



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

January 19, 2022

Lillian Brown  
Wilmer Cutler Pickering Hale & Dorr LLP

Re: The Walt Disney Company (the "Company")  
Incoming letter dated October 26, 2021

Dear Ms. Brown:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Anne B. Butterfield for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company report on both median and adjusted pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent.

We are unable to concur in your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal does not deal with the Company's litigation strategy or the conduct of litigation to which the Company is a party.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Natasha Lamb  
Arjuna Capital

Lillian Brown

+1 202 663 6743 (t)

+1 202 663 6363 (f)

lillian.brown@wilmerhale.com

October 26, 2021

**Via E-mail to shareholderproposals@sec.gov**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, NE  
Washington, DC 20549

**Re: The Walt Disney Company  
Exclusion of Shareholder Proposal by Anne B. Butterfield**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to inform you of the Company’s intention to exclude from its proxy statement and proxy to be filed and distributed in connection with its 2022 annual meeting of shareholders (the “Proxy Materials”) the enclosed shareholder proposal and supporting statement (collectively, the “Proposal”) submitted by Arjuna Capital on behalf of Anne B. Butterfield (the “Proponent”) requesting that the Company prepare a report identifying whether there exists a gender and /or racial pay gap among its employees.

The Company respectfully requests that the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) advise the Company that it will not recommend any enforcement action to the Commission if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on the basis that the Proposal relates to the Company’s ordinary business operations.

Pursuant to Exchange Act Rule 14a-8(j) and Staff Legal Bulletin No. 14D (November 7, 2008) (“SLB 14D”), the Company is submitting electronically to the Commission this letter, and the Proposal and related correspondence (attached as Exhibit A to this letter), and is concurrently sending a copy to the Proponent, no later than eighty calendar days before the Company intends to file its definitive Proxy Materials with the Commission.

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## Background

On September 17, 2021, the Company received the Proposal from the Proponent, which states in relevant part as follows:

### Pay Equity

**Whereas:** Pay inequities persist across race and gender and pose substantial risk to companies and society at large. Black workers' hourly median earnings currently represent 64 percent of white wages. The median income for women working full time is 83 percent that of men. Intersecting race, Black women make 63 cents, Native women 60 cents, and Latina women 55 cents. At the current rate, women will not reach pay equity until 2059, Black women until 2130, and Latina women until 2224.

Citigroup estimates closing minority and gender wage gaps 20 years ago could have generated 12 trillion dollars in additional income. PwC estimates closing the gender pay gap could boost Organization for Economic Cooperation and Development (OECD) countries' economies by 2 trillion dollars annually.

Actively managing pay equity is associated with improved representation and diversity is linked to superior stock performance and return on equity. Black employees represent 8 percent of Disney's workforce, but only 5 percent of executive leadership. Women account for 51 percent of Disney's workforce and 42 percent of executive leadership.

Pay gaps are *literally* defined as the *median* pay of minorities and women compared to the median pay of non-minorities and men. Median gaps are considered *the* valid way of measuring gender pay inequity by the United States Census Bureau, Department of Labor, OECD, and International Labor Organization.

Best practice pay equity reporting consists of two parts:

1. *unadjusted* median pay gaps, assessing equal opportunity to high paying roles,
2. statistically *adjusted* gaps, assessing whether minorities and non-minorities, men and women, are paid the same for similar roles.

Disney does not report its unadjusted or adjusted pay gaps. Over 20 percent of the 100 largest employers currently report statistically adjusted gaps. An increasing number of companies also disclose unadjusted median pay gaps, as they more

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fully address the structural bias women and minorities face regarding job opportunity and pay.

The United Kingdom mandates disclosure of median gender pay gaps and is considering race and ethnicity reporting. Disney reported a 12 percent median base pay gap and 25 percent bonus gap for United Kingdom employees.

**Resolved:** Shareholders request Disney report on both *median and adjusted* pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.

Racial/gender pay gaps are defined as the difference between non-minority and minority/male and female *median* earnings expressed as a percentage of non-minority/male earnings (Wikipedia/OECD, respectively).

**Supporting Statement:** An annual report adequate for investors to assess performance could, with board discretion, integrate base, bonus and equity compensation to calculate:

- percentage median and adjusted gender pay gap, globally and/or by country, where appropriate
- percentage median and adjusted racial/minority/ethnicity pay gap, US and/or by country, where appropriate

### **Basis for Exclusion**

***The Proposal may be excluded pursuant to Rule 14a-8(i)(7).***

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal “deals with a matter relating to the company’s ordinary business operations.” The underlying policy of the ordinary business exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” SEC Release No. 34-40018 (May 21, 1998) (the “1998 Release”). As set out in the 1998 Release, there are two “central considerations” underlying the ordinary business exclusion. One consideration is that “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight.” The other consideration is that a proposal should not “seek[] to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be

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in a position to make an informed judgment.” As discussed below, we believe the Proposal implicates the first of these considerations and may be excluded from the Company’s proxy materials as it implicates the Company’s ordinary business operations, including the Company’s litigation strategy and the conduct of ongoing litigation to which it is a party.

***The Proposal may be excluded because it relates to the Company’s litigation strategy and the conduct of litigation that the Company is a party to.***

The Proposal requests that the Company provide a report “on both median and adjusted pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent” and that the report “should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.” In light of current and ongoing Company litigation addressing this topic, we believe the Proposal may be excluded from the Company’s proxy materials pursuant to Rule 14a-8(i)(7) on the basis that the Proposal involves the same subject matter as, and implicates the Company’s litigation strategy and conduct of litigation in, pending lawsuits involving the Company and therefore relates to the Company’s ordinary business operations. Although the Proposal states that the Company’s litigation strategy may be omitted from the report, the Company’s litigation strategy would nevertheless be implicated in such a report due to the Company’s ongoing litigation involving the same subject matter as the Proposal. Additionally, we note that the fact that the Proposal requests a report on the topic does not alter the analysis as to whether the Proposal may be excluded based on Rule 14a-8(i)(7). The Commission has long held that proposals requesting a report are evaluated by the Staff by considering the underlying subject matter of the proposal when applying Rule 14a-8(i)(7). *See* Commission Release No. 34-20091 (August 16, 1983).

