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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ELLIEMARIA TORONTO ESA,
derivatively on behalf of
NORTONLIFELOCK INCORPORATED,

Plaintiff,

vs.

VINCENT PILETTE, GREGORY S.
CLARK, FRANK E. DANGEARD, SUE
BARSAMIAN, NORA DENZEL, PETER A.
FELD, KENNETH Y. HAO, DAVID W.
HUMPHREY, V. PAUL UNRUH, ERIC K.
BRANDT, DALE L. FULLER, ANITA M.
SANDS, SUZANNE M. VAUTRINOT, and
DOES 1-30,

Defendants,

- and -

NORTONLIFELOCK INCORPORATED,

Nominal Defendant.

Case No. _____

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT FOR:**

- 1. BREACH OF FIDUCIARY DUTY;**
- 2. AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY;**
- 3. ABUSE OF CONTROL;**
- 4. UNJUST ENRICHMENT; AND**
- 5. VIOLATION OF SECTION 14(A)
OF THE SECURITIES
EXCHANGE ACT OF 1934.**

DEMAND FOR JURY TRIAL

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1 Plaintiff EllieMaria Toronto ESA ("Plaintiff") submits this Verified Shareholder
2 Derivative Complaint against certain directors and officers of nominal defendant
3 NortonLifeLock Incorporated ("NortonLifeLock" or the "Company") for, *inter alia*,
4 violations of the Securities Exchange Act of 1934 ("Exchange Act") and breaches of
5 fiduciary duties. In support of these claims, Plaintiff alleges the following upon (1)
6 personal knowledge with respect to the matters pertaining to herself; and (2)
7 information and belief with respect to all other matters, based upon the investigations
8 undertaken by her counsel, which include a review of NortonLifeLock's legal and
9 regulatory filings, press releases, analyst reports, and media reports about the Company.
10 Plaintiff believes that substantial additional evidentiary support will exist for the
11 allegations set forth below after a reasonable opportunity for discovery.

12 I. INTRODUCTION

13 "We are a country suffering from racial inequality. And we want the
14 inequality and suffering to end. Enough people agree with these points
15 that this issue has become a matter that will impact every corporation
16 doing business in this country. Companies that are capable of
17 understanding their roles in taking effective action to end inequality will
18 benefit operationally and reputationally; those that refuse to acknowledge
19 their exposure to this massive problem or that are incapable of swift and
20 effective action will struggle to maintain their competitive positions as
21 employers and with consumers."¹

"NortonLifelock is committed to building a diverse, safe, and inclusive
workplace culture."²

22 ¹ See John Streur, *"More Engagement Needed to Get Companies to Address Racial*
23 *Inequality Risks and Issues,"* CALVERT RESEARCH AND MANAGEMENT, June 19, 2020,
24 available at <https://www.calvert.com/impact.php?post=more-engagement-needed-to-get-companies-to-address-racial-inequality-risks-and-issues-&sku=35910>, last visited
June 29, 2020.

25 ² See [https://www.nortonlifelock.com/us/en/corporate-responsibility/diversity-](https://www.nortonlifelock.com/us/en/corporate-responsibility/diversity-and-inclusion/)
26 *and-inclusion/*, last visited July 20, 2020.

1 1. Despite NortonLifeLock’s statement that it is committed to diversity and
2 inclusion, NortonLifeLock has failed to create any diversity at the very top of the
3 Company — the Board of Directors (the “Board”). The NortonLifeLock Board has
4 lacked diversity at all relevant times, and is one of the few publicly-traded companies
5 without a single African American director.

6 2. Back in the 1960s, almost every corporate board looked like the following:
7



19 Board of directors attend a meeting in 1960. CENTRAL PRESS GETTY.

20 3. While most of corporate America has made substantial progress in
21 diversification since the 1960s, NortonLifeLock still does not have a single African
22 American on its Board. The following are the current members of the Board:

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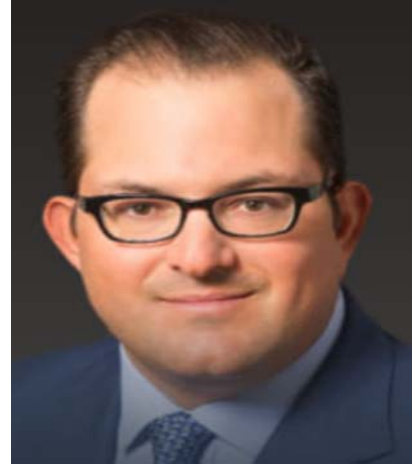
Frank E. Dangeard
Chairman of the Board,
Member of Audit and
Nominating and
Governance Committee



Sue Barsamian
Chair of Nominating and
Governance Committee,
Member of Compensation
Committee,
Director



Peter A. Feld
Chair of Compensation
Committee, Member of
Nominating and
Governance Committee,
Director



