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August 5, 2020

VIA EMAIL (bod@cisco.com)  
AND OVERNIGHT DELIVERY

Board of Directors  
Attn: Charles H. Robbins, Chairman  
Cisco Systems, Inc.  
170 West Tasman Drive  
San Jose, CA 95134-1706

Re: *Litigation Demand to Cisco Systems, Inc.'s Board of Directors to Comply with  
Cisco's Public Statements About Diversity and Add African Americans to the Board  
and Executive Leadership Team*

Dear Directors:

This shareholder litigation demand is being made upon the Board of Directors of Cisco Systems, Inc. ("Cisco" or the "Company") by the City of Pontiac General Employees' Retirement System ("City of Pontiac"), which has been a Cisco shareowner continuously since October 2007. City of Pontiac hereby demands that the Board of Directors ("Board") immediately commence legal action against certain current and former Cisco directors and/or officers for breach of fiduciary duty and federal proxy law violations. These individuals are M. Michele Burns, Wesley G. Bush, Mark Garrett, Michael D. Capellas, John L. Hennessy, Kristina M. Johnson, Roderick C. McGearry, Arun Sarin, Brenton L. Saunders, Charles H. Robbins, Carole B. Tomé, and Steven M. West (together, the "Cisco Insiders").

Since at least 2015, the Cisco Insiders publicly misrepresented Cisco's success as an industry leader in top leadership diversity and as a Company that effectively promotes diversity, including racial diversity, throughout its ranks. In reality, there is a visible absence of African Americans in leadership positions across Cisco. Despite those representations, in 2020, there are still no African Americans on Cisco's Board. Although each of the Cisco Insiders was aware of this reality between 2015 and 2020, and this situation has persisted for years, the Cisco Insiders repeatedly represented that "Cisco regularly evaluates the need for board refreshment," and that, "[a]s a part of its consideration of director succession," the Board "believes it is important to consider diversity of race . . . in evaluating board candidates."

The Cisco Board lacks a single African American director and its senior Executive Leadership Team is likewise devoid of any African Americans. The noticeable lack of African

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Americans at Cisco extends deep into the Company, that is to the vice president, leadership and people manager levels as well.

The business case for diversity is now overwhelming. In 2015, McKinsey & Company (“McKinsey”) first reported a statistically significant relationship between a more diverse leadership team and better financial performance, finding that “[c]ompanies in the top quartile of racial/ethnic diversity were 35 percent more likely to have financial returns above their national industry median,” while “[c]ompanies in the bottom quartile for both gender and ethnicity/race were statistically less likely to achieve above-average financial returns than the average companies in the dataset (that is, they were not just not leading, they were lagging).” Vivian Hunt, Dennis Layton, and Sara Prince, *Diversity Matters*, McKinsey & Company, at 1 (Feb. 2, 2015) (“*Diversity Matters*”), <https://www.mckinsey.com/~media/mckinsey/business%20functions/organization/our%20insights/why%20diversity%20matters/diversity%20matters.pdf>.

Cisco has been damaged and irreparably harmed by the Cisco Insiders’ conscious, continuing failure to embrace racial diversity throughout Cisco’s corporate enterprise, as has been represented to shareowners. The Board, however, has not acted to address this harm to the Company. The City of Pontiac makes this Litigation Demand to remedy the Cisco Insiders’ dereliction of their legal duty to act in the best interests of the Company and remove the institutional structures preventing Cisco from complying with its stated diversity objectives.

## INTRODUCTION AND OVERVIEW

At almost every opportunity, Cisco publicly asserts its commitment to “inclusion and diversity” at every level of the Company. The Company acknowledges diversity is “essential” to better teams, more innovation and “ultimately” more success. For example, the Cisco Insiders caused Cisco to represent:

- “*Within our own company, we continue to transform our culture – driving diversity and inclusion throughout our entire organization* and implementing sustainable business practices to reduce our environmental impact.” Cisco Systems, Inc., 2019 Corporate Social Responsibility Report (“2019 CSR Report”) at 3.<sup>1</sup>
- “At Cisco, *we are committed to full-spectrum diversity inclusive* of gender, ethnicity, *race*, orientation, age, ability, veteran status, religion, culture, background, experience, strengths, and perspectives.” *Id.* at 38.

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<sup>1</sup> Emphasis has been added unless otherwise noted.

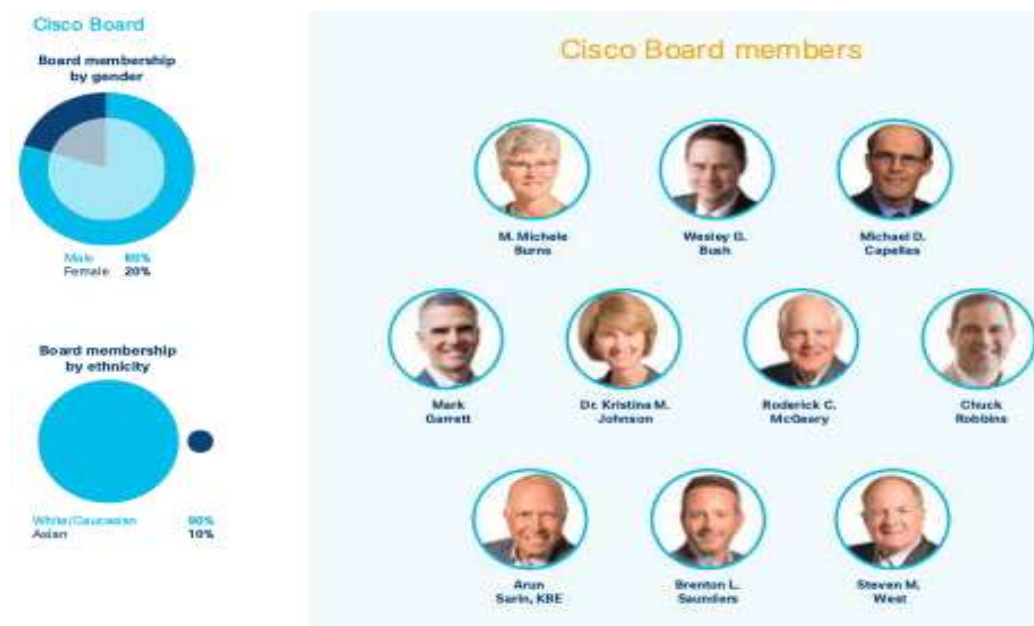
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- “**Diversity**, inclusion, collaboration, and technology are *fundamental to who we are*, how we create the best teams, *and how we will succeed* in this age of digital transformation.” *Id.*
- “**Our work is focused on achieving four key business outcomes: Diverse leadership and workforce**, inclusive and collaborative culture, community engagement and impact, and inclusion and collaboration industry leadership.” *Id.*
- “We are also focused on building a thriving workforce that **embraces diversity across the spectrum at every level** by using technology to better recruit, hire, and develop diverse talent.” Cisco Systems, Inc., 2018 Corporate Responsibility Report (“2018 CSR Report”) at 5.
- “Amid this age of digital transformation, we believe inclusion, **diversity**, and collaboration make us more innovative, more agile, *and ultimately more successful*. **This commitment starts at the top.**” *Id.* at 10.

Corporate platitudes and virtue signaling do not equate to fulfilling Cisco’s public commitment to diversity. In reality, Cisco has lacked and continues to lack diversity at the top, and elsewhere, and is one of the few remaining publicly traded companies in the United States that lacks even a single African American director. The following are the ten members of the 2019 Board:

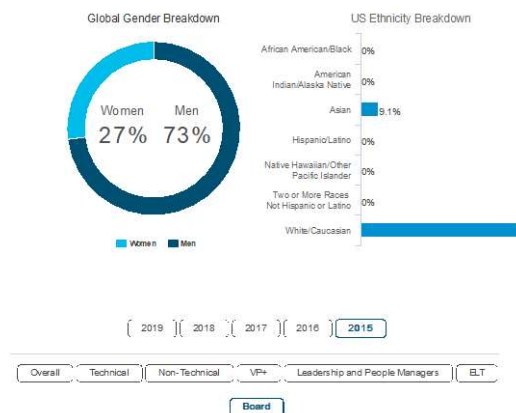


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As the charts below demonstrate, Cisco has failed to increase African American representation on the Board since at least 2015.