The Staff consistently has concurred in exclusion under Rule 14a-8(i)(7) of shareholder proposals when the subject matter of the proposal is the same as or similar to that which is at the heart of litigation in which a company is then involved, including in recent letters addressing the same topic as that at issue in the Proposal – so-called “pay equity”. In *Wal-Mart Stores Inc.* (April 13, 2018), the Staff concurred in exclusion of a proposal requesting a “report on the risks to the Company associated with emerging public policies on the gender pay gap, including associated reputational, competitive, and operational risks, and risks related to recruiting and retaining female talent.” The Staff concurred in exclusion of the proposal under rule 14a-8(i)(7), as relating to the company’s ordinary business operations, based on the company’s representation that the proposal would affect the conduct of ongoing litigation relating to the subject matter of the Proposal to which the company was a party. *See also, Chevron Corp.* (March 30, 2021) (concurring in exclusion, as relating to litigation strategy, of a proposal that requested a report analyzing whether the Company’s “policies, practices and the impacts of its business, perpetuate racial injustice and inflict harm on communities of color” where the

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Company was involved in litigation seeking to hold the Company liable for alleged harmful impacts of climate change on communities of color); *Wal-Mart Stores, Inc.* (April 14, 2015) (concurring in exclusion, as relating to litigation strategy, of a proposal relating to pay equity where the Company was subject to various pending lawsuits and claims alleging gender-based discrimination in pay); *Chevron Corp.* (March 19, 2013) (concurring in exclusion of a proposal as relating to the company's ordinary business operations [i.e., litigation strategy] where the proposal requested that the company review its "legal initiatives against investors"); *Johnson & Johnson* (February 14, 2012) (concurring in exclusion, as relating to litigation strategy, of a proposal where the company was litigating several thousand cases involving claims that individuals had been injured by the company's drug LEVAQUIN®, and the proposal requested that the company report on any "new initiatives instituted by management to address the health and social welfare concerns of people harmed by adverse effects from Levaquin"); *Reynolds American Inc.* (March 7, 2007) (concurring in exclusion, as relating to litigation strategy, of a proposal requesting that the company provide information on the health hazards of secondhand smoke, including legal options available to minors to ensure their environments are smoke free, where the company was currently litigating six separate cases alleging injury as a result of exposure to secondhand smoke and a principal issue concerned the health hazards of secondhand smoke); and *AT&T Inc.* (February 9, 2007) (concurring in exclusion, as relating to ordinary business operations (i.e., litigation strategy), of a proposal requesting that the company issue a report containing specified information regarding the alleged disclosure of customer records to governmental agencies, while the company was a defendant in multiple pending lawsuits alleging unlawful acts by the company in relation to such disclosures).

As was the case in the Wal-Mart pay equity letters, the Proposal at issue in this instance requests that the Company prepare a report addressing the median and adjusted pay gaps across race and gender at the Company – including associated policy, reputational, competitive, and operational risks – and thus seeks information that would require the Company to identify information that could be deemed an admission by the Company and therefore would interfere with the pending litigation. In this regard the Company currently is defending a lawsuit by ten current and former employees of the Company purporting to represent a class alleging female employees were not paid fairly compared to male employees – i.e., asserting there is a gender-based pay gap. On April 2, 2019, plaintiffs Laronda Rasmussen and Karen Moore filed their putative class action, *Rasmussen, Laronda and Karen Moore v. The Walt Disney Company, Walt Disney Pictures, and Hollywood Records, Inc.*, in the Los Angeles County Superior Court, alleging the Company violated their rights under the California Equal Pay Act and Unfair Competition Law by paying women employees less than male employees who perform equal or substantially similar work. Through a series of amendments, plaintiffs added eight additional plaintiffs, several additional defendants, and claims of discrimination and retaliation under the California Fair Employment and Housing Act. Plaintiffs seek to represent all women who have worked for The Walt Disney Company or any of its subsidiaries in California since April 1, 2015, and seek, among other

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things, injunctive relief, back pay, front pay, emotional distress damages, liquidated damages, various penalties and attorney's fees. The parties are engaged in extensive discovery, and the court has not yet set a deadline for plaintiffs to file their motion for class certification. The Company plans to vigorously oppose plaintiffs' certification motion and is committed to defending its interests in what inevitably will be long-running litigation.

One of the principal issues in the lawsuits and claims currently pending against the Company is the various plaintiffs' allegation that the Company has discriminated against women with respect to pay. The Proposal addresses whether there are "pay gaps across race and gender"<sup>1</sup> at the Company. Specifically, and as noted, the Proposal requests a report "on both *median and adjusted* pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent." Therefore, the Proposal would require the Company to issue a report that involves the principal issue being litigated, thereby requiring the Company to provide information, outside the context of pending litigation and the discovery process, with respect to the possible existence of a "pay gaps across race and gender" and risks related thereto at the Company, which would by its very nature interfere with the Company's defense of pending litigation. Indeed, Plaintiffs in the pending litigation or future litigation may argue that the disclosure of any such information should be viewed as an admission by the Company regarding the likelihood and scope of "pay gaps across race and gender" and risks related thereto at the Company. In effect, the Proposal requests that the Company provide current and future claimants with both an admission by the Company regarding the possible existence of a "pay gaps across race and gender" and risks related thereto and a roadmap for establishing claims pursuant to that admission.

In short, implementation of the Proposal would intrude upon Company management's exercise of its day-to-day business judgment with respect to the pending litigation, other normal course litigation or future litigation in the ordinary course of its business operations by requiring the Company to take action that might be contrary to its legal defense in pending litigation. In this regard, the Proposal would substitute the judgment of shareholders for that of the Company. Accordingly, we believe that the Proposal may be properly excluded from the Company's proxy materials under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

***Regardless of whether the Proposal touches upon a significant policy issue, the entire Proposal is excludable because it addresses ordinary business matters.***

The fact that a proposal touches upon a significant policy issue is not alone sufficient to avoid the application of Rule 14a-8(i)(7) when a proposal implicates ordinary business matters. Although the Commission has stated that "proposals relating to such [ordinary business] matters

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<sup>1</sup> The Proposal defines gender and racial pay gaps as the difference expressed as a percentage between the earnings of each demographic group in comparable roles.

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but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable,” the Staff has expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7). *See* 1998 Release. *See also* *Chevron Corp.* (March 30, 2021), *Wal-Mart Inc.* (April 13, 2018) and *Wal-Mart Stores, Inc.* (April 14, 2015), as discussed above.

Accordingly, and for the reasons discussed above, we believe the Proposal may properly be excluded under Rule 14a-8(i)(7).

### **Conclusion**

For the foregoing reasons, and consistent with the Staff’s prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials pursuant to Rule 14a-8(i)(7), on the basis that the Proposal relates to the Company’s ordinary business operations.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and SLB 14D, and copy the undersigned.

Best regards,



Lillian Brown



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Enclosures

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

Natasha Lamb, Managing Partner  
Arjuna Capital

**EXHIBIT A**

Date: 09/15/2021

Natasha Lamb  
Managing Partner  
Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

Dear Ms. Lamb,

I hereby authorize Arjuna Capital to file a shareholder proposal on my behalf for The Walt Disney Company (DIS) 2022 annual shareholder meeting. The specific topic of the proposal is requesting that the company report on median pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent.

