

## Appendix

### Financial Materiality and DEI: Criminal Background Checks

I. [EEOC Reaches Agreement with Pier 1 Imports to Resolve Background Check Race Discrimination<sup>1</sup> Charge](#)

The EEOC charged that a **Black** job applicant was denied a position as an assistant manager at a Pier 1 Imports store in Montclair, California after a criminal **background check<sup>2A</sup>** was conducted on him. The EEOC investigation determined that the company's use of criminal records limited the employment opportunity of the job applicant based on his **race** in violation of Title VII of the Civil Rights Act of 1964. In addition to the \$20,000 the company will pay the job applicant and **injunctive relief<sup>2B</sup>**, Pier 1 Imports will reaffirm its commitment to Title VII by revising its **background check<sup>2C</sup>** process and **removing the criminal conviction question from its employment application**. An employer is liable for violating Title VII if its **background check** policy or practice disproportionately screens out a Title VII-protected group<sup>3</sup> and **the employer fails to demonstrate that the policy or practice is job related for the position in question and consistent with business necessity**.

Source: esrcheck.com, August 15, 2019.

#### Formatting Key

Format	Meaning
<b>Red Bold</b>	These keywords match the pattern of a practice/outcome term, but no DEI terms appear within the standard 15-context word window, so these terms are not flagged in the method.
<b>Orange</b>	DEI terms
<u>Red underlined</u>	Additional information that supports the case for human capital metrics related to formerly incarcerated applicants.

**Table A1: Key for Term Patterns in Article on Discriminatory Background Checks at Pier 1**

Indicator	Term Name	Term Type	Term Theme	Examples of Identified Patterns
<b>Green</b>	background check	Practice	Recruitment/ Retention/ Promotion-Rates	['background', 'check', 'protected group']
<b>Blue</b>	discrimination	Practice	Recruitment/ Retention/ Promotion-Rates	['discriminat', 'discriminat', 'race(  , .)']

\* For the sake of presentation clarity, this is a subset of terms and keywords identified in this text using the algorithm.

II. **New Discrimination Lawsuit Filed Against Macy’s, Inc. Over Criminal History<sup>1</sup> Screening<sup>2A</sup> Policy**

The NAACP Legal Defense and Educational Fund, Inc. (LDF), the law firm of Outten & Golden LLP (O&G), and Youth Represent (YR) filed a lawsuit today in the Southern District of New York against Macy’s, Inc. (Macy’s), challenging its use of an unnecessarily punitive **criminal history screening<sup>2B</sup>** policy. According to the **lawsuit**, the policy disproportionately disqualifies Black and Latinx applicants and **employees<sup>3</sup>** from job opportunities in violation of Title VII of the Civil Rights Act of 1964 and the New York City Human Rights Law. Jenetta Rolfer, seek to change a screening policy that they **allege** results in a disproportionate number of otherwise qualified Black<sup>4</sup> and Latinx job applicants and employees being denied employment<sup>5</sup> or terminated<sup>6</sup> due to their criminal background histories, including for minor or very old convictions that are unrelated to the positions at issue. Fortune, a nonprofit community-based organization that supports successful community reentry, including job-training and placement services, alleges that hiring practices at Macy’s affect its participants who work at or apply for jobs and are rejected or terminated because of the company’s policy. Rolfer alleges that Macy’s has violated the Fair Credit Reporting Act by rejecting applicants or terminating employees based on information contained in criminal background reports without providing individuals with a copy of their report, a notice of their rights, or a timely notification of its intent to take an adverse employment action.

Source: *PR Newswire*, June 26, 2019.