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Over the last 60 years, most of Corporate America has made gains in the effort to obtain the benefits of racial diversity, including at the executive level. Not Cisco. In 2020, there is not a single black person on its Executive Leadership Team.



At Cisco, African Americans are only barely represented at the vice president level (1.8%) or leadership and people manager levels (2.2%). Moreover, only 3.8% of Cisco's workforce is comprised of African Americans, a barely perceptible change from 3.3% in 2015. Cisco employs African American workers at a rate that is 70% lower than the ratio of African Americans to the total U.S. population and 10% of the rate at which Cisco employs Asian employees – 37% vs. 3.8%.

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### Vice presidents



### Leadership and people managers<sup>2</sup>



## Workforce snapshot<sup>1</sup>

Cisco has published workforce diversity statistics in our CSR Report since 2005. The diversity summary data below is based on FY19 data, and a total of 75,762 Cisco employees. See more at [Cisco.com](http://Cisco.com). In addition to the OIG Diversity Data, the EEO-1 [submission](https://www.dhs.gov/eo-12812) can be found online.

### Overall workforce





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Despite their rhetoric, the Cisco Insiders appear to have made no real effort to promote racial diversity on the Company's Board and/or senior Executive Leadership Team. Rather than address these deficiencies head-on – by adding African Americans to Cisco's Board and Executive Leadership Team – the Cisco Insiders have opted to have the Company issue platitudes. Cisco's publicly facing communications state that the Company has a myriad of initiatives, policies, and practices underway designed to accelerate diversity at Cisco, including at the very top. Yet, the Cisco Insiders have failed to carry out Cisco's policies and proclamations about increasing racial diversity at the Company.

As a result, and despite its carefully curated image as an industry leader in top leadership diversity, Cisco was recently exposed for being among the 20 largest companies in the United States without a single black person on its Board. See Kerri Anne Renzulli, *The 20 Largest Public U.S. Companies Without a Black Person on Their Board*, Newsweek.com, June 17, 2020, <https://www.newsweek.com/20-largest-public-us-companies-without-black-person-their-board-1511319>. A shortage of African American candidates cannot be the answer to the Cisco Insiders' failure to live up to the Company's professed commitment to "inclusion, diversity, and collaboration" that "starts at the top." 2018 CSR Report at 10.

In May 2020, a McKinsey report concluded that "[t]he business case for inclusion and diversity (I&D) is stronger than ever," finding that "companies in the top quartile outperformed those in the fourth by 36 percent in terms of profitability in 2019." Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, and Kevin Dolan, *Diversity wins: How inclusion matters*, McKinsey & Company, at 3-4 (May 2020) ("*Diversity wins*"), <https://www.mckinsey.com/featured-insights/diversity-and-inclusion/diversity-wins-how-inclusion-matters>. McKinsey also found that, "[f]or diverse companies, the likelihood of outperforming industry peers on profitability has increased over time, while the penalties are getting steeper for those lacking diversity." *Id.* at 3.

Cisco's Board members have certain legal obligations and responsibilities to the Company and its shareowners, including the duty to be truthful and honest and to act consistent with Cisco's public representations about the Company's policies and procedures. The Cisco Insiders have failed on both counts. Today, in 2020, the Cisco Board of Directors still has no African Americans. Nor is any member of the Company's senior Executive Leadership Team African American.

The failure of the Cisco Board to act consistent with its representations concerning diversity has adversely impacted the Company by as much as \$4.1 billion annually. Instead of actually embracing diversity, the Cisco Insiders have instead misled Cisco shareowners and the public by making false assertions about the Company's commitment to "diversity" and acted inconsistent with their obligation to increase shareowner returns, which research confirms is attained through

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more diverse leadership teams. In doing so, the Cisco Insiders have committed actionable breaches of fiduciary duty under Delaware law.

Cisco has suffered and continues to suffer damages and irreparable harm at the hands of the Cisco Insiders. The City of Pontiac is therefore making this Litigation Demand to remedy the Cisco Insiders' dereliction of their legal duty to act in the best interests of the Company by, among other things, removing the institutional structures preventing Cisco from achieving its stated diversity objectives. See Laura Morgan Roberts and Anthony J. Mayo, *Toward a Racially Just Workplace: Diversity efforts are failing black employees. Here's a better approach*, Harvard Bus. Rev. (Nov. 14, 2019), <https://hbr.org/cover-story/2019/11/toward-a-racially-just-workplace>.

### **THE CISCO INSIDERS' DUTY TO ACT IN THE BEST INTERESTS OF CISCO AND ITS SHAREOWNERS**

Corporations are one of society's most important institutions and the dominant form of business organization. Without profitable corporations, however, economies contract, communities fail, and the general welfare suffers. Diversity in the boardroom and throughout a corporate organization is a bulwark against these ills.

Research shows that firms with greater diversity enjoy greater profitability and create more shareowner wealth. As such, building a high functioning, diverse board of directors lies within the very heart of a director's fiduciary duty to maximize corporate value to the fullest extent. Declining to do so is not a protected business judgment.

#### **A. Enhancing Shareowner Wealth Is a Director's Fundamental Duty**

In early 2016, *The Economist* called shareowner primacy theory "the biggest idea in business," stating "[t]oday shareholder value rules business." *Analyze this; Shareholder Value*, *Economist* (Apr. 2, 2016). The idea is not new, however. As early as 1919, the courts recognized that "[a] business corporation is . . . carried on primarily for the profit of the stockholders." *Dodge v Ford Motor Corp.*, 170 N.W. 668, 684 (Mich. 1919). Over the years, this shareowner wealth maximization norm has become the most fundamental concept in corporate law and is firmly embedded in "the law of the most important American jurisdiction – Delaware." Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporate Law*, Univ. of Penn., Inst. for Law & Econ., Research Paper No. 15-08, at 3 (Mar. 11, 2015) ("Strine, *Danger of Denial*").

As the legendary Chicago school economist Milton Friedman succinctly put it, "corporations have no higher purpose than maximizing profits for their shareholders." Milton Friedman, *Capitalism and Freedom* (1962). More specifically, he stated:



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In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom.

Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*,” N.Y. Times Mag. (Sept. 13, 1970).

Oxford University and Harvard Law School Professors John Armour and Reinier Kraakman described shareowner primacy theory this way in their seminal work *The Anatomy of Corporate Law: A Comparative and Functional Approach*: “[S]hareholder primacy operates to ‘assure that the corporation serves the best interests of its shareholders or, more specifically, to maximize financial returns to shareholders or, more specifically still, to maximize the current market price of corporate shares.’” John Armour, et al., *What Is Corporate Law?* in *The Anatomy of Corporate Law: A Comparative and Functional Approach* 23 (3d ed., Oxford Univ. Press).

Delaware has firmly embraced shareowner primacy in its corporate law. As former Delaware Supreme Court Chief Justice Leo E. Strine, Jr. wrote:

[A] clear-eyed look at the law of corporations in Delaware reveals that, within the limits of their discretion, directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare.

Strine, *Dangers of Denial* at 10. Thus, the directors of a Delaware corporation have a fiduciary duty to make their decisions looking solely to the best interests of the Company and its shareowners. Above all else, enhancing and protecting wealth for shareowners is the fundamental interest directors must serve.

Recent Delaware court decisions have strengthened the legal force behind the shareowner primacy theory. For example, in *In re Trados Inc. S’holder Litig.*, 73 A.3d 17, 42 n.16 (Del. Ch. 2013), the Delaware Chancery Court recognized that “the standard of fiduciary conduct calls for the board to maximize the value of the corporation for the benefit of the common stock.” Likewise, in *eBay v. Newmark*, 16 A.3d 1 (Del. Ch. Ct. 2010), the Delaware Court of Chancery held:

The corporate form . . . is not an appropriate vehicle for purely philanthropic ends, at least not when there are other stockholders interested in realizing a return on its investment. . . . The “Inc.” after the company name has to mean at least that. Thus, I

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cannot accept as valid . . . a corporate policy that specifically, clearly and admittedly seeks *not* to maximize the economic value of a for-profit Delaware corporation for the benefit of its stockholders . . . .

