



BE IT RESOLVED: Shareholders of Nordstrom, Inc. (“Nordstrom”) ask the Board to prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination, and other unlawful acts. The report should be prepared at reasonable cost and omit confidential information.

SUPPORTING STATEMENT: Concealment clauses are defined as any employment or post-employment agreement, such as arbitration, non-disclosure, or non-disparagement agreements that Nordstrom asks employees or contractors to sign to limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination.

WHEREAS: Nordstrom appropriately uses concealment clauses in employment agreements to protect confidential corporate information. However, Nordstrom’s employment-related agreements may prohibit workers from speaking publicly about harassment, discrimination, or other unlawful acts, which may contribute to a toxic workplace.

It is not known to what extent Nordstrom uses non-disclosure or non-disparagement agreements. Nordstrom’s Dispute Resolution Program requires prospective and existing employees to agree to mandatory, binding arbitration; give up their rights to a judge or jury trial; and limits their ability to conduct discovery and participate in class actions. This explicitly includes claims related to working conditions, discrimination, harassment, and retaliation.¹

Nordstrom has faced few public allegations of harassment and discrimination. With mandatory arbitration and possibly other concealment clauses in use, investors cannot know if this is a result of Nordstrom’s strong human capital management or a result of its use of manipulative legal tactics.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders that is 60 percent higher than those in the median and 200 percent higher than organizations rated in the bottom quartile for healthy workplace culture.² A study by the *Wall Street Journal* found that over a five-year period, the 20 most diverse companies in the S&P 500 had

¹https://careers.nordstrom.com/pdfs/Nordstrom_Dispute_Resolution_Program.pdf

²<https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>



an average annual stock return almost six percentage points higher than the 20 least diverse companies.³

In contrast, a workplace that tolerates harassment invites legal, brand, financial, and human capital risk. Companies may experience reduced morale, lost productivity, absenteeism, and challenges in attracting and retaining talent.⁴ Companies such as Alphabet,⁵ Apple,⁶ Microsoft,⁷ and Salesforce,⁸ among others, have ended their use of concealment clauses.

Nordstrom operates under a quickly changing patchwork of state and federal laws related to use of concealment clauses and will likely benefit from a consistent practice across all employees and contractors, no matter the law of a particular jurisdiction. As of November 2022, “The Speak Out Act,” which limits non-disclosure agreements when sexual harassment is claimed, is expected to be signed into federal law by the President.⁹ It joins existing federal legislation which ended the use of forced arbitration in workplace sexual assault and harassment cases.¹⁰ California, Maine, New York, Washington, and other states have also reduced employers’ abilities to use concealment clauses.

³ <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>

⁴ https://conference.iza.org/conference_files/LaborMarkets_2021/sockin_j28322.pdf

⁵ https://www.sec.gov/Archives/edgar/data/1652044/000130817922000262/lgoog2022_def14a.htm

⁶ <https://www.sec.gov/Archives/edgar/data/320193/000119312522003583/d222670ddef14a.htm>

⁷ <https://www.reuters.com/legal/litigation/microsoft-says-it-will-not-enforce-non-compete-clauses-us-employee-agreements-2022-06-08/>

⁸ <https://finance.yahoo.com/news/salesforce-let-workers-break-ndas-164604675.html>

⁹ <https://www.forbes.com/sites/kimelsesser/2022/11/16/congress-passes-law-restoring-victims-voices-banning-ndas-in-sexual-harassment-cases/>

¹⁰ <https://www.washingtonpost.com/politics/2022/03/03/biden-signs-new-law-ending-forced-arbitration-sex-assault-harassment/>