**Table A2: Key for the Term Patterns in Article on Macy’s**

Indicator	Term Name	Term Type	Term Theme	Examples of Identified Patterns
Blue	discrimination lawsuit	Outcome	DEI-Strategy/ Governance	['lawsuit', 'discriminat', 'criminal histor']
Green	background check	Practice	Recruitment/ Retention/ Promotion-Rates	['criminal (history record)', 'screen', 'criminal histor']
Purple	lawsuit/litigation-employee	Outcome	DEI-Strategy/ Governance	['lawsuit', '(ex)?( -)? employ(er ee)', 'latin(o a x)'], ['lawsuit', '(ex)?( -)?employ(er ee)', '(black african american)']
Teal	Alleg, accus, publicly expose	Outcome	General	['alleg', 'alleg', '(black african american)']

Red	Reject applicant	Practice	Recruitment/ Retention/ Promotion-Rates	['den(i(a e) y)', 'employ( ment)', 'latin(o a x)']
<u>Black underlined</u>	Termination-employee	Practice	Recruitment/ Retention/ Promotion-Rates	[('terminat(e ion)', 'employee', 'latin(o a x)']

\* For the sake of presentation clarity, this is a subset of terms and keywords identified in this text using the algorithm.

III. Excerpt from NorthStar Asset Management’s 2022 Microsoft proposal and resolved clause requesting a report on background checks in hiring:

The tight tech labor market means that employers must not only rewrite the hiring and retention playbook but also cast a wider net by diversifying the technology talent pool. Concurrently, companies, including Microsoft, seek to implement racial equity commitments[.] Given the disproportionately high incarceration rates of Black and Brown people in the U.S. and case study evidence that **formerly incarcerated employees can have lower turnover<sup>1</sup>** and better attendance and disciplinary records compared to their peers without criminal records, **recruiting fair chance employees can help ease labor market constraints and advance racial equity goals[.]** Fair chance employers **recruit<sup>2</sup>** from the talent pool of people with arrest and incarceration records. Despite signing the Fair Chance Business Pledge in 2015 and joining the Second Chance Business Coalition, Microsoft has not implemented comprehensive fair chance employment practices. For example, **while it has eliminated questions about criminal convictions from job applications, this is only a first step that is already required of federal contractors and mandated by law in locations that cover 80% of the U.S. population...**

RESOLVED: Shareholders request that the Board of Directors prepare a report analyzing whether Microsoft **hiring practices** related to people with arrest or **incarceration** records are aligned with publicly stated DEI (**diversity<sup>3</sup>** equity, and inclusion), **racial equity**, or **criminal justice reform goals**, and other **public statements<sup>4</sup>** such as the Fair Chance Business Pledge. The report, prepared at reasonable cost and omitting proprietary information and published publicly within one year, is recommended to evaluate the risk of discrimination — including racial discrimination — that may result from failure to implement targeted fair chance employment practices.

**Table A3: Key for Term Patterns in NorthStar Asset Management’s 2022 Microsoft proposal**

Indicator	Term Name	Term Type	Term Theme	Examples of Identified Patterns
Blue	hire goal/ quota-employee	Practice	DEI-Strategy/ Governance	['goal', 'recruit', 'racial']
Green	attrition/turnover	Outcome	Recruitment/ Retention/ Promotion-Rates	['turnover', 'employee', '(formerly incarcerated  incarcerated formerly)']
Purple	Policy-re-entry	Practice	DEI-Strategy/ Governance	['practice', 'incarcerat', 'hir(e(s d)?[ing]', 'divers']
Teal	Acknowledgement -BLM	Practice	Public-Advocacy	['statement', 'public', 'criminal justice', 'racial']

\*This is a subset of terms and keywords identified in this text using our method.

## Financial Materiality and DEI: Age Discrimination

### IV. [Lawsuit claims Eli Lilly favors millennials for sales jobs](#)

Eli Lilly and Co was **accused in a proposed class action filed on Wednesday of systematically refusing to interview and hire older<sup>1</sup> workers<sup>2</sup>** for sales representative jobs, opting instead to target millennials and recent college graduates. Two one-time Eli Lilly job applicants filed a complaint in Indianapolis federal court claiming the drugmaker **only advertises sales rep positions through on-campus recruitment programs, and typically fills the jobs with younger<sup>3</sup> workers who were initially hired as interns**. The plaintiffs said Eli Lilly has violated the federal Age Discrimination in Employment Act and comparable Florida and Georgia laws, and proposed a nationwide collective of workers 40 and older who unsuccessfully applied for sales rep jobs with the company or were deterred from doing so. The plaintiffs are seeking **back pay<sup>4A</sup>, front pay<sup>4B</sup>** liquidated and **punitive damages<sup>4C</sup>**, and damages for lost benefits and emotional distress, along with **injunctive relief** barring Eli Lilly from engaging in **age discrimination<sup>5,1</sup>**.

