GIBSON DUNN

Gibson, Dunn & Crutcher LLP

1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Tel 202.955.8500
www.gibsondunn.com

Elizabeth Ising
Direct: 202.955.8287
Fax: 202.530.9631
EIsing@gibsondunn.com

Client: 93024-00048

January 15, 2021

VIA E-MAIL

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

Re: *The Home Depot, Inc.*
Shareholder Proposal of the NorthStar Asset Management, Inc. Funded Pension Plan
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, The Home Depot, Inc. (the "Company"), intends to omit from its proxy statement and form of proxy for its 2021 Annual Meeting of Shareholders (collectively, the "2021 Proxy Materials") a shareholder proposal, including statements in support thereof (the "Proposal"), received from the NorthStar Asset Management, Inc. Funded Pension Plan (the "Proponent").

Pursuant to Rule 14a-8(j), we have:

- filed this letter with the Securities and Exchange Commission (the "Commission") no later than eighty (80) calendar days before the Company intends to file its definitive 2021 Proxy Materials with the Commission; and

- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) and Staff Legal Bulletin No. 14D (Nov. 7, 2008) ("SLB 14D") provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the "Staff"). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

THE PROPOSAL

The Proposal states (in part):

> **RESOLVED:** Shareholders urge the Board of Directors to issue a report evaluating opportunities to address the company's role in systemic racism by enhancing its policies applicable to any suppliers utilizing incarcerated workers.
>
> **SUPPORTING STATEMENT:** Shareholders recommend that the report examine, at the board and management's discretion, the benefits and drawbacks of enhancing supplier policies such as requiring:
>
> - Payment to workers of local prevailing wage and transparency of wage payments for incarcerated workers;
> - Additional company or independent mechanisms for verification of voluntariness of labor;
> - Programs to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation.

A copy of the Proposal, as well as related correspondence with the Proponent, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2021 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations and does not focus on a significant policy issue.

BACKGROUND

This Proposal focuses on how the Company manages its supplier relationships, including how it monitors its suppliers' compliance with existing Company business and ethics standards and policies. Although the Proposal makes limited references to "systematic racism," the Proposal does not focus on any significant policy issue under the meaning of Rule 14a-8(i)(7) and is excludable because it focuses on the Company's policies pertaining to lawful, uncoerced prison labor that may occur in the Company's supply chain. The Proposal itself recognizes that the Company currently has a policy that prohibits "involuntary and exploitative prison labor," and appears to question whether the Company's policy should be enhanced and if the Company adequately monitors for and reports on compliance with such prohibition and other existing supplier standards. To this end, the Supporting Statement specifically addresses not only the

compensation of incarcerated workers and "mechanisms for verification of voluntariness of labor," but also the development of programs relating to post-incarceration support and counseling.

The Company's responsible sourcing program, including the Company's current Responsible Sourcing Standards (the "Responsible Sourcing Standards"),[1] supports its efforts to conduct its business in a responsible and ethical manner. The Responsible Sourcing Standards currently prohibit, among other things, child labor, forced, bonded (including debt bondage), or indentured labor, and involuntary or exploitative prison labor.[2] The Company revised its Responsible Sourcing Standards in 2019 to more specifically address practices that can create an environment where labor is forced and provide specific requirements regarding, among other things, workers' freedom of movement, supplier hiring practices, workers' ability to terminate their own employment, and access to identity or immigration documents.[3] Moreover, in early 2019 the Company joined the Responsible Business Alliance's Responsible Labor Initiative, a multi-industry, multi-stakeholder initiative focused on ensuring that the rights of workers vulnerable to forced labor in global supply chains are consistently respected and promoted.[4]

Notably, the Responsible Sourcing Standards are not limited to prison labor, but also provide the minimum requirements that all suppliers must meet in order to conduct business with the Company. For example, the Responsible Sourcing Standards address compliance with all applicable laws and regulations where a supplier operates and ordinary workforce matters pertaining to general compensation, hours of work, health and safety, freedom of association, business ethics, communication and subcontracting. The Proposal addresses several of these matters with respect to the Company's supply chain.

The Company's 2020 Responsible Sourcing Report (the "Report") describes how the Company addresses these ordinary business matters relating to the Company's supply chain through its responsible sourcing program. The Report also describes several Company measures in place to monitor and support compliance with its business and ethics standards. For example, the Audit Committee of the Board of Directors annually reviews the Company's responsible sourcing program, and the Company engages in a robust audit process to ensure its responsible sourcing program is effective, including through the use of third-party audit firms to conduct compliance

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[1] *Available at* https://corporate.homedepot.com/social-and-environmental-responsibility-standards, as currently in effect as of January 15, 2021 and attached hereto as Exhibit B.

[2] The Responsible Sourcing Standards further provide that any "use of prison or convict labor cannot be forced and must be consistent with the laws where the products are manufactured and the laws where it is imported."

[3] *See* the Company's 2020 Responsible Sourcing Report, *available at* https://corporate.homedepot.com/sites/default/files/THD_RS_Report.pdf, at 9, 11.

[4] *See id*.

audits.[5] The Responsible Sourcing Standards also provide for announced and unannounced site audits of production factories to monitor compliance, including review of records and confidential interviews.[6] The Report notes that the Company performed 1,354 factory audits in 2019 in 38 countries.[7] According to the Company, all of the factory audits assess whether there is any use of prison labor, and none of the audits in 2019, 2018, and 2017 identified any use of prison labor.

ANALYSIS

The Proposal May Be Excluded Under Rule 14a-8(i)(7) Because It Addresses Matters Related To The Company's Ordinary Business Operations.

