pain and listening, but not a single nonconforming viewpoint is heard, either from those who support the bill or

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<sup>95</sup> See Ethan L. Clay, *Disney's Institutional Capture*, QUILLETTE (March 29, 2022), <https://tinyurl.com/y93pjwwh>.

those who think Disney has no business getting involved in this dispute in the first place.”

- “‘At Disney,’ the company’s website promises, ‘inclusion is for everyone. We reimagine tomorrow as our way of amplifying underrepresented voices and untold stories as well as championing the importance of accurate representation in media and entertainment.’ But, as usual, ‘inclusion’ only protects those who think like DEI activists. ‘Fairness’ only applies to historically oppressed people groups. The only pain worth understanding is that felt by the subsection of LGBT cast members who believe that sex education ought to begin in kindergarten. Listening and seeing is restricted to the approved narratives, and even excludes those LGBT cast members who support the Florida legislation. I know many of them personally, and nearly without exception, they are all parents.”
- “It’s incredible that a company—particularly a company whose brand is family friendly content—would oppose the perfectly reasonable view that sexual topics are not appropriate for six-year-olds in a public school setting. The bill puts the onus back on parents, rather than public schools, to decide how and if these conversations happen. That perspective can be debated, but it is not wrong a priori, and a very large number of Florida voters agree with it. But Disney isn’t interested in allowing a genuine debate or conversation to occur, it simply wants to satisfy the DEI activists so they stop making trouble and bad headlines for the company. The result is that they parrot the party line, offer craven apologies, and ignore and silence opposition.”
- An email from management on March 11, 2022, “contained these ominous words: ‘Starting immediately, we are increasing our support for advocacy groups to combat similar legislation in other states. We are hard at work creating a new framework for our political giving that will ensure our advocacy better reflects our values.’ In other words, the DEI takeover at Disney has been so thorough that, in [the] future, the citizens of this country will see one of its largest and most powerful corporations throw its financial and political support behind progressive political causes. We’ve already seen this in Texas, where Disney pledged, during an internal Reimagine Tomorrow session, to oppose a law criminalizing transgender surgeries and hormone treatments for children.”
- “I have been personally involved in no less than five projects that had their creative visions dimmed by the dictates of profoundly uncreative DEI functionaries: Replace that Christmas song, it’s too Christian. Don’t ‘culturally appropriate’ that visual design, we don’t have a member of that ethnicity on the project team. Send this script to a ‘sensitivity reader,’ the voice is too male.

Remove ‘ladies and gentleman [sic], boys and girls’ from all park announcements, it reinforces the gender binary.”

- “The majority of executives, as one would expect, not only toe the party line, but are extremely vocal in their endorsement, frequently initiating conversations about the bill as they anxiously scan the room for nods of approval. But others fall silent during company-wide calls and study their company phones whenever the topic comes up. I’ve only managed a few private conversations with these people, and the story is consistently the same: keep your mouth shut or find yourself the target of scrutiny and likely termination.”

As the Company has repeatedly recognized, its financial success is inextricably tied to selecting and retaining the right people and retaining them. “From the start, Walt Disney knew how important it was to empower his Cast Members at Disneyland to strive for excellence and deliver outstanding service to each and every guest. In fact, [he] once said, ‘You can dream, create, design, and build the most wonderful place in the world ... but it requires people to make the dream a reality.’”<sup>96</sup> However, the Open Letter and the Quillette.com article are devastating indictments of the Company’s willful failure to provide a lawfully compliant and respectful workplace for all its employees.

Instead, it seems the Company’s executives are engaging in systemic discrimination against pro-American conservatives, creating a hostile work environment to silence them and/or drive them out of the Company. Management’s conduct here is extremely difficult to understand given the Company’s silence regarding genuine human rights abuses—including forced labor, harsh political oppression including imprisonment and torture, and what are fairly described as the forced internment of an entire ethnic population in concentration camps—by the Chinese Communist Party.

#### Gina Carano

In February 2021, Disney fired Gina Carano from the hit Disney+ show *The Mandalorian* after she expressed her personal political beliefs online.