Source: Reuters, September 1, 2021.

**Table A4: Key for the Term Patterns in Article on Eli Lilly**

<sup>1</sup> Back pay, front pay, and monetary damages (the outcome terms in red) are financially material, but a DEI term did not appear within the 15-term context window. This met the first condition of matching the keyword patterns (in the middle column), but it did not meet the second condition of being within the specified window of a DEI term (the terms in orange).

Indicator	Term Name	Term Type	Term Theme	Examples of Identified Patterns
<u>Black underlined</u>	alleg, accus, publicly expose	Outcome	General	1 ['accus', 'accus', 'old(er)?']
Green	hiring/recruitment	Practice	Recruitment/ Retention/ Promotion-Rates	2 ['hir(e(s)d)? ing]', 'work(er force)', 'old(er)?']
Blue	programs/ initiatives/ policies-attract	Practice	Recruitment/ Retention/ Promotion-Rates	3 ['program', 'recruit', 'position', 'young']
Purple	court-ordered relief	Outcome	General	5 ['relief', 'injunctive', 'age discrimin']

\* For the sake of presentation clarity, this is a subset of terms and keywords identified in this text using the algorithm.

V. [Employers' job ads on Facebook discriminated against women and older<sup>1</sup> workers, EEOC says](#)

Two years ago, ProPublica and the *New York Times* revealed that [companies were posting discriminatory job ads on Facebook](#), using the social network's **targeting** tools to keep **older workers<sup>2</sup> from seeing employment opportunities**. *The decisions stem from complaints<sup>3</sup>* filed by the Communications Workers of America, the American Civil Liberties Union, and plaintiffs' attorneys after ProPublica's reporting. The agency made the rulings in July, but they are becoming public now as part of a separate pending class-action suit in federal court **accusing companies of age discrimination<sup>4</sup>**. The EEOC's batch of decisions are significant, attorney Peter Romer-Friedman of Outten & Golden says, because [they are the first time companies besides Facebook have had to defend how they use Facebook's tools to advertise jobs](#). The company changed its process for screening housing ads after ProPublica retested the system two years ago and showed it was possible to buy dozens of ads that excluded people by gender, race, religion, national origin, age, and other categories protected by civil rights laws.

Source: *ABA Journal*, September 27, 2019.

**Table A5: Key for the Term Patterns in Article on Facebook**

Indicator	Term Name	Term Type	Term Theme	Examples of Identified Patterns
Green	discrimination	Outcome	General	['discriminat', 'discriminat', 'old(er)?']
Blue	hire goal/quota-employee	Practice	DEI-Strategy/ Governance	['target', 'work(er)[force]', 'old(er)?']
<u>Black underlined</u>	backlash/ resistance-employee	Outcome	DEI-Strategy/ Governance	['complain', 'work(er)[force]', 'old(er)?']
Purple	alleg, accus, publicly expose	Outcome	General	['accus', 'accus', 'age discrimin']

## Financial Materiality and LCSC: Supply Chain Visibility

### VI. [Volvo implements blockchain to trace ethical sources for cobalt in EV batteries](#)

Color code: Practice terms, Outcome terms, LCSC terms, Context terms

*Volvo Cars announced today that it would become the first carmaker to implement **global traceability** of cobalt by applying **blockchain technology**. The Swedish carmaker said that it reached an agreement with its **two global battery suppliers**, CATL of China and LG Chem of South Korea, to trace cobalt supplies starting this year.*