*Id.* at 34 (emphasis is original). Further, in *Frederick Hsu Living Tr. v. ODN Holding Corp.*, No. 12108-VCL, 2017 WL 1437308 (Del. Ch. 2017), the Delaware Chancery Court held that “the fiduciary relationship requires that the directors act prudently, loyally, and in good faith to maximize the value of the corporation over the long-term for the benefit of the providers of presumptively permanent equity capital.” *Id.* at \*18.

The central tenet of the shareowner primacy theory is therefore to ensure that corporate Delaware directors act in the best interest of the corporation and its shareowners. A director who deviates from this maxim commits a breach of fiduciary duty for which he may be held liable.

Of course, it is true that the business judgment rule provides directors with wide discretion, and that it enables directors to justify by reference to long run stockholder interests a number of decisions that may in fact be motivated more by a concern for a charity the CEO cares about, or the community in which the corporate headquarters is located, or once in a while, even the company’s ordinary workers, than long run stockholder wealth. But that does not alter the reality of what the law is. *Dodge v. Ford* and *eBay* are hornbook law because they make clear that if a fiduciary admits that he is treating an interest other than stockholder wealth as an end in itself, rather than an instrument to stockholder wealth, he is committing a breach of fiduciary duty.

Strine, *Dangers of Denial* at 20.

## **B. Diversity Serves the Best Interests of Shareowners and Maximizes Shareowner Wealth**

In 2015, McKinsey, one of the world’s largest and most prestigious management consulting firms, first observed a statistically significant connection between diverse leadership and financial performance, finding that “[c]ompanies in the top quartile for racial/ethnic diversity were 35 percent more likely to have financial returns above their national industry median.” *Diversity Matters* at 1. After examining proprietary data sets for 366 public companies, including financial results and the composition of top management and boards, McKinsey found that “diversity correlates with better financial performance,” while the “reverse is also true, companies in the bottom quartile in both gender and ethnicity underperformed the other three quartiles.” *Id.* at 3.

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Moreover, the 2015 McKinsey report found that companies in the top quartile for gender or racial and ethnic diversity are more likely to have financial returns above their national industry median, while companies in the bottom quartile in these dimensions are statistically less likely to achieve above-average returns:

The analysis found a statistically significant relationship between a more diverse leadership team and better financial performance. The companies in the top quartile of gender diversity were 15 percent more likely to have financial returns that were above their national industry median. Companies in the top quartile of racial/ethnic diversity were 35 percent more likely to have financial returns above their national industry median. Companies in the bottom quartile for both gender and ethnicity/race were statistically less likely to achieve above-average financial returns than the average companies in the dataset (that is, they were not just not leading, they were lagging). The results varied by country and industry. Companies with 10 percent higher gender and ethnic/racial diversity on management teams and boards in the US, for instance, had EBIT that was 1.1 percent higher; in the UK, companies with the same diversity level had EBIT that was 5.8 percent higher. Moreover, the unequal performance across companies in the same industry and same country implies that diversity is a competitive differentiator that shifts market share towards more diverse companies.

*Id.* at 1.

In 2018, McKinsey updated its analysis and reported that more diverse firms enjoy greater shareowner returns than less diverse firms, finding that ethnically diverse companies are 35% more likely to financially outperform ethnically homogeneous ones and gender diverse companies are 15% more likely to financially outperform companies lacking gender diversity and social justice practices. Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, and Lareina Yee, *Delivering through Diversity*, McKinsey & Company, at 8 (Jan. 2018) (“*Delivering through Diversity*”), <http://www.insurance.ca.gov/diversity/41-ISDGBD/GBDEExternal/upload/McKinseyDeliverDiv201801-2.pdf>. As McKinsey explained:

We first established a positive, statistically significant correlation between executive team diversity and financial performance in our 2015 *Why Diversity Matters* report (using 2014 diversity data). We find this relationship persists in our expanded, updated, and global 2017 data set. In *Why Diversity Matters* we found that companies in the top quartile for gender diversity on their executive teams were 15% more likely to experience above-average profitability than companies in the 4th quartile. Almost exactly three years later, this number rose to 21% and continued to

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be statistically significant. For ethnic/cultural diversity, the 2014 finding was a 35% likelihood of outperformance, comparable to the 2017 finding of a 33% likelihood of outperformance on EBIT margin, both statistically significant . . . .

*Id.*

Addressing boardroom diversity in particular, the 2018 *Delivering through Diversity* report found that “[e]thnic and cultural diversity’s correlation with outperformance on profitability was also statistically significant at Board level,” making companies with greater ethnic and cultural board diversity 43% more likely to enjoy higher profits. *Id.* at 13. In other words, diversity provides increased shareowner returns, which is in the best interests of the corporation and its shareowners. As McKinsey further explained:

We found that companies with the most ethnically/culturally diverse Boards worldwide are 43% more likely to experience higher profits. We also found a positive correlation between ethnic/cultural diversity and value creation at both the executive team and Board levels, though the relationship is not statistically significant. It may be the case that overall, the picture on top-team diversity globally is more complex due to significant geographic differences in the cultural contexts in which the companies we studied operate.

Overall, our findings that ethnic and cultural diversity on executive teams continues to correlate strongly with company financial performance support the argument that there is value in promoting ethnic/cultural diversity in company top teams around the world. We hypothesize that, for companies, addressing the challenge of building an inclusive company culture across cultural differences could significantly strengthen organizational effectiveness. Further, ethnic/cultural diversity at the highest levels of company leadership could serve as a signal to employees and other stakeholders that the organization truly understands and values the community and customers that they serve.

*Id.*

And, most recently in May 2020, McKinsey reported that “[t]he business case for inclusion and diversity (I&D) is stronger than ever,” finding that “companies in the top quartile outperformed those in the fourth by 36 percent in terms of profitability in 2019,” and that, “[f]or diverse companies, the likelihood of outperforming industry peers on profitability has increased over time, while the penalties are getting steeper for those lacking diversity.” *Diversity wins* at 3-4. As McKinsey explained:

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*Diversity Wins* is the third in a McKinsey series investigating the business case for diversity, following *Why Diversity Matters* (2015) and *Delivering through Diversity* (2018). This report shows not only that the business case remains robust, but also that the relationship between diversity on executive teams and the likelihood of financial outperformance is now even stronger than before. These findings are underpinned by our largest data set to date, encompassing 15 countries and more than 1,000 large companies.

\* \* \*

In the case of ethnic and cultural diversity, the findings are equally compelling. We found that companies in the top quartile outperformed those in the fourth by 36 percent in terms of profitability in 2019, slightly up from 33 percent in 2017 and 35 percent in 2014. And, as we have previously found, there continues to be a higher likelihood of outperformance difference with ethnicity than with gender.

\* \* \*

This growing polarization between high and low performers is reflected in an increased likelihood of a performance penalty. In 2019, fourth-quartile companies for executive-team gender diversity were 19 percent more likely than companies in the other three quartiles to underperform on profitability. This is up from 15 percent in 2017 and nine percent in 2015. And for companies in the fourth quartile of both gender and ethnic diversity the penalty is even steeper in 2019: they are 27 percent more likely to underperform on profitability than all other companies in our data set.

*Id.* at 3-4 (footnote omitted).

The findings of numerous other studies are in accord. For instance:

- In 2009, the American Sociological Association published “Diversity Linked to Increased Sales Revenue and Profits, More Customers,” in which it found that companies reporting the highest levels of racial diversity brought in nearly 15 times more sales revenue on average than those with the lowest levels of racial diversity.
- In 2013, the Center for Talent Innovation published “Innovation, Diversity, and Market Growth,” in which it found that publicly traded companies with 2D diversity (exhibiting both inherent and acquired diversity) were 70% more likely to capture a new market, 75% more likely to see ideas actually become productized, and 158% more likely to understand their target end-users and innovate effectively if one or more members on the team represent the user’s demographic.