Ms. Carano credibly alleges that she was fired in retaliation for “expressing her personal political views, opinions, and beliefs.”<sup>97</sup> On her personal Instagram account, she had posted an image with text that read, “Jews were beaten in the streets, not by Nazi soldiers but by their neighbors.... Even by children” and asked the question, “how [Nazi soldiers succeeded in getting neighbors to hate each other is] any different

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<sup>96</sup> Bruce Jones, *The One Thing You Must Do to Empower Your People*, FORBES (Apr. 16, 2018), <https://tinyurl.com/23ckyrce>.

<sup>97</sup> Complaint at ¶ 6, *Carano v. The Walt Disney Co., et al.*, No. 24-cv-01009 (C.D. Cal. Feb. 06, 2024), ECF No. 1.

from hating someone for their political views?”<sup>98</sup> Disney said she had been terminated and that her “social media posts denigrating people based on their cultural and religious identities are abhorrent and unacceptable.”<sup>99</sup>

Management publicly misrepresented Ms. Carano’s questioning of Democrat Party lockdown policies and her use of a historical example as “denigrating...cultural and religious identities.”<sup>100</sup> It singled her out not because of her invoking a Nazi comparison to modern events, but because of her political viewpoint and, apparently, her sex. Ms. Carano’s co-star on *The Mandalorian*, Pedro Pascal, and Star Wars star Mark Hamill have each made multiple social media posts explicitly comparing Donald Trump and his supporters to Nazis – however, these men kept their roles and faced neither discipline nor public shaming. In fact, Pascal was just announced to lead Disney’s upcoming adaptation of the *Fantastic Four* film franchise as Mr. Fantastic. Ms. Carano’s firing sparked the “#CancelDisneyPlus” campaign online, leading many Disney+ subscribers to cancel their accounts in protest.<sup>101</sup>

### Allison Williams

Multiple employees of Disney’s ESPN have been forced out of the company for expressing mainstream conservative beliefs. In October 2021, ESPN and Disney denied reporter Allison Williams’ request for accommodation related to its COVID-19 vaccine mandate.<sup>102</sup> Williams was, at the time, trying to have another child and accordingly refused to comply with the Company’s mandate – ultimately forcing her to separate from the company. Williams alleges that she has been “bullied, vilified, slandered and ostracized” for her decision.<sup>103</sup> Polling suggests that more than half of employed Americans oppose employers requiring their employees to take the COVID-19 vaccine in order to work.<sup>104</sup>

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<sup>98</sup> Lee Brown, *See Gina Carrano’s Tweets Posts That Got Her Fired from ‘The Mandalorian’*, NEW YORK POST (Feb. 11, 2021), <https://tinyurl.com/2ht3cct5>.

<sup>99</sup> Daniel Holloway, *Lucasfilm, UTA Drop ‘Mandalorian’ Star Gina Carano Following Offensive Social Media Posts*, VARIETY (Feb. 10, 2021), <https://tinyurl.com/4bjuzv3y>; Complaint at ¶ 157, *Carano v. The Walt Disney Co.* (Carano was a popular character in both seasons of *The Mandalorian* in which she appeared, and Disney had even announced that she would star in a spinoff series. In addition to being fired from *The Mandalorian* for her social media post, her spinoff series was canceled).

<sup>100</sup> Complaint at ¶ 31, *Carano v. The Walt Disney Co.*

<sup>101</sup> Emily Baker, *Gina Carano: Why Mandalorian Fans Are Boycotting Disney Plus After Actress Was Fired Over ‘Abhorrent’ Tweets*, iNEWS (Feb. 11, 2021), <https://tinyurl.com/3j85xz4d>; Emma Nolan, *Conservatives Outraged by Gina Carano Firing, Urge People to Cancel Disney Plus*, NEWSWEEK (Feb. 11, 2021), <https://tinyurl.com/3nwcw26r>.

<sup>102</sup> Andrea Hsu, *ESPN’s Allison Williams Explains Why She’s Giving Up Her Job Over a Vaccine Mandate*, NPR (Oct. 18, 2021), <https://tinyurl.com/2snuspy8>.

