



DIVISION OF
CORPORATION FINANCE

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

April 10, 2023

Julia Lapitskaya
Gibson, Dunn & Crutcher LLP

Re: Comcast Corporation (the "Company")
Incoming letter dated January 31, 2023

Dear Julia Lapitskaya:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by the Remmer Family Foundation and co-filers for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the board publish a report disclosing how the Company is protecting its 401(k) plan beneficiaries with a longer investment horizon from climate risk in the Company's default retirement options.

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 transcends ordinary business matters.

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/2022-2023-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Luke Morgan
As You Sow

January 31, 2023

VIA E-MAIL

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

Re: *Comcast Corporation*
Shareholder Proposal of Remmer Family Foundation et al.
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

This letter is to inform you that our client, Comcast Corporation (the “Company”), intends to omit from its proxy statement and form of proxy for its 2023 Annual Meeting of Shareholders (collectively, the “2023 Proxy Materials”) a shareholder proposal (the “Proposal”) and statements in support thereof (the “Supporting Statement”) submitted by As You Sow on behalf of Remmer Family Foundation (S), Minnesota Valley Trust (S), Pottruck Resilience Fund (S), and Warren Wilson College (collectively, the “Proponents”).

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 2023 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponents.

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 Proponents that if the Proponents elect to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and SLB 14D.

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THE PROPOSAL

The Proposal states:

RESOLVED: Shareholders request that the Board publish a report, at reasonable expense and omitting confidential information, disclosing how the Company is protecting Plan beneficiaries with a longer investment time horizon from climate risk in the Company's default retirement options.

A copy of the Proposal and the Supporting Statement, as well as correspondence with the Proponents directly relevant to this no-action request, is attached to this letter as Exhibit A.

BASIS FOR EXCLUSION

We hereby respectfully request that the Staff concur in our view that the Proposal may be excluded from the 2023 Proxy Materials pursuant to Rule 14a-8(i)(7) because the Proposal relates to the Company's ordinary business operations (the compensation and benefits provided to employees).

ANALYSIS

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

A. Background On The Ordinary Business Standard.

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "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 stated 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," and identified two central considerations that underlie this policy. *Id.* As relevant here, one of these considerations 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." *Id.* The Commission stated that examples of tasks that implicate the ordinary

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business standard include “*the management of the workforce*, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers.” *Id.* (emphasis added).

A shareholder proposal being framed 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 proposed report is within the ordinary business of the issuer. *See* Exchange Act Release No. 20091 (Aug. 16, 1983); *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).”); *see also Ford Motor Co.* (avail. Mar. 2, 2004) (concurring with the exclusion of a proposal requesting that the company publish a report about global warming/cooling, where the report was required to include details of indirect environmental consequences of its primary automobile manufacturing business).

B. The Proposal Is Excludable Because It Relates To General Employee Compensation And Benefits.

The Proposal relates to the Comcast Corporation Retirement-Investment Plan, the NBCUniversal Capital Accumulation Plan, and the Universal Orlando 401(k) Retirement Plan (the “Plans”).¹ In general, most of the Plans offer automatic enrollment in the Plans for all eligible employees.²

The Proposal requests that the Company’s board of directors (the “Board”) prepare a report disclosing “how the Company is protecting Plan beneficiaries with a longer investment time horizon from climate risk in the Company’s default retirement options.”³ The Supporting Statement suggests that the report assess the performance of the default investment options by including an analysis of “[t]he degree to which carbon-intensive investments in the default investment option contribute to greater beneficiary risk and reduced Plan performance” and “[w]hether carbon-intensive investments in the default investment option put younger beneficiaries’ savings at greater risk than participants closer to retirement.”

¹ While the Proposal only refers generally to “Comcast’s 401(k) retirement plan,” it refers to aspects of each of the Plans, including by referencing in note 4 a website that mentions each of the plans. We refer to the “Plans” in the aggregate throughout rather than by individually naming each Plan because the arguments made in this no-action letter apply equally to each of the Plans.

² *See* <https://jobs.comcast.com/meet-comcast/benefits> and <https://www.nbcunicareers.com/benefits>.

³ As addressed below, it is the management committee, not the Board, that is responsible for determining the investment options available under the Plan.

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The Proposal is misguided in several respects. First, the Board does not have responsibility for or other control over the Plans, including investment options available under the Plans. Instead, as is customary for large retirement plans, the Company's Retirement Investment Committee (a management committee) serves as the Plans' fiduciary that, with the assistance of professional third-party advisors, is responsible for selecting the Plans' investment options. Second, federal pension law places strict requirements on a plan fiduciary responsible for choosing plan investment options.⁴ Specifically, law mandates that a responsible plan fiduciary select 401(k) investment options, including the default investment option, based on economic factors the fiduciary "reasonably determines are relevant to a risk and return analysis" for the particular investment or investment course of action.⁵ In addition, the responsible plan fiduciary "may not subordinate the interests of the participants and beneficiaries in their retirement income or financial benefits under the plan to other objectives, and may not sacrifice investment return or take on additional investment risk to promote benefits or goals unrelated to interests of the participants and beneficiaries in their retirement income or financial benefits under the plan."⁶ Accordingly, the Plans' fiduciary takes into account a variety of potential economic risks, reward opportunities, and goals—including, but not limited to, those related to climate change—in selecting all of the Plan investment options, including the default fund.⁷ Further, the managers of several of the Plans' core investment options currently consider and integrate ESG factors in their stewardship or security selection processes consistent with their duties as fiduciaries to the Plans. Because these decisions are subject to strict fiduciary standards of conduct, with which the Investment Committee, its consultant and Plan investment managers comply, it is not practical or appropriate to include Comcast's shareholders, who are not subject to these requirements, in this analysis.