As of January 4, 2021, I have continuously held shares of the Company's common stock with a value of at least \$2,000 for at least one year. I have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date hereof, which confers eligibility to submit a proposal under Rule 14a-8(b)(3). I intend to hold the aforementioned shares of stock through the date of the company's annual meeting in 2022.

I support this proposal as racial and gender pay gaps present business risks to the company. I specifically give Arjuna Capital full authority to deal, on my behalf, with any and all aspects of the aforementioned shareholder proposal, and to negotiate a withdrawal of the proposal to the extent the representative views the company's actions as responsive. I understand that my name may appear on the corporation's proxy statement as the filer of the aforementioned proposal.

Sincerely,

*Anne B Butterfield*

Anne B. Butterfield

c/o Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

ARJUNA  CAPITAL  
ENLIGHTENED INVESTING

RECEIVED  
SEP 17 2021  
ALAN BRAVERMAN

September 16, 2021  
*VIA FEDEX OVERNIGHT*

The Walt Disney Company  
500 South Buena Vista Street  
Burbank, California 91521-1030

Dear Mr. Braverman:

Arjuna Capital is an investment firm focused on sustainable and impact investing.

I am hereby authorized to notify you of our intention to file the enclosed shareholder proposal with The Walt Disney Company (DIS) on behalf of our client Anne Butterfield. Arjuna Capital submits this shareholder proposal for inclusion in the 2022 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934 (17 C.F.R. § 240.14a-8).

As of January 4, 2021, Anne Butterfield has continuously held shares of the Company's common stock with a value of at least \$2,000 for at least one year. Anne Butterfield has continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date hereof, which confers eligibility to submit a proposal under Rule 14a-8(b)(3). Verification of this ownership is attached. Our client will remain invested in these positions continuously through the date of the 2022 annual meeting.

Enclosed please find verification of the positions and respective letter from Anne Butterfield authorizing Arjuna Capital to undertake this filing on her behalf. A representative will attend the stockholders' meeting to move the shareholder proposal as required by the SEC rules.

Anne Butterfield and Arjuna Capital are available to meet with the company via teleconference on October 7<sup>th</sup> from 10-10:30am or 10:30-11am PST.

Please direct any written communications to me at the address below or to [natasha@arjuna-capital.com](mailto:natasha@arjuna-capital.com). Please also confirm receipt of this letter via email.

Sincerely,



Natasha Lamb  
Managing Partner  
Arjuna Capital  
1 Elm Street  
Manchester, MA 01944

Enclosures

## Pay Equity

**Whereas:** Pay inequities persist across race and gender and pose substantial risk to companies and society at large. Black workers' hourly median earnings currently represent 64 percent of white wages. The median income for women working full time is 83 percent that of men. Intersecting race, Black women make 63 cents, Native women 60 cents, and Latina women 55 cents. At the current rate, women will not reach pay equity until 2059, Black women until 2130, and Latina women until 2224.

Citigroup estimates closing minority and gender wage gaps 20 years ago could have generated 12 trillion dollars in additional income. PwC estimates closing the gender pay gap could boost Organization for Economic Cooperation and Development (OECD) countries' economies by 2 trillion dollars annually.

Actively managing pay equity is associated with improved representation and diversity is linked to superior stock performance and return on equity. Black employees represent 8 percent of Disney's workforce, but only 5 percent of executive leadership. Women account for 51 percent of Disney's workforce and 42 percent of executive leadership.

Pay gaps are *literally* defined as the *median* pay of minorities and women compared to the median pay of non-minorities and men. Median gaps are considered *the* valid way of measuring gender pay inequity by the United States Census Bureau, Department of Labor, OECD, and International Labor Organization.

Best practice pay equity reporting consists of two parts:

1. *unadjusted* median pay gaps, assessing equal opportunity to high paying roles,
2. statistically *adjusted* gaps, assessing whether minorities and non-minorities, men and women, are paid the same for similar roles.

Disney does not report its unadjusted or adjusted pay gaps. Over 20 percent of the 100 largest employers currently report statistically adjusted gaps. An increasing number of companies also disclose unadjusted median pay gaps, as they more fully address the structural bias women and minorities face regarding job opportunity and pay.

The United Kingdom mandates disclosure of median gender pay gaps and is considering race and ethnicity reporting. Disney reported a 12 percent median base pay gap and 25 percent bonus gap for United Kingdom employees.

**Resolved:** Shareholders request Disney report on both *median and adjusted* pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.

Racial/gender pay gaps are defined as the difference between non-minority and minority/male and female *median* earnings expressed as a percentage of non-minority/male earnings (Wikipedia/OECD, respectively).

**Supporting Statement:** An annual report adequate for investors to assess performance could, with board discretion, integrate base, bonus and equity compensation to calculate:

- percentage median and adjusted gender pay gap, globally and/or by country, where appropriate
- percentage median and adjusted racial/minority/ethnicity pay gap, US and/or by country, where appropriate

*charles* SCHWAB

September 16, 2021

To WHOM IT MAY CONCERN:

Re: ANNE BARTOL BUTTERFIELD

Account # [REDACTED] PII

I write concerning a shareholder proposal (the "Proposal") submitted to The Walt Disney Company by Anne Butterfield. This letter is to confirm that Charles Schwab & Co. is the record holder for the beneficial owner of the account above (# [REDACTED] PII ) which Arjuna Capital manages and which holds 32 shares of common stock in The Walt Disney Company (DIS).

As of January 4, 2021, Anne Butterfield had continuously held shares of the Company's common stock with a value of at least \$2,000 for at least one year. Anne Butterfield has continuously maintained a minimum investment of at least \$2,000 of such securities (the "Shares") from January 4, 2021 through September 16, 2021.

Sincerely,

*John Bergeron*

John Bergeron

Team Manager | Advisor Services

Case ID # **AM-11000026**

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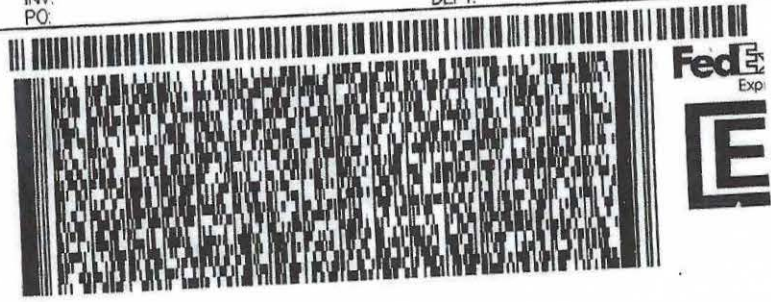
Align top of FedEx Express

ORIGIN ID:MXGA (978) 704-0112  
NATASHA LAMB  
ARJUNA CAPITAL  
1 ELM STREET  
MANCHESTER-BY-THE SE, MA 01944  
UNITED STATES US