<sup>103</sup> Alejandro Avila, *Ex-ESPN Reporter Allison Williams Shares Emotional Journey About Losing Job Over COVID Jab*, OUTKICK (July 28, 2023), <https://tinyurl.com/4xe8kkh3>.

<sup>104</sup> POLITICO & HARVARD T.H. CHAN SCHOOL OF PUBLIC HEALTH, *The American Public’s View On Mandating COVID-19 Vaccination and on Allowing Prescription Drug Importation from Multiple Countries* at 2 (July 2021), <https://tinyurl.com/2c3b3mkkh>.

## Sage Steele

In October 2021, Sage Steele, another then-ESPN reporter, was sidelined and taken off several high-profile assignments because of her off-air comments, including her questioning Barack Obama’s calling himself black instead of biracial. Steele had said, “I think that’s fascinating considering his Black dad was nowhere to be found but his white mom and grandma raised him. But hey, you do you, I’m going to do me.”<sup>105</sup> Meanwhile, left-leaning ESPN personalities can, in their personal time and on-air,<sup>106</sup> freely discuss without consequence issues of black fatherhood rates,<sup>107</sup> America’s purported fear of black Americans having access to guns,<sup>108</sup> and the so-called “black national anthem.”<sup>109</sup> Steele sued Disney, alleging that the Company “based their punitive actions against Steele on a supposed workplace policy barring political commentary, they repeatedly have ignored commentary from other employees - both before and after they penalized Steele for expressing her opinion - that was more political and more controversial than the comments made by Steele, and that in some cases was overtly disrespectful to Steele.”<sup>110</sup>

### 3. *Parental rights*

Disney publicly opposed the “Parental Rights in Education Act” as part of its purported “dedicat[ion] to standing up for the rights and safety of LGBTQ+ members of the Disney family.”<sup>111</sup> On March 11, 2022, Chief Executive Officer and Board Member Bob Chapek, in a message to the Company’s employees, falsely characterized the “Parental Rights in Education” law as a “challenge to basic human rights” and promised that the Company will increase “our support for advocacy groups to combat similar legislation in other states.” Disney’s on-air talent acted accordingly. ESPN’s courtside reporters took time *while on air* during ESPN’s broadcast of the Women’s NCAA Tournament, in the form of a two-minute long moment of silence, to protest the bill.<sup>112</sup>

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<sup>105</sup> Complaint, *Sage Steele v. ESPN Prod., Inc.*, No. HHD-CV-22-6154934-S (Conn. Sup. Ct. Apr. 27, 2021); Olafimihan Oshin, *ESPN’s Sage Steele: Obama’s identification as Black ‘Fascinating’*, THE HILL (Oct. 5, 2021), <https://tinyurl.com/2ndt8wme>.

<sup>106</sup> Ryan Gaydos, *ESPN Personalities Suggest NFL Thinks Its Fans are Racist, Raise Theory on Rule Changes to Favor White Players*, FOX NEWS (May 1, 2023), <https://tinyurl.com/3em9v7xc>.

<sup>107</sup> Stephen A. Smith (@stephenasmith), X (Nov. 28, 2022, 4:49 PM), <https://tinyurl.com/5n863x8r>.

<sup>108</sup> Stephen A. Smith (@stephenasmith), X (Apr. 19, 2023, 12:48 PM), <https://tinyurl.com/bdfmvubh>.

<sup>109</sup> Stephen A. Smith (@stephenasmith), X (Feb. 13, 2024, 9:07 AM), <https://tinyurl.com/3d9wdek>; Jacob Bogage, *Jemele Hill Stands by Calling President Trump a White Supremacist: ‘I Thought I Was Saying Water is Wet’*, THE WASHINGTON POST (Dec. 26, 2018), <https://tinyurl.com/y5fd2wyk>.