David Humphrey
Director



Nora Denzel
Member of Audit and
Compensation Committee,
Director



Gregory S. Clark
Former Chief Executive
Officer



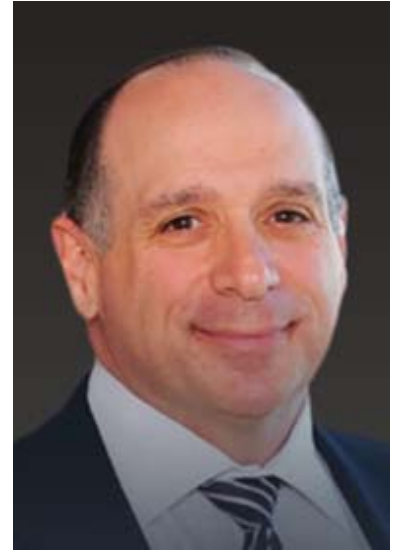
Kenneth Hao
Director



Vincent Pilette
Chief Executive Officer,
Director



Erik K. Brandt
Chair of Audit Committee,
Director



V. Paul Unruh
Director



4. While NortonLifeLock’s Board contains one Asian (Mr. Hao), Hao was not appointed to the Board to increase diversity, but instead because his employer, Silver Lake, invested in the Company.

5. At NortonLifeLock, it is not just the Board that lacks any African American individuals; there are no African Americans among the Company’s senior executives:

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Vincent Pilette
Chief Executive Officer,
NortonLifeLock
Incorporated



Samir Kapuria
President, NortonLifeLock
Incorporated



Natalie Derse
Chief Financial Officer,
NortonLifeLock
Incorporated



Bryan Ko
General Counsel &
Corporate Secretary,
NortonLifeLock
Incorporated



Kara Jordan
Chief People & Culture
Officer, NortonLifeLock
Incorporated



Robert Clarkson
Chief Commercial Officer



1 **Krista Todd**
2 Vice President of Marketing
& Communications,
3 NortonLifeLock
Incorporated



Gagan Singh
Chief Product Officer,
NortonLifeLock
Incorporated



Darren Shou
Head of Technology,
NortonLifeLock
Incorporated



10 **Sameer Kherra**
11 Chief Information Officer



Matthew Brown
Chief Accounting Officer



20 **II. NATURE AND SUMMARY OF THE ACTION**

21 6. NortonLifeLock's Directors, wishing to avoid public backlash, have
22 repeatedly made misrepresentations in the Company's public statements by claiming to
23 have a policy of being committed to diversity and inclusion at the Company.

24 7. In reality, though, NortonLifeLock's Board and senior executive officers
25 remain devoid of any Blacks and any meaningful representation of other minorities.

26 8. Even NortonLifeLock's Chief People & Culture Officer, Kara Jordan, is
27 white:
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10 9. At NortonLifeLock, the Company’s workforce and Board remain
11 conspicuously devoid of any meaningful percentage of Black and minority individuals.

12 10. *At NortonLifeLock, only 1% of the Company’s leadership is comprised of*
13 *African Americans*, despite the fact that African Americans make up over 13% of the U.S.
14 population.³ Its total U.S. workforce population is only 2% African American.

15 11. NortonLifeLock has five times more Hispanic than Black workers, which
16 comprise 5% of its workforce.⁴

17 12. In reality, NortonLifeLock has made no real efforts to promote diversity on
18 its Board and among its senior executives. Indeed, the word “diversity” only appears
19 seven (7) times in NortonLifeLock’s 2019 Proxy Statement.

20 13. The Company’s 2019 Proxy stated: “**Diversity**. In addition to a diverse
21 portfolio of professional background, experiences, knowledge and skills, *the*
22

23 ³ See the Company’s 2019 Corporate Responsibility Report, at p. 14, available at
24 file:///C:/Users/fbottini/Downloads/2019-corporate-responsibility-report-en%20(1).pdf,
25 last visited July 20, 2020. NortonLifeLock sold its Symantec business to Broadcom in
26 addition to the NortonLifeLock business.

27 ⁴ *Id.*

1 *composition of the Board should reflect the benefits of diversity as to gender, race,*
2 *ethnic, cultural and geographic backgrounds that reflect the composition of our global*
3 *investors, customers, employees and partners."*

4 14. Despite this concession, NortonLifeLock's Board contains zero African
5 American individuals and only one minority (Kenneth Hao), who is Asian. However,
6 Mr. Hao was not appointed to the Board to increase diversity, but instead because his
7 employer, Silver Lake, invested in the Company. As the Company's 2019 Proxy admits:

8 On February 3, 2016, NortonLifeLock entered into an investment
9 agreement with investment entities affiliated with Silver Lake, a private
10 equity firm, relating to the issuance to Silver Lake of \$500 million principal
11 amount of 2.5% convertible unsecured notes, due in 2021. *In connection*
12 *with the investment, Kenneth Y. Hao, a managing partner and managing*
director of Silver Lake, was appointed to our Board.