SHIP DATE: 16SEP21  
ACTWGT: 0.50 LB  
CAD: 104660149/NET4400  
BILL SENDER

TO ALAN BRAVERMAN, CORPORATE SECRETARY  
THE WALT DISNEY COMPANY  
500 SOUTH BUENA VISTA STREET

BURBANK CA 91521  
(800) 690-6903 REF:  
INV: DEPT:  
PO:



56DJB169AFE4A



283755643810

To: Braverman, Alan N  
Bldg: STUDIO LOT - TEAM DIS  
Room 606  
MailCode 1030  
Phone 818  
SL06  
Facility Services and Support

FRI - 17 SEP 10:30  
PRIORITY OVERNIGHT

TRK# 2837 5564 3810  
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# SANFORD J. LEWIS, ATTORNEY

PO Box 231  
Amherst, MA 01004-0231  
413 549-7333  
sanfordlewis@strategiccounsel.net

November 23, 2021  
Via electronic mail

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Shareholder Proposal to The Walt Disney Company Regarding Racial and Gender Pay Equity on Behalf of Anne B. Butterfield, Represented by Arjuna Capital

Ladies and Gentlemen:

Anne B. Butterfield (the “Proponent”) is the beneficial owner of common stock of The Walt Disney Company (the “Company”). Arjuna Capital has submitted a shareholder proposal (the “Proposal”) on her behalf to the Company. I have been asked by the Proponent to respond to the letter dated October 26, 2021 (“Company Letter”) sent to the Securities and Exchange Commission by Attorney Lillian Brown. In that letter, the Company contends that the Proposal may be excluded from the Company’s 2022 proxy statement. A copy of this letter is being emailed concurrently to Attorney Brown.

## SUMMARY

The Proposal in its resolved clause requests that the Company report on both *median and adjusted* pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information. The supporting statement clarifies that an annual report adequate for investors to assess performance could, with board discretion, integrate base, bonus and equity compensation to calculate both the percentage median and adjusted gender pay gap, globally and/or by country, where appropriate, and percentage median and adjusted racial/minority/ethnicity pay gap, US and/or by country, where appropriate. The full proposal is included in Appendix A to this letter.

The Company Letter asserts that the Proposal is excludible under Rule 14a-8(i)(7) due to pending California litigation regarding the gender pay equity of its California employees. However, the Proposal addresses both racial and gender pay equity for the entirety of the company’s workforce, which substantially exceeds its California employees. The Proponent estimates that disclosures related to the gender pay equity of the Company’s California workforce relates to approximately 20% of the disclosures requested by the Proposal. Issues of



racial pay equity in California, and racial and gender equity in its worldwide workforce are not at issue in the California litigation.

The Company has treated gender pay equity information for its California workforce as proprietary, including requiring employees to sign nondisclosure agreements. The advisory Proposal provides sufficient flexibility for the Company to withhold the data regarding gender pay equity for its California workforce, because it allows the Company to omit proprietary, litigation strategy and legal compliance information and to disclose the data “where appropriate.”

Since the request of the Proposal can be substantially fulfilled by the Company without undercutting the Company’s position in the California litigation, exclusion under Rule 14a-8(i)(7) is not appropriate.

### **1. The Proposal is not excludable under Rule 14a-8(i)(7).**

The Company Letter asserts that the Proposal is excludable because the Company is being sued in California in a lawsuit alleging gender discrimination against California employees.

As referenced in the Company Letter, the Staff has sometimes been asked by companies to allow the exclusion of proposals where the fulfillment of the proposal’s request might involve a statement or admission by the company that could prove useful to plaintiffs in current litigation. This category of potential exclusions could easily encompass **all** shareholder proposals that address significant societal issues. Inevitably, in most instances in which companies are faced with significant social policy issues, the controversies are also raised in the courts. If the Staff were to allow exclusion of resolutions because they might lead to some kind of statement that might be useful in ongoing litigation, this would have the effect of giving companies a pass on proposals on the most critical issues facing their businesses. As importantly, it would deprive investors of access to the shareholder proposal process for attention to the most significant issues facing their companies.

Accordingly, the Staff rulings on shareholder resolutions that might involve some form of “admission” have been narrowly circumscribed to apply only where the resolutions cross the line into requiring the company to do something that is pointedly inconsistent with defense of litigation, including reporting undisclosed information that is at the heart or crux of the litigation, such as admitting to liability or fault. In contrast, where acting on a proposal on significant policy issues of legitimate concern to investors, even if the proposal may potentially make some non-core admission or information available for plaintiffs, the Staff routinely rejects exclusion. The instances in which exclusions have been allowed involved proposals requiring a company to make an admission or concession of a *core contested fact in litigation* - for example, taking responsibility for a harm that the company has not already agreed exists.

Where there is a claim that a proposal could lead to some disclosures that could be interpreted as admissions usable in a pending lawsuit, the existence of an overriding significant policy issue

can prevent exclusion. In *JPMorgan Chase & Co.* (March 14, 2011) the company requested permission to exclude a shareholder proposal requesting that the board oversee the development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to loans owned by the company and those serviced for others, and report policies and results to shareholders. Although the company urged exclusion under Rule 14a-8(i)(7) due to the potential for the requested actions to be interpreted as admissions, the proposal was not deemed excludable because the proposal went to core issues in the overwhelming social policy issue posed by the housing crisis and its relationship to mortgage lending practices.

In the present instance, the Proposal speaks to the recognized significant policy issue of racial and gender pay equity. For the Proposal to be excludible there would need to be overwhelming evidence that the fulfillment of the request could not be done without substantially compromising the Company's position in the litigation. That is not the case here. In fact, as will be shown below, the Proposal gives the Company sufficient flexibility to protect its position in the litigation while responding to most of the disclosure request.

The Company Letter cites the precedents at *Wal-Mart Stores, Inc.* (April 14, 2015) and (April 13, 2018). The proposals in those precedents urged the board to address *gender-based pay inequity* at the company in the United States. The company in those instances had provided evidence that the disclosures sought by the proposals **would constitute an admission in the regional lawsuits filed in a series of "regional" class actions.** The individual plaintiffs in those putative class actions continued to allege *Company-wide gender-based pay disparities*, which the company denied existed. Thus, the Staff found the proposals' requests for disclosures effectively involved a request for admissions in the litigation and allowed exclusion under Rule 14a-8(i)(7).