<sup>110</sup> Complaint at ¶ 3, *Steele v. ESPN Prod.*

<sup>111</sup> *Statement from The Walt Disney Company on Signing of Florida Legislation*, THE WALT DISNEY COMPANY (March. 28, 2022), <https://tinyurl.com/5h4jpsf>.

<sup>112</sup> Brittany Bernstein, *ESPN Broadcasters Hold Moment of Silence to Protest Florida’s Parental Rights Bill on LGBT Ed*, NATIONAL REVIEW (Mar. 19, 2022), <https://tinyurl.com/46jtd3ek>.

However, Mr. Chapek did not specify the “basic human rights” allegedly being challenged by the law’s age-appropriate teaching and parental notification provisions. It provided procedures for parental notification regarding issues related to their child’s “mental, emotional, or physical health or well-being”; mandated school personnel “encourage a student to discuss issues related to his or her well-being with his or her parent”; and prevented school districts from adopting “procedures that prohibit school district personnel from notifying a parent about his or her student’s mental, emotional, or physical health or well-being.” These requirements are basic and substantially mirror long-standing federal requirements under the Protection of Pupil Rights Amendment.<sup>113</sup> Management has never repudiated Mr. Chapek’s action or provided a rational business justification for this anti-parent crusade. Thus, tens of millions of the Company’s customers in the United States and overseas are now left to wonder why the Company irrationally supports lessons on sexual orientation and gender identity for five-year-old children while simultaneously opposing parental notification.

#### **IV. Section 220 discovery would be appropriate in this case**

Section 220 of the Delaware General Corporation Law provides stockholders with a qualified right to inspect corporate books and records.<sup>114</sup> To obtain inspection, a stockholder must satisfy the statute’s form and manner requirements. The stockholder must also prove, by a preponderance of the evidence, a proper purpose entitling the stockholder to an inspection of every item sought. The stockholder must further demonstrate by a preponderance of the evidence that “each category of books and records is essential to the accomplishment of the stockholder’s articulated purpose for the inspection.”<sup>115</sup>

Delaware courts strongly encourage stockholder-plaintiffs to utilize Section 220 before filing a derivative action to satisfy the heightened demand futility pleading requirements of Court of Chancery Rule 23.1. By first prosecuting a Section 220 action to inspect books and records, the stockholder-plaintiff may be able to uncover particularized facts that would establish demand excusal in a subsequent derivative suit.<sup>116</sup> There is no shortage of proper purposes under Delaware law, provided that the purpose asserted by the stockholder is intended to “further the interest of all stockholders and should increase stockholder return.”<sup>117</sup> It is well established that a stockholder’s desire to investigate wrongdoing or mismanagement is a “proper

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<sup>113</sup> See 20 U.S.C. § 1232h.

<sup>114</sup> 8 Del. C. § 220(b).

<sup>115</sup> See *Simeone v. Walt Disney Co.*, 302 A.3d 956, 966 (Del. Ch.), judgment entered sub nom. *Simeone v. The Walt Disney Co.* (Del. Ch. 2023); see also *Seinfeld v. Verizon Commc’ns, Inc.*, 909 A.2d 117, 119 (Del.2006);

<sup>116</sup> *Paul v. China MediaExpress Holdings, Inc.*, No. CIV.A. 6570-VCP, 2012 WL 28818, at \*5 (Del. Ch. Jan. 5, 2012) (citation omitted).

<sup>117</sup> *Seinfeld*, 909 A.2d at 121.

purpose,” as is investigating the possibility of pursuing a derivative action based on perceived wrongdoing by a corporation's officers or directors.<sup>118</sup>

A stockholder seeking to investigate wrongdoing must show, by a preponderance of the evidence, a credible basis from which the court can infer that there is possible mismanagement that would warrant further investigation. This burden, the lowest standard of proof in law, requires only some evidence to suggest a credible basis for wrongdoing.<sup>119</sup> Here, there is substantial credible evidence of wrongdoing. The Board's encouragement of and/or failure to prevent systemic civil rights violations, its decision not to disclose the likely consequences of its political and socio-sexual agenda, and its disregard for its duty of loyalty to stockholders, are all precisely the sort of mismanagement for which a Section 220 books and records demand would be appropriate.