13 On June 12, 2016, NortonLifeLock entered into an investment agreement
14 with investment entities affiliated with Silver Lake and Bain Capital
15 relating to the issuance of \$1.25 billion aggregate principal amount of 2.0%
16 convertible unsecured notes due in 2021. Pursuant to the investment
17 agreement, Silver Lake has agreed to purchase \$500 million aggregate
18 principal amount of the notes, and Bain Capital, private equity firm of
19 which David W. Humphrey is a managing director, has agreed to purchase
20 \$750 million aggregate principal amount of the notes. The transactions
contemplated by this investment agreement closed concurrently with the
closing of the Blue Coat acquisition on August 1, 2016. In connection with
the investment, Mr. Humphrey was appointed to our Board.⁵

21 15. Despite being called out *seven years ago* for not having a single Black
22 individual on its Board, NortonLifeLock still does not have any African Americans on its
23 Board. See "*75 Companies Without Black Board Members,*" BLACK ENTERPRISE, Sept. 10,

24
25 _____
26 ⁵ See 2019 Proxy at pp. 69-70.

1 2013.⁶

2 16. As stated by Crystal Ashby, president and CEO of the Executive
3 Leadership Council, an organization of black senior executives that works to increase
4 inclusivity in business leadership: "Companies need to be intentional about increasing
5 the diversity of their executive leadership teams. The culture of an organization is
6 cultivated by its leaders."

7 17. As one individual aptly stated recently: "We've seen anemic progress to
8 date but *this is a watershed moment that must spur private and public boards into*
9 *accelerated action*," says Janet Foutty, executive chair of the board for Deloitte, which
10 has separately researched board diversity among Fortune 500 companies.⁷

11 18. Founded in 1989, NortonLifeLock today in 2020 has: (1) zero African-
12 Americans on its Board; and (2) zero African-Americans among its senior executive
13 ranks.

14 19. The Director Defendants named herein all signed each of NortonLifeLock's
15 annual proxy statements. With such signatures come an obligation to ensure that the
16 statements in the Proxy were true and accurate, and to correct any misleading
17 statements. They failed to do so.

18 20. NortonLifeLock's Directors have deceived stockholders and the market by
19 claiming to have concrete and specific inclusion and diversity programs that are
20 measurable and produce actionable tasks. In doing so, the Directors have breached their
21 duty of candor and have also violated the federal securities laws. Their conduct has also
22 irreparably harmed NortonLifeLock.

23 _____
24 ⁶ Available at <https://www.blackenterprise.com/75-companies-without-black-board-members/>, last visited July 20, 2020.

25 ⁷ See Kerri Anne Renzulli, "The 20 Largest U.S. Companies Without a Black Person on
26 Their Board," NEWSWEEK, June 17, 2020.

1 21. Moreover, greater diversity is in NortonLifeLock’s own interest. Studies
2 show that greater board diversity is associated with increased profits. *A McKinsey report*
3 *found that companies with the most ethnically or culturally diverse boards worldwide*
4 *were 43 percent more likely to experience higher profits.*

5 22. The shareholder derivative lawsuit has been the only judicial mechanism
6 for shareholders to hold directors accountable for engaging in wrongdoing. Courts have
7 long recognized that derivative suits play an important role in corporate governance
8 where directors fail to do their jobs:

9 The derivative action is practically the only remedy for calling the
10 management to account for its wrongs against the corporation and to
11 obtain restitution. Where a derivative suit is against outsiders for wrongs
12 against the corporation the directors can usually be expected to decide
13 impartially on the advisability of suing. But the management cannot be
14 expected to sue themselves for their own misdeeds.

15 *Pearce v. Super. Ct.*, 149 Cal. App. 3d 1058, 1065 (1983); *see also Vega v. Jones, Day, Reavis &*
16 *Pogue*, 121 Cal. App. 4th 282, 297 (2004); *accord Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 95
17 (1991) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949)). As the
18 California Supreme Court recognized in *Jones v. H. F. Ahmanson & Co.*, where, as here,
19 the company’s board and management fail to perform their duties, stockholders have a
20 “right” to bring derivative actions. *See* 1 Cal. 3d 93, 107 (1969). The courts of Delaware,
21 NortonLifeLock’s state of incorporation, likewise acknowledge that derivative actions
22 serve an important function: “The machinery of corporate democracy and the derivative
23 suit are potent tools to redress the conduct of a torpid or unfaithful management.”
24 *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984), *overruled in part on other grounds by Brehm*
25 *v. Eisner*, 746 A.2d 244 (Del. 2000).

