



July 8, 2022

Thomas Colclough, Director
Melinda Dugas, Regional Attorney
Charlotte District Office
U.S. Equal Employment Opportunity Commission
129 West Trade Street, Suite 400
Charlotte, NC 28202

Re: Investigation Request/Kontoor Brands, Inc.

Dear Director Colclough and Attorney Dugas:

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans. We write pursuant to 29 C.F.R. § 1601.6(a), providing that “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” to request that the Equal Employment Opportunity Commission open an investigation into Kontoor Brands, Inc. (the “Company”) for engaging in unlawful employment practices in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.¹

The Company is a publicly traded corporation incorporated under the laws of the State of North Carolina with its principal executive offices located at 400 N. Elm Street, Greensboro, NC 27401. Its Form 10-K for the fiscal year ended January 1, 2022, states that it is “a global lifestyle apparel company, with a portfolio led by two of the world’s most iconic consumer brands: *Wrangler*® and *Lee*®.” Kontoor Brands, Inc., 2021 Form 10-K at 1 (Mar. 2, 2022), <https://bit.ly/3OPXFor>. The Form 10-K affirms that its “strategic priorities are reflected in the Inclusion & Diversity Progress Report (‘Report’) we published in 2021, focusing on Workplace Belonging, Workplace Diversity, Marketplace Equity and Sustainability & Accountability.” *Id.* at 8 (Mar. 2, 2022), <https://bit.ly/3OPXFor>.

Notably, the Report contains “measurable goals” for the racial, ethnic, and sexual composition of the Company’s workforce. These “goals” were first set in the Company’s August 2020 global “Inclusion & Diversity” strategy. They include:

- “Reach gender parity at Director level and above by 2030.”

¹ Copies of this letter are also addressed to each Member of the Commission and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

- “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>. We note that the term “BIPOC” lacks any fixed or intelligible legal meaning. However, it seems that the Company is using it as a proxy for race, color, and/or national origin.

An unlawful employment practice is established when the evidence demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice. 42 U.S.C. § 2000e-2(m). Here, the Company has affirmatively represented to its shareholders, to its investors, and to the Securities and Exchange Commission, that it is and will continue favoring certain individuals because of their race, color, national origin, or sex in its employment practices. Accordingly, it has admitted that its employment practices are infused with considerations of race, color, sex, and/or national origin, and designed to favor some applicants based solely on their immutable characteristics.

Racial, ethnic, and sex-based “balancing” in hiring, training, compensation, and promotion is patently illegal. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law holds 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). The Company admits to limiting, segregating, or classifying its employees and/or its applicants for employment in ways that deprive or tend to deprive many individuals, including but not limited to American men who are white or Asian, of employment opportunities because of their race, color, religion, sex, or national origin.² But this is facially illegal. 42 U.S.C § 2000e-2(a).

Furthermore, the Company’s management has introduced an “ESG modifier” in the annual cash incentive program for fiscal 2021 modifying 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 fails to meet that goal. Kontoor, Inc., Schedule 14A at 32-34 (Mar. 8, 2022), <https://bit.ly/3uw75O2>. In other words, management is paying bounties to encourage violations of federal civil rights laws. Such brazenly and cynically unlawful conduct should not be tolerated.

Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority” in its victims “that may affect their

² *See also Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

hearts and minds in a way unlikely to ever be done.”³ More broadly, the discrimination here necessarily foments contention and resentment, it is “odious and destructive.”⁴ It truly “is a sordid business, this divvying us up” by race, national origin, or sex.⁵ Always has been, always will be. Kontoor Brands, Inc.’s admissions provide compelling reason for the Commission to open a comprehensive investigation of the company’s hiring, training, compensation, and promotion practices.

Sincerely,

Reed D. Rubinstein
America First Legal Foundation

Cc: The Hon. Charlotte A. Burrows, Commission Chair
The Hon. Jocelyn Samuels, Commission Vice Chair
The Hon. Janet Dhillon, Commissioner
The Hon. Keith E. Sonderling, Commissioner
The Hon. Andrea R. Lucas, Commissioner

³ *Brown v. Bd. Of Education*, 347 U.S. 484, 494 (1954).

⁴ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

⁵ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).