*In March 2019, **Amnesty International** raised concerns about the ethics of EV batteries, especially those containing cobalt mined with **child labor** in the Democratic Republic of Congo (DRC). More than 60% of the world's cobalt comes from the DRC.*

***Tesla** took the lead in committing to the **ethical sourcing of battery materials**, reducing its use of cobalt by as much as 60% in the past few years. Less than 3% of Model 3 batteries are comprised of cobalt, according to a tweet from Elon Musk in May 2018.*

### VII. [Shareholder Resolution: Kroger](#)

- Practice: due diligence
- Outcome: fine
- Context: supplier

[resolved clause]

*Supporting Statement: There is increasing recognition that company risks related to human rights violations, such as litigation, reputational damage, and project delays and disruptions, can adversely affect shareholder value.*

*Kroger, like many other companies, has adopted a supplier code of conduct (see “[The Kroger Company Standard Vendor Agreement](#)”) but has yet to publish a company-wide Human Rights Policy, addressing human rights issues and a separate human rights code that applies to its suppliers. Adoption of these principles would be an important first step in effectively managing human rights risks. Companies must then assess risks to shareholder value of human rights practices in their operations and supply chains to translate principles into protective practices.*

*The importance of human rights risk assessment is reflected in the United Nations Guiding Principles on Business and Human Rights (the “Ruggie Principles”) approved by the UN Human Rights Council in 2011. The Ruggie Principles urge that “business enterprises should carry out human rights **due diligence**, assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed” (<http://www.business-humanrights.org/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>).*

*Kroger’s business exposes it to significant human rights risks. While over 90% of Kroger’s business is food its vendor Code of Conduct is based heavily on compliance with the law, and U.S. agricultural workers are excluded from many labor laws that apply to other U.S. workers. The company’s supply chain is complex and global and violations of human rights in Kroger’s supply chain can lead to negative publicity, public protests, and a loss of consumer confidence that can have a negative impact on shareholder value.*

*A proactive Human Rights Risk Assessment regimen has the potential to prevent Kroger from being implicated in the exploitation of workers such as occurred when Kroger supplier Tomato Thyme was assessed a civil fine of \$1.4 million by the U.S. Department of Labor for violations of the Fair Labor Standards Act, Migrant and Seasonal Agricultural Worker Protection Act and H-2A temporary agricultural program.*

*We urge shareholders to vote for this proposal.*

#### VIII. [Earnings Call: American Software, Inc.](#)

- Practice: due diligence

*During the pandemic and the ensuing global crisis, there has been a heightened attention to the responsibility of supply chains to help ensure the ethical treatment of workers around the world and the impact that supply chains have on the environment. In alignment with this responsibility, the United States Customs and Border Protection has taken action to seize imports suspected of containing materials produced with forced labor. We are on the forefront of addressing these economic, environmental, and social sustainability imperatives. Just one example is the release of our digital supply chain traceability solution to help companies ensure transparency across their supply chains and exceed their corporate and social responsibility goals while sustaining the flow of goods that we all rely on for our daily lives [American Software, Inc., Q3 2021 Earnings Call, Feb 24, 2021, 2222637].*

## Financial Materiality and LCSC: Alternative Workforce

### IX. [Port truckers win \\$30 million in wage theft settlements](#)

Color code: Practice terms, outcome terms, LCSC context terms

Trucking companies classify many of their drivers as independent contractors, thus making them ineligible for a host of labor protections, including the ability to collectively bargain for wages.

The combined settlements, approved by U.S. District Judge R. Gary Klausner, addressed allegations that two XPO subsidiaries, XPO Logistics Cartage in Commerce and San Diego and XPO Port Service in Rancho Dominguez, paid drivers less-than-legal wages, failed to pay them for missed meal and rest periods, and failed to reimburse them for business expenses or for waiting-time penalties.