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- And, in 2017, the firm Boston Consulting Group revealed research that found companies with more diverse management teams have 19% higher revenues due to innovation.

These findings demonstrate that firms with greater diversity outperform their peers by a significant margin. Diversity is in the best interests of a corporation and its shareowners. Cisco recognizes this – at least on paper. Cisco publicly affirms that, “[a]t Cisco, diversity, inclusion, and collaboration are fundamental to who we are, how we create the best teams, and how we drive success.” Cisco Systems, Inc., 2019 Annual Report at 7. In practice, however, this appears to be only lip-service, as Cisco remains one of the few large publicly traded companies in the United States without a single black director.

## BILLIONS IN POTENTIAL EXCESS SHAREOWNER WEALTH SQUANDERED

### A. The Cisco Board of Directors and Executive Leadership Team

Cisco enjoys the dubious distinction of being one of only a handful of publicly traded companies in the United States without an African American director. The Company’s 13-person Executive Leadership Team likewise lacks a single black member. The members of the Cisco 2019 Board follow:





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The members of the Executive Leadership Team follow:



The lack of racial diversity at the top at Cisco is significant. The Board bears ultimate responsibility for ensuring the Company's compliance with federal and state laws prohibiting discrimination based on race, gender, and other factors. The Cisco Board, however, has failed at that role with respect to racial diversity; in 2020, the Board and the Company's Executive Leadership Team still lack a single African American member.

## **B. The Cisco Insiders' False Statements About the Company's Top Leadership Diversity**

Privately, the Cisco Insiders have consistently avoided the opportunity to appoint African Americans to Cisco's Board and/or its Executive Leadership Team. But publicly, the Cisco Insiders, in pursuit of the accolades and awards that affirm true diversity leadership, have falsely portrayed Cisco as an industry leader in top leadership diversity and as a company that effectively promotes and achieves diversity across its enterprise, including at the top.

### **1. False Statements About Racial Diversity on the Company's Website**

For example, Cisco's website not only recognizes diversity to be a key to success, but also highlights Cisco's efforts to accelerate diverse talent acquisition across the enterprise.

#### **Accelerating Diverse Talent**

At Cisco, we believe that everyone plays a role in accelerating diversity, inclusion, and collaboration.

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Across our global company, we've driven broad improvements in overall representation that have resulted in the most diverse Cisco ever. *Today, we have one of the most diverse executive leadership teams in our industry.* And we're just getting started.

\* \* \*

Our bold new strategies for accelerating diversity begin with creating new ways to find extraordinary talent. We've designed an innovative framework that includes:

- Introducing new tools and technologies to help us accurately map the talent market
- Creating job postings that attract highly qualified diverse candidates
- Expanding the diversity within our interview panels.

Cisco Systems, Inc., *About Us*, <https://www.cisco.com/c/en/us/about/inclusion-diversity/us.html> (last visited July 30, 2020).

The "Diverse Talent Accelerators" page of the Company's website further states:

#### **Diverse Talent Accelerators Initiative**

Our innovative Diverse Talent Accelerators initiative is transforming the way Cisco finds, attracts, and hires top diverse talent.

Through powerful new analytics, we can now accurately map the talent market and adjust our searches to target diverse candidates within specific job families and experience levels. With new insights come new opportunities. To accelerate diversity, we're embedding some innovative new solutions within our hiring practices.

Cisco Systems, Inc., *Diverse Talent Accelerators*, [https://www.cisco.com/c/dam/en\\_us/about/inclusion-collaboration/diverse-talent-accelerator.pdf](https://www.cisco.com/c/dam/en_us/about/inclusion-collaboration/diverse-talent-accelerator.pdf) (last visited July 30, 2020).

Similarly extolling the power of inclusion and diversity at Cisco, the "About Us" page of Cisco's website further states:

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### **Inclusion is the power of people – connected**

Cisco sees inclusion and diversity as essential to fueling what we call the power of connection.

At Cisco, we see inclusion as a bridge – a way to connect diverse perspectives. To spark new ideas, explore new possibilities, tap into the power of digital transformation, and inspire innovation.

We're inventing new ways to multiply the power of our people and developing innovative solutions to some of our most business-critical challenges and opportunities. We're expanding our commitment to fair pay. Accelerating our diverse talent. Investing in our emerging diverse leaders. Creating new realms of inclusion through technology, as seen in our Cisco LifeChanger and Connected Health and Education programs. Partnering across the globe to multiply our impact. And taking a stand for social justice throughout our communities.

Cisco Systems, Inc., *About Us*, <https://www.cisco.com/c/en/us/about/inclusion-diversity/us.html> (last visited July 30, 2020).

## **2. False Statements About Racial Diversity in the Company's Proxy Statements**

In addition to website postings, between at least 2015 and 2020, the Cisco Insiders falsified the Company's official SEC filings. In particular, while under the stewardship of the Cisco Insiders, the Company's Proxy Statements repeatedly misrepresented that it effectively promotes and achieves inclusion and diversity. For example, in the 2019 Proxy Statement, the Cisco Insiders stated: "Cisco's Board of Directors is composed of skilled and diverse directors and has established robust corporate governance practices and policies." Cisco Systems, Inc., Proxy Statement (Sch. 14A) (Oct. 22, 2019) ("2019 Proxy Statement") at 1.

The Cisco Insiders further stated, with respect to "[b]oard [r]efreshment," *i.e.*, the nomination of directors, that the Cisco Board prizes "diverse perspectives" and, therefore, "believes it is important to consider diversity of race, ethnicity, gender, age, education, cultural background, and professional experiences in evaluating board candidates in order to provide practical insights and diverse perspectives." *Id.* at 4-5. More specifically, they stated:

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## Board Refreshment

*Cisco regularly evaluates the need for board refreshment.* The Nomination and Governance Committee, and the Board of Directors, are focused on identifying individuals whose skills and experiences will enable them to make meaningful contributions to the shaping of Cisco’s business strategy. . . .

As part of its consideration of director succession, the Nomination and Governance Committee from time to time review the appropriate skills and characteristics required of board members such as diversity of business experience, viewpoints and personal background, and diversity of skills in technology, finance, marketing, international business, financial reporting and other areas that are expected to contribute to an effective Board of Directors. Additionally, due to the global and complex nature of our business, *the Board believes it is important to consider diversity of race, ethnicity, gender, age, education, cultural background, and professional experiences in evaluating board candidates in order to provide practical insights and diverse perspectives.*

*The Nomination and Governance Committee and the Board will regularly evaluate the key qualifications, skills and attributes required in order to effectively refresh the Board* with engaged and dynamic leaders with a proven business track record *who will bring fresh perspectives* to the Board while maintaining the productive working dynamics and collegiality of the Board.

*Id.*

Additionally, in the 2019 Proxy Statement, the Cisco Insiders identified “inclusion and diversity” as one of the essential core elements driving Cisco’s purpose, culture, and investments, stating:

Corporate social responsibility (“CSR”) is *core to our purpose, our culture, and how we invest.* We focus on the issues that align with our business strategy, and where we can have the greatest potential for global impact, *including inclusion and diversity*, supporting local community programs, and reducing our environmental impact.

*Id.* at 5.

Cisco’s 2017 and 2018 Proxy Statements contain similar statements representing that the Company effectively promotes and achieves inclusion and diversity. For example, in the 2018

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Proxy Statement, the Cisco Insiders stated: “Cisco’s Board of Directors is composed of skilled and diverse directors and has established robust corporate governance practices and policies in order to promote shareholder returns,” and “the Board believes it is important to consider diversity of race, ethnicity, gender, age, education, cultural background, and professional experiences in evaluating board candidates in order to provide practical insights and diverse perspectives.” Cisco Systems, Inc., Proxy Statement (Sch. 14A) (Oct. 24, 2018) (“2018 Proxy Statement”) at 1, 5.