26 23. Plaintiff, derivatively on behalf of NortonLifeLock, seeks the following
27 relief from the Director Defendants:

28 (a) The Chief People and Culture Officer should immediately create a
substantive plan for diversity and inclusion for the Board, upper management

1 levels, and throughout the corporation with the authority to implement such a
2 plan; and if unable to do so, the Chief People and Culture Officer shall be
3 replaced by a person of color with the skill set and authority to do so;

4 (b) At least one of NortonLifeLock's directors should immediately resign
5 prior to the Company's annual meeting set for September 8, 2020 and a Black
6 person nominated to the Board at that time. Thereafter, within a year and prior to
7 the next annual meeting at least one other person of color shall be nominated to
8 the Board;

9 (c) All Director Defendants named in this suit should return all of their
10 2020 compensation received from NortonLifeLock (including any stock grants),
11 and donate the money to an acceptable charity or organization whose efforts
12 include the advancement of Blacks and minorities in corporate America;

13 (d) NortonLifeLock should agree to publish an annual Diversity Report
14 that contains particularized information about the hiring, advancement,
15 promotion, and pay equity of all minorities at NortonLifeLock;

16 (e) NortonLifeLock should create a \$500 million fund to hire Blacks and
17 minorities, promote minorities to more management positions at the Company,
18 establish and maintain a mentorship program at NortonLifeLock for minorities
19 that is committed to providing the skills and mentorship necessary to succeed in
20 corporate America;

21 (f) NortonLifeLock should require annual training of its entire Board
22 and all Section 16 executive officers, which training should at a minimum focus
23 on diversity, affirmative action, anti-discrimination and anti-harassment, and
24 other relevant topics; and

25 (g) NortonLifeLock should immediately set specific goals with respect
26 to the number of Blacks and minorities to hire at the Company over the next five
27 years, and NortonLifeLock should adopt a revised executive compensation
28

1 program that makes 30% of executives' compensation tied to the achievement of
2 the diversity goals.

3 24. The Individual Defendants' misconduct has caused severe financial and
4 reputational damage to NortonLifeLock.

5 25. While underpaying minorities and women, NortonLifeLock's CEO and
6 executives have used the money saved to pay themselves huge amounts. *In fiscal year*
7 *2020, the Company paid its CEO Vincent Pilette total compensation of \$20,596,491. In*
8 *fiscal year 2018, the Company paid its CEO Gregory Clark total compensation of \$*
9 *17,347,581. In fiscal year 2019, the Company paid its CFO Nick Noviello \$ 13,299,795*
10 *and its President Samir Kapuria \$10,976,180.*

11 26. As set forth below, Defendants' conduct constitutes bad faith and disloyal
12 acts, giving rise to claims that fall outside the scope of the business judgment rule and
13 outside of permissible indemnification by NortonLifeLock. As a result, all members of
14 the Board face a substantial likelihood of liability and any demand on them to bring this
15 case would be a futile and useless act.

16 III. JURISDICTION AND VENUE

17 27. This Court has subject matter jurisdiction over this action under Article III
18 of the U.S. Constitution and 28 U.S.C. § 1331 because of claims arising under Section
19 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and SEC regulation 14a-9 promulgated
20 thereunder. The Court has exclusive jurisdiction under Section 27 of the Exchange Act,
21 15 U.S.C. § 78aa. The Court has jurisdiction over the state-law claims in accordance with
22 28 U.S.C. § 1367.

23 28. This Court also has subject matter jurisdiction over this action under
24 Article III of the U.S. Constitution and 28 U.S.C. § 1332 because Plaintiff and Defendants
25 are citizens of different States and the amount in controversy exceeds the sum or value
26 of \$75,000, exclusive of interest and costs.

27 29. This Court has jurisdiction over Defendants. Each Defendant is either a
28

1 resident of California or otherwise has sufficient contacts with California in order to
2 render the exercise of jurisdiction by this Court over them permissible under traditional
3 notions of fair play and substantial justice. Additionally, in connection with the
4 misconduct alleged herein, Defendants, directly or indirectly, used the means and
5 instrumentalities of interstate commerce, including the United States mails, interstate
6 telephone communications, and the facilities of the national securities markets. The
7 Court has jurisdiction over NortonLifeLock because the Company was headquartered in
8 Mountain View, California for most of the time relevant to this complaint and has
9 substantial business operations in California.

10 30. Venue is proper in this District pursuant to Section 27 of the Exchange Act.
11 Venue is also proper under 28 U.S.C. § 1391(b) because: (a) NortonLifeLock maintained
12 its principal place of business in this District for most of the time relevant to this
13 complaint; and (b) many of the acts and conduct that constitute the violations of law
14 complained of herein, including the preparation and dissemination to the public of
15 materially false and misleading information, occurred in this District. The Company's
16 2018 and 2019 Proxy Statements and annual meetings were disseminated in and held in
17 this District in Mountain View, California.

18 **IV. INTRADISTRICT ASSIGNMENT**

19 31. In compliance with Local Rule 3-2(b), Plaintiff requests that this action be
20 assigned to the San Jose Division of this District because a substantial part of the events
21 or conduct giving rise to the claims in this action occurred in the County of Santa Clara.

22 **V. THE PARTIES**

23 **A. Plaintiff**

24 32. Plaintiff is a current shareholder of NortonLifeLock, and has continuously
25 held NortonLifeLock stock at all relevant times. Plaintiff is a citizen of New Jersey.

26 **B. Nominal Defendant**

27 33. NortonLifeLock Incorporated is a Delaware corporation. Prior to a recent
28

1 name change in November 2019, the Company was called Symantec and maintained its
2 headquarters at 350 Ellis Street, Mountain View, California 94043. The Company
3 recently moved its headquarters to 60 E. Rio Salado Parkway, Suite 1000, Tempe,
4 Arizona 85281, but still maintains significant operations in California.