The Company Letter notes:

As was the case in the Wal-Mart pay equity letters, the Proposal at issue in this instance requests that the Company prepare a report addressing the median and adjusted pay gaps across race and gender at the Company – including associated policy, reputational, competitive, and operational risks – and thus seeks information that would require the Company to identify information that could be deemed an admission by the Company and therefore would interfere with the pending litigation. In this regard the Company currently is defending a lawsuit by ten current and former employees of the Company purporting to represent a class alleging female employees were not paid fairly compared to male employees – i.e., asserting there is a gender-based pay gap. On April 2, 2019, plaintiffs Laronda Rasmussen and Karen Moore filed their putative class action, *Rasmussen, Laronda and Karen Moore v. The Walt Disney Company, Walt Disney Pictures, and Hollywood Records, Inc.*, in the Los Angeles County Superior Court, alleging the Company violated their rights under the California Equal Pay Act and Unfair Competition Law by paying women employees less than male employees who perform equal or

substantially similar work. Through a series of amendments, plaintiffs added eight additional plaintiffs, several additional defendants, and claims of discrimination and retaliation under the California Fair Employment and Housing Act. Plaintiffs seek to represent all women who have worked for The Walt Disney Company or any of its subsidiaries in California since April 1, 2015, and seek, among other things, injunctive relief, back pay, front pay, emotional distress damages, liquidated damages, various penalties and attorney's fees. The parties are engaged in extensive discovery, and the court has not yet set a deadline for plaintiffs to file their motion for class certification. The Company plans to vigorously oppose plaintiffs' certification motion and is committed to defending its interests in what inevitably will be long-running litigation.

Thus, even by the Company's own characterization of the California litigation, the present matter is distinct from the Walmart litigation since the California litigation only relates to a portion of the Company's workforce (an estimated 18% who are female employees in California) and only a fraction of the disclosures sought by the proposal. This makes the current proposal distinct from and not controlled by the Walmart example.

### **Estimating global workforce demographics**

Although the Company has not provided readily usable disclosure on its employees by region, the Proponent, extrapolating from public data, was able to estimate that California employees constitute no more than 37% of global employees covered by the Proposal. And if 51% of global employees are women, we could extrapolate that female employees in California make up only 18% of global employees, or somewhere between 15-20% of global employees. We estimate, based on publicly available disclosures and sources, that of the 203,000 global employees<sup>1</sup>, only 70% (or 142,000) are US-based.<sup>2</sup> By then subtracting the 59,000 Disney World park employees in Florida<sup>3</sup>, the 3,800 US Disney Cruise Line's employees<sup>4</sup>, and the 4,000 New York-based employees<sup>5</sup>, only about 37% of the remaining US employees could be California-based. Half of these, the likely proportion of women, would constitute about 18% of the Company's workforce.

When these demographics are overlaid against the requests of the Proposal, it is apparent that the majority of the workforce is not involved in the gender pay equity litigation in California. Also, the racial pay equity information of its entire workforce is not at issue, even in the litigation in California. And thirdly, as shown in the graphic, below, most of the disclosures requested do not constitute an "admission" for purposes of the California litigation.

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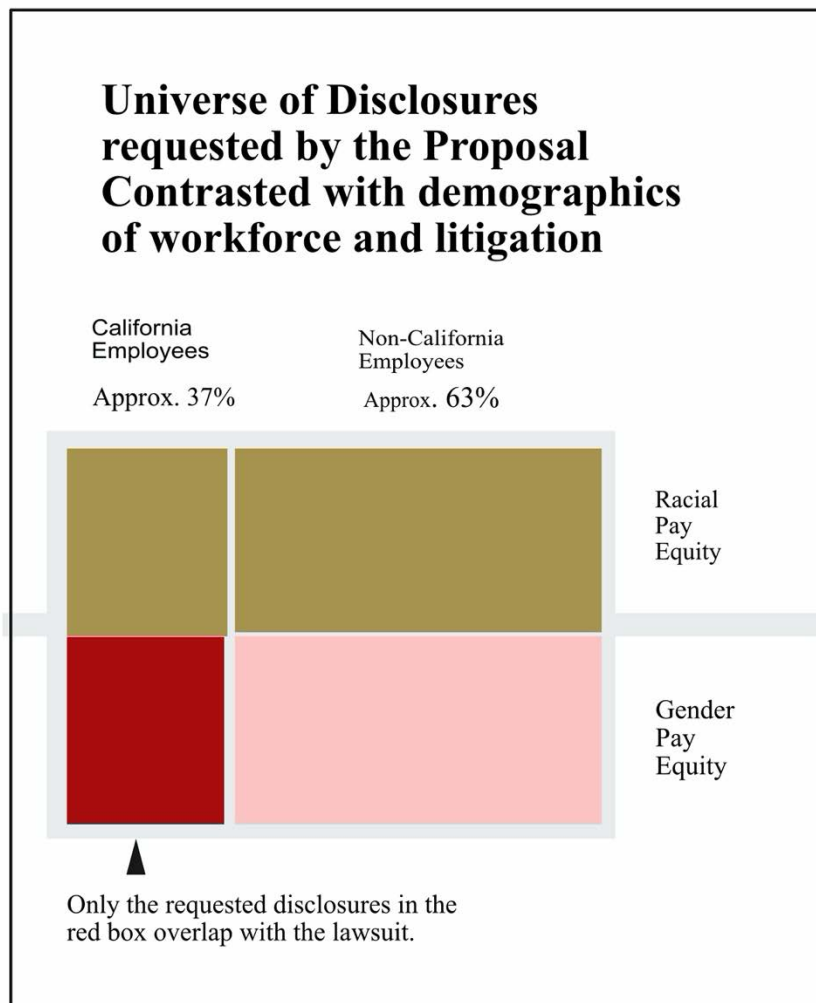
<sup>1</sup> [2020 Annual Report \(thewaltdisneycompany.com\)](https://www.waltdisneycompany.com/2020-annual-report)

<sup>2</sup> [DiversityDashboard-v7 \(thewaltdisneycompany.com\)](https://www.waltdisneycompany.com/diversity)

<sup>3</sup> [Ex-Disney World Employees on the Pain of Losing a Dream Job \(insider.com\)](https://www.insider.com/ex-disney-world-employees-on-the-pain-of-losing-a-dream-job)

<sup>4</sup> [Disney Cruise Ships by Size \[2020\] with Comparison Chart \(gangwaze.com\)](https://www.gangwaze.com/disney-cruise-ships-by-size-2020-comparison-chart)

<sup>5</sup> [First look at Disney's SOM-designed Hudson Square HQ - Curbed NY](https://www.curbed.com/2019/12/11/disney-hudson-square-hq)



The Proposal is an advisory proposal with adequate exceptions to allow withholding admissions in the California litigation.

The Proposal in its resolved clause states that the requested report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information. Notably, according to information in the California litigation, the Company in California treats employee wages as a proprietary matter.

As an advisory proposal, the board and management retain full flexibility in implementation of

the Proposal to withhold disclosure of information that would constitute an admission regarding the litigation and the alleged gender pay gaps for its California employees. In addition, the supporting statement of the Proposal provides additional flexibility in noting that the annual report sought by the Proposal would be prepared with board discretion and would include geographic breakdowns of racial and gender pay equity “where appropriate”.

