

BE IT RESOLVED: Shareholders of Tesla, Inc. (“Tesla”) ask the Board of Directors to oversee the preparation of a publicly-disclosed report on the impact of the use of mandatory arbitration on Tesla’s brand, employees and workplace culture. The report should evaluate the impact of Tesla’s current use of arbitration on the prevalence of harassment and discrimination in its workplace, on employees’ ability to seek redress, and on consumer perceptions of Tesla as an employer. The report should be prepared at reasonable cost and omit proprietary and personal information.

WHEREAS: A workplace that tolerates harassment and discrimination invites legal, brand, financial, and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism, and challenges in attracting and retaining talent. A number of studies have found significant share value benefits associated with diverse, equitable and inclusive workplaces.

Tesla requires employees to agree to arbitrate employment-related claims. Mandatory arbitration limits employees’ remedies for wrongdoing, reduces employee willingness to report discrimination¹ and, per the U.S. Equal Employment Opportunity Commission (EEOC), “can shield serial harassers from accountability and allow them to repeatedly abuse employees.”² Arbitration also prevents class-action suits, which may allow a sense of impunity for companies with poorly implemented or managed diversity, equity and inclusion policies.

These concerns are particularly relevant to Tesla. The California’s Department of Fair Employment and Housing, which is not subject to Tesla’s arbitration provisions, announced in February 2022 that it would be suing Tesla after receiving hundreds of complaints and conducting a three-year investigation. Allegations include that employees were subjected to racial slurs; segregated and discriminated against in job assignments, pay, and promotion; and faced retaliation when they reported their experiences.³ This lawsuit joins numerous other allegations of racial or sexual harassment and discrimination at Tesla.⁴

¹ <https://www.hnrl.org/2020/08/forced-into-employment-arbitration-sexual-harassment-victims-are-saying-metoo-and-beginning-to-fight-back-but-they-need-congressional-help/>

² <https://www.eeoc.gov/newsroom/eeoc-chair-applauds-passage-ending-forced-arbitration-act>

³ <https://qz.com/2126548/why-is-california-suing-tesla/>

⁴ <https://www.reuters.com/business/autos-transportation/california-lawsuit-latest-accuse-tesla-discrimination-2022>

Ongoing use of employee arbitration creates a long-tail risk for Tesla, particularly as the company faces a changing regulatory landscape with the passage of The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act. This Act prohibits the use of arbitration when there are claims of sexual harassment. In addition, in California, employers are not allowed to retaliate against employees that refuse to sign arbitration agreements.⁵

A number of companies have ceased, or never required, employees to arbitrate discrimination claims. This includes Adobe, AirBnb, Google, IBM Intel, Microsoft, Salesforce and Uber, which have relaxed or do not use these policies, as well as Google, whose use of arbitration was identified as a key aspect of a “culture of concealment” in its \$310 million misconduct settlement.⁶

Tesla’s valuable brand would be harmed by an association with racist, sexist, or other discriminatory behaviors. Its future success also relies on its ability to innovate, and to implement those innovations effectively. For investors to have confidence that it will be able to do this well, Tesla must also have confidence that the company has effective human capital management systems.

⁵ <https://www.jdsupra.com/legalnews/california-s-mandatory-arbitration-ban-5885483/#:~:text=On%20September%2015%2C%202021%2C%20in,States%20of%20America%2C%20et%20a>

⁶ <https://www.law.com/therecorder/2020/09/25/google-ends-mandatory-arbitration-in-310m-sexual-harassment-settlement/>