



July 8, 2022

Mr. Scott Baxter
President, Chief Executive Officer, & Chair of the Board
Kontoor Brands, Inc.
400 N. Elm Street
Greensboro, NC 27401

Dear Mr. Baxter:

We write to you in your capacity as President, Chief Executive Officer, and Chairman of the Board of Kontoor Brands, Inc. (“Company”). The purpose of this letter is to alert you to apparent mismanagement that threatens the waste of Company assets, violations of federal civil rights laws, and breaches of fiduciary duty.

The Company describes its Wrangler and Lee brands as “steeped in rich heritage and authenticity, with 75 years and 133 years of history, respectively.” It acknowledges that shareholder value substantially depends on “our brands’ images and our customers’ connection to our brands,” and that “[n]egative claims or publicity regarding us, our brands or our products could adversely affect our reputation and sales.” It further acknowledges that shareholder value “also depends on our ability to recruit, retain and engage our personnel,” and the Company “is subject to comprehensive national, state and local laws and regulations on ... employment ... and other matters [and] could be adversely affected by costs of compliance with or violations of those laws and regulations.” Kontoor Brands, Inc., 2021 Form 10-K at 12, 14, 18 (Mar. 2, 2022), <https://bit.ly/3OPXFor>.

In August 2020, Company management set “measurable goals” in its “first global Inclusion & Diversity strategy,” which included the following objectives:

- “Increase U.S. BIPOC [Black, Indigenous, Peoples of Color] representation from 38% to 50% by 2030.”
- “Increase U.S. Black representation from 11% to 16% by 2030.”
- “Increase U.S. BIPOC representation at Director level and above from 15% to 25% by 2030.”

Kontoor Brands, Inc., 2021 Inclusion & Diversity Progress Report at 3-4 (Sep. 2021), <https://bit.ly/3yMMPdB>. To further motivate employees to reach these objectives, management introduced an “ESG modifier” in the annual cash incentive program for

611 Pennsylvania Ave SE #231
Washington, DC 20003

fiscal 2021 that would modify performance incentive payments by plus 5% if the Company increased the “percentage of Black, indigenous and people of color in U.S. non-retail employee population,” or by minus 2.5% if the Company failed to meet that goal. Kontoor, Inc., Schedule 14A at 32-34 (Mar. 8, 2022), <https://bit.ly/3uw75O2>. Racial, ethnic, and national origin “balancing” in hiring, training, and promotion is patently illegal under Title VII of the Civil Rights Act of 1964. *See* 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that — no matter how well intentioned — policies that seek to impose racial balancing are prohibited. *See, e.g., United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987). Second, “BIPOC” is a term without fixed or intelligible meaning. If the Company is using “BIPOC” as a proxy for all persons who are not White, and it is hiring, training, or promoting such individuals because of this characteristic, then it is necessarily engaging in unlawful racial discrimination.

Management’s public commitment to the advancement of “BIPOC” persons in its U.S. workforce as part of “the success of our *global* Inclusion & Diversity efforts”¹ contrasts the Company’s silence regarding genuine human rights abuses — including forced labor, harsh political oppression including imprisonment and torture, and what are fairly described as the forced internment of an entire ethnic population in concentration camps — by the Chinese Communist Party against ethnic minorities in China. The Coalition to End Forced Labour in the Uyghur Region included Kontoor Brands on its list of companies which it “does not believe are yet taking adequate steps to fully remove Uyghur forced labour from their global supply chains.”² This compliance risk became especially pronounced after the Uyghur Forced Labor Prevention Act took effect on June 21, 2022, which established a rebuttable presumption that the importation of cotton produced or manufactured wholly, or in part, in the Xinjiang Uyghur Autonomous Region, or produced by certain entities implicated in forced labor, is prohibited by Section 307 of the Tariff Act of 1930 and subject to enforcement by U.S. Customs and Border Protection. Pub. L. No. 117-78, 135 Stat. 931 (2021). Rather than mitigating such compliance risks, management instead sought “expansion of our *Wrangler*® and *Lee*® brand, most notably in China,” as one of its four “growth catalysts” for its “multi-year strategic vision.” Kontoor Brands, Inc., 2021 Form 10-K at 26 (Mar. 2, 2022), <https://bit.ly/3OPXFfor>. This hypocrisy calls into question the sincerity behind management’s implementation of racially discriminatory employment practices under the guise of shaping a “more equitable, inclusive and diverse culture.”³

Management’s conduct, as outlined above, has needlessly exposed the Company to potential state and/or federal investigations and enforcement actions and suggests either a disregard for its fiduciary obligations or a major breakdown in its compliance controls. The Company is organized and carried on primarily for the profit of its

¹ Kontoor Brands, Inc., 2021 Inclusion & Diversity Progress Report at 11 (Sep. 2021), <https://bit.ly/3yMMPdB> (emphasis added).

² *Apparel and Textile Industry*, Coalition to End Forced Labour in the Uyghur Region, <https://bit.ly/3RfZhtd> (last visited July 6, 2022).

³ Kontoor Brands, Inc., 2021 Inclusion & Diversity Progress Report at 2 (Sep. 2021), <https://bit.ly/3yMMPdB>.

shareholders, and the powers of its officers and directors are to be employed solely for that end. If the Company's officers and directors are unable to demonstrate that the above-described conduct and policies clearly and concretely create shareholder value, then they are violating their fiduciary duty to shareholders by spending the Company's funds to advance idiosyncratic political and social agenda.

Therefore, to prevent the waste of the Company's assets, to repair and safeguard the Company's brand, goodwill, and reputation among its core customers, to protect the Company's shareholders, and in fulfillment of your fiduciary duty to ensure the Company's compliance with civil rights laws, we demand that you and the Board immediately take the following steps.

1. Immediately cease and desist from all employment practices that discriminate based on race, color, sex, or national origin, and/or that are designed to impose racial balancing. This would include, but is not limited to, the use of the "measurable goals"
2. Direct the Company to retain an independent counsel for the purpose of conducting a comprehensive compliance audit of the Company's hiring practices and then make that report fully and transparently available to investors and shareholders.
3. Provide real transparency to shareholders regarding the Company's commercial and other relationships with the Chinese Communist Party and its instrumentalities. Among other things, the Company should be directed to release all internal communications and other information necessary for shareholders to understand why racial balance of its workforce (which presents no material compliance or business risk to the Company) and not untangling the Company from its embrace of the CCP (which most assuredly does present such a risk), is the subject of management's attention.
4. Direct the Company to retain an independent counsel for the purposes of conducting a comprehensive compliance audit of its compliance with the Uyghur Forced Labor Prevention Act, and designing and implementing effective internal controls, ideally with independent third party oversight, to ensure the Company complies with this law and refrains from engaging in commercial activities with or otherwise provides material support to the CCP.
5. In anticipation of litigation, preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars, financial spreadsheets, PDF documents, Word documents, and all other information created and/or stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive.

Thank you in advance for your cooperation.

Sincerely,

Reed. D. Rubinstein
America First Legal Foundation

Cc: Robert Shearer, Lead Independent Director
Kathleen Barclay, Director
Ashley Goldsmith, Director
Robert Lynch, Director
Andrew E. Page, Director
Mark Schiller, Director
Shelley Stewart, Jr., Director