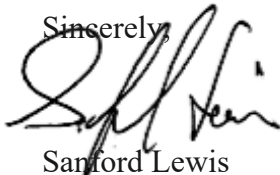
Thus, the Proponent asserts that the current Proposal is unlike those in other precedents including Walmart, where the proposal’s request overlapped in its entirety with the pending litigation. Here, where only a small portion of the requested data overlaps with the litigation, the Company has adequate flexibility to avoid the “admissions” targeted by the no action request.

The Proposal is in striking contrast to Walmart, where the litigation against Walmart was widespread across multiple regions. Nor is it similar to other “admissions” oriented precedents such as *Johnson & Johnson* (Feb. 14, 2012), where the proposal would have required the company to address the “health and social welfare concerns of people *harmed by adverse effects from Levaquin*,” one of the Company’s pharmaceutical products. The company was in litigation about precisely *whether its products caused adverse effects*. See also *General Electric Co.* (Feb. 3, 2016) where the proposal requested a report quantifying the company’s *liabilities associated with the discharge of chemicals into the Hudson River*, while the company was a defendant in multiple pending lawsuits where the entirety of those liabilities were at issue.

## CONCLUSION

Based on the foregoing, we believe it is clear that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2022 proxy statement pursuant to Rule 14a-8. As such, we respectfully request that the Staff inform the Company that it is denying the no action letter request. If you have any questions, please contact me at 413 549-7333 or [sanfordlewis@strategiccounsel.net](mailto:sanfordlewis@strategiccounsel.net).

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written over the word "Sincerely,".

Sanford Lewis

## APPENDIX A – Proposal

### Pay Equity

**Whereas:** Pay inequities persist across race and gender and pose substantial risk to companies and society at large. Black workers' hourly median earnings currently represent 64 percent of white wages. The median income for women working full time is 83 percent that of men. Intersecting race, Black women make 63 cents, Native women 60 cents, and Latina women 55 cents. At the current rate, women will not reach pay equity until 2059, Black women until 2130, and Latina women until 2224.

Citigroup estimates closing minority and gender wage gaps 20 years ago could have generated 12 trillion dollars in additional income. PwC estimates closing the gender pay gap could boost Organization for Economic Cooperation and Development (OECD) countries' economies by 2 trillion dollars annually.

Actively managing pay equity is associated with improved representation and diversity is linked to superior stock performance and return on equity. Black employees represent 8 percent of Disney's workforce, but only 5 percent of executive leadership. Women account for 51 percent of Disney's workforce and 42 percent of executive leadership.

Pay gaps are *literally* defined as the *median* pay of minorities and women compared to the median pay of non-minorities and men. Median gaps are considered *the* valid way of measuring gender pay inequity by the United States Census Bureau, Department of Labor, OECD, and International Labor Organization.

Best practice pay equity reporting consists of two parts:

1. *unadjusted* median pay gaps, assessing equal opportunity to high paying roles,
2. statistically *adjusted* gaps, assessing whether minorities and non-minorities, men and women, are paid the same for similar roles.

Disney does not report its unadjusted or adjusted pay gaps. Over 20 percent of the 100 largest employers currently report statistically adjusted gaps. An increasing number of companies also disclose unadjusted median pay gaps, as they more fully address the structural bias women and minorities face regarding job opportunity and pay.

The United Kingdom mandates disclosure of median gender pay gaps and is considering race and ethnicity reporting. Disney reported a 12 percent median base pay gap and 25 percent bonus gap for United Kingdom employees.

**Resolved:** Shareholders request Disney report on both *median and adjusted* pay gaps across race and gender, including associated policy, reputational, competitive, and operational risks, and risks related to recruiting and retaining diverse talent. The report should be prepared at reasonable cost, omitting proprietary information, litigation strategy and legal compliance information.

Racial/gender pay gaps are defined as the difference between non-minority and minority/male and female *median* earnings expressed as a percentage of non-minority/male earnings (Wikipedia/OECD, respectively).

**Supporting Statement:** An annual report adequate for investors to assess performance could, with board discretion, integrate base, bonus and equity compensation to calculate:

- percentage median and adjusted gender pay gap, globally and/or by country, where appropriate
- percentage median and adjusted racial/minority/ethnicity pay gap, US and/or by country, where appropriate

Lillian Brown

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+1 202 663 6363 (f)

lillian.brown@wilmerhale.com

December 24, 2021

**Via E-mail to shareholderproposals@sec.gov**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, NE  
Washington, DC 20549

Re: **The Walt Disney Company**  
**Exclusion of Shareholder Proposal by Anne B. Butterfield**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to respond to correspondence from Sandford J. Lewis on behalf of Anne B. Butterfield (the “Proponent”) dated November 23, 2021 (the “Reply Letter”), in response to the Company’s October 26, 2021 correspondence (the “No-Action Request”). Please note that while we acknowledge the Staff’s (as defined in the No-Action Request) new interpretive positions set forth in Staff Legal Bulletin No. 14L (“SLB 14L”), which was published on November 3, 2021, we do not believe that SLB 14L is applicable to this particular Proposal (as defined in the No-Action Request) or related legal analysis and therefore have not addressed it here. The Company continues to believe, both for the reasons set forth below and the reasons provided in the No-Action Request, that the Proposal may be excluded from the Company’s Proxy Materials (as defined in the No-Action Request).

***The Proposal may be excluded pursuant to Rule 14a-8(i)(7) because it deals with a matter relating to the Company’s ordinary business operations – the Company’s litigation strategy and the conduct of ongoing litigation to which the Company is a party.***

As recognized in the Company’s No-Action Request and the Proponent’s Reply Letter, the Staff has consistently concurred in exclusion under Rule 14a-8(i)(7) of shareholder proposals implicating or relating to a company’s litigation strategy and the conduct of ongoing litigation to which the company is a party. The Company is currently engaged in litigation alleging that men at the Company are paid more than women for the same or substantially similar work. The Proponent’s Reply Letter incorrectly asserts that the information requested by the Proposal would not require the Company to disclose information that Plaintiffs in this current litigation



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may argue constitutes an admission or concession of an important contested fact (namely, whether a pay differential between men and women exists). In fact, the Proponent's Reply Letter acknowledges that a portion of the disclosures requested by the Proposal apply to the putative class, and further provides a chart demonstrating that the requested disclosures overlap with the putative class in the pending litigation. The Proponent further states that "most of the disclosures requested do not constitute an 'admission' for purposes of the California litigation." Through this statement, however, the Proponent concedes that the requested information does indeed require the Company to publicly disclose information that Plaintiffs may argue constitutes an admission for purposes of the pending litigation.

