CtW Investment Group

August 29, 2018
Arthur D. Levinson
Chairman, Apple Inc.
1 Infinite Loop
Cupertino, CA 95014

Dear Dr. Levinson,

In light of increased public awareness of and concern over unlawful, inequitable, or anti-competitive employment practices, including multiple legislative proposals to bar such practices at the state and federal levels, we urge you to:

1. Lead your fellow directors in a review of Apple Inc.'s contracting practices, including the use of any of the provisions listed below.
2. Report the board's findings to shareholders before your next annual meeting
3. Commit to increased human capital management disclosure going forward.

The unlawful, inequitable, and/or anti-competitive employment practices we are concerned with include:

- Non-disclosure agreements, including those reached between company executives and employees, former employees, or contractors.
- Non-compete provisions, whether applicable to the current or post-employment period.
- "No Poaching" agreements, whether between Apple Inc. and other firms, or among company subsidiaries, affiliates, or franchisees.
- Mandatory Arbitration provisions that apply to disputes arising from employment, the termination of employment, or putative joint-employment claims.

As we explain below, we believe that such a review is overdue given the clear financial, operational, regulatory, and reputational risks these contracting practices increasingly present. Particularly now that courts, regulators, and legislators from across the political spectrum view these practices with suspicion and are moving to limit the scope of their application – where they are not prohibited outright – it is incumbent upon the board to ensure that habit, inertia, and ignorance do not generate substantial costs for long-term shareholders by inhibiting Apple Inc. from adapting to changing attitudes and legal standards. We leave it to you and your fellow directors to determine the appropriate arrangements for conducting this review and reconsideration, but we expect that the result of this process will include a comprehensive and detailed report to shareholders prior to next year's annual meeting.

The CtW Investment Group works with union-sponsored pension funds to enhance long-term stockholder value through active ownership. These funds have over $250 billion in assets under management and are substantial Apple Inc. shareholders.

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Public Awareness of Employment Contracting Practices

Over the past year reports of inequitable, unlawful, and anti-competitive contracting provisions in the employment agreements of millions of US workers has drawn unprecedented coverage and public scrutiny. Multiple corporate scandals have emerged from the use of non-disclosure agreements to cover-up sexual harassment allegations, in some cases enabling perpetrators to avoid accountability for years. Non-compete agreements, previously thought to apply only to highly paid employees possessing trade secrets, have been found in employment contracts for fast-food chains, retailers, and TV newsrooms. Employers in multiple industries have entered into "no poach" agreements, substantially limiting the mobility of workers across the spectrum from engineers to janitors. And over 60 million workers have been compelled by their employers to enter into mandatory arbitration agreements, which may preclude their participation in collective action to remedy workplace problems.

While it is likely obvious that these practices would tend to impose significant costs on individual workers (through reduced mobility, absence of competing offers, etc.), they have also been found to impose significant burdens on the economy as a whole, and therefore on shareholders in general. First, by insulating abusive employees and managers against exposure, employers may enable the continuation of harassing behavior and a hostile working environment with all of its associated costs. Despite the publicity attached to the #metoo movement, it still appears to be the case that 25%-85% of women experience sexual harassment in the workplace, over 70% do not report such harassment, and 75% of those who do report harassment face retaliation.[1] The EEOC has estimated that workplace sexual harassment costs companies approximately $100 million a year in fines, and as much as $350 million a year in litigation costs and settlements.[2] A 1988 *Fortune* article that considered the costs to the economy of the excess turnover and lowered productivity due to sexual harassment, updated for inflation, yields an estimate of $14 million in costs per Fortune 500 company ($7 billion total per year).[3]

Second, by limiting mobility between jobs and employers, non-compete and no-poach provisions reduce the job opportunities and earning power of employees. Approximately 18% of US workers are covered by non-compete provisions, including 15% of workers without a college degree, and 14% of those earning less than $40,000 a year.[4] Additionally, survey evidence strong suggests that fewer than 3 in 10 workers are told of the non-compete provision before they accept a job.[5] Research suggests that non-compete provisions reduce wages by 1.4% - 1.9%.[6] Moreover, non-competes limit entrepreneurship, since workers are mostly likely to try to go into business for themselves in an industry or occupation with which they are already experienced: economists have found that for the median state, enforcing non-competes more strictly results in 200 fewer new firms being formed per year.[7] Another study found

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[1] Lynn Parramore, "$MeToo: The Economic Cost of Sexual Harassment" *Institute for New Economic Thinking*, Jan. 2018 https://www.ineteconomics.org/research/research-papers/metoo-the-economic-cost-of-sexual-harassment; https://www.vox.com/identities/2017/10/15/16438750/weinstein-sexual-harassment-facts.

[2] Parramore, op.cit.

[3] Parramore, op.cit.; https://www.yourerc.com/blog/post/the-cost-of-sexual-harassment-in-the-workplace.aspx

[4] Ryan Nunn, "Leveling the playing field for workers by reforming non-competes" *Brookings* May 6, 2016 https://www.brookings.edu/opinions/leveling-the-playing-field-for-workers-by-reforming-non-competes/.