The Proposal is focused on the management of benefits under the Company's employee benefit plans, as it addresses specifically the default investment option provided to the Plans' participants and the resulting impact on the Company's recruiting and retention efforts. Notably, the Staff has concurred with the exclusion of a substantially similar proposal as relating to a company's ordinary business operations. *See FedEx Corp. (Roman)* (avail. July 7, 2016). In *FedEx*, the proposal "urge[d] the [b]oard of [d]irectors to direct

⁴ Specifically, the fiduciary requirements of the Employee Retirement Income Security Act of 1974, as amended. 29 U.S.C. §1001, *et. seq.*

⁵ 87 Fed. Reg. 73,827 (Dec. 1, 2022) (to be codified at 29 C.F.R. § 2550.404a-1).

⁶ *See* 87 Fed. Reg. 73,885 and 29 C.F.R. § 2550.404a-1(c) (which language will remain unchanged following the January 30, 2023 effective date of the final rules published by the Department of Labor in the Federal Register).

⁷ Notably, the recitals rate investment funds under the Plans in terms of carbon emissions, and not in terms of investment quality or investment returns.

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company management to include a fossil-free 401(k) retirement plan in its selection of retirement plan options” and make the plan available to employees by a certain date. The recitals stated that “[s]atisfaction with retirement plans is correlated with shareholder return” and, after noting that a potential reason for dissatisfaction is “a lack of responsiveness to current investment trends,” discussed at length investor interest in “socially responsible investing.” Specifically, the recitals noted a “particular concern to many investors” was “a desire to divest their investments of fossil fuel-related companies” and cited a petition “call[ing] on American firms to offer fossil-free 401(k) plan choices,” which the company did not offer. The company argued in its no-action request that the company’s general administration “of its employee benefit plans, including the structuring and the variety of investment options under such plans, constitutes activities that are part of” its ordinary business operations. In concurring with the proposal’s exclusion, the Staff noted “that the proposal relates to the terms of [the company’s] employee retirement plans.” The Proposal is substantially similar to the proposal in *FedEx*. In particular, as in *FedEx*, the Proposal addresses the Company’s (default) investment options for 401(k) plan participants, and the recitals discuss the “likelihood of significant negative impacts to [workers’] retirement portfolios” and the risks associated with the Company’s ability to “attract and retain top talent” as a result of the Plan’s default investment option. Here, the Proposal more overtly relates to the Company’s ordinary business operations as it focuses on returns generated for beneficiaries under the Company’s default investment options (rather than the availability of sustainable investment options for the beneficiaries as in *FedEx*). Therefore, the Proposal is properly excludable under the ordinary business exception as relating to the terms of the Company’s employee benefit plans.

Moreover, *FedEx* is consistent with a long line of precedent concurring with the exclusion pursuant to Rule 14a-8(i)(7) of proposals relating to the administration of benefits provided under employee retirement plans. *See General Electric Co.* (avail. Dec. 14, 2010) (concurring with the exclusion of a proposal seeking “a breakdown” with specified information about two company pension plans, noting that “the proposal relates to compensation that may be paid to employees generally and is not limited to compensation that may be paid to senior executive officers and directors”); *International Business Machines Corp.* (avail. Dec. 11, 2009) (concurring with the exclusion of a proposal seeking changes to payments for former employees with vested rights retirement compensation and proposed cost of living adjustments, noting it “relates to the terms of [the company’s] employee retirement plans,” and that “proposals concerning the terms of general employee benefit plans are generally excludable under [R]ule 14a-8(i)(7)”); *Honeywell International Inc.* (avail. Jan. 22, 2009) (concurring with the exclusion of a proposal recommending annual increases to benefits payable under the company’s retirement or pension plans based on changes in the Consumer Price Index, noting they relate to the company’s “ordinary business operations (i.e., employee benefits)”); *E.I. du Pont de Nemours and Co.* (avail. Jan. 21, 2009)

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(concurring with the exclusion of a proposal requesting all employees be allowed to “choose to remain in the defined benefit pension plan” as it was previously written and applied as relating to “ordinary business operations (i.e., employee benefits)”); *AT&T Inc.* (avail. Nov. 19, 2008) (concurring with the exclusion of a proposal seeking to modify the company’s pension plan eligibility provisions); *Citigroup Inc.* (avail. Dec. 31, 2007) (concurring with the exclusion of a proposal seeking a supplemental pension payment for qualified retirees); *Ford Motor Co.* (avail. Feb. 20, 2007) (concurring with the exclusion of a proposal recommending the board make available to employees a self-directed option in their 401(k) savings plans so they can make any investment not prohibited by law, noting the proposal related “to its ordinary business operations (i.e., employee benefits)”); *Aetna Inc.* (avail. Feb. 14, 2005) (concurring with the exclusion of a proposal requesting that the company restore a subsidy for dental benefits for retirees); *ConocoPhillips* (avail. Feb. 2, 2005) (concurring with the exclusion of a proposal to eliminate pension plan offsets as ordinary business operations relating to employee benefits); *Gannett Co.* (avail. Dec. 18, 2002) (concurring with the exclusion of a proposal requesting the board of directors make certain changes to the administration of the company’s retirement plan); *SBC Communications, Inc.* (avail. Jan. 3, 1997) (concurring with the exclusion of a proposal seeking to establish a pension overview committee).