5 **C. Executive Officer Defendants**

6 34. Defendant Vincent Pilette has served as chief executive officer of
7 NortonLifeLock since May 2019, and serves on the Company's Board. Pilette previously
8 served as the Company's CFO. The Company paid Pilette total compensation in excess
9 of \$20 million in fiscal year 2020. Pilette is a citizen of California and maintains his
10 residence in Menlo Park, California.

11 35. Defendant Gregory S. Clark was a director of the Company from 2016 until
12 May 2019. Clark served as CEO of the Company prior to Mr. Pilette's tenure. Clark is a
13 citizen of California.

14 **D. Director Defendants**

15 36. Defendant Frank E. Dangeard has served as the Chairman of the Board and
16 has been a director of the Company since 2007. Dangeard is a member of the
17 Nominating & Governance Committee, Audit Committee, and Compensation
18 Committee. Dangeard is a citizen of New York.

19 37. Defendant Sue Barsamian has served as a director since January 7, 2019
20 and currently is a member of NortonLifeLock's Nominating & Governance Committee
21 and Compensation Committee. Barsamian is a citizen of California and maintains her
22 residence in Menlo Park, California.

23 38. Defendant Nora Denzel has been a director of NortonLifeLock since 2019
24 and serves on the Audit Committee. Denzel is a citizen of California and maintains her
25 residence in Saratoga, California.

26 39. Defendant Peter A. Feld is a director of NortonLifeLock and has been since
27 2018, and serves as a member of the Compensation Committee and Nominating &
28

1 Governance Committee. Feld is a citizen of New York.

2 40. Defendant Kenneth Y. Hao has served as a director of the Company since
3 2016. He currently serves as a Managing Partner and Director of Silver Lake Partners
4 and was appointed to the Board of NortonLifeLock as a result of financing deals
5 between Silver Lake and the Company. Hao is a citizen of California and maintains his
6 residence in Hillsborough, California.

7 41. Defendant David W. Humphrey has served as a director of the Company
8 since 2016. He currently is a Managing Director of Bain Capital. Humphrey is a citizen of
9 Massachusetts.

10 42. Defendant V. Paul Unruh has served as a director of the Company since
11 2005. He currently is the Chairman of NortonLifeLock's Audit Committee. On July 22,
12 2020, the Company announced that Unruh would step down from the Board after the
13 Company's 2020 Annual Meeting, which is set for September 8, 2020. Unruh is a citizen
14 of California and maintains his residence in Orinda, California.

15 43. Defendant Eric K. Brandt is a director of the Company and member of the
16 Audit Committee. Brandt is a citizen of California and maintains his residence in Corona
17 del Mar, California.

18 44. Defendant Dale L. Fuller served as a director of the Company from 2018
19 until December 2019. He served on NortonLifeLock's Nominating & Governance
20 Committee. Fuller is a citizen of California and maintains his residence in Menlo Park,
21 California.

22 45. Defendant Anita M. Sands served as a director of the Company from 2013
23 until December 2019. She served on NortonLifeLock's Audit Committee. Sands is
24 currently a resident of New York, and was a resident of San Francisco, California during
25 the relevant time period, residing at 2425 Devisidero Street, San Francisco, California
26 94115 from 2015 to 2019.

27 46. Defendant Suzanne M. Vautrinot served as a director of the Company from
28

1 2013 until December 2019. She served on NortonLifeLock's Audit Committee.
2 Vautrinot also serves on the Board of Wells Fargo and was on the Board during the "fake
3 account" scandal that tarnished Wells Fargo's reputation and resulted in hundreds of
4 millions of dollars in settlements with private plaintiffs and governmental entities. In
5 2020, a U.S. House Financial Services committee issued a report entitled "The Real Wells
6 Fargo: Board & Management Failures, Consumer Abuses and Ineffective Regulatory
7 Oversight" that lambasted Wells Fargo's response to regulatory orders since the fake
8 account scandal began. Vautrinot is a citizen of Colorado.

9 47. Defendants Clark and Pilette are referred to herein as the "Executive
10 Officer Defendants." The rest of the Defendants identified above, including Pilette and
11 Clark, are referred to herein as the "Director Defendants." Collectively, all defendants
12 are referred to herein as the "Individual Defendants."

13 **E. Doe Defendants**

14 48. Except as described herein, Plaintiff is ignorant of the true names of
15 defendants sued as Does 1 through 30, inclusive, and therefore, Plaintiff sues these
16 defendants by such fictitious names. Following further investigation and discovery,
17 Plaintiff will seek leave of this Court to amend this Complaint to allege their true names
18 and capacities when ascertained. These fictitiously named defendants are
19 NortonLifeLock officers, other members of management, employees, and/or consultants
20 or third parties who were involved in the wrongdoing detailed herein. These
21 defendants aided and abetted, and participated with and/or conspired with the named
22 defendants in the wrongful acts and course of conduct or otherwise caused the damages
23 and injuries claimed herein and are responsible in some manner for the acts,
24 occurrences, and events alleged in this Complaint.

