

RESOLVED:

Shareholders of Digital Realty Trust, Inc. (“Digital Realty”) ask that the Board of Directors prepare a public report assessing the potential risks to the company associated with its use of concealment clauses in the context of harassment, discrimination and other unlawful acts. The report should be prepared at reasonable cost and omit proprietary and personal information.

SUPPORTING STATEMENT:

Concealment clauses are defined as any employment or post-employment agreement, such as arbitration, non-disclosure or non-disparagement agreements, that Digital Realty asks employees or contractors to sign which would limit their ability to discuss unlawful acts in the workplace, including harassment and discrimination.

WHEREAS:

Digital Realty may wisely use concealment clauses in employment agreements to protect corporate information, such as intellectual capital and trade secrets. However, harassment, discrimination are not trade secrets, nor are they core to Digital Realty’s operations or needed for competitive reasons. Yet, Digital Realty’s employment agreements may prohibit their workers from speaking openly on these topics. Given this, investors cannot be confident in their knowledge of Digital Realty’s workplace culture.

Concealment clauses may limit employees’ remedies for wrongdoing, reduce employee willingness to report discrimination¹, and prevent employees from learning about shared concerns. Concealment clauses may also enable discrimination, reduce workforce effectiveness, and create brand, legal, and human capital risks. Arbitration prevents class-action suits, which may allow a sense of impunity from companies with poorly implemented diversity, equity and inclusion policies.

A healthy workplace culture is linked to strong returns. McKinsey found that companies in the top quartile for workplace culture post a return to shareholders 60 percent higher than median companies and 200 percent higher than organizations in the bottom quartile.² A study by the *Wall Street Journal* found that over a five-year period, the 20 most diverse companies in the S&P 500 had an average annual stock return that was almost six percentage points higher than the 20 least diverse companies.³

Pinterest paid \$22.5 million to settle a gender discrimination lawsuit brought by a former executive after years of binding employees to concealment agreements. Shareholders ultimately sued Pinterest executives alleging a breach of fiduciary duty by “perpetrating or knowingly ignoring the long-standing and systemic culture of discrimination and retaliation.”⁴ Similarly, in 2020, Alphabet agreed to limit confidentiality and arbitration restrictions associated with harassment and discrimination cases as part

¹<https://www.hnlr.org/2020/08/forced-into-employment-arbitration-sexual-harassment-victims-are-saying-metoo-and-beginning-to-fight-back-but-they-need-congressional-help/>

²<https://www.mckinsey.com/business-functions/organization/our-insights/the-organization-blog/culture-4-keys-to-why-it-matters>

³ <https://www.wsj.com/articles/the-business-case-for-more-diversity-11572091200>

⁴<https://www.institutionalinvestor.com/article/b1phvnsffr2bp/Retirement-System-Sues-Pinterest-Board-and-Execs-Over-Discrimination>

of a \$300 million settlement of shareholder lawsuits alleging the company created a toxic work environment.⁵

A number of states have sought to remove or reduce forced arbitration of employee claims. This includes California, Maryland, New Jersey, New York, Vermont and Washington.⁶ California law also prohibits concealment clauses in employment agreements involving recognized forms of discrimination and unlawful activity.⁷ Digital Realty risks working under a patchwork of state laws related to the use of concealment clauses and may benefit from consistent practices across all employees and contractors.

⁵ <https://www.nytimes.com/2020/09/25/technology/google-sexual-harassment-lawsuit-settlement.html>

⁶ reuters.com/legal/legalindustry/anti-arbitration-statutes-faa-metoo-2021-10-05/

⁷ <https://www.marketwatch.com/story/silenced-no-more-act-becomes-law-in-california-crippling-ndas-1163370539>