## V. Conclusion

To prevent the continued waste of the Company's assets, to repair and safeguard the Company's brand, goodwill, and reputation among its core customers, to protect the Company's shareholders, and in fulfillment of your fiduciary duty to ensure the Company's compliance with civil rights laws and use of corporate funds for business-related matters only, we demand that you and the Board immediately take the following steps:

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind and resulting from the Company's Inclusion Standards. 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 analytic data that it possesses demonstrating that management's policies and practices as described above enhance the Company's brand reputation and promote alignment between its business and the tastes and preferences of its core customers.
2. Compel the Company to (a) immediately cease and desist from all employment and contracting practices that discriminate based on race, color, sex, or national origin; (b) immediately cease and desist from making any statements or representations promoting or promising employment outcomes based on race, color, sex, and/or national origin; (c) retain an independent counsel to conduct a compliance audit of the Company's hiring, promotion, recruitment, and

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<sup>118</sup> *Norfolk Cnty. Ret. Sys. v. Jos. A. Bank Clothiers, Inc.*, No. CIV.A. 3443-VCP, 2009 WL 353746, at \*6 (Del. Ch. Feb. 12, 2009), *aff'd*, 977 A.2d 899 (Del. 2009).

<sup>119</sup> *Haque v. Tesla Motors, Inc.*, No. CV 12651-VCS, 2017 WL 448594, at \*4 (Del. Ch. Feb. 2, 2017) (describing that the “credible basis” standard sets “the lowest possible burden of proof” and “may be satisfied by a credible showing, through documents, logic, testimony or otherwise, that there are legitimate issues of wrongdoing”).



purchasing practices comply with federal civil rights laws, and (d) comply with its legal duty to disclose the risks associated with its DEI practices and policies in its Form 10-K and proxy statements. Again, to avoid the expense and disruption of litigation enforcing the Company's disclosure obligations, the compliance audit and all relevant emails and other management communications regarding these matters should be made promptly and fully available.

3. Direct the General Counsel to investigate the acts described above that threaten consumer acceptance and misalignment with public and consumer tastes. The General Counsel should also conduct a comprehensive investigation to ensure management's use of corporate funds has only a business purpose, not a political one. Finally, the General should be directed to report to the Board and to the Company's shareholders to provide full transparency.
4. In anticipation of litigation and a possible Section 220 demand, 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.
5. Distribute a copy of this letter to all shareholders in advance of the shareholder meeting on April 3, 2024.

Thank you in advance for your cooperation.

Sincerely,

/s/ Reed D. Rubinstein  
America First Legal Foundation

Cc: Mary T. Barra, Director  
Safra A. Catz, Director  
Amy L. Chang, Director  
D. Jeremy Darroch, Director  
Francis A. deSouza, Director  
Carolyn N. Everson, Director  
Michael B.G. Froman, Director  
James P. Gorman, Director  
Maria Elena Lagomasino, Director  
Calvin R. McDonald, Director  
Derica W. Rice, Director

APPENDIX





*If police slow down and watch you  
Sometimes they might try to stop you*



*Or say you're a different guy  
Sometimes they're just drifting by*



-See them boarding up the buildings?  
-Yeah?



-But no one's trying to hurt them, why?  
-Why?







through all that tear gas  
you fired into the park



full of peaceful protesters.