Here, the Proposal requests a report reviewing “the Company’s default retirement options” under the Plans, in which hundreds of thousands of the Company’s U.S. employees are eligible to and do participate. Thus, the Proposal clearly focuses on the administration of benefits under employee benefit plans, specifically evaluation and selection of the investments within the default option. The Proposal’s recitals and Supporting Statement make this focus clear by referring solely to employees and the Plans’ options available to them, as the Proposal:

- focuses on the “default investment option” applicable to all of the Company’s employee retirement funds;
- expresses concern over “workers’ life savings” and “workers’ portfolios”;
- references the “employee recruitment and retention landscape” and speculates that the current Plan options “may make it more difficult for [the Company] to attract and retain top talent”;
- references “employee loyalty and satisfaction”; and
- requests that the report include an analysis of the impact the investment options have on beneficiaries with differing investment horizons (i.e., “younger beneficiaries” compared to “participants closer to retirement”).

As in *FedEx* and the other precedents cited above, where the proposals related to administration of general employee compensation and benefits (e.g., employee benefit and

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retirement plans), here too, the Proposal relates to the Company's ordinary business—namely, administration of general employee compensation and benefits. Accordingly, consistent with the foregoing precedents, the Proposal may be excluded under Rule 14a-8(i)(7).

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

In the 1998 Release, the Commission reaffirmed the standards for when proposals are excludable under the “ordinary business” provision that the Commission had initially articulated in Exchange Act Release No. 12999 (Nov. 22, 1976) (the “1976 Release”). In the 1998 Release, the Commission also distinguished proposals pertaining to ordinary business matters that are excludable under Rule 14a-8(i)(7) from those that “focus on” significant social policy issues. The Commission stated, “proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote.” 1998 Release. When assessing proposals under Rule 14a-8(i)(7), the Staff considers the terms of the resolution and its supporting statement as a whole. *See* Staff Legal Bulletin No. 14C, part D.2 (June 28, 2005) (“In determining whether the focus of these proposals is a significant social policy issue, we consider both the proposal and the supporting statement as a whole.”).

In Staff Legal Bulletin No. 14L (Nov. 3, 2021), the Staff stated that it “will realign its approach for determining whether a proposal relates to ‘ordinary business’ with the standard the Commission initially articulated in [the 1976 Release], which provided an exception for certain proposals that raise significant social policy issues, and which the Commission subsequently reaffirmed in the 1998 Release.” As such, the Staff stated that it will focus on the issue that is the subject of the shareholder proposal and determine whether it has “a broad societal impact, such that [it] transcend[s] the ordinary business of the company,” and noted that proposals “previously viewed as excludable because they did not appear to raise a policy issue of significance for the company may no longer be viewed as excludable under Rule 14a-8(i)(7).” The Staff noted further that “proposals squarely raising human capital management issues with a broad societal impact would not be subject to exclusion solely because the proponent did not demonstrate that the human capital management issue was significant to the company” (citing to the 1998 Release and *Dollar General Corp.* (avail. Mar. 6, 2020) and providing “significant discrimination matters” as an example of an issue that transcends ordinary business matters).

In contrast, proposals that refer to topics that might raise significant social policy issues—but which do not focus on or have only tangential implications for such issues—are not

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transformed from an otherwise ordinary business proposal into one that transcends ordinary business, and as such, remain excludable under Rule 14a-8(i)(7). For example, in *Amazon.com, Inc.* (avail. April 10, 2018) (“*Amazon 2018*”), a proposal requested that the Company issue a report “on company-wide efforts to assess, reduce and optimally manage food waste” and asserted in the supporting statement that the proposal would “help achieve sustainability goals” and “combat climate change and hunger.” In a supplemental letter, the Company argued that the proposal “focuse[d] primarily on the economic and routine operational aspects of food waste” rather than any particular significant policy issue. The Staff concurred that the proposal could be excluded under Rule 14a-8(i)(7). *See also Amazon.com, Inc. (AFL-CIO Reserve Fund)* (avail. Apr. 8, 2022) (“*Amazon (AFL-CIO)*”) (concurring with the exclusion of a proposal requesting a report on the Company’s workforce turnover rates and labor market changes resulting from the COVID-19 pandemic noting that “the [p]roposal . . . does not focus on significant social policy issues”); and *Amazon.com, Inc. (McRitchie)* (avail. Apr. 8, 2022) (“*Amazon (McRitchie)*”) (concurring with the exclusion of a proposal requesting an annual report on the distribution of stock-based incentives throughout the workforce despite referring to wealth inequality in the United States as a significant policy issue).

The Proposal does not implicate a significant social policy issue because, despite the Proponents’ references to climate change, the central focus of the Proposal is the default investment option under the Plans and whether the investments in the default option are in the best interests of employees. Importantly, the Proposal is not focused on and does not address any business risks to the Company associated with climate change (as in *Wal-Mart Stores, Inc.* (avail. Mar. 28, 2011); *The PNC Financial Services Group, Inc.* (avail. Feb. 13, 2013)), and it does not address the manner or extent to which the Company’s products and services may generate greenhouse gas emissions (as in *Exxon Mobil* (avail. Mar. 23, 2007)). Similarly, the Proposal does not address any risks and opportunities to the Company associated with a global transition towards a lower emissions energy system (as in *ConocoPhillips* (avail. Mar. 19, 2021)). As well, the Proposal is not focused on the alignment of the Company’s retirement plan options with the Company’s own climate change goals. In this respect, the Proposal differs from *Amazon.com, Inc. (Raphael et al.)* (avail. Apr. 8, 2022) (“*Amazon (Raphael)*”) and *Comcast Corp. (The Elizabeth Kantor Trust U/A DTD 3/11/1993 and John & Shari Behnke Rev Trust)* (avail. Apr. 13, 2022) in each of which the Staff determined that a proposal requesting “a report reviewing the Company’s retirement plan options with the board’s assessment of how the Company’s current retirement plan options align with its climate action goals” was not excludable under Rule 14a-8(i)(7) because the proposal transcended ordinary business matters.⁸