Similarly, in the 2017 Proxy Statement, the Cisco Insiders stated that “Cisco’s Board of Directors is composed of skilled and diverse directors” and declared the Board’s intention to “promote shareholder returns.” Cisco Systems, Inc., Proxy Statement (Sch. 14A) (Oct. 25, 2017) at 1. The Cisco Insiders further stated that “Cisco regularly evaluates the need for board refreshment.” *Id.* at 5. Accordingly, “[a]s a part of its consideration of director succession,” the Board seeks to attain “diverse perspectives” and “believes it is important to consider diversity of race, ethnicity, gender, age, education, cultural background, and professional experiences in evaluating board candidates.” *Id.*

### 3. False Statements About Racial Diversity in the Company’s Corporate Social Responsibility Reports

Each year, at the direction of the Board, the Company releases its annual Corporate Social Responsibility (“CSR”) Report. In these reports, the Cisco Insiders candidly recognize the correlation between diversity and increased shareowner wealth. “Amid this age of digital transformation, we believe inclusion, diversity, and collaboration make us more innovative, more agile, and ultimately more successful.” 2018 CSR Report at 10.

Additionally, in the CSR Reports, the Cisco Insiders have repeatedly represented to shareowners and the public that Cisco effectively promotes diversity throughout the Company. For example, the 2019 CSR Report states:

- At Cisco, *we are committed to full-spectrum diversity*, inclusive of gender, ethnicity, race, orientation, age, ability, veteran status, religion, culture, background, experience, strengths, and perspectives.
- *Diversity, inclusion, collaboration, and technology are fundamental to who we are, how we create the best teams, and how we will succeed in this age of digital transformation.*
- Our work is focused on achieving four key business outcomes: *Diverse leadership* and workforce, *inclusive and collaborative* culture, community engagement and impact, and inclusion and collaboration industry leadership.

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2019 CSR Report at 38.

The 2019 CSR Report further states that Cisco views “inclusion and coloration as the bridge to connect diverse perspectives” and that “a Conscious Culture,” committed to “[f]ull-spectrum diversity” and “[i]nclusive culture,” is fundamental in achieving competitive success in the marketplace and sustainable shareowner returns:

### **The foundation of a Conscious Culture**

*We view inclusion and collaboration as the bridge to connect diverse perspectives.* Spark new ideas. Imagine new possibilities. Challenge the status quo. Inspire innovation. And unleash the full power and potential of our people.

This is the heart of our approach to creating a Conscious Culture where everyone takes responsibility for fostering an inclusive, collaborative, and respectful environment. Cisco welcomes all people into life and work. Our commitment has two components:

- **Full-spectrum diversity.** Inclusive of gender, ethnicity, race, orientation, age, ability, veteran status, religion, culture, background, experience, strengths, and perspectives.
- **Inclusive culture.** A place where people feel welcomed, valued, respected, accepted, and heard, and are enabled by our technology to fully participate in the business.

Our definition of diversity and inclusion is expansive, intersectional, and continually evolving.

*Our culture sets us apart, starting at the top with our diverse Executive Leadership Team (ELT).* We’re proud to say that women make up 46 percent of our ELT. And 62 percent is diverse in terms of gender and/or ethnicity, making us an industry leader in this area.

### **Cisco sees diversity differently**

We’ve made big shifts in how we approach diversity. Years ago, our discipline focused on government compliance. Later, we worked to create a workplace where all people could belong and thrive. Today, we’re reaching new



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heights, welcoming people into work by using our collaboration technology and enabling them to fully participate in our business.

We created the Office of Inclusion & Collaboration in 2014, choosing a name that encompasses our one-of-a-kind approach. Our technologies are central to our work, allowing everyone to have a seat at the table, even if they're not sitting in the same room. Today, the office helps Cisco's business in four main ways:

**Workforce.** Helping us find and keep diverse people at every level.

**Culture.** Promoting a Conscious Culture where everyone can contribute.

**Community.** Making positive impact a habit with an inclusive approach.

**Leadership.** Sharing our inclusive programs and practices across our industry.

*Id.* at 39-40.

As in the Cisco Insiders other public facing statements, the 2019 CSR Report highlights the Company's purported efforts to accelerate diverse talent acquisition throughout the Company. Specifically, highlighting the Company's "Diverse Talent Accelerator" ("DTA"), a suite of tools designed to help minimize bias in candidate searches and interviews, the 2019 CSR Report states:

#### **Accelerating diverse representation**

DTA is delivering results. Cisco achieved record levels of representation of women, African American/Black, and Hispanic/Latino employees due to record levels of hiring. In FY19, a record 31 percent of new hires were women, a 2 percentage point increase from FY18. We also saw a 4.8 percent increase in women in director and manager roles. All organizations are hiring above baseline share for women in both technical and nontechnical roles. Baseline Share is the portion of the global talent market that has the skills and experience levels for the job families Cisco targets. We also increased representation for African American/Black employees to 3.8 percent and Hispanic/Latino employees to 5.6 percent. Representation of African American/Black employees and Hispanic/Latino employees has increased every year since 2016. The improvement in representation for these ethnicities has been broad-based and is being driven by record-level hiring, with African American/Black hiring at 5.1 percent and Hispanic/Latino hiring at 6.7 percent. While we have had record levels of hiring, we know that we still have work

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to do. We will continue to drive efforts outlined in our Inclusive Workforce Plans and look forward to sharing continued progress in future CSR reports.

*Id.* at 40-41.

Cisco's 2017 and 2018 CSR Reports contain similar statements representing that the Company effectively promotes and achieves inclusion and diversity. For example, the 2018 CSR Report states that "[d]iversity, inclusion, and collaboration are fundamental to who we are, how we create the best teams, and how we will succeed in this age of digital transformation," and that "[o]ur vision for the future is to create exponential value for Cisco, our employees, customers, partners, and communities through the intersection of diversity, inclusion, collaboration, and technology." 2018 CSR Report at 49.

Emphasizing diversity gains within Cisco's senior executive leadership ranks, the 2018 CSR Report further stated:

We are the most diverse Cisco since 1998. *We are delivering on our vision of accelerating full-spectrum diversity-inclusion of gender, generation, race, ethnicity, orientation, ability, nationality, religion, veteran status, background, culture, experience, strengths, and perspectives.* It starts at the top, were 42 percent of our Executive Leadership Team (ELT) is women, and 58 percent is diverse in terms of gender or ethnicity, making Cisco an industry leader in top leadership diversity.

*Id.* at 50. The "message from Chuck Robbins" accompanying the 2018 CSR Report echoes these sentiments, stating: "We are also focused on building a thriving workforce that *embraces diversity* across the spectrum *at every level* by using technology to better recruit, hire, and develop diverse talent." *Id.* at 5.

Cisco's 2017 CSR Report also highlights Cisco's concentration on "inclusion and diversity," particularly at the senior executive leadership level. Specifically, the 2017 CSR Report states:

### **Inclusion and Collaboration**

We believe a focus on inclusion is not simply the right thing to do – it really works. Inclusion is the bridge that connects diverse perspectives, challenges the status quo, and unlocks the full potential of our people. When we truly connect people with different backgrounds, abilities, genders, generations, cultures,

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ethnicities, orientations, work styles, and points of view, we can collaborate at exciting new levels.

\* \* \*

We're all in – starting at the top. *Our executive leadership team is one of the most diverse in our industry, setting a powerful precedent and demonstrating that inclusion is fundamental to who we are – and where we're going.*

#### **46% diversity on our Executive Leadership Team.**

In the past year, we've delivered innovative solutions to some of our most business-critical challenges and opportunities – like expanding our commitment to fair pay, accelerating diverse talent, and taking a stand for social justice throughout our communities.

2017 CSR Report at 45.

#### **4. The Statements About Cisco's Racial Diversity Were Knowingly False**

Cisco is not an industry leader in leadership diversity. Numerous other Silicon Valley technology companies have at least one black director, including companies such as Alphabet, Inc., Apple, Inc., Ansys, Inc., HP Inc., Intel Corp., Netflix, PayPal Holdings, Inc., and Salesforce.com. Yet, Cisco still does not have a single African American on its Board. Cisco's senior leadership ranks are likewise devoid of any African Americans.