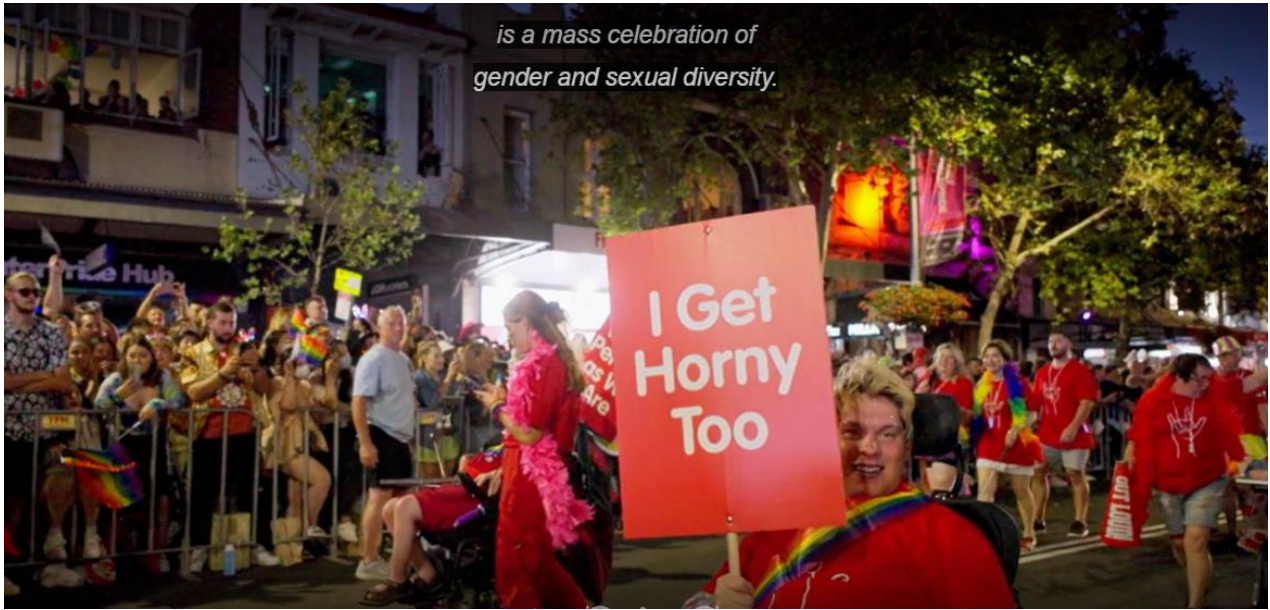
















(cheering)



*all over Australia to take  
part in the huge Pride parade.*



## WHAT CAN I EXPECT?

17

What I will see during the parade:

- People of all ages
- Same-sex or non-binary couples
- People who do not appear as either male or female
- Groups of people marching along the street
- Brightly coloured floats
- People in costumes (some might not be wearing much clothing)
- Some nudity
- People hugging and kissing
- People dancing, yelling and singing
- Drunk people
- Security, police and ambulance paramedics. They are here to keep me safe
- Cameras from the media and the general public taking pictures of the crowd





This program includes negative depictions and/or mistreatment of people or cultures. These stereotypes were wrong then and are wrong now. Rather than remove this content, we want to acknowledge its harmful impact, learn from it and spark conversation to create a more inclusive future together.

Disney is committed to creating stories with inspirational and aspirational themes that reflect the rich diversity of the human experience around the globe.

To learn more about how stories have impacted society visit:  
[www.Disney.com/StoriesMatter](http://www.Disney.com/StoriesMatter)

YOUR VIDEO WILL START IN 11





Disney+ HOME SEARCH WATCHLIST ORIGINALS MOVIES SERIES

robin hood

No results found for "robin hood"

Some content may be hidden due to parental controls.

Disney+ HOME SEARCH WATCHLIST ORIGINALS MOVIES SERIES

cinderella

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Disney+ HOME SEARCH WATCHLIST ORIGINALS MOVIES SERIES

mary poppins

No results found for "mary poppins"

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Disney+ HOME SEARCH WATCHLIST ORIGINALS MOVIES SERIES

the jungle book

No results found for "the jungle book"

Some content may be hidden due to parental controls.