⁸ In *Comcast Corp.*, counsel for the proponents there argued that the proposal was “focused on the apparent misalignment between its reputation and the Company’s retirement plan options. The Proposal is not

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Unlike the proposal in *Amazon (Raphael)*, *Comcast Corp.* and the other climate change-focused letters cited in the preceding paragraph, the Proposal is focused on the default investment option under the Plans and whether it provides a sufficient level of security and benefits for certain participants in the Plans. Just as in *Amazon 2018*, *Amazon (AFL-CIO)*, and *Amazon (McRitchie)*, simply making a connection between the subject matter of a proposal and a significant policy issue like climate change does not result in the proposal having a sufficient focus on that social policy issue. Indeed, this precise issue was already resolved in *FedEx*, where the company reasoned that the request to “include a fossil-free 401(k) retirement plan in its selection of retirement plan options” was “not about climate change and does not ask the [c]ompany to take any specific actions with regard to climate change,” but instead focused on “one aspect of [employee] compensation related to choices the employees could make under the [c]ompany’s retirement plans that the [p]roponent believes would increase overall employee satisfaction.”

Here as well, the subject matter of the Proposal is not a significant social policy issue, but instead relates to the financial benefits provided through the Plans. The Proposal and Supporting Statement seek to suggest that the performance of default investment alternatives available under the Plans implicate a significant social policy issue that should be considered by the Company’s shareholders by asserting that the Company “is generating climate risk . . . to workers’ portfolios.” While the law permits the Plans’ fiduciary to factor in economic factors relating to climate change (among other economic considerations) when selecting investment options, the primary concern is to maximize the Plans’ retirement benefits for individuals participating in the Plans, which the Plans’ fiduciary does by factoring in all relevant economic factors in making its decisions, rather than limiting its risk analysis solely to climate change considerations, as posited by the Proposal. Thus, when addressing the selection of investment alternatives under the Plans, the focus is of necessity the ordinary business issue of providing appropriate compensation and benefits to the Company’s employees who participate in the Plans. Accordingly, the Proposal does not focus on a significant policy issue and therefore does not transcend ordinary business matters.

CONCLUSION

Based upon the foregoing analysis, the Company intends to exclude the Proposal, including the Supporting Statement, from its 2023 Proxy Materials, and we respectfully request that the Staff concur that the Proposal, including the Supporting Statement, may be excluded under Rule 14a-8.

excludable under Rule 14a-8(i)(7) because it is consistent with prior Staff rulings asking companies to assess the congruency of various ‘ordinary business’ activities, including proxy voting, political contributions and charitable donations.” Letter from Sanford J. Lewis to the Staff (Mar.1, 2022).

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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 212-351-2354 or email me at JLapitskaya@gibsondunn.com.

Sincerely,



Julia Lapitskaya

Enclosures

cc: Elizabeth Wideman, Comcast Corporation
Grant Bradski, As You Sow
Shareholder Engagement, As You Sow
Steven Fox, Remmer Family Foundation
Deborah Loon, Minnesota Valley Trust
Debra Kuang, Pottruck Resilience Fund
Alan Russell, Warren Wilson College
Benjamin Linthicum, Warren Wilson College

EXHIBIT A



2020 Milvia St. Suite 500
Berkeley, CA 94704

www.asyousow.org
BUILDING A SAFE, JUST, AND SUSTAINABLE WORLD SINCE 1992

VIA FEDEX & EMAIL

December 20, 2022

Thomas J. Reid
Chief Legal Officer and Secretary
Comcast Corporation
One Comcast Center
Philadelphia, PA 19103
[REDACTED]

Dear Mr. Reid,

As You Sow is filing a shareholder proposal on behalf of Remmer Family Foundation (S), ("Proponent"), a shareholder of Comcast, for inclusion in Comcast's 2023 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. The Proponent is available for a meeting with the Company regarding this shareholder proposal at the following days/times: January 5, 2023 at 1:00pm Eastern or January 5, 2023 at 2:00pm Eastern.

The Proponent is designating *As You Sow* as a representative for all issues in this matter. Grant Bradski, [REDACTED] is the contact person on behalf of *As You Sow*. **Please also send all correspondence regarding this proposal to [REDACTED]**

A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent's concerns.

Sincerely,

Andrew Behar
As You Sow, CEO

Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: Marci Ryvicker, Senior Vice President, Investor Relations
[REDACTED]

WHEREAS: Climate change poses growing, systemic risk to the economy. If global climate goals are not met, workers face the likelihood of significant negative impacts to their retirement portfolios. Swiss Re estimates a 4% decline in global GDP by 2050 if global temperature increases are kept below 2 degrees Celsius, but up to an 18% decline without effective mitigation.¹

Comcast has taken certain actions to address climate change, for example, by committing to reach carbon neutrality for Scope 1 and 2 emissions, across its global operations, by 2035.² Yet, while decarbonizing part of its business, Comcast's 401(k) retirement plan ("Plan") continues to invest significantly in companies that contribute to climate change, jeopardizing workers' life savings.

Our Company's employee retirement funds are automatically invested in the Plan's default investment option unless employees proactively choose different investments. Thus, the majority of the Comcast Plan's \$17.6 billion in assets are invested in its default option.³

Comcast has selected Vanguard Target Retirement funds as the Plan's default offering. These funds invest significantly in fossil fuel companies and companies contributing to deforestation.⁴ By investing employees' retirement savings in companies with outsize contributions to climate change, Comcast is generating climate risk, including transition risk and long-term systemic risk, to workers' portfolios.

Comcast's default 401(k) choice risks compromising its obligation to select retirement plan investment options in the best interests of its plan participants, including those with retirement dates more than a decade out.