[5] Ibid.

[6] Office of Economic Policy, U.S. Department of the Treasury "Non-Compete Contracts: Economic Effects and Policy Implications" March 2016.

[7] Jessica S. Jeffers, "The Impact of Restricting Labor Mobility on Corporate Investment and Entrepreneurship" January 16, 2017.

that states enforcing non-competes gain 16 jobs when venture capital investment increases by 1%, while states that do not enforce such provisions (such as California) gain 56 jobs in response to the same increase.[8] Finally, non-compete provisions impair the ability of labor markets to generate efficient matches between employers and workers. The "goodness of fit" between employer and employee is a major source of value from the employment relationship, such that by constraining the ability of individual workers to seek out new opportunities, employers artificially limit the pool of potential matches available to them. In effect, the recruiting difficulties many employers report and attribute to a "skills shortage" is much more plausibly explained by the limits on workers mobility that employers themselves impose.[9]

Third, by requiring employees to submit claims of unlawful behavior to mandatory arbitration – in which employers win the overwhelming majority of cases- employers reduce the likelihood that "low road" practices (such as wage theft, misclassification, and discrimination) will be detected and ended. This result has the unfortunate consequence of placing law-abiding employers who focus on the long-term and commit to workforce engagement and human capital investment at a competitive disadvantage. Currently more than half of US employers impose mandatory arbitration on their workers, roughly double the proportion from the early 2000s.[10] It is noteworthy that during this same period, while public filings of sexual harassment claims have fallen, survey evidence indicates that sexual harassment is no less prevalent than a decade ago: instead, it seems probable that mandatory arbitration is limiting the ability of employees to seek redress while also keeping investors, directors, and the public at large in the dark concerning the full scope of harassing behavior in the workplace.

Regulatory Guidance and Enforcement Risk

Following the reporting, prosecution, and litigation against six major technology firms operating in Silicon Valley, a number of US agencies including the Department of Justice ("DoJ") have made it clear that they view widespread contracting practices – including non-competes, no-poach agreements, and mandatory arbitration – to be illegal, legally dubious in many circumstances, or potentially inconsistent with rights clearly established under US law. In particular, the US DoJ's Anti-Trust Division and the Federal Trade Commission published *Anti-Trust Guidance for Human Resource Professionals* in October 2016, which further emphasized the importance of ensuring employers recognized their potential civil and criminal liabilities stemming from employment contracting practices that may constrain the ability of workers to move between jobs or engage in good faith bargaining over pay. As the *Guidance* makes clear, employers need to carefully consider the appropriateness of applying contractual provisions that may compromise worker mobility and impair labor market competition. Over the past two years, the DoJ has made clear that this guidance is still in effect, while numerous state Attorneys General have joined together to pursue enforcement actions targeting mandatory arbitration and no-poach

[8] Sampsa Samila & Olav Sorenson, "Non-compete covenants: Incentives to innovate or impediments to growth" October 5, 2010.

[9] As Jordan Weissman notes, an actual skills shortage should be associated with rapid wage increases (as employers compete for workers) not extremely slow-to-non-existent wage increases, as the U.S. has experienced over the past decade. Jordan Weissman, "After All the Talk About a Skills Shortage in the U.S. Job Market, the Real Problem May Be an Employer Shortage" *Slate*, January 17, 2018.

[10] Jeff Green, "Sexual Harassment Cases Go Uncounted as Compliant Process Goes Private" *Bloomberg* April 23, 2018; Jacob Gershman, "As More Companies Demand Arbitration Agreements, Sexual Harassment Claims Fizzle" *Wall Street Journal*, January 25, 2018.

agreements. In other words, employers are on notice that anti-competitive labor practices carry significant enforcement risks, as well as financial and reputational risks that frequently follow regulatory enforcement actions.

Minimizing Investor Risk Begins With Knowledge

Currently, Apple Inc. does not provide shareholders with any detailed description of the contracting practices used by managers, the degree to which certain contract provisions are standard or widespread across different locations, occupations, and levels of organizational authority, or the internal controls in place that enable senior management and the board to monitor contracting practices and ensure that problematic practices are curtailed. As institutional shareholders increasingly recognize the centrality of human capital management to sustainable value creation, it becomes all the more important for boards of directors to recognize and mitigate the risks posed by inequitable and anti-competitive contracting practices. As you many know, a coalition of institutional investors with more than $2.8 trillion in assets under management has petitioned the SEC to undertake a rulemaking to require disclosure of a variety of human capital management metrics. We urge you to begin reviewing Apple Inc.'s use of anti-competitive employment practices promptly, and to report to shareholders on the board's findings and recommendations. We would appreciate hearing both that you have received this letter and are discussing the concerns we raise by September 30, 2018.

We would be happy to meet to discuss our concerns at your convenience. Please contact our Research Director, Richard Clayton by email richard.clayton@ctwinvestmentgroup.com or at (202) 721 6038.

Sincerely,

Dieter Waizenegger, Executive Director