The Proponent's Reply Letter seeks to ignore this issue by asserting that the Proposal provides the Company with "sufficient flexibility" to respond to "most of the disclosure request." The Proponent suggests that the Proposal would allow the Company to omit certain "overlapping" information that may relate to the putative class in the pending litigation (presumably information related to California employees). However, even if the Company were to omit the information the Proponent identified as overlapping, the Proponent incorrectly assumes that Plaintiffs will not attempt to use the information identified as non-overlapping as an admission by the Company in the pending litigation. Just as the Proponent used global workforce demographics in the Reply Letter to extrapolate information about female employees in California, the Plaintiffs in the pending litigation may seek to argue that global racial and gender pay equity information provided by the Company can be extrapolated or assumed to apply to the putative class members in California for purposes of the litigation. Therefore, disclosing the information that the Proponent identified as non-overlapping would be making information available to Plaintiffs that they may argue constitutes an important contested fact in the litigation. Moreover, Plaintiffs' complaint in the ongoing litigation argues "Disney's compensation policies, practices, and procedures are consistent company-wide," making it more likely that Plaintiffs will attempt to extrapolate broad data to the putative class members in the litigation.

The Proponent makes several references in the Reply Letter to various principles and distinctions that purportedly guide the Staff's analysis of litigation-related ordinary business arguments that would support an argument that the Proposal may not be excluded, but without providing citations to any precedent to support such references and assertions. Additionally, the Proponent incorrectly interprets the precedent that is cited in the Reply Letter. First, the Proponent argues that the Proposal is "distinct from and not controlled by the Walmart example" because the pending litigation "only relates to a portion of the Company's workforce . . . and only a fraction of the disclosure sought by the [P]roposal." The Proposal at issue in this instance requests that the Company prepare a report addressing whether any median and/or adjusted pay differentials exist at the Company, which report would also include "associated policy, reputational, competitive, and operational risks." Thus, and as was the case in *Walmart Inc.* (April 13, 2018) and *Wal-Mart Stores, Inc.* (April 14, 2015), the Proposal seeks information that would require

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the Company to identify information that Plaintiffs could argue constitutes an admission by the Company and therefore would interfere with the pending litigation. The fact that the Proposal here seeks information about whether pay differentials exist across both gender and race while the Wal-Mart letters addressed gender alone does not render the precedent inapplicable. Also, as discussed above, the exact extent to which the Proponent estimates that the requested data overlaps with the putative class in the litigation is irrelevant given that all of the requested data would interfere with the Company's pending litigation, for the reasons set forth above.

The Proponent further argues that the Proposal is not "similar to other 'admissions' oriented precedents" and cites *Johnson & Johnson* (February 14, 2012) and *General Electric Co.* (February 3, 2016) for support. The Proponent seeks to distinguish *Johnson & Johnson* and *General Electric Co.* from the Proposal by arguing that the subject of the proposals in those instances would require each company to address the subject matter of litigation those companies were involved in and that the Proposal does not because it only relates to a "portion" of the litigation. However, as discussed in the No-Action Request and above, the Proposal involves the same subject matter of the pending litigation and would require the Company to provide disclosures regarding alleged gender and race pay differentials, which information has not previously been disclosed. Thus, the Proposal would require the Company to publish information that overlaps with the subject matter of the pending litigation and would implicate the Company's litigation strategy.

Finally, the Proponent cites *JP Morgan Chase & Co.* (March 14, 2011), in which the shareholder proposal requested that the board oversee development and enforcement of policies to ensure that the same loan modification methods for similar loan types are applied uniformly to loans owned by the company and those serviced for others, and report policies and results to shareholders. The Proponent argues, based on *JP Morgan Chase & Co.*, that the existence of an overriding significant policy issue can prevent exclusion if "the proposal may potentially make some non-core admission or information available for plaintiffs." We believe this is a misinterpretation of the Staff's approach and, further, as described above, disclosure of any of the requested information would impact the Company's litigation strategy and posture regardless.

While a proposal may not be excluded under Rule 14a-8(i)(7) if it is determined to focus on a significant policy issue that transcends ordinary business, the Staff has found that proposals addressing a company's litigation strategy are "inherently the ordinary business of management to direct" and are thus excludable under Rule 14a-8(i)(7) regardless of whether or not they also address a significant policy issue. See *Philip Morris Companies Inc.* (February 4, 1997). The Staff has expressed the view that proposals relating to both ordinary business matters and significant social policy issues may be excluded in their entirety in reliance on Rule 14a-8(i)(7). See *1998 Release* (as defined in the No-Action Request). See also *Chevron Corp.* (March 30,

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2021), *Walmart Inc.* (April 13, 2018) and *Wal-Mart Stores, Inc.* (April 14, 2015). In this instance, the Proposal would require disclosure of information that Plaintiffs could argue constitutes an important contested fact in the Company's pending litigation and would implicate the Company's litigation strategy and decisions involving its litigation strategy, which are ordinary business matters. Therefore, whether the Proposal also implicates any significant policy issues is irrelevant to determining whether the Proposal may be excluded under Rule 14a-8(i)(7).

For these reasons, and notwithstanding the assertions made in the Proponent's Reply Letter, the Proposal may be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7) on the basis that the Proposal relates to the Company's ordinary business operations.

### ***Conclusion***

For the foregoing reasons and the reasons set out in the No-Action Request, and consistent with the Staff's prior no-action letters, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials.

If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008), and copy the undersigned.

Best regards,



Lillian Brown

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

Natasha Lamb, Managing Partner  
Arjuna Capital

# SANFORD J. LEWIS, ATTORNEY

PO Box 231  
Amherst, MA 01004-0231  
413 549-7333

January 3<sup>rd</sup>, 2022  
Via electronic mail

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Supplemental response to No Action Request regarding Shareholder Proposal to The Walt Disney Company on Racial and Gender Pay Equity on Behalf of Anne B. Butterfield, Represented by Arjuna Capital

Ladies and Gentlemen:

I am writing in response to the December 24, 2021 supplemental letter (“Supplemental Letter”) of The Walt Disney Company (the “Company”) to the Shareholder Proposal of Anne B. Butterfield. A copy of this letter is being emailed concurrently to Attorney Lillian Brown.

In the Supplemental Letter, Attorney Brown does not contest the idea that the Proposal gives the Company flexibility to omit California gender-related data in producing disclosures in response to the Proposal, and does not assert that the racial pay gap data (50% of the disclosures requested by the Proposal) would constitute an admission in the litigation. Instead, Attorney Brown focuses on the idea that some of the remaining gender wage gap disclosures requested by the Proposal for other geographic areas would constitute admissions that could potentially be useful to the plaintiffs as evidence in the California litigation.

The Proponent believes that it is a tenuous argument that disclosures of gender pay equity data outside of California might be effectively used by the plaintiffs to win their case. It seems improbable that this disclosure would advance the plaintiffs’ case as there are too many factors at play in distinguishing demographics, segments, culture, etc. in the Company’s operations outside of California to find such disclosures decisive in the California litigation. Yet, under the Proposal’s terms requesting “appropriate” disclosures, one could foresee the Company withholding such gender wage equity data (but not racial wage gap data) if it were concluded by its litigation counsel that no matter how such data is presented, it would constitute an admission in the litigation.