As discussed below, the Proposal may be omitted under Rule 14a-8(i)(7) as it relates to the Company's ordinary business operations because it relates to (i) decisions regarding the Company's suppliers and enforcement of its existing standards of supplier conduct, and (ii) general workplace safety, workplace conditions and worker compensation, and it does not focus on any significant policy issue that transcends the Company's ordinary business operations.

A. Background

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to its "ordinary business operations." According to the Commission's release accompanying the 1998 amendments to Rule 14a-8, the term "ordinary business" "refers to matters that are not necessarily 'ordinary' in the common meaning of the word," but instead the term "is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company's business and operations." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). In the 1998 Release, the Commission explained that 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." *Id.*

The 1998 Release further distinguishes proposals pertaining to ordinary business matters from those involving "significant social policy issues." 1998 Release (citing Exchange Act Release No. 12999 (Nov. 22, 1976)). While "proposals . . . focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered excludable," the Staff has indicated that proposals relating to both ordinary business matters and

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[5] Report at page 8.

[6] *Id*. at page 11.

[7] *Id*. at page 15.

significant social policy issues may be excludable in their entirety in reliance on Rule 14a-8(i)(7) if they do not "transcend the day-to-day business matters" discussed in the proposals. *Id.* In this regard, when assessing proposals under Rule 14a-8(i)(7), the Staff considers "both the proposal and the supporting statement as a whole." Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005).

Moreover, framing a shareholder proposal in the form of a request for a report does not change the nature of the proposal. The Commission has stated that a proposal requesting the dissemination of a report may be excludable under Rule 14a-8(i)(7) if the subject matter of the report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *see also Johnson Controls, Inc.* (avail. Oct. 26, 1999) ("[Where] the subject matter of the additional disclosure sought in a particular proposal involves a matter of ordinary business . . . it may be excluded under [R]ule 14a-8(i)(7).").

B. The Proposal Is Excludable Because It Relates To Decisions Regarding The Company's Supplier Relationships And Enforcement Of Its Existing Supplier Standards Of Conduct

The Proposal requests a report relating to "enhancing its policies applicable to any suppliers utilizing incarcerated workers." As noted in the "Whereas" paragraphs (the "Recitals") immediately preceding the "Resolved" clause, the "Proponent believes that the Company would benefit from strengthening of policies related to prison labor identified in the supply chain." Thus the thrust and focus of the Proposal, as reiterated in the "Resolved" clause, Supporting Statement, and Recitals, as demonstrated below, are that the Company does not currently prohibit all prison labor and the Proposal's corresponding request for the Company to therefore enhance its policies relating to prison labor. In this regard, the Proposal states:

- "Because the [C]ompany prohibits 'involuntary or exploitative prison labor,' the Proponent presumes that prison labor deemed 'voluntary and non-exploitative' will be permitted in the Company's supply chain."

- "In the U.S., despite its legality, sometimes incarcerated individuals work in unsafe or unhealthy conditions" and some may "work for no pay" or little pay.

- The Proposal also raises the potential for "reputational harm from a connection to prison labor," including "financial and operational risk for companies including supply chain disruption, litigation, and reputational damage."

- Notably, the "Resolved" clause focuses on "enhancing [the Company's] policies applicable to any suppliers utilizing incarcerated works."

- Further, the Supporting Statement is focused on enhanced disclosure of how the Company can further strengthen: its policies relating to prison labor (by promoting payment of a "local prevailing wage"); enforcement of its existing policies (*i.e.*, "independent mechanisms for verification of voluntariness of labor"); and its provision of vocational support for prisoners transitioning into the workforce ("such as counseling on careers, job applications, and interview preparation").

The foregoing reveals that the Proposal is focused on the Company's policies relating to the potential use of lawful, uncoerced prison labor in its supply chain, including its supply chain standards, and monitoring and verifying compliance therewith. Notably, as highlighted above, the Company already has an existing supplier standard of conduct that prioritizes ethical sourcing, emphasizes ethical responsibility standards, and expressly prohibits involuntary and exploitative prison labor. The Company also has a robust program for monitoring and ensuring compliance by its suppliers with such standards and regularly performs a significant number of audits across its global supply chain (which the Company described most recently in the Report).

The Staff has consistently concurred with the exclusion under Rule 14a-8(i)(7) of proposals relating to a company's supplier relationships. Of particular relevance here is the Staff's recent consideration of a similar proposal submitted by the Proponent in *The Home Depot, Inc.* (avail. Mar. 20, 2020) ("*Home Depot 2020*"), which requested a report "summarizing the extent of known usage of prison labor in the company's supply chain." The proposal's supporting statements requested, among other things, metrics regarding the number of supplier audits completed by the Company or third-party auditors regarding the presence of prison labor in the Company's supply chain and an evaluation of risks to the Company's finances, operations and reputation related to prison labor in its supply chain. The Company argued that the proposal was excludable as ordinary business because, among other reasons, it related to decisions regarding the Company's suppliers and enforcement of its existing standards of supplier conduct. The Staff concurred with exclusion under Rule 14a-8(i)(7). Like the proposal at issue in *Home Depot 2020*, here the Proposal also raises the potential for "reputational harm from a connection to prison labor," further asserting that such connection "can pose financial and operational risks for companies." As in *Home Depot 2020*, the Proposal focuses on the potential use of prison labor in the Company's supply chain and on the manner in which the Company verifies compliance with its existing policies (*i.e.*, "mechanisms for verification of voluntariness of labor"). Because the Proposal likewise focuses on the Company's supplier relationships, including policies and standards relating thereto, like *Home Depot 2020*, the Proposal is excludable pursuant to Rule 14a-8(i)(7).