25 **F. Unnamed Participants**

26 49. Numerous individuals and entities participated actively during the course
27 of and in furtherance of the wrongdoing described herein. The individuals and entities
28

1 acted in concert by joint ventures and by acting as agents for principals, to advance the
2 objectives of the scheme and to provide the scheme to benefit Defendants and
3 themselves to the detriment of NortonLifeLock.

4 VI. RESPONSIBILITIES AND DUTIES OF THE INDIVIDUAL DEFENDANTS

5 A. Responsibilities of the Individual Defendants

6 50. Corporate officers and directors owe the highest fiduciary duties of care
7 and loyalty to the corporation they serve.

8 51. Board Members and Executive Officers are held to the highest level of
9 ethics and compliance with the law.

10 52. The Company's corporate governance principles state:

11 Our Board of Directors is charged with representing the interests of our
12 stockholders and ensuring that the company is managed in alignment with
13 our commitment to the principles of corporate responsibility.

14 53. NortonLifeLock also states that:

15 **We continually work to strengthen our performance. Below are a few**
16 **highlights of our corporate governance practices:**

17 ● The nominating committee of the Board of Directors receives
18 regular briefings on NortonLifeLock's corporate responsibility objectives
19 and performance.

20 ● The compensation committee of the Board of Directors
21 undertakes rigorous review of proposed executive compensation packages
22 to ensure a balance between fair compensation and NortonLifeLock's
23 ability to attract and retain top talent. The process includes a
24 comprehensive performance evaluation, comparison with other
25 companies' practices, and consultation with compensation experts.

26 ● We review our internal controls and strengthen our policies
27 and procedures to ensure that our accounting systems are accurate and
28 reliable.

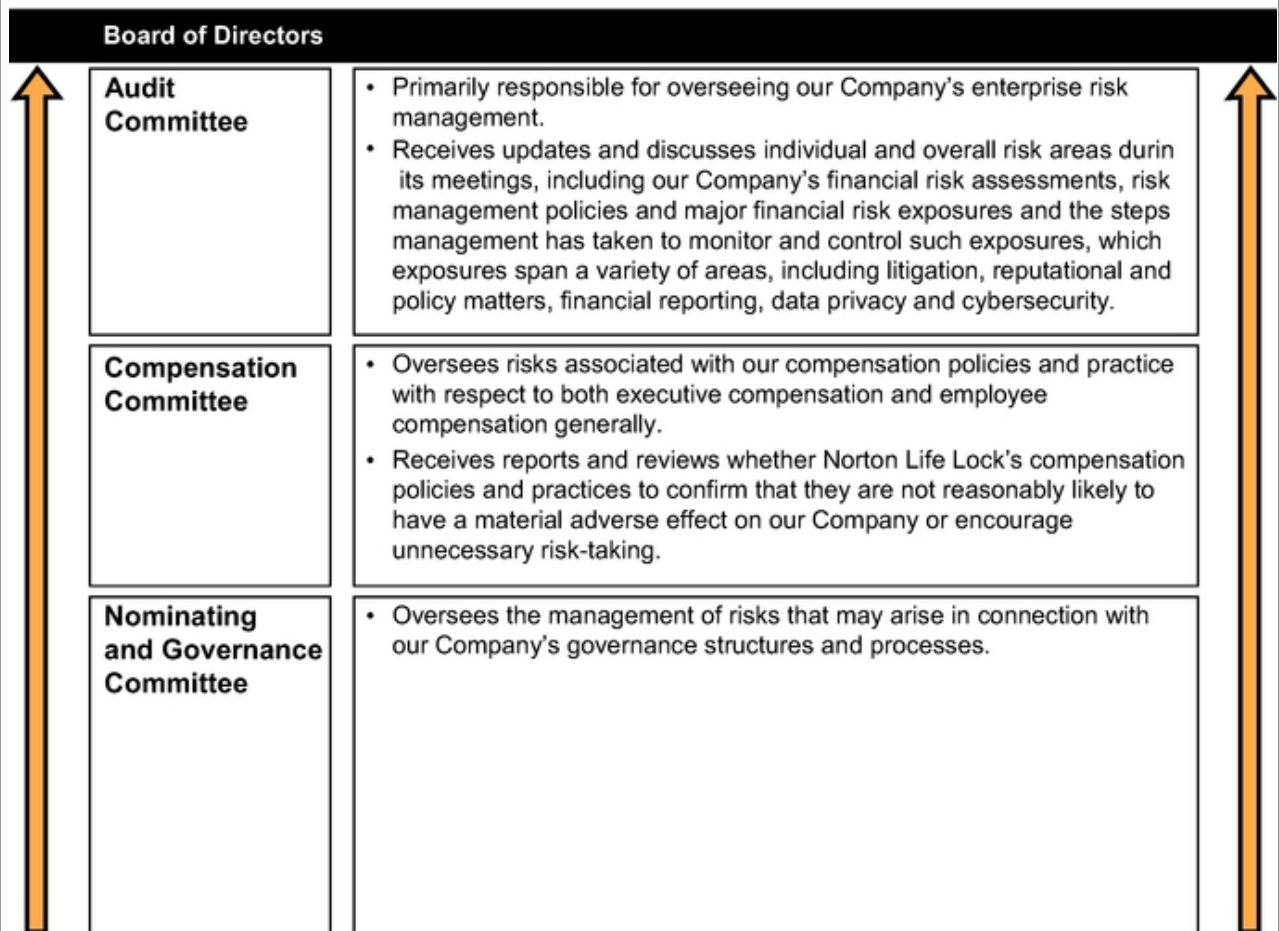
- We disclose our trade association affiliations and our company position on various public policy issues.