#### X. XPO Shareholder Resolution

Color code: Practice terms, outcome terms, context terms

*SUPPORTING STATEMENT: The racial justice movement together with the disproportionate impacts of the COVID-19 pandemic have focused attention on civil rights and gender and racial equity issues. XPO has responded by including Diversity, Equity, and Inclusion (‘DEI’) metrics in its executive compensation plans and internalizing DEI concerns into its structure. However, the integrity, scope and fulsomeness of these efforts are thrown into doubt by the lengthy list of misclassification lawsuits and regulatory actions against XPO.*

*Misclassification deprives workers of full wages under minimum wage and overtime work laws, leading to ‘wage theft,’ and other critical labor protections. Preventing misclassification is an essential element of any program to advance racial and gender equity, given that women and/or people of color are overrepresented in sectors at risk for misclassification (e.g., see <https://www.minnesotalawreview.org/wp-content/uploads/2017/02/Alexander.pdf>).*

*California’s port drayage drivers play a vital role in the nation’s supply chains, yet a California statute (SB 338) refers to them as the ‘last American sharecroppers,’ who suffer from ‘rampant misclassification,’ which ‘contributes to wage theft and ... a cycle of poverty.’ They are a ‘largely immigrant workforce,’ ‘particularly vulnerable to exploitation’ and ‘often fearful to report violations to state agencies or unaware of their rights,’ depriving them of access to critical safety net benefits by virtue of their misclassification.’ These drivers have also been found to be overwhelmingly Latino (e.g. see [https://www.researchgate.net/publication/240628100\\_A\\_Study\\_of\\_Drayage\\_at\\_the\\_Ports\\_of\\_Los\\_Angeles\\_and\\_Long\\_Beach](https://www.researchgate.net/publication/240628100_A_Study_of_Drayage_at_the_Ports_of_Los_Angeles_and_Long_Beach)).*

*According to SB 338 there could be 16,000 misclassified drivers in California’s ports, which process 40% of all shipping containers entering the country.*

*Critically, misclassification is a material risk for XPO. Last October, for instance, XPO agreed to pay nearly 800 drivers almost \$30 million to settle class action lawsuits concerning its Californian intermodal drayage operations, which alleged the drivers were ‘willfully misclassified’ as independent contractors rather than employees (see <https://landline.media/xpo-settles-pair-of-port-driver-lawsuits-for-nearly-30-million/>). XPO’s fiscal 2020 10-K acknowledges ‘numerous lawsuits’ over misclassification issues that ‘could involve thousands of claimants’ and ‘significant potential damages and litigation costs.’*

*Whatever else XPO’s DEI program aims to achieve, ending wage theft from vulnerable populations of XPO’s workforce is surely central. Management’s seeming disregard to the plight of misclassified drivers despite numerous legal and regulatory actions — demands a third-party undertake a root-and-branch civil rights audit.*

#### XI. Article: [Fair Work uncovers “rampant exploitation” of Woolworths cleaners](#)



Color code: Practice terms, outcome terms, LCSC context terms

*Cleaning contractors at 90 per cent of Woolworths' Tasmanian supermarkets were found not complying with workplace laws a Fair Work Ombudsman inquiry has uncovered.*

*Examining supermarket cleaning contractors in Tasmania commencing from late 2014, the Fair Work Ombudsman found "deficiencies in Woolworths' governance arrangements with regards to its procurement and oversight of cleaning contracts." Fair Work Ombudsman, Natalie James, said Woolworths' governance deficiencies resulted in serious exploitation occurring at multiple levels of its cleaning supply chain.*

## XII. Earnings Call: Scandi Standard

*At the same time, we have experienced an adverse development regarding worker safety, which is our third sustainability parameter here.*

*And that worker safety development is mainly driven by a higher stock turnover during the pandemic, where we've had a higher proportion of temporary employees and also had to change people in various job positions to keep the factories going. This development, of course, is unacceptable and is being acted on forcefully by myself and managers at all levels.*

*And in parallel with immediate interventions that we're already taking, we are putting in place a systematic program to train people so that we will get down to industry levels and below in the coming periods [Scandi Standard AB (publ), Scandi Standard AB (publ), Q4 2021 Earnings Call, Feb 11, 2022, 2491695].*