Similarly, in *Foot Locker, Inc.* (avail. Mar. 3, 2017), the proposal requested a report "outlin[ing] the steps that the company is taking, or can take, to monitor the use of subcontractors by the company's overseas apparel suppliers." The proposal also requested information relating to: "[t]he extent to which company codes of conduct are applied to apparel suppliers and sub-contractors"; "[p]rocess and procedures for monitoring compliance with corporate codes of

conduct by apparel suppliers and sub-contractors"; and "[p]rocess and procedures that the company has in place for dealing with code non-compliance by apparel suppliers and sub-contractors." The company argued that the proposal sought to "influence the manner in which the [c]ompany monitors the conduct of its suppliers and their subcontractors" and that "[t]he extent to which a company applies and enforces its code of conduct on suppliers and their subcontractors" was an ordinary business matter. In concurring with exclusion, the Staff noted "the proposal relates broadly to the manner in which the company monitors the conduct of its suppliers and their subcontractors." *See also The TJX Companies, Inc.* (avail. Mar. 20, 2020) (concurring with exclusion of a substantially similar proposal to *Home Depot 2020* under Rule 14a-8(i)(7)); *Walmart Inc.* (avail. Mar. 8, 2018) (concurring with the exclusion of a proposal seeking a report outlining the requirements suppliers must follow regarding engineering ownership and liability as relating to the company's ordinary business matters); *Kraft Foods Inc.* (avail. Feb. 23, 2012) (concurring with the exclusion of a proposal requesting a report detailing the ways the company would assess and mitigate water risk to its agricultural supply chain as "relat[ing] to decisions relating to supplier relationships"); and *Alaska Air Group, Inc.* (avail. Mar. 8, 2010) (concurring with the exclusion of a proposal requesting a report discussing the maintenance and security standards used by the company's aircraft contract repair stations and the company's procedures for overseeing maintenance performed by the contract repair stations as "relat[ing] to . . . standards used by the company's vendors").

Like in *Home Depot 2020* and *Foot Locker*, the Proposal seeks to influence the manner in which the Company monitors its supplier relationships. In this regard, the Proposal addresses almost all of the same underlying issues that were raised in the proposal in *Home Depot 2020*: the potential use of prison labor (whether involuntary or voluntary) within the supply chain, auditing of the Company's suppliers, alleged unsafe or unhealthy working conditions, coercive practices where "some may be coerced into working by threat of punishment for declining work" (which is similar to the statement in the *Home Depot 2020* proposal that "people may be coerced into working by threat of punishment for declining work"), and potential reputational harm in connection with prison labor. As previewed above, the Proposal is even more focused on ordinary business matters than the proposal in *Home Depot 2020* because the Supporting Statement and Recitals make clear that it is solely focused on "prison labor deemed 'voluntary and non-exploitative.'" In this regard, the Supporting Statement addresses a number of issues that relate solely to non-coerced, compensated labor, such as "wage payments for incarcerated workers," "verification of voluntariness of labor," and "[p]rograms to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation." As discussed below, and as was the case in *Home Depot 2020*, *Foot Locker* and the other precedent above, the fact that the Proposal may touch upon a significant policy issue is insufficient to preclude relief where the focus of the Proposal is on the Company's relationships with its suppliers and compliance with its existing Responsible Sourcing Standards.

Similarly, the Staff has consistently concurred with the exclusion of shareholder proposals related to a company's adherence to ethical business practices and policies. For example, *Mattel, Inc.* (avail. Feb. 10, 2012) involved a proposal that requested the company require its suppliers to publish a report detailing their compliance with the International Council of Toy Industries ("ICTI") Code of Business Practices. The proposal addressed several concerns relating to the company's suppliers' plants in China, including "underage workers during the summer, excessive overtime, concerns about chemicals and poor ventilation" and alleged that "reviewers of the audit firms of the ICTI" were "seeking bribes." Consequently, the proposal sought "proven and transparent compliance with [the ICTI Code] at [the company's] suppliers' plants" in order to "avoid strikes, negative media coverage and loud complaints from consumers." The Staff concurred with exclusion of the proposal in *Mattel* as relating to the company's ordinary business operations, noting that "the proposal calls for [the company] to require that its suppliers publish a report about their compliance with the ICTI Code of Business Practices" and the company's "view that the ICTI Code 'has a broad scope that covers several topics that relate to the [c]ompany's ordinary business operations and are not significant policy issues.'" *See also Verizon Communications, Inc.* (avail. Jan. 10, 2011) (concurring with the exclusion of a proposal directing the board to form a Corporate Responsibility Committee charged with monitoring the company's commitment to integrity, trustworthiness and reliability—and the extent to which it lived up to its code of conduct, as "relating to [the company's] ordinary business operations" and concerning "general adherence to ethical business practices"); *The Walt Disney Co.* (avail. Dec. 12, 2011) (concurring with the exclusion of a proposal requesting a report on board compliance with the company's code of conduct for directors, stating that "[p]roposals that concern general adherence to ethical business practices and policies are generally excludable under [R]ule 14a-8(i)(7)"); and *NYNEX Corp.* (avail. Feb. 1, 1989) (concurring with the exclusion of a proposal related to the formation of a special committee of the board to revise the existing code of corporate conduct was excludable because it related "to the [c]ompany's ordinary business operations (*i.e.*, the particular topics to be addressed in the company's code of conduct")).