54. The Board is responsible for oversight and compliance with the Company’s internal controls regarding diversity, anti-discrimination, pay equity, hiring and promotion. As alleged herein, the Company’s Board of Directors failed to act in good faith by failing to ensure compliance with these policies and controls. These policies existed on paper, but were knowingly disregarded.

55. The Company’s 2019 Proxy Statement stated the following with respect to the Board’s role in risk oversight:

Board’s Role in Risk Oversight

The Board executes its risk management responsibility directly and through its committees.



1 56. The Board has obviously been aware at all relevant times that it is all-white
2 and lacks diversity. The Board and the Executive Officers also knew that diversity was
3 lacking in the Company’s workforce. The Defendants’ knowledge of the problems is
4 reflected by their efforts to conceal the lack of diversity and discrimination.

5 57. The Board knew the Company had policies in place on paper, but they
6 failed to give the policies any teeth or enforcement. The Board’s conduct represented
7 hypocrisy, bad faith, and disloyal conduct. The Board had a duty to cause the Company
8 to comply with the law and its own Corporate Governance Principles, and failed to do
9 so.

10 58. The direct involvement of NortonLifeLock’s Board makes them interested
11 in the outcome of this litigation because they face a substantial likelihood of liability.
12 Demand is thus futile.

13 **B. Fiduciary Duties of the Individual Defendants**

14 59. By reason of their positions as officers and directors of the Company, each
15 of the Individual Defendants owed and continue to owe NortonLifeLock and its
16 shareholders fiduciary obligations of trust, loyalty, good faith, and due care, and were
17 and are required to use their utmost ability to control and manage NortonLifeLock in a
18 fair, just, honest, and equitable manner. The Individual Defendants were and are
19 required to act in furtherance of the best interests of NortonLifeLock and not in
20 furtherance of their personal interest or benefit.

21 60. To discharge their duties, the officers and directors of the Company were
22 required to exercise reasonable and prudent supervision over the management, policies,
23 practices, and controls of the affairs of the Company. By virtue of such duties, the
24 officers and directors of NortonLifeLock were required to, among other things:

- 25 (a) conduct the affairs of the Company in compliance with all
26 applicable laws, rules, and regulations so as to make it possible to provide
27 the highest quality performance of its business, to avoid wasting the
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1 Company's assets, and to maximize the value of the Company's stock; and

2 (b) remain informed as to how NortonLifeLock conducted its
3 operations, and, upon receipt of notice or information of imprudent or
4 unsound conditions or practices, make reasonable inquiry in connection
5 therewith, and take steps to correct such conditions or practices and make
6 such disclosures as necessary to comply with applicable laws.

7 **C. Breaches of Fiduciary Duties by the Individual Defendants**

8 61. The conduct of the Individual Defendants complained of herein involves a
9 knowing and culpable violation of their obligations as officers and directors of
10 NortonLifeLock, the absence of good faith on their part, and a reckless disregard for
11 their duties to the Company.

12 62. The Individual Defendants breached their duty of loyalty and good faith
13 by allowing defendants to cause, or by themselves causing, the Company to cover up
14 NortonLifeLock's discrimination, and caused NortonLifeLock to incur substantial
15 damage.

16 63. The Individual Defendants, because of their positions of control and
17 authority as officers and/or directors of NortonLifeLock, were able to and did, directly or
18 indirectly, exercise control over the wrongful acts complained of herein. The Individual
19 Defendants also failed to prevent the other Individual Defendants from taking such
20 improper actions. As a result, and in addition to the damage the Company has already
21 incurred, NortonLifeLock has expended, and will continue to expend, significant sums
22 of money.

23 **D. Conspiracy, Aiding and Abetting, and Concerted Action**

24 64. At all relevant times, Individual Defendants were agents of the remaining
25 Individual Defendants, and in doing the acts alleged herein, were acting within the
26 course of scope of such agency. The Individual Defendants ratified and/or authorized
27 the wrongful acts of each of the other Individual Defendants. The Individual
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1 Defendants, and each of them, are individually sued as participants and as aiders and
2 abettors in the improper acts, plans, schemes, and transactions that are the subject of this
3 Complaint.