In the increasingly competitive employee recruitment and retention landscape, failing to minimize material climate risk in its 401(k) Plan default option may make it more difficult for Comcast to attract and retain top talent. Employee polling indicates that firms' environmental records are an important consideration in choosing a job.⁵ Employee polling also reveals increasing demand for climate-safe retirement plan options.⁶

Given the threat that climate change poses to employee's life savings, our Company can help ensure employee loyalty and satisfaction, and demonstrate that it is actively safeguarding all employee retirement savings, no matter when they are set to retire, by minimizing climate risk in its Plan offerings, especially in its default option. The federal government recently clarified that fiduciaries may appropriately consider climate risk in the selection of plan offerings, including in the default option.⁷

¹ <https://www.swissre.com/media/press-release/nr-20210422-economics-of-climate-change-risks.html>

² https://update.comcast.com/wp-content/uploads/sites/33/dlm_uploads/2021/06/Comcast-Impact-Report-FIN3.pdf

³ <https://jyv-charts.s3.us-west-2.amazonaws.com/retirement-plans/comcast/comcast-corporation-employee-savings-plans-master-trust-form-5500-filing-and-attachment-2021.pdf>

⁴ <https://investyourvalues.org/retirement-plans/comcast>

⁵ <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/climate-change-branding-can-lift-recruitment-and-retention.aspx>

⁶ <https://www.cnbc.com/2019/04/09/workers-want-elusive-socially-responsible-investments-in-401k-survey.html>

⁷ <https://www.federalregister.gov/documents/2022/12/01/2022-25783/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights>

RESOLVED: Shareholders request that the Board publish a report, at reasonable expense and omitting confidential information, disclosing how the Company is protecting Plan beneficiaries with a longer investment time horizon from climate risk in the Company's default retirement options.

SUPPORTING STATEMENT: The report should include, at Board discretion, analysis of:

- The degree to which carbon-intensive investments in the default investment option contribute to greater beneficiary risk and reduced Plan performance over time;
- Whether carbon-intensive investments in the default investment option put younger beneficiaries' savings at greater risk than participants closer to retirement.

February 27, 2023

VIA EMAIL

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Email: shareholderproposals@sec.gov

Re: Shareholder Proposal to Comcast Corporation Regarding Climate Risk in Employee Retirement Plans on Behalf of Remmer Family Foundation (S) et al.

Ladies and Gentlemen:

The Remmer Family Foundation (S), Minnesota Valley Trust (S), Pottruck Resilience Fund (S), and Warren Wilson College (the “Proponents”) are the beneficial owners of common stock of Comcast Corporation (the “Company”) and filed a shareholder proposal (the “Proposal”) to the Company. The Proponents have designated *As You Sow* to act as representative with respect to the Proposal, and it is in that capacity that I write in response to the letter dated January 31, 2023 (the “Company Letter”) sent to the Securities and Exchange Commission by Julia Lapitskaya of Gibson, Dunn & Crutcher LLP.

In the Company Letter, Comcast contends that the Proposal may be excluded from the Company’s 2023 proxy statement. The Proponents’ response follows. A copy of this letter is being emailed concurrently to the Company and its counsel.

The discussion below demonstrates that there is no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponents respectfully request that the Staff inform the Company that it is denying the no-action request.

SUMMARY

The Company manages a 401(k) defined contribution plan (the “Plan”) on behalf of its employees. The Plan has more than \$17.9 billion in assets under management, with 53% of those assets invested in a series of funds that likely constitute the Plan’s default option: the Vanguard Target Retirement Funds Series. A significant portion of the funds in this target-date series are, in turn, heavily invested in fossil-fuel companies.

The investment by Comcast of its employees’ retirement money in high-carbon companies creates long-term climate risk to beneficiaries’ retirement security, creates reputational risk to the Company, and threatens to undo the commitments the Company has made to reduce the greenhouse gas emissions from its operations. The Proposal requests that the Board prepare a report describing how the Company is protecting Plan beneficiaries whose longer-term investment horizons put their retirement funds at greater climate risk due to the Company’s high-carbon 401(k) investments.

The Company asserts that the Proposal is excludable under Rule 14a-88(i)(7) as relating to “the compensation and benefits provided to employees.” Company Letter at 2. However, this Proposal addresses the significant issue of the climate risk in the Company’s Plan investments, an issue that the Staff has already determined transcends the Company’s ordinary business. That the Proposal addresses this significant and transcendent issue in the context of the Plan’s default retirement option does not alter the fact that the main thrust of the Proposal transcends the Company’s ordinary business.

THE PROPOSAL

WHEREAS: Climate change poses growing, systemic risk to the economy. If global climate goals are not met, workers face the likelihood of significant negative impacts to their retirement portfolios. Swiss Re estimates a 4% decline in global GDP by 2050 if global temperature increases are kept below 2 degrees Celsius, but up to an 18% decline without effective mitigation.¹

Comcast has taken certain actions to address climate change, for example, by committing to reach carbon neutrality for Scope 1 and 2 emissions, across its global operations, by 2035.² Yet, while decarbonizing part of its business, Comcast's 401(k) retirement plan ("Plan") continues to invest significantly in companies that contribute to climate change, jeopardizing workers' life savings.

Our Company's employee retirement funds are automatically invested in the Plan's default investment option unless employees proactively choose different investments. Thus, the majority of the Comcast Plan's \$17.6 billion in assets are invested in its default option.³

Comcast has selected Vanguard Target Retirement funds as the Plan's default offering. These funds invest significantly in fossil fuel companies and companies contributing to deforestation.⁴ By investing employees' retirement savings in companies with outsize contributions to climate change, Comcast is generating climate risk, including transition risk and long-term systemic risk, to workers' portfolios.