Similarly, the Proposal necessarily entails a review of the Company's existing standards of ethical behavior applicable to its suppliers (*i.e.*, the Responsible Sourcing Standards) by seeking both a report relating to the Company's "policies applicable to any suppliers utilizing incarcerated workers" as well as an examination of "the benefits and drawbacks of enhancing supplier policies" regarding a number of issues that relate solely to non-coerced and compensated labor. As noted above, the Responsible Sourcing Standards currently include an express prohibition of forced labor and the use of any prison or convict labor that is inconsistent with applicable local laws and provide that suppliers must meet or exceed the minimum wage and compensation requirements as defined under applicable labor laws. Developing and maintaining relationships with suppliers and determining how best to manage those relationships are an important management responsibility, including how the Company decides to encourage its suppliers to pursue or address the issues raised by the Supporting Statement. As described in

the "Background" section, the Company already requires its suppliers to comply with a wide variety of business and ethical standards, as explained in and implemented through the Responsible Sourcing Standards. Further, the Company's existing practices already prohibit the use of involuntary prison labor in its supply chain, including requiring suppliers to meet or exceed the relevant minimum wage and compensation requirements, and the Company monitors and enforces the Responsible Sourcing Standards to which its suppliers must adhere. As noted above and in the Report, the Company regularly performs supplier audits, and such audits include an assessment of whether there is any use of prison labor. Thus, similar to *Mattel*, the Proposal delves into the terms of the Company's relationship with its suppliers and compliance with its existing policies such that it is properly excludable under Rule 14a-8(i)(7).

The extent to which a company oversees, applies, and enforces compliance with its supplier code of conduct (such as the Responsible Sourcing Standards) involves decisions that are fundamental to the company's day-to-day operations and entails a variety of ordinary business considerations. The underlying subject matter of the Proposal addresses standards set forth in the Responsible Sourcing Standards, which involve the Company's oversight of its suppliers and their workforce. Such considerations are complex and cannot, as a practical matter, be subject to shareholder oversight. As such, consistent with *Home Depot 2020*, *Foot Locker*, *Mattel*, and the other well-established precedent discussed above, the Proposal is properly excludable under Rule 14a-8(i)(7) because it seeks a report concerning general adherence to the Company's existing ethical business practices and policies applicable to its suppliers (*i.e.*, the Responsible Sourcing Standards), which relate to the Company's ordinary business operations.

C. The Proposal Is Excludable Because It Relates To Overall Workplace Safety, Workplace Conditions, And General Worker Compensation

Based on the language of the Proposal, taken as a whole, the Proponent appears concerned with a select subset of workers (*i.e.*, those who may be incarcerated, to the extent any prison labor is used in the Company's supply chain), including such workers' level of compensation, health and safety, and working conditions, each of which has been recognized by the Staff as an ordinary business matter properly excludable under Rule 14a-8(i)(7). In this regard, the Recitals make broad reference to "work in unsafe or unhealthy conditions," and that "[c]orrectional industries workers may be paid as little as $0.33-$1.41 per hour." As described above, the Company's Responsible Sourcing Standards address a wide variety of matters pertaining to the standards, terms, schedules, compensation, environment, health and safety, and other conditions required for workers utilized by the Company's domestic and global suppliers.

The Staff has recognized that proposals relating to workplace safety are a matter of ordinary business and excludable under Rule 14a-8(i)(7).[8] For example, as discussed above, in *Home Depot 2020*, the proposal addressed a number of the same issues the Proposal such as "worker mistreatment," wage and compensation issues, and "work that sometimes occurs in unsafe or unhealthy conditions." In addition to the basis described above, in *Home Depot 2020*, the Company also argued that the proposal was excludable as relating to overall workplace safety, workplace conditions, and general worker compensation issues. The Staff concurred with exclusion under Rule 14a-8(i)(7). Similarly, in *Pilgrim's Pride Corp*. (avail. Feb. 25, 2016), the proposal requested a report describing the company's policies, practices, performance and improvement targets related to occupational health and safety. In concurring with exclusion under Rule 14a-8(i)(7), the Staff "note[d] that the proposal relates to workplace safety." *See also The GEO Group Inc.* (avail. Feb. 2, 2017) (concurring with the exclusion of a proposal requesting implementation of provisions relating to operational audits of its facilities examining issues such as workplace violence rates and disciplinary and grievance systems, as relating to the company's ordinary business operations); and *The Chemours Company* (avail. Jan. 17, 2017) (concurring with the exclusion of a proposal requesting a report "on the steps the [c]ompany has taken to reduce the risk of accidents" with the supporting statement citing to a number of industrial accidents at the company's facilities and significant regulatory fines that had been assessed against the company for various safety violations). In *Pilgrim's Pride*, the requested report sought disclosure of "employee injury causes and rates, incidents of non-compliance with safety and labor laws, remedial actions taken and measures contributing to long-term mitigation and improvements." This is similar to the Proposal's request for "verification of voluntariness of labor" and "[p]rograms to support prisoner transitions to the workforce." Additionally, the *Pilgrim's Pride* proposal asserted that "detailed reporting would[] strengthen Pilgrim's ability to assess and improve working conditions for its employees . . ." and "enable shareholders to better understand potential regulatory, legal, reputational and financial risks relating to OHS." That same reasoning is echoed in the Proposal, where the Proponent likewise raises concerns with respect to "reputational harm from a connection to prison labor" and generally seeks enhancement of the Company's "policies applicable to any suppliers utilizing incarcerated workers." Similar to the proposals in the precedent cited above, the Proposal implicates a broad array of day-to-day workforce issues that confront the Company's suppliers.

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[8] By way of analogy, we also note that the Staff has consistently recognized that a wide variety of proposals pertaining to the management of a company's workforce are excludable under Rule 14a-8(i)(7). *See, e.g., Walmart, Inc.* (avail. Apr. 8, 2019) (concurring with the exclusion of a proposal that requested the board evaluate the risk of discrimination that may result from the company's policies and practices of hourly workers taking absences from work for personal or family illness, as relating to "management of [the company's] workforce"); and *W.R. Grace & Co.* (avail. Feb. 29, 1996) (concurring with the exclusion of a proposal regarding the creation of a "high performance workplace based on policies of workplace democracy and meaningful worker participation").