Instead of pursuing racial diversity on the Board and elsewhere within the Company, the Cisco Insiders have not only made, or caused Cisco to make, untrue statements about its commitment to diversity, but also have approved false statements that Cisco has been successful in those efforts. For example, the Company filed its 2019 Proxy Statement with the SEC on October 22, 2019, after it was approved by directors Burns, Bush, Capellas, Garrett, Johnson, McGeary, Robbins, Sarin, Saunders, and Tomé. And the Company filed its 2018 Proxy Statement with the SEC on October 24, 2018, after it was approved by directors Burns, Capellas, Garrett, Hennessy, Johnson, McGeary, Robbins, Sarin, Saunders, and West. The 2019 and 2018 Proxy Statements misleadingly used the phrase "diversity of business experience, viewpoints and personal background" to suggest that the Nomination and Governance Committee has a goal of achieving actual diversity on the Board by seeking to achieve representation of diverse persons – *i.e.*, African Americans. 2019 Proxy Statement at 14; 2018 Proxy Statement at 14.

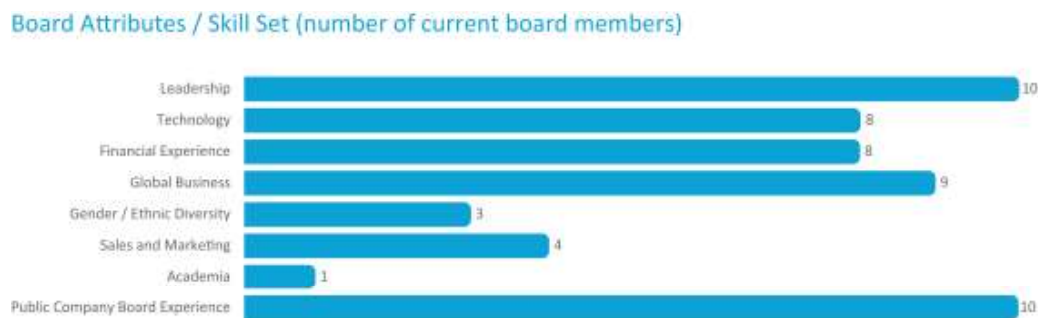
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Moreover, the representation in the 2019 and 2018 Proxy Statements that “the Board believes it is important to consider diversity of race, ethnicity, gender, age, education, cultural background, and professional experiences in evaluating board candidates in order to provide practical insights and diverse perspectives” is misleading because a reasonable reading of that phrase conveys that the Company is actively seeking to achieve racial diversity on its Board. 2019 Proxy Statement at 14; 2018 Proxy Statement at 14. Despite highlighting “race” as an important factor to achieving “diverse perspectives,” the fact remains that Cisco has no black Board members, and no African American has served on Cisco’s Board since at least 2015. The undisclosed truth is, therefore, that while Cisco may maintain a policy that states it is attempting to bring racially diverse candidates into its director nominee pool, it either has no intention of actually nominating such persons to its Board or is engaged in efforts to thwart the nomination of such persons and prefers applicants other than African Americans in the pool.

Indeed, elsewhere in the Proxy Statements the Company lists the following factors that are considered by the Nomination and Governance Committee when selecting Board candidates: Leadership, Technology, Financial Experience, Global Business, **Gender/Ethnic Diversity**, Sales and Marketing, Academia, and Public Company Board Experience. Specifically, the 2019 Proxy Statement states:



2019 Proxy Statement at 5. The 2018 Proxy Statement listed similar factors considered by Cisco when nominating director candidates:

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Board Attributes / Skill Set (number of board members)



2018 Proxy Statement at 5. As is evident, racial diversity is not among the relevant factors the Nomination and Governance Committee lists as considerations in its decisions with respect to Board nominees.

### C. The Compensation and Management Development Committee's Role in Making Cisco's Non-Racially Diverse Board

Cisco directors Burns, Bush, Johnson, McGeary, Sarin, and Saunders served on Cisco's Compensation and Management Development Committee (or its predecessor) between 2015 and 2020. The Charter of the Compensation and Management Development Committee states that the Committee's "basic responsibility is to review the performance and development of the Company's management in achieving corporate goals and objectives and to assure that the Company's executive officers . . . are compensated effectively in a manner consistent with the strategy of the Company, competitive practice, sound corporate governance principles and shareholder interests[, and] [t]oward that end, the Committee will review and approve all compensation to executive officers." Compensation and Management Development Committee Charter at 1. Further, in the 2019 Proxy Statement, the Compensation and Management Development Committee states that Cisco's executive compensation philosophy is "pay-for-performance":

The core of Cisco's executive compensation philosophy and practice continues to align real pay delivery with performance. Cisco's executive officers are compensated in a manner consistent with Cisco's business strategy, competitive practice, sound corporate governance principles, and shareholder interests and concerns. We believe our compensation program is strongly aligned with the long-term interests of our shareholders.

2019 Proxy Statement at 20. However, the specific targets/objectives underlying the four "Individual Performance Factors" ("IPF") used by the Compensation and Management Development Committee to determine annual CEO compensation do not include diversity. Instead,

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the targets focus on “Leadership,” “Innovation / Strategic Planning,” “Execution,” and “Contribution to Financial Goals”:

In determining the appropriate IPF for each individual executive officer participant, the Compensation Committee considered performance in the areas of leadership, innovation/strategic planning, execution, and contributions to Cisco’s achievement of its financial goals. Below are the fiscal 2019 goals for each named executive officer for the various categories.



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Named Executive Officer	Leadership (1 to 5 Points)	Innovation / Strategic Planning (1 to 5 Points)	Execution (1 to 5 Points)	Contribution to Financial Goals (1 to 5 Points)
Charles H. Robbins	<ul style="list-style-type: none"> <li>• Establish and maintain a high-performing leadership team known for delivering exceptional results and modeling Cisco’s culture</li> <li>• Attract top talent, internally and externally, critical to Cisco’s current and future needs</li> <li>• Create and maintain employee and leader loyalty resulting in retention of critical employees and leaders</li> <li>• Lead Cisco’s culture change</li> </ul>	<ul style="list-style-type: none"> <li>• Accelerate innovation and solutions that meet customer current and future needs</li> <li>• Accelerate delivery of cloud-based solutions</li> <li>• Drive multicloud message / understanding to our customers / partners</li> </ul>	<ul style="list-style-type: none"> <li>• Oversee the execution of the most critical transitions for the company</li> <li>• Drive the necessary talent changes quickly – new sales, engineering, services &amp; operations leadership</li> <li>• Drive value creation through M&amp;A and R&amp;D yield.</li> <li>• Increase market share in networking, security and collaboration</li> </ul>	<ul style="list-style-type: none"> <li>• Achieve or exceed the approved Cisco FY19 financial plan</li> <li>• Deliver on market guidance</li> <li>• Deliver TSR increase above peers</li> <li>• Achieve Cisco gross margins in-line with or exceeding approved targets</li> <li>• Achieve Cisco operating margins in-line with or exceeding targets</li> </ul>

*Id.* at 28-29.

**D. The Nomination and Governance Committee’s Role in Making Cisco’s Non-Racially Diverse Board**

The Charter of the Nomination and Governance Committee states that the Committee “shall recommend candidates for election to the Company’s Board of Directors.” Nomination and Governance Committee Charter at 1. At all relevant times, directors Capellas, Garrett, Hennessy,

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Johnson, and McGeary served on the Cisco Board's Nomination and Governance Committee. The Company's 2019 Proxy Statement further states that the goal in nominating individuals to serve on the Cisco Board is to attain "diverse perspectives," and, therefore, "it is important to consider diversity of race, ethnicity, gender, age, education, cultural background, and professional experiences in evaluating board candidates in order to provide practical insights and diverse perspectives." 2019 Proxy Statement at 14. Cisco's 2019 Proxy Statement further still states that to broaden its reach, "the Nomination and Governance Committee considers nominees recommended by directors, officers, employees, shareholders and other," including "consultants or third-party search firms." *Id.*

Ostensibly, this statement conveys to Cisco investors and the public that Cisco actively promotes "inclusion and diversity" at all levels of the Company. But, in fact, the Cisco Insiders have made no real effort to promote racial diversity on the Board. Rather, Cisco has the dubious distinction of being one of the few remaining large publicly traded companies in 2020 that has declined to nominate a single African American director to its Board in any of the last five years.