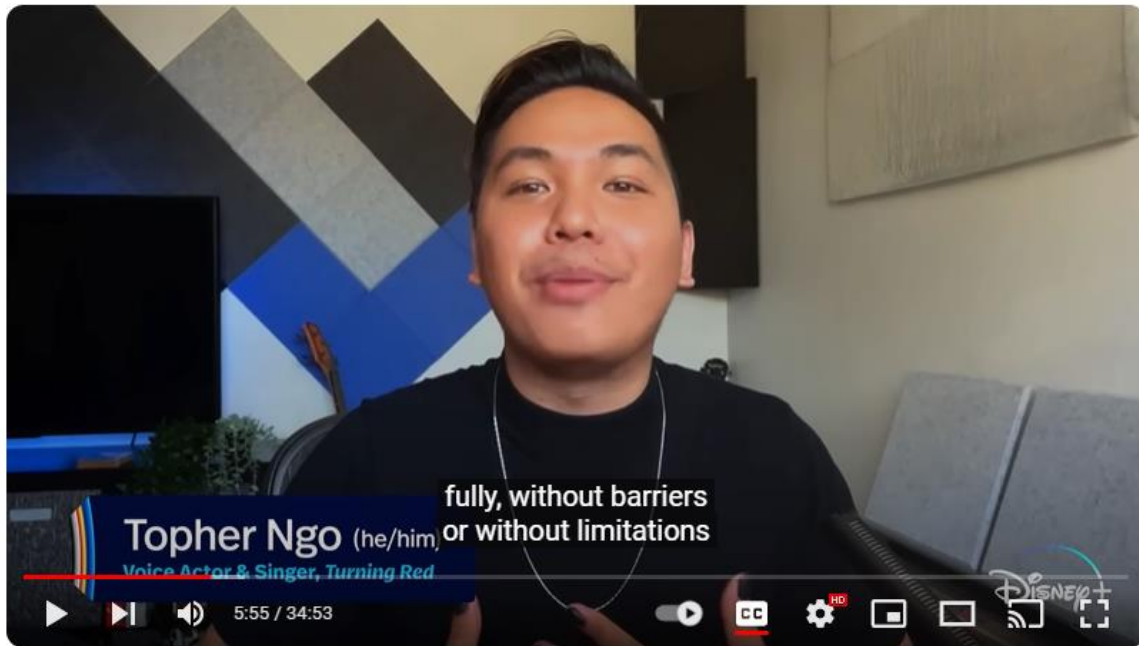


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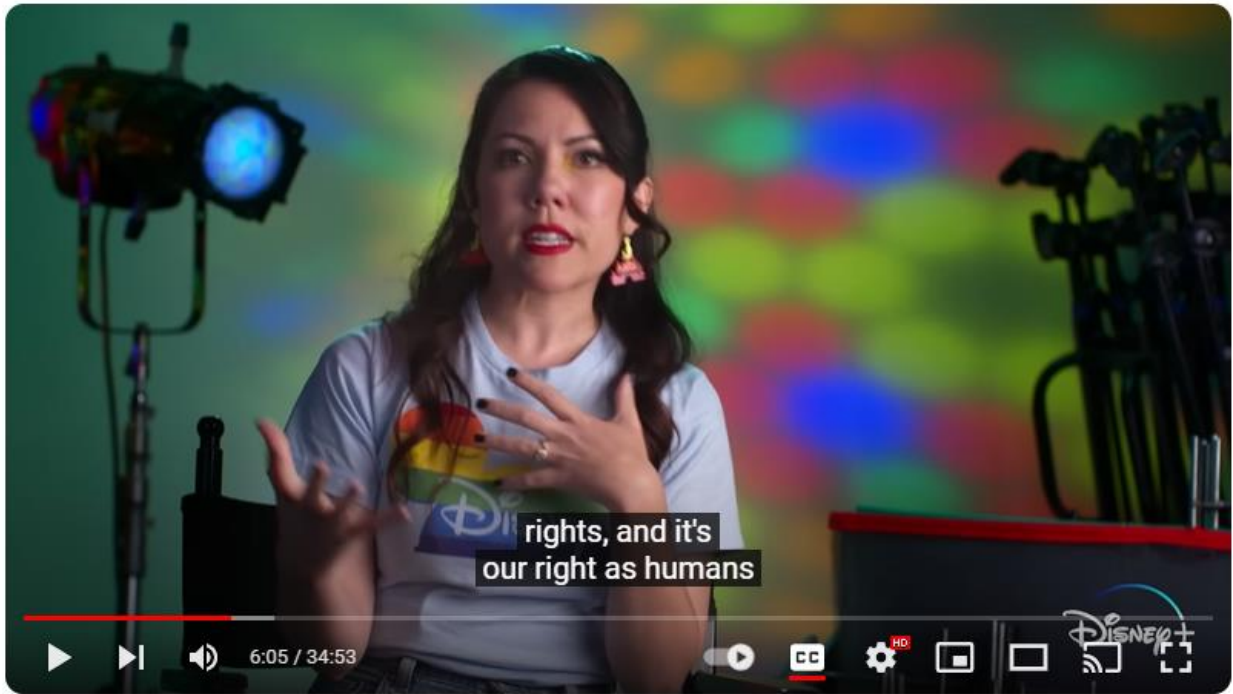