Comcast's default 401(k) choice risks compromising its obligation to select retirement plan investment options in the best interests of its plan participants, including those with retirement dates more than a decade out.

In the increasingly competitive employee recruitment and retention landscape, failing to minimize material climate risk in its 401(k) Plan default option may make it more difficult for Comcast to attract and retain top talent. Employee polling indicates that firms' environmental records are an important consideration in choosing a job.⁵ Employee polling also reveals increasing demand for climate-safe retirement plan options.⁶

Given the threat that climate change poses to employee's life savings, our Company can help ensure employee loyalty and satisfaction, and demonstrate that it is actively safeguarding all employee retirement savings, no matter when they are set to retire, by minimizing climate risk in its Plan offerings, especially in its default option. The federal government recently clarified that fiduciaries may appropriately consider climate risk in the selection of plan offerings, including in the default option.⁷

¹ <https://www.swissre.com/media/press-release/nr-20210422-economics-of-climate-change-risks.html>

² https://update.comcast.com/wp-content/uploads/sites/33/dlm_uploads/2021/06/Comcast-Impact-Report-FIN3.pdf

³ <https://iyv-charts.s3.us-west-2.amazonaws.com/retirement-plans/comcast/comcast-corporation-employee-savings-plans-master-trust-form-5500-filing-and-attachment-2021.pdf>

⁴ <https://investyourvalues.org/retirement-plans/comcast>

⁵ <https://www.shrm.org/resourcesandtools/hr-topics/talent-acquisition/pages/climate-change-branding-can-lift-recruitment-and-retention.aspx>

⁶ <https://www.cnbc.com/2019/04/09/workers-want-elusive-socially-responsible-investments-in-401k-survey.html>

⁷ <https://www.federalregister.gov/documents/2022/12/01/2022-25783/prudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights>

RESOLVED: Shareholders request that the Board publish a report, at reasonable expense and omitting confidential information, disclosing how the Company is protecting Plan beneficiaries with a longer investment time horizon from climate risk in the Company's default retirement options.

SUPPORTING STATEMENT: The report should include, at Board discretion, analysis of:

- The degree to which carbon-intensive investments in the default investment option contribute to greater beneficiary risk and reduced Plan performance over time;
- Whether carbon-intensive investments in the default investment option put younger beneficiaries' savings at greater risk than participants closer to retirement.

BACKGROUND

Employees are typically automatically enrolled in the Plan. See Company Letter at 3. Like many defined contribution plans, the Plan consists of a "menu" of investment alternatives from which employees may choose. *Id.* at 4. However, the Plan includes a "default alternative" into which employees' contributions (*i.e.*, their deferred wages) are invested if the employees do not affirmatively select an option. The Company's default funds appear to consist of a "family" of target-date funds: the Vanguard Target Retirement Funds. Target-date retirement funds are "dated" to a particular year in the future, such as 2050, and chosen or assigned based on the dates closest to when an employee anticipates retiring. The fund gradually shifts the balance of its allocations over time from riskier to more conservative as the retirement date draws nearer.

The Plan's default alternative is significantly exposed to climate risk. For example, the 2050 target date fund has 8.9 percent of its total value invested in fossil fuel companies, and another .7% of its value invested in deforestation-risk agribusiness companies.

The Proposal asks the Company to issue a report to explain how it is protecting Plan beneficiaries with a longer investment time horizon from climate risk inherent in the Company's high-carbon default options. It also suggests, in the discretion of the Board, that the report analyze the degree to which carbon-intensive investments in the default investment option contribute to greater beneficiary risk and reduced Plan performance over time and whether carbon-intensive investments in the default investment option put younger beneficiaries' savings at greater risk than it does for participants closer to climate change.

The Proposal's focus on the Plan's default investment option is important and appropriate, because the investments in the default option are significant and automatic. As described above, the majority of the Plan's assets are invested in that family of funds. As a consequence, more than a billion dollars of employees' money is, without employee input, invested in fossil fuels.¹ As described in greater depth below, this generates substantial climate risk in employees' retirement portfolios.

ANALYSIS

I. The Proposal Raises a Significant Policy Issue Appropriate for Shareholder Consideration.

Virtually all shareholder proposals will relate in some way to some aspect of a company's business or operations. Indeed, the failure to do so is itself a basis for exclusion. See Rule 14a-8(i)(5). Nonetheless,

¹ <https://investyourvalues.org/retirement-plans/comcast>.

matters implicating a company's ordinary business are nonetheless appropriate subjects for shareholder proposals if they have major implications for society or if they implicate matters of significant social policy and do not micromanage a company.

The Commission's 1998 Release remains the authoritative interpretation of the meaning and scope of the ordinary business rule. See Exchange Act Release No. 34-40018 (May 21, 1998). In the 1998 Release, the Commission identified two central considerations: (1) whether the proposal addresses a significant social policy issue; and (2) whether the proposal micromanages the company.

While the Commission acknowledged 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," it also recognized that "proposals relating to such matters but focusing on sufficiently significant social policy issues ... generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters." 1998 Release.

The Commission and Staff have subsequently confirmed on multiple occasions that proposals addressing even core company business are not excludable when they implicate significant issues of social policy. As a consequence, "a proposal may transcend a company's ordinary business ... even if" the significant policy issue's connection to the company involves "the 'nitty-gritty' of its core business." Staff Legal Bulletin No. 14H (Oct. 22, 2015); see also Staff Legal Bulletin No. 14L (Nov. 3, 2021) (stating that a proposal that addresses an "issue[] with a broad societal impact," even if it does so through the lens of the company's day-to-day operations, "transcend[s] the ordinary business of the company").