Cisco's overall workforce representation of African Americans fares little better. Although black people comprise 13.4% of the total U.S. population, no African Americans serve on the Company's senior Executive Leadership Team and African Americans make up only 3.8% of Cisco's total workforce. Likewise, only 1.8% of Cisco's vice presidents are African Americans while only 2.2% of Cisco's employees in leadership and people manager positions are black.

This lack of diversity has contributed to economic disparities at Cisco. For example, in 2018, the Company's CEO pay was 160 times as high as the median pay of all other employees:

As determined in accordance with SEC rules, the fiscal 2018 annual total compensation was \$21,284,339 for our CEO as reported in the Summary Compensation Table and \$132,764 for our median employee, and the ratio of these amounts is 160 to 1.

2018 Proxy Statement at 58. In 2019, the Company's CEO pay increased to 181 times as high as the median pay of all other employees:

As determined in accordance with SEC rules, the fiscal 2019 annual total compensation was \$25,829,833 for our CEO as reported in the Summary Compensation Table and \$142,593 for our median employee, and the ratio of these amounts is 181 to 1.

2019 Proxy Statement at 53. The absence of significant performance metrics based on achievements in diversity in executive compensation plans can spur economic disparities across an

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enterprise, as reflected by Cisco's dramatic CEO pay ratio of 160 to 1 in 2018, which only increased in 2019 to 181 to 1.

Leading Fortune 500 companies and top business schools have tied executive pay to a myriad of business goals, like revenues, profits, share price, and talent acquisition. For example, “[a]chieving diversity goals helps determine one-sixth of the cash bonus of Microsoft’s chief executive, Satya Nadella,” while at Uber, “[d]iversity targets are embedded in the stock compensation of its chief executive, Dara Khosrowshahi, accounting for a fourth of his performance-based stock awards.” Peter Eavis, *Want More Diversity? Some Experts Say Reward C.E.O.s for It*, N.Y. Times, July 14, 2020. As *The New York Times* reported, “[m]aking diversity targets part of compensation and disclosing them would not just give top executives a financial incentive to hire and promote more Black and Latino people, but also provide a public scorecard that employees and shareholders could use to determine whether companies were following through on their commitments.” *Id.*

The Cisco Insiders have declined to link CEO pay to diversity, however. Financial disincentives to recruit, hire, promote and retain African Americans at senior levels at Cisco, including in the boardroom, have harmed, and continue to harm, the Company and its shareowners by, among other things, adversely impacting shareowner returns. Instead of acknowledging the problem and demanding change, the Cisco Insiders have instead issued false statements claiming success in achieving diversity and inclusion in the face of this huge wealth gap.

**E. Cisco’s Majority Voting Rules, as Applied, Discourage the Nomination of Racial Minorities to the Board**

Cisco’s Proxy Statements state that the Company’s bylaws and corporate governance policies provide for a majority voting standard in uncontested elections of directors. Therefore, “in an [uncontested] election . . . , a nominee for director will be elected to the Board of Directors to serve until the next annual meeting of shareholders, . . . if the number of shares voted for the nominee exceeds the number of shares voted against the nominee and also represents the affirmative vote of a majority of the required quorum.” 2019 Proxy Statement at 18. But Cisco’s facially neutral majority voting rule, as applied by the Cisco Insiders, operates to entrench current directors in office and thus prevents the necessary “refreshment” that would allow African Americans to receive an opportunity to be fairly considered for election to the Cisco Board. As a result, the application of the Company’s corporate governance policies by the Cisco Insiders has enabled them to preserve a lack of racial diversity on the Board.

Moreover, the Proxy Statements were false and misleading because they failed to disclose that the effect of the majority voting rules, as applied by the Cisco Insiders, inhibited the consideration of African Americans for appointment/election to the Cisco Board. These material

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omissions would have been material to a shareowner's decision regarding whether to reelect the incumbent directors at the annual meeting. The false Proxy Statements harmed the Company by interfering with the mechanisms for the election of directors by shareowners. As a result of the false or misleading Proxy Statements, Cisco shareowners voted to reelect the Cisco Insiders to the Board each year.

**F. The Absence of Term Limits Discourages the Nomination of Racial Minorities to the Board**

Cisco's Proxy Statements reveal that the Company does not have term limits for directors. But the unstated purpose of the lack of term limits at Cisco is to entrench current directors in office, which effectively prevents African Americans from having a fair opportunity to be considered, let alone elected, to the Board. To attempt to justify this position, the Cisco Insiders have resisted efforts to appoint new members to the Board by claiming that individuals who have served on the Cisco Board for, in some cases, over a decade have experience that is valuable to the Company.

In practice, however, excessive tenure for directors does not serve the best interests of the corporation, as demonstrated by leading academics and professionals in the field of best corporate governance principles. A report by the Harvard Law School Forum on Corporate Governance, entitled "Board Refreshment Trends at S&P 1500 Firms," noted that:

Investor respondents to ISS' 2016–2017 Global Policy Survey (conducted between Aug. 2, 2016 and Aug. 30, 2016) were asked which tenure-related factors – with multiple answers allowed – would give rise to concern about a board's nominating and refreshment processes. Among the 120 institutional investors (one-third of whom each own or manage assets in excess of \$100 billion) who responded, 68 percent pointed to a high proportion of directors with long tenure as cause for concern, 53 percent identified an absence of newly-appointed independent directors in recent years as a potential problem, and 51 percent flagged lengthy average tenure as problematic. Just 11 percent of the investor respondents said that tenure is not a concern, although even several of those respondents indicated that an absence of newly-appointed directors is a concern.

Jon Lukomnik, *Board Refreshment Trends at S&P 1500 Firms*, Harvard Law School Forum on Corporate Governance (Feb. 9, 2017), <https://corpgov.law.harvard.edu/2017/02/09/board-refreshment-trends-at-sp-1500-firms>.

The Cisco Insiders' refusal to adopt director term limits and to appoint black members to the Board betrays an improper and far-too-long-unchallenged pretext for denying African Americans a

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seat on the Cisco Board. This has harmed Cisco by allowing the Cisco Insiders to perpetuate a lack of racial diversity on the Cisco Board (and on Cisco's senior Executive Leadership Team).

Moreover, the Proxy Statements were false and misleading because they did not disclose the true reasons and effect, as applied, of Cisco's lack of term limits. These omitted facts, had they been disclosed, would have been highly material to Cisco shareowners' decisions regarding whether to reelect the Board nominees and vote in favor or against the "say on pay" executive compensation proposals. Diversity and inclusion are valued very highly by shareowners. The false Proxy Statements harmed the Company by interfering with the mechanism for electing directors to the Board. As a result of the false or misleading statements in the Proxy Statements, Cisco shareowners voted to reelect the Cisco Insiders to the Board each year.

**G. The Cisco Insiders Have Enriched Themselves at the Expense of Cisco's Shareowners by Making Misleading Statements About Cisco's Commitment to Diversity**

The Charter of the Nomination and Governance Committee states that its members shall, among other things, "[i]dentify and review candidates for the Board and recommend to the full Board candidates for election to the Board." Nomination and Governance Committee Charter at 1. The Charter also states that the Nomination and Governance Committee "may engage consultants or third-party search firms to assist in identifying and evaluating potential nominees." *Id.* Similarly, with regard to the criteria for the selection of directors, the 2019 Proxy Statement states:

As part of its consideration of director succession, the Nomination and Governance Committee from time to time reviews, including when considering potential candidates, the appropriate skills and characteristics required of board members, including factors that it seeks in board members such as diversity of business experience, viewpoints and personal background, and diversity of skills in technology, finance, marketing, international business, financial reporting and other areas that are expected to contribute to an effective Board of Directors. In evaluating potential candidates for the Board of Directors, the Nomination and Governance Committee considers these factors in the light of the specific needs of the Board of Directors at that time. Additionally, due to the global and complex nature of our business, the Board believes it is important to consider diversity of race, ethnicity, gender, age, education, cultural background, and professional experiences in evaluating board candidates in order to provide practical insights and diverse perspectives.