In contrast to excludable proposals that would necessitate admissions that go to the core of a company’s litigation defense, the potential disclosure of company-wide gender and racial wage gap data are outlying data that do not go to the crux of the litigation. The Company’s arguments that this tangential information *might provide an argument in the litigation* would expand the scope of the Staff’s litigation exclusion to effectively exempt many, if not most, proposals that address social issues, since most such issues eventually end up in the courts in some form or other. That is why the litigation “admissions” exclusion is necessarily circumscribed, and not applicable to disclosures that could theoretically be presented in evidence by plaintiffs but that

do not go to the crux of the case. To allow exclusion in this instance would effectively allow the litigation exception to negate the availability of shareholder proposals to address significant concerns of investors that remain of concern despite the existence of litigation.

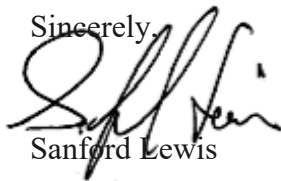
Prior Staff decisions drew a bright line against exclusion of proposals that might theoretically be used as evidence in pending litigation versus proposals that went to the crux of the litigation. For instance, in the *Dow Chemical Bhopal* example, the requested disclosures from the company to report on any proactive measures that it is taking to support the survivors of the Bhopal chemical disaster could have been used in the pending litigation. But the Staff did not allow exclusion of the proposal, because the disclosures would be tangential and not decisive of liability issues in the litigation.

Similarly, in the *J.P. Morgan Chase & Co.* example, the issuer had presented some evidence that the disclosures requested could make their way into the plaintiffs' evidence in litigation, but the tangential nature of the evidence was insufficient to override the clear interest of investors in disclosure of the requested information as a significant social policy issue.

As a policy matter, the mere possibility that the plaintiffs might extrapolate from disclosures requested to provide some tangential evidence in their litigation cannot be a sufficient rationale for finding a proposal excludable. Instead, we believe the appropriate test, as demonstrated by the Staff's decisions, is that the centrality of the related admissions must be considered. Otherwise, the existence of ongoing litigation on social issues such as diversity or environmental externalities would provide a broad shield against investor requests for accountability and disclosure on the same issues.

In these and all other aspects, we stand by our original response to the no action request. We urge the Staff to deny the company's no action request.

Sincerely,

A handwritten signature in black ink, appearing to read "Sanford Lewis", written over the word "Sincerely,".

Sanford Lewis

Lillian Brown

+1 202 663 6743 (t)

+1 202 663 6363 (f)

lillian.brown@wilmerhale.com

January 6, 2022

**Via E-mail to shareholderproposals@sec.gov**

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, NE  
Washington, DC 20549

Re: **The Walt Disney Company**  
**Exclusion of Shareholder Proposal by Anne B. Butterfield**

Ladies and Gentlemen:

We are writing on behalf of our client, The Walt Disney Company (the “Company”), to respond to correspondence from Sandford J. Lewis on behalf of Anne B. Butterfield (the “Proponent”) dated January 3, 2022 (the “Proponent’s Supplemental Reply”), in response to the Company’s December 24, 2021 correspondence (the “Company’s Reply Letter”). The Company continues to believe, both for the reasons set forth below and the reasons provided in the Company’s Reply Letter and the Company’s October 26, 2021 correspondence (the “No-Action Request”), that the Proposal may be excluded from the Company’s Proxy Materials. All terms that are not otherwise defined herein are as defined in the No-Action Request.

The Proponent’s Supplemental Reply asserts that the Company is not “contest[ing]” certain assumptions and unfounded statements in the Proponent’s November 23, 2021 reply letter (the “Proponent’s Original Reply Letter”). The Company’s Reply Letter neither replaces nor restates every argument made in the No-Action Request. Neither does it address each and every unfounded assumption or statement made in the Proponent’s Original Reply Letter. And nor should it. This does not mean the Company accepts such assumptions or statements and it is inappropriate for the Proponent to make this leap. Rather, the Company’s Reply Letter demonstrates that, even were one to accept the Proponent’s unfounded assumptions and statements about the Company’s workforce composition and current litigation strategy and posture, the Proposal still would be appropriately excludable as implicating or relating to the Company’s litigation strategy and conduct of litigation to which the Company is currently party.

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Simply put, the Proposal seeks disclosure of certain “pay gap” information that would not otherwise be provided by the Company. The litigation that the Company is currently engaged in relates to alleged gender “pay gaps.” Thus, disclosure of the requested information relates to the Company’s strategy and conduct of current litigation as contemplated in the Staff’s longstanding approach to proposals in this context.<sup>1</sup> The Proponent attempts to obfuscate this simple fact by making assumptions about what is “core” or goes to “the crux” of the litigation, and seeks to analogize to factually different no-action precedent. Here, and as further set out in the No-Action Request, the Proposal falls within a long line of no-action letters, including the recent letters issued to *Chevron Corp.* (March 30, 2021) and *Walmart Inc.* (April 13, 2018), both of which are substantively analogous to the Proposal.

The Proponent also attempts to further confuse the matter by arguing that if the Staff grants the No-Action Request, it would somehow “expand the scope of the Staff’s litigation exclusion” to any social issue proposal since, in the Proponent’s view, “most” social issues “eventually end up in the courts.” But that is not the situation here – this is not a hypothetical future litigation – the Company is involved in currently ongoing litigation that relates to the subject of the Proposal. As such, granting the No-Action Request would not expand the scope of the litigation exclusion but would, as discussed above, be consistent with previous no-action letters where the Staff concurred in exclusion under Rule 14a-8(i)(7) of shareholder proposals implicating or relating to a company’s litigation strategy and the conduct of ongoing litigation to which the company is a party.

Accordingly, we respectfully reiterate our request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff has any questions with respect to the foregoing, or if for any reason the Staff does not agree that the Company may exclude the Proposal from its Proxy Materials, please do not hesitate to contact me at [lillian.brown@wilmerhale.com](mailto:lillian.brown@wilmerhale.com) or (202) 663-6743. In addition, should the Proponent choose to submit any response or other correspondence to the Commission, we request that the Proponent concurrently submit that response or other correspondence to the Company, as required pursuant

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<sup>1</sup> Nothing in this letter or in the Company’s prior submissions should be viewed as a concession in the pending or any future litigation.

January 6, 2022

Page 3

to Rule 14a-8(k) and Staff Legal Bulletin No. 14D (November 7, 2008), and copy the undersigned.

Best regards,

A handwritten signature in cursive script, appearing to read "Lillian Brown".

Lillian Brown

cc: Jolene Negre, Associate General Counsel and Assistant Secretary  
The Walt Disney Company

Natasha Lamb, Managing Partner  
Arjuna Capital