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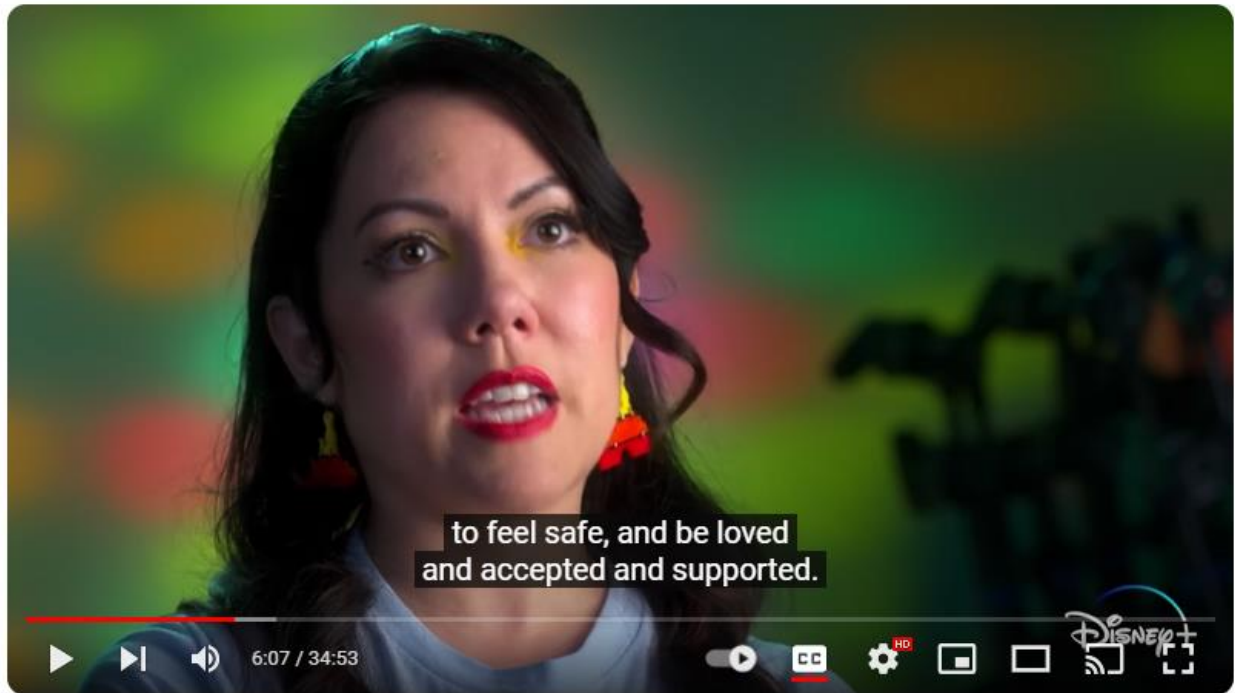
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Be loud, be bold, be colorful. 🏳️‍🌈👏 This is "Say It With PRIDE: #DisneyPlus Celebrates #Pride365", a special celebration of musicians, activists, actors, and allies from the LGBTQIA+ community. #DisneyPlusPride  
...more



**Rachel Agana** (she/her)

Post Production Coordinator, Pixar

I came to identify as ace in my 30s,



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