4 65. In committing the wrongful acts alleged herein, the Individual Defendants
5 have pursued, or joined in the pursuit of, a common course of conduct, and have acted
6 in concert with and conspired with one another in furtherance of the improper acts,
7 plans, schemes, and transactions that are the subject of this Complaint. In addition to
8 the wrongful conduct herein alleged as giving rise to primary liability, the Individual
9 Defendants further aided and abetted and/or assisted each other in breaching their
10 respective duties.

11 66. The Individual Defendants engaged in a conspiracy, common enterprise,
12 and/or common course of conduct, by failing to maintain adequate internal controls at
13 the Company and covering up discrimination at the Company.

14 67. During all times relevant hereto, the Individual Defendants, collectively
15 and individually, initiated a course of conduct that was designed to and did circumvent
16 the internal controls at the Company and caused the Company to cover up
17 NortonLifeLock executives' discrimination. In furtherance of this plan, conspiracy, and
18 course of conduct, the Individual Defendants, collectively and individually, took the
19 actions set forth herein.

20 68. The purpose and effect of the Individual Defendants' conspiracy, common
21 enterprise, and/or common course of conduct was, among other things, to disguise the
22 Individual Defendants' violations of law, breaches of fiduciary duty, and waste of
23 corporate assets, and to conceal adverse information concerning the Company's
24 operations.

25 69. The Individual Defendants accomplished their conspiracy, common
26 enterprise, and/or common course of conduct by intentionally circumventing internal
27 controls at the Company and causing the Company to cover up discrimination at the
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1 Company. Because the actions described herein occurred under the authority of the
2 Board, each of the Individual Defendants was a direct, necessary, and substantial
3 participant in the conspiracy, common enterprise, and/or common course of conduct
4 complained of herein.

5 70. Each of the Individual Defendants aided and abetted and rendered
6 substantial assistance in the wrongs complained of herein. In taking such actions to
7 substantially assist the commission of the wrongdoing complained of herein, each
8 Individual Defendant acted with knowledge of the primary wrongdoing, substantially
9 assisted in the accomplishment of that wrongdoing, and was aware of his or her overall
10 contribution to and furtherance of the wrongdoing.

11 E. The Directors' Roles and Committees at NortonLifeLock

12 71. The following chart sets forth the directors of NortonLifeLock as set forth
13 in the Company's 2019 Proxy Statement and the committees on which they serve:

| 14 Name | 15 Age | 16 Principal Occupation | 17 Independent | 18 AC | 19 CC | 20 NGC | 21 |
|-------------------|--------|-------------------------|--|--------|-------|--------|----|
| 22 Sue Barsamian | 23 60 | 24 2019 | 25 Director | 26 Yes | 27 ● | 28 ● | 1 |
| Frank E. Dangeard | 61 | 2007 | Managing Partner, Harcourt | Yes | ● | ● | 1 |
| Nora M. Denzel | 57 | n/a* | Nominee | Yes | ● | | 3 |
| Peter A. Feld | 40 | 2018 | Managing Member and Head of Research, Starboard Value LP | Yes | ● | ● | 1 |
| Kenneth Y. Hao | 51 | 2016 | Managing Partner and Managing Director, Silver Lake Partners | Yes | | | 2 |
| David W. Humphrey | 42 | 2016 | Managing Director, Bain Capital | Yes | | | 1 |
| Vincent Pilette | 47 | n/a* | CEO | No | | | 0 |
| V. Paul Unruh | 71 | 2005 | Director | Yes | ● | | 0 |

1
2 **VII. SUBSTANTIVE ALLEGATIONS**

3 72. NortonLifeLock Inc. (formerly known as Symantec), is an American
4 software company headquartered in Tempe, Arizona. The Company provides
5 cybersecurity software and services. NortonLifeLock is a Fortune 500 company and a
6 member of the S&P 500 stock-market index. The Company also has development centers
7 in Pune, Chennai and Bangalore.

8 73. On October 9, 2014, Symantec declared it would split into two independent
9 publicly-traded companies by the end of 2015. One company would focus on security,
10 the other on information management. On January 29, 2016, Symantec sold its
11 information-management subsidiary, named Veritas Technologies (which Symantec had
12 acquired in 2004), to The Carlyle Group.

13 74. On August 9, 2019, Broadcom Inc. announced it would be acquiring the
14 Enterprise Security software division of Symantec for \$10.7 billion, after having
15 attempted to purchase the whole Company. The sale closed November 4, 2019, and
16 subsequently, the Company adopted the NortonLifeLock name. It also relocated its
17 headquarters to Tempe, Arizona from Mountain View, California in approximately
18 December 2019.

19 75. NortonLifeLock's Board enjoys the undesirable distinction of being one of
20 the few publicly-traded companies in the United States with no African Americans on
21 the Board.

22 76. The lack of diversity at the top at NortonLifeLock is significant. The Board
23 bears ultimate responsibility for ensuring the Company's compliance with federal and
24 state laws prohibiting discrimination based on race, gender, and other factors. Diversity
25 in the workforce is a strong indication of a lack of discrimination; conversely, a lack of
26 diversity provides a strong indication that discrimination is present.

27 77. If the NortonLifeLock