Likewise, the Staff has consistently recognized that shareholder proposals addressing minimum wage concerns are excludable as relating to ordinary business matters. *See, e.g.*, *CVS Health Corp.* (avail. Mar. 1, 2017) (concurring with the exclusion of a proposal urging the board to adopt and publish principles for minimum wage reform as "relating to ordinary business operations" and, specifically, "general compensation matters"); *CVS Health Corp.* (avail. Feb. 23, 2016, *recon. denied* Mar. 8, 2016) (same); and *Chipotle Mexican Grill, Inc.* (avail. Feb. 23, 2016, *recon. denied* Mar. 8, 2016) (same). Similar to such proposals, the Proposal mentions "incarcerated people [who] are forced to work for no pay" and asserts that "[c]orrectional industries workers may be paid as little as $0.33-$1.41 per hour." Like the cited precedent, the Proposal's minimum wage concerns fall squarely within the realm of ordinary business matters, and render the Proposal properly excludable under Rule 14a-8(i)(7).

While the Company agrees that the issues raised in the Proposal are important, these types of issues (*e.g.*, compliance with existing business and ethics standards and supply chain oversight, including those relating to relevant minimum wage and compensation requirements) relate to the Company's ordinary business. Thus, consistent with *Home Depot 2020* and the other precedent discussed above, the Proposal may properly be excluded under Rule 14a-8(i)(7) as relating to the Company's ordinary business operations.

D. The Proposal Does Not Focus On A Significant Policy Issue That Transcends The Company's Ordinary Business Operations

As mentioned above, the plain language of the Proposal, including the Supporting Statement in particular, is focused on the Company's policies and practices as they relate to suppliers' potential use of incarcerated workers, including monitoring compliance therewith and developing and encouraging programs relating to the transitioning of former prisoners into the workforce; all of which are relevant to uncoerced, paid labor, and thus implicate a host of ordinary business matters. While the Proponent attempts to reframe the scope of the Proposal by including limited references to "systematic racism" (one in the Recitals and one in the "Resolved" clause), these references do not shift the foregoing focus of the Proposal or transcend the Company's ordinary business operations. The Company agrees that these types of issues are important and is committed to supporting change "that will bring us closer to realizing an end to discrimination and hatred."[9] However, the Proposal remains focused on the Company's policies relating to voluntary prison labor and, outside of the two limited references to "systematic racism," does not otherwise address issues relating to race, ethnicity, diversity, inclusion, or discrimination.

[9] *See, e.g.*, Message From Craig Menear – Racial Equality & Justice For All, *available at* https://corporate.homedepot.com/newsroom/message-craig-menear-%E2%80%93-racial-equality-justice-all.

In fact, the Proposal does not use the phrase "human rights," "abuse," "ethnicity," or "discrimination" in referring to the issues of "systematic racism" raised in the Proposal. The Proposal also makes no reference to allegations of human rights abuse or discrimination within the Company's supply chain and takes issue instead with the fact that the Company has not, as of the date of this letter, prohibited the use of lawful, voluntary prison labor in its supply chain. Additionally, nothing in the Proposal ties the concerns regarding "systemic racism" to the Company or its actions. The Proposal makes a blanket assertion, with no factual support, that prison labor is "inextricably linked to systematic racism." But the Proposal does not explain this assertion or how this link is relevant or specific to the Company's policies or practices, as they relate to the potential use of incarcerated workers in the Company's supply chain, beyond a broad, sweeping theoretical generalization that could apply to any company operating in today's social and political climate. Moreover, although the Proposal suggests that "prison labor is an outgrowth of slavery in the U.S.," the scope of the Proposal does not appear limited to the United States.

Consistent with the 1998 Release, the Staff routinely concurs with the exclusion of proposals that relate to ordinary business decisions even where the proposal may reference a significant policy issue. For example, in *Amazon.com, Inc. (Domini Impact Equity Fund)* (avail. Mar. 28, 2019), the proposal requested that the board annually report to shareholders "its analysis of the community impacts of [the company's] operations, considering near- and long-term local economic and social outcomes, including risks, and the mitigation of those risks, and opportunities arising from its presence in communities." In its no-action request, the company successfully argued that "[e]ven if some of [the] issues that would be addressed in the report requested by the [p]roposal could touch upon significant policy issues within the meaning of the Staff's interpretation, the [p]roposal is not focused on those issues, but instead encompasses a wide range of issues implicating the [c]ompany's ordinary business operations within the meaning of Rule 14a-8(i)(7), and therefore may properly be excluded under Rule 14a-8(i)(7)." The Staff concurred and granted no-action relief under Rule 14a-8(i)(7) noting that "the [p]roposal relates generally to 'the community impacts' of the [c]ompany's operations and does not appear to focus on an issue that transcends ordinary business matters." Similarly, and as demonstrated above, the focus of the Proposal is on the Company's policies relating to its suppliers, an ordinary business matter, undiminished by two limited references to "systemic racism" in the abstract and in spite of the Proposal's assumption that the Proposal's request to enhance "its policies applicable to any suppliers utilizing incarcerated workers" would address any alleged "role in systemic racism."

Additionally, in *The Walt Disney Co.* (avail. Jan. 8, 2021) ("*Walt Disney 2021*"), the proposal sought a report "assessing how and whether [the company] ensures [its] advertising policies are not contributing to violations of civil or human rights." Despite concerns that the company's policies were "contributing to the spread of racism, hate speech, and disinformation," and notwithstanding references to recent events involving racial justice and Black Lives Matter, the Staff concurred that the proposal was excludable under Rule 14a-8(i)(7) as relating to ordinary

business matters. Here, the Proposal presents an even more compelling case for exclusion, as the Proposal includes only two underdeveloped references to "systemic racism" that do not otherwise detract from the Proposal's focus on ordinary business matters. *See also Walmart Inc.* (avail. Apr. 8, 2019) (concurring with the exclusion of a proposal requesting that the board prepare a report evaluating the risk of discrimination that may result from the company's policies and practices for hourly workers taking absences from work for personal or family illness because it related to the company's ordinary business operations, *i.e.*, the company's management of its workforce, and "[did] not focus on an issue that transcends ordinary business matters"); *PetSmart, Inc.* (avail. Mar. 24, 2011) (concurring with the exclusion of a proposal requesting the board to require its suppliers to certify that they had not violated "the Animal Welfare Act, the Lacey Act, or any state law equivalents" noting that "[a]lthough the humane treatment of animals is a significant policy issue, we note your view that the scope of the laws covered by the proposal is 'fairly broad in nature from serious violations such as animal abuse to violations of administrative matters such as record keeping'").

The Staff's position that proposals are excludable where they relate to both ordinary and non-ordinary business matters is well-established. Notably, in *Wal-Mart Stores, Inc.* (avail. Mar. 15, 1999) ("*Wal-Mart 1999*"), the Staff concurred with the exclusion of a proposal that requested that the board of directors report on the company's "actions to ensure it does not purchase from suppliers who manufacture items using forced labor, convict labor, or child labor or who fail to comply with laws protecting their employees' wages, benefits, working conditions, freedom of association and other rights." In concurring with the company's request, the Staff noted "in particular that, although the proposal appears to address matters outside the scope of ordinary business, paragraph 3 of the description of matters to be included in the report relates to ordinary business operations." The paragraph referenced by the Staff addressed "[p]olicies to implement wage adjustments to ensure adequate purchasing power and a sustainable living wage." In addition, the proposal also addressed disclosure regarding "[c]urrent monitoring practices enforcing the company's Standards for Vendor Partners for its manufacturers and licensees," "[i]ncentives to encourage suppliers to comply with standards" and "[p]lans to report to the public on supplier compliance reviews." Likewise, as discussed above, in *Home Depot 2020*, the proposal encompassed all manner of prison labor (voluntary and involuntary) and therefore broadly implicated day-to-day workforce issues that confront the Company's suppliers. Despite the fact that the proposal touched on involuntary prison labor, the Staff concurred with exclusion under Rule 14a-8(i)(7). *See also Foot Locker* (concurring with the exclusion of a proposal entitled "Supplier Labor Standards" that took issue with violations of human rights in overseas operations, child labor and "sweatshop" conditions, where two out of four recitals addressed human rights in the company's supply chain); *JPMorgan Chase & Co.* (avail. Mar. 9, 2015) (concurring with the exclusion of a proposal requesting the company amend its human rights-related policies "to address the right to take part in one's own government free from retribution" because the proposal related to "[the company's] policies concerning its employees"); *Papa John's International, Inc.* (avail. Feb. 13, 2015) (concurring with the exclusion of a proposal

requesting the company to include more vegan offerings in its restaurants, despite the proponent's assertion that the proposal would promote animal welfare—a significant policy issue).

While the Proposal makes limited references to matters that may be significant policy issues, the overall text of the Proposal makes clear that it focuses on ordinary business matters. In this regard, the Proposal is similar to the proposals in *Home Depot 2020* and *Walt Disney 2021*, each of which the Staff recently concurred was excludable under Rule 14a-8(i)(7) notwithstanding references to forced prison labor and racial injustice, respectively. Like in *Home Depot 2020*, the Proposal is concerned with the manner in which the Company monitors its suppliers' conduct, including what practices the Company encourages its suppliers to pursue or address, particularly as they relate to the use of incarcerated workers, and is thus properly excludable under Rule 14a-8(i)(7).

In summary, the Proposal is primarily focused on the potential use of uncoerced, lawful prison labor and concerns compliance with the Company's related policies and standards pertaining to ethical business practices in its supply chain, all matters that have historically been excludable as relating to a company's ordinary business matters. In this regard, the Proposal is comparable to cited precedent including *Home Depot 2020*, *Foot Locker*, *Pilgrim's Pride*, *Mattel*, and *Wal-Mart 1999*, and is properly excludable under Rule 14a-8(i)(7).

CONCLUSION

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2021 Proxy Materials.

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to shareholderproposals@gibsondunn.com. If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8287, or Stacy S. Ingram, the Company's Associate General Counsel and Deputy Corporate Secretary, at (770) 384-2858.

Sincerely,

Elizabeth A. Ising

Enclosures

cc: Stacy S. Ingram, The Home Depot, Inc.
Julie N.W. Goodridge, NorthStar Asset Management, Inc. Funded Pension Plan

EXHIBIT A

December 3, 2020

Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, GA 30339
Via email (teresa_roseborough@homedepot.com) and FedEx

Dear Ms. Roseborough:

In the United States, there are over 2.2 million incarcerated individuals, the vast majority of which are employed during their incarceration, and many of which work for outside, for-profit corporations. While prison labor is legal in the U.S, where The Home Depot sources some products, incarcerated people sometimes work under circumstances that are inhumane and/or unpaid, posing a risk to shareholder value for any company found associated with suppliers or service providers using prison labor. We believe the Company may benefit from considering strengthening policies related to prison labor identified in the supply chain.

Therefore as the beneficial owner, as defined under Rule 13(d)-3 of the General Rules and Regulations under the Securities Act of 1934, of more than $2,000 worth of shares of The Home Depot common stock held for more than one year, the NorthStar Asset Management Funded Pension Plan is submitting for inclusion in the next proxy statement, in accordance with Rule 14a-8 of the General Rules, the enclosed shareholder proposal. The proposal requests that the company produce a report to shareholders on enhancements to policies related to suppliers using incarcerated workers.

As required by Rule 14a-8, the NorthStar Asset Management, Inc. Funded Pension Plan has held these shares for more than one year and will continue to hold the requisite number of shares through the date of the next stockholders' annual meeting. Proof of ownership will be provided within 15 business days. I or my appointed representative will be present at the annual meeting to introduce the proposal.

A commitment from The Home Depot to report to shareholders as described in the proposal will allow this proposal to be withdrawn. We believe that this proposal is in the best interest of our Company and its shareholders.

Sincerely,

Julie N.W. Goodridge
President and CEO
Trustee, NorthStar Asset Management, Inc. Funded Pension Plan

Encl.: shareholder resolution

Report on Prison Labor

WHEREAS:

Prison labor – voluntary and forced – is allowed in the United States due to an exception in the 13th amendment to the Constitution: "Neither slavery nor involuntary servitude, except as a punishment for crime…";

Modern prison labor is an outgrowth of slavery in the U.S. The Brennan Center for Justice explains that after slavery was abolished, "Southern states codified punitive laws, known as the Black Codes, to arbitrarily criminalize the activity of their former slaves." Soon after, formerly enslaved African Americans comprised 70% of the prison population. Then, "desperate for cheap labor and revenue," Southern states began to lease convicts out to private parties for physical labor. To the present day, prison labor remains inextricably linked to systemic racism;

The Proponent recognizes that the Company's 2020 Responsible Sourcing Report states that it prohibits forced labor as well as "involuntary or exploitative prison labor" and that it appears that the Company has revised its policies to include requiring responsible sourcing audits of at least some manufacturers in the United States;

Because the company prohibits "involuntary or exploitative prison labor," the Proponent presumes that prison labor deemed "voluntary and non-exploitative" will be permitted in the Company's supply chain. The Company's Responsible Product Standards states that the use of prison labor "must be consistent with the laws where the products are manufactured";

In the U.S., despite its legality, sometimes incarcerated individuals work in unsafe or unhealthy conditions. Reports indicate that some may be coerced into working by threat of punishment for declining work. Correctional industries workers may be paid as little as $0.33-$1.41 per hour. In some states, incarcerated people are forced to work for no pay;

Regardless of the legal nature of prison labor in the U.S., companies have experienced public backlash, boycotts, and long-term brand name and reputation harm from a connection to prison labor. This can pose financial and operational risks for companies including supply chain disruption, litigation, and reputational damage;

The Proponent believes that the Company would benefit from strengthening of policies related to prison labor identified in the supply chain.

RESOLVED: Shareholders urge the Board of Directors to issue a report evaluating opportunities to address the company's role in systemic racism by enhancing its policies applicable to any suppliers utilizing incarcerated workers.

SUPPORTING STATEMENT: Shareholders recommend that the report examine, at the board and management's discretion, the benefits and drawbacks of enhancing supplier policies such as requiring:

- Payment to workers of local prevailing wage and transparency of wage payments for incarcerated workers;
- Additional company or independent mechanisms for verification of voluntariness of labor;
- Programs to support prisoner transitions to the workforce following incarceration, such as counseling on careers, job applications, and interview preparation.

December 9, 2020

Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, GA 30339

Dear Ms. Roseborough:

This letter is regarding the shareholder proposal by the NorthStar Asset Management Funded Pension Plan filed for the next proxy statement. Enclosed, please find a letter from our brokerage, Morgan Stanley Wealth Management (a DTC participant), verifying that the NorthStar Funded Pension Plan has held the requisite amount of common stock in The Home Depot, Inc. for more than one year prior to filing the shareholder proposal. As previously stated, we intend to continue to hold these shares through the next shareholder meeting.

Please note that we are submitting this proof of ownership on a timely basis consistent with Rule 14a-8. In the event that you find any defect in this documentation, we request that you notify us promptly of any concerns or deficiencies.

Should you need anything further, do not hesitate to contact me at mschwartzer@northstarasset.com. Thank you in advance for your attention to this matter.

Sincerely,

Mari C. Schwartzer

Mari C. Schwartzer
Director of Shareholder Activism and Engagement

Encl.: proof of ownership

Wealth Management
[illegible]

Morgan Stanley

December 7, 2020

Teresa Wynn Roseborough
Corporate Secretary
The Home Depot, Inc.
2455 Paces Ferry Road, Building C-22
Atlanta, GA 30339

Dear Ms. Roseborough:

Morgan Stanley Wealth Management, a DTC participant, acts as the custodian for the NorthStar Asset Management, Inc. Funded Pension Plan. On December 3, 2020, the NorthStar Asset Management, Inc. Funded Pension Plan held 319 shares of The Home Depot, Inc. common stock valued $85,536.66. Morgan Stanley Wealth Management has continuously held 318 of those shares valued at $85,268.52 on behalf of the NorthStar Asset Management Funded Pension Plan since December 3, 2019.

We are presenting the information contained herein pursuant to our Client's request. It is valid as of the date of issuance. Morgan Stanley does not warrant or guarantee that such identified securities, assets or monies will remain in the Client's Account(s). The Client has the ability to withdraw assets from the Account(s) at any time.

Sincerely,

APPROVED
By Stephen Calderara at 12:56 pm, Dec 07, 2020

Stephen A. Calderara, CFP®
Family Wealth Advisor
Financial Advisor
Morgan Stanley Wealth Management
NMLS # 1401593

Investments and Services are offered through Morgan Stanley Smith Barney LLC & accounts carried by Morgan Stanley & Co. Incorporated. Member SIPC

The information contained herein is based upon data obtained from sources believed to be reliable. However, such data is not guaranteed as to its accuracy or completeness and is for informational purposes only. Clients should refer to their confirmations and statements for tax purposes as the official record for their account.

THE ABOVE SUMMARY/QUOTE/STATISTICS CONTAINED HEREIN HAVE BEEN OBTAINED FROM SOURCES BELIEVED RELIABLE BUT ARE NOT NECESSARILY COMPLETE AND CANNOT BE GUARANTEED. ERRORS AND OMISSIONS EXCEPTED.

EXHIBIT B

More saving. More doing.™

RESPONSIBLE SOURCING STANDARDS

The Home Depot and its affiliates, divisions, and subsidiaries strive to conduct business in a responsible manner. As we expand our business activities and work with suppliers domestically and globally to meet customers' needs, it is important to preserve our collective commitment to human rights and safety in the workplace.

The Home Depot expects that all suppliers will abide by all applicable international and local laws, rules and regulations in the manufacture and distribution of merchandise or services provided to The Home Depot. All suppliers are strongly encouraged to exceed The Home Depot's guidelines and promote continuous improvement throughout their operations.

All suppliers must be able to demonstrate compliance with these requirements at the request of The Home Depot.

These guidelines provide an introduction to the minimum requirements that all Suppliers must meet in order to conduct business with The Home Depot. These requirements are part of all commercial agreements with The Home Depot.

Laws and Regulations

Suppliers must operate in full compliance with all applicable laws and regulations of the countries in which they operate.

Child Labor

Suppliers must not employ workers younger than the greater of 15 years of age -- or 14 where the local law allows such exception consistent with International Labor Organization guidelines -- or the age for completing compulsory education or the minimum age established by law in the country of manufacture.

In addition, Suppliers must comply with all local legal requirements for the work of authorized young workers, particularly those pertaining to hours of work, wages, and working conditions.

Forced Labor

Suppliers must not use forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, nor shall suppliers participate in slavery or trafficking of persons. This includes transporting, harboring, recruiting, transferring or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. The use of prison or convict labor cannot be forced and must be consistent with the laws where the products are manufactured and the laws where it is imported.

There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities.

As part of the hiring process, workers must be provided with all documents relevant to their employment in a language they understand with a description of terms and conditions of employment prior to the worker departing from his or her country of origin, and there shall be no substitution or change(s) allowed in such documentation upon arrival in the receiving country unless these changes are made to meet local law and provide equal or better terms.

All work must be voluntary and workers shall be free to terminate their employment. Employers and agents may not hold or otherwise destroy, conceal, confiscate or deny access by employees to their identity or immigration documents, such as government-issued identification, passports or work permits, unless such holdings are required by law.

Foreign migrant factory workers should not be required to pay employers' or agents' recruitment fees or other related fees for the purpose of being hired or as a condition of employment.

Harassment and Abuse

Suppliers must treat all workers with respect and dignity. No worker shall be subject to corporal punishment, or physical, sexual, psychological or verbal harassment or abuse. In addition, Suppliers will not use monetary fines as a disciplinary practice.

Compensation

Suppliers must meet or exceed the minimum wage and compensation requirements as defined under applicable labor laws, applicable agreements and local regulations for regular work, overtime work, production rates and other elements of compensation and employee benefits.

Hours of Work

Suppliers must ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, workers shall not be required to work more than the lesser of (a) sixty (60) hours per week, including overtime or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture. In addition, except in extraordinary business circumstances, all workers shall be entitled to at least one day off in every consecutive seven day period.

Non Discrimination

Suppliers will ensure employment – including hiring, salary, benefits, advancement, discipline, termination, retirement, or any other terms and conditions of employment – should be based solely on the person's ability to perform the job requirements and not the person's beliefs or any other personal characteristics.

Freedom of Association and Collective Bargaining

Suppliers must recognize and respect the rights of workers to exercise lawful rights of free association, including joining or not joining any association. Suppliers must also respect the legal right of workers to bargain collectively.

Health and Safety

Suppliers must provide a safe and healthy working environment in accordance with applicable laws and regulations.

Environment

Suppliers must comply with all local environmental laws and regulations applicable to the workplace. Factories must conduct business in a manner which minimizes their impact on the environment.

Subcontracting

Suppliers must not use subcontractors in the manufacture of products or product components for The Home Depot without disclosing such information to The Home Depot, and only after the subcontractor has adequately demonstrated compliance with these Responsible Sourcing Standards.

Communication

Suppliers must communicate the provisions of The Home Depot Responsible Sourcing Standards to all workers and supervisors.

Business Ethics

Suppliers will conduct business with The Home Depot consistent with honesty and integrity and demonstrate the highest standards of business ethics. Suppliers will take no actions directed at improperly impacting the results of any audit including presentation of falsified records or coaching of employees. Consistent with The Home Depot Gift and Entertainment policy, Suppliers will not offer any incentives to The Home Depot's associates or audit firm representatives.

Monitoring and Compliance

The Home Depot will undertake affirmative measures, such as announced and unannounced on-site audits of production factories, to monitor compliance with these Responsible Sourcing Standards. Suppliers must maintain on site all documentation necessary to demonstrate compliance with the Responsible Sourcing Standards, and Suppliers must allow Associates and/or representatives from The Home Depot full access to production facilities, worker records, production records and workers for confidential interviews in connection with monitoring visits.

Suppliers are expected to take necessary corrective actions to promptly remediate any noncompliance. Suppliers are expected to actively engage in remediation – including timely preparation and presentation of a Corrective Action Preventative Action (CAPA) plan. The Home Depot reserves the right to terminate its business relationship with any Supplier who is unwilling to comply with these Responsible Sourcing Standards.