2019 Proxy Statement at 14.

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At all relevant times, Cisco Insiders Capellas, Garrett, and McGeary served on the Nomination and Governance Committee of the Cisco Board. But rather than uphold Cisco's commitment to accelerate diversity at the top and the selection criteria for new board members, Capellas, Garrett, and McGeary chose instead to perpetuate Cisco's exclusion of black directors under the pretext that the existing members constitute a "diverse" board. Consequently, many qualified black candidates who would have allowed Cisco and its shareowners to benefit from the perspectives of an African American on the Cisco Board have been excluded. The following chart sets forth the compensation earned by Cisco directors in 2019:

*Fiscal 2019 Total Director Compensation*

The following table provides information as to compensation earned by the non-employee directors during fiscal 2019.

<b>Director Compensation</b>				
<u>Name</u>	<u>Fees Earned or Paid in Cash (\$)</u>	<u>Stock Awards (\$)(1)</u>	<u>All Other Compensation (\$)</u>	<u>Total (\$)</u>
Carol A. Bartz (2) .....	\$ 6,000	\$ —	—	\$ 6,000
M. Michele Burns .....	\$ 138,000	\$ 224,960	—	\$ 362,960
Wesley G. Bush .....	\$ 44,738(3)	\$ 125,814	—	\$ 170,552
Michael D. Capellas .....	\$ 159,000(3)	\$ 224,960	—	\$ 383,960
Mark Garrett .....	\$ 141,000	\$ 224,960	—	\$ 365,960
Dr. John L. Hennessy (2) .....	\$ 6,000	\$ —	—	\$ 6,000
Dr. Kristina M. Johnson .....	\$ 102,000	\$ 224,960	—	\$ 326,960
Roderick C. McGeary .....	\$ 156,000	\$ 224,960	—	\$ 380,960
Arun Sarin .....	\$ 116,000	\$ 224,960	—	\$ 340,960
Brenton L. Saunders .....	\$ 98,000	\$ 224,960	—	\$ 322,960
Steven M. West .....	\$ 130,000	\$ 224,960	—	\$ 354,960

*Id.* at 17.

Directors Johnson, McGeary, Sarin, and Saunders at all relevant times served on the Cisco Board's Compensation and Management Development Committee. In addition to receiving lucrative compensation themselves, they also lavished extraordinary executive compensation on Cisco's CEO and other Executive Team Members. The majority of Cisco's principal executive officers are not racially diverse. Cisco's 2019 executive compensation is set forth below:

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**Summary Compensation Table**

Name and Principal Position (1)	Fiscal Year (1)	Salary (\$)	Bonus (\$)	Stock Awards (\$ (2))	Non-Equity Incentive Plan Compensation (\$ (3))	All Other Compensation (\$ (4))	Total (\$)
Charles H. Robbins	2019	\$ 1,325,000	—	\$ 18,576,568	\$ 5,795,550	\$ 132,715	\$ 25,829,833
Chairman and Chief Executive Officer	2018	\$ 1,231,250	—	\$ 14,940,771	\$ 4,990,711	\$ 121,732	\$ 21,284,464
	2017	\$ 1,187,308	—	\$ 12,873,491	\$ 2,532,352	\$ 160,613	\$ 16,753,764
Kelly A. Kramer	2019	\$ 850,000	—	\$ 10,610,100	\$ 2,106,810	\$ 67,500	\$ 13,634,410
Executive Vice President and Chief Financial Officer	2018	\$ 763,750	—	\$ 8,751,410	\$ 1,857,206	\$ 91,005	\$ 11,463,371
	2017	\$ 735,000	—	\$ 7,084,573	\$ 940,653	\$ 43,995	\$ 8,804,221
David Goeckeler	2019	\$ 825,000	—	\$ 9,374,159	\$ 2,044,845	\$ 84,969	\$ 12,328,973
Executive Vice President and General Manager, Networking and Security Business	2018	\$ 748,077	—	\$ 8,458,949	\$ 1,823,312	\$ 53,816	\$ 11,084,154
Maria Martinez	2019	\$ 675,000	\$ 6,500,000(5)	\$ 6,161,149	\$ 1,574,640	\$ 70,631	\$ 14,981,420
Executive Vice President and Chief Customer Experience Officer	2018	\$ 194,712	\$ 6,500,000(5)	\$ 12,003,070	\$ 400,569	\$ 246,554	\$ 19,344,905
Gerri Elliott	2019	\$ 750,000	\$ 4,000,000(6)	\$ 6,161,149	\$ 1,968,300	\$ 58,002	\$ 12,937,451
Executive Vice President and Chief Sales and Marketing Officer	2018	\$ 187,500	\$ 6,000,000(6)	\$ 10,001,614	\$ 385,941	\$ 273,369	\$ 16,848,424

2019 Proxy Statement at 43.

**DEMANDS**

The time for racial diversity at Cisco in the boardroom and on the Executive Leadership Team has arrived. Accordingly, City of Pontiac hereby demands that the Cisco Board immediately bring legal claims against the Cisco Insiders to remedy the dereliction of their duty to act in the best interests of Cisco and its shareowners. Additionally, to bring real change to Cisco by removing the institutional structures preventing it from achieving its stated diversity objectives, City of Pontiac further demands that the Cisco Insiders publicly announce, and then immediately begin to adopt, implement and maintain, the following initiatives, policies and procedures designed to promote greater racial diversity, equity and inclusion, within 45 days after the date of this Litigation Demand:

- Nominate three new persons to serve on the Cisco Board, which candidates shall include two African American persons and one other racial minority to replace three current Cisco directors.
- Fill 15% of all new Cisco positions in the United States with African Americans.



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- Invest \$400 million in economic and social justice programs for the African American community designed to address historical racial disparities.
- Finance 100 education scholarships valued at \$100,000 each for K-12 African American students annually at partner schools located in the communities in which the Company does business and/or maintains its headquarters.
- Invest in the Company's talent pipeline by creating and/or expanding connections with Historically Black Colleges and Universities located in the United States.
- Give diversity, equity and inclusion sustained C-suite support by shifting from preventative measures, such as anti-bias training, to proactive ones, such as increasing the number of black candidates considered for open positions and rewarding the people who contribute to the Company's success.
- Develop a program to ensure fair and equitable hiring across the Company – to remove hiring bias, increase representation of African Americans within senior leadership, management and supervisory ranks, and create more accountability and oversight for the advancement of diversity and inclusion practices and systems within the Company.
- Eliminate pay gap disparity by paying African Americans and others equally for doing the same work in the same workplace within the Company.
- Provide managers the skills they need to support diversity, equity and inclusion efforts.
- Create a public facing dashboard reporting the Company's progress, which shall include, among other things:
  - the representation of African American men and women on the Cisco Board;
  - the representation of African American women in the United States at the vice president and above level;
  - the representation of African Americans in the United States at the vice president and above level;
  - the percentage of Cisco's workforce actively engaged in promoting the Company's diversity, equity and inclusion efforts;

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- the top business leaders within the Company who have participated in diversity, equity and inclusion training designed to promote inclusive environments and foster ongoing dialogue; and
- the names of the black-owned businesses located in the United States the Company has partnered with during the fiscal year.
- Require annual training of Cisco's entire Board and Executive Leadership Team, which training shall at a minimum focus on diversity, equity and inclusion, and other relevant diversity-related topics.
- Eliminate the use of mandatory arbitration for employee disputes.

We look forward to your prompt response to this litigation demand.

Very truly yours,



DARREN J. ROBBINS

cc: Mark Chandler, Chief Legal Officer  
Evan Sloves, Secretary