A. The Proposal Addresses a Significant Social Policy Issue That Transcends Ordinary Business.

Fundamentally, the Proposal addresses the consequences of the Company's investment of more than a billion of its employees' dollars into fossil fuel and deforestation-risk agribusiness companies. The investment of more than a billion dollars' worth of employee retirement funds in a way that increases, rather than decreases, climate risk to employees' entire retirement portfolios raises a significant issue of social policy, notwithstanding the fact that it also implicates a set of "ordinary business" decisions concerning the management of employee retirement plans. As such, the Proposals transcend ordinary business.

Last year, the Staff concluded that two proposals addressing climate risk in companies' retirement plans transcended ordinary business. See *Amazon.com, Inc. (Raphael)* (Apr. 8, 2022); *Comcast Corporation (Kantor)* (Apr. 13, 2022). Each proposal requested that the Company "prepare a report reviewing the Company's retirement plan options with the board's assessment of how the Company's current retirement plan options align with its climate action goals." In each case, the Staff concluded that the proposal "transcends ordinary business matters." The Company Letter fails to explain why the current Proposal's focus on the default option provides any reason for the Staff to depart from last season's determination.

Despite the Staff's conclusions in *Amazon* and *Comcast*, the Company Letter largely reiterates the arguments that it (and Amazon) made last season that the current Proposal is excludable because it "relates to general employee compensation and benefits." In doing so, it relies primarily on *FedEx Corp. (Roman)* (July 6, 2016) and a number of other precedents. See Company Letter at 4-6. In this respect it is substantially identical to the arguments in last season's company letter. See *Comcast Corporation* (Company Letter at 5-7). The Company's argument amounts to an attempt to construct a *per se*

prohibition on proposals involving employee retirement plans, a position that the Staff rejected in *Amazon* and *Comcast*.

The Company provides little substantive explanation of why the Staff should reconsider those decisions or why the distinctions between the current Proposal and last season's proposals merit a different outcome. For example, the Company argues that the Proposal's "focus" on "the administration of benefits under employee benefit plans" is "clear" because, for example, the Proposal "focuses on the 'default investment option' applicable to all of the Company's employee retirement funds." Company Letter at 6. It argued the same thing with respect to last season's proposal, stating that the 2022 proposal's "focus" on "administration of an employee benefit plan that involves general employee compensation matters" was "clear" because it addressed "the December 2020 total 'employee retirement dollars invested' in the Plans." *Comcast Corp.* (Company Letter at 7). The Proposal at issue here similarly addresses the investing of employee retirement funds and the climate impact associated with how those dollars are invested. Simply reiterating last season's unsuccessful arguments does not provide a reasoned basis for distinguishing this Proposal.

In reality, the climate risk created by the Plan's selection of a default investment option is precisely the kind of issue that transcends ordinary business. While the selection of retirement funds may generally be ordinary business, the Proposal's *exclusive* focus is on the ***climate impact*** of the Plan's default retirement option, and the resultant risks to employees, the Company, and the planet.

1. **The Significance of Climate Risk**

The Proposal focuses narrowly on the significant social issue of systemic climate transition risk. Continued investment of retirement funds in high-carbon companies is implicated by and central to the current understanding that investments misaligned with global climate goals poses systemic risk to the broader economy and will have an outsized impact on future retirees' portfolio performance. Moreover, such impacts will likely far exceed any offsetting short term benefits of increased value from companies that benefit from perpetuating high-carbon activities. It is these questions on which the Proposal asks the Company to report.

These concerns raised in the Proposal have been expressed and are subject to significant debate in the investment marketplace. An emerging understanding among investors is that climate change will dramatically affect portfolio-wide values by causing widespread detrimental changes in the economy — also referred to as the "beta" effect on portfolio values. Some analysts have concluded that the systemwide economic impact of climate change threatens to swamp investment stock picking (*i.e.*, "alpha") strategies:

It is not that alpha does not matter to an investor . . . but that the impact of the market return driven by systemic risk swamps virtually any possible scenario created by skillful analysis or trading or portfolio construction.²

A recent report on this issue noted:

Due to the outsized risks it poses to the economy, climate change is the quintessential system-wide risk. Put proverbially, diversified investors who allow portfolio companies to emit [greenhouse gases] to an extent that threatens the economy in order to maximize

² Jon Lukomnik and James P. Hawley, *Moving Beyond Modern Portfolio Theory: Investing That Matters* (Routledge, 2021).

enterprise value are rearranging the deck chairs on the Titanic as the iceberg looms ever closer.³

As cited in the Proposal, Swiss Re estimates the total economic impact of climate change to be a decline of between 4% and 18% of global GDP, depending on the effectiveness of mitigation efforts.⁴ Thus, the Plan's investments involve a significant issue that transcends ordinary business.

Moreover, the issue of climate risk in retirement investments is a matter of significant public debate. In recent years, numerous states have enacted legislation on the topic, either requiring public pension funds to divest from fossil fuels or requiring public pension funds to divest from companies that "boycott" fossil fuels.⁵ There is also proposed legislation concerning climate risk in retirement funds in several states.⁶ Additionally, a number of large retirement fund managers have concluded that their fiduciary duty requires divestment from fossil fuels, and thus have either divested or announced plans to do so.⁷ Recently, the Department of Labor amended regulations implementing the ERISA statute governing the management of 401(k) plans to clarify that ESG considerations, within which climate change falls, are appropriate considerations for fiduciaries, *including* in the selection of default options.⁸ Several states have sued to block those rules.⁹

In short, retirement plans' climate risk is a significant policy issue subject to significant social debate, and therefore transcends ordinary business.

2. The Proposal Focuses on Climate Risk

The Company's suggestion that the Proposal's focus on climate change is only "tangential," *see* Company Letter at 7, is not well-founded. The Proposal's *sole* concern with respect to the Plan and the default option is climate risk. The Proposal seeks a report on how the Company is protecting longer-term beneficiaries "from climate risk in the Company's default retirement options," and suggests an analysis of the "degree to which carbon-intensive investments ... contribute to greater beneficiary risk and reduced Plan performance" and whether "carbon-intensive investments ... put younger beneficiaries' savings at greater risk." The Proposal does not request general disclosure regarding on employee compensation and benefits; it solely requests disclosure and analysis related to climate risk in employee's retirement accounts.

The Proposal focuses on a core mechanism by which retirement plans contribute to the climate crisis: the investment of a majority of plan assets into a default alternative that is significantly exposed to high-

³ <https://theshareholdercommons.com/wp-content/uploads/2022/09/Climate-Change-Case-Study-FINAL.pdf>.

⁴ <https://www.swisre.com/media/press-release/nr-20210422-economics-of-climate-change-risks.html>

⁵ <https://www.sierraclub.org/maine/blog/2021/06/maine-becomes-first-state-pass-law-divest-fossil-fuels>; <https://www.texastribune.org/2022/08/24/texas-boycott-companies-fossil-fuels>.

⁶ <https://www.nj.com/news/2022/10/nj-could-divest-its-92b-pension-fund-from-fossil-fuels-what-it-meansfinancially-and-for-climate-change.html>; <https://www.pionline.com/esg/california-bills-call-calpers-calstrs-divestfossil-fuels-company-climate-disclosure>.

⁷ <https://www.institutionalinvestor.com/article/b1wpqrffxtkn7c/New-York-s-State-Pension-Fund-Announces-Plan-to-Divest-From-21-Oil-and-Gas-Companies>; <https://www.opb.org/article/2022/11/16/oregon-treasurer-wantsstate-pension-fund-divest-fossil-fuels>; <https://www.ai-cio.com/news/chicago-teachers-pension-fund-to-reorientateportfolio-to-fully-offset-fossil-fuel-investments/>.

⁸ <https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-onprudence-and-loyalty-in-selecting-plan-investments-and-exercising-shareholder-rights>.

⁹ <https://www.cnn.com/2023/01/27/investing/biden-esg-lawsuit/index.html>.

carbon companies and which thereby exacerbate climate risk. As a general matter, since at least 2009 (see Staff Legal Bulletin No. 14E), proposals requesting analyses of the *financial impacts* of climate policy on companies have not been found to be excludable under Rule 141a-8(i)(7). This became apparent in the Staff's determinations of two no-action requests at Goldman Sachs. In *Goldman Sachs* (Feb. 7, 2011 & Mar. 1, 2011), the Staff found that climate proposals at that financial institution were not excludable as relating to ordinary business. One proposal sought analysis of the firm's risk *to the climate* (Mar. 1, 2011), and the other sought analysis of the climate-related risks *to the firm* (Feb. 6, 2011). In each instance, the company argued that disclosure of the risks related to climate change pertained to ordinary business. The Staff found the proposals not excludable because they focused on the "significant policy issue of climate change."

The Company relies – as it did in 2022 – on *FedEx Corp.* (July 7, 2016). *FedEx* remains distinguishable. There, the Proposal asked the Board to direct company management to include a fossil fuel-free alternative in its 401(k) plan. The current Proposal, like last season's, does not ask the Board to *change* company plan options, but instead to assess and report on the risk created by the current allocations.

Finally, in a footnote, the Company seeks to distinguish last season's decisions in *Amazon* and *Comcast* by suggesting that those Proposals focused on *alignment* (between the companies' climate goals and their plan investments). See Company Letter at 8-9 n.8. First, the current Proposal also addresses the issue of alignment. See Proposal, paragraph 2 ("Comcast has taken certain actions to address climate change . . . Yet, while decarbonizing part of its business, [the Plan] continues to invest significantly in companies that contribute to climate change."). Indeed, last season, the Company argued that the Proposal's focus on alignment was inappropriate.¹⁰ Second, while the Proponents in *Amazon* and *Comcast* certainly argued (*inter alia*) that the proposals were not excludable because they focused on value alignment, the Staff decided that the proposals were not excludable because they transcended ordinary business.

The Company has chosen a default option that invests heavily in high-carbon companies, including fossil fuels. These investments exacerbate growing climate risk faced by the planet and employees' retirement accounts. Ensuring that the Company is managing this climate risk, including the climate risk which redounds across portfolios and creates climate risk to employee retirement funds, is properly a matter for shareholder consideration. A proposal asking for a report on the management of this risk is not excludable under Rule 14a-8(i)(7) because it transcends the Company's ordinary business.¹¹

CONCLUSION

Based on the foregoing, the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

¹⁰ See <https://www.sec.gov/Archives/edgar/data/1166691/000120677422001186/cmcsa4011221-def14a.htm> (Company Statement in Opposition to Proposal: "There is no connection — and in fact under the law there cannot be a connection — between our climate action goals or other company values and the selection of investment funds made available under our retirement plans. This proposal is misguided in seeking to connect the two.").

¹¹ The Company's practical objections to the Proposal — for example, that the Proposal is inappropriate because management and not the Board governs the Plan — were unsuccessful last season, and should be again for the same reasons. Compare Company Letter at 4 with *Comcast Corp.* (Company Letter at 4).

Office of Chief Counsel

February 27, 2023

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Sincerely,

A handwritten signature in black ink, appearing to read 'LM', with a stylized flourish extending to the right.

Luke Morgan

Staff Attorney, *As You Sow*

cc:

Meghan Sherley, Gibson, Dunn & Crutcher, LLP

Julia Lapitskaya, Gibson, Dunn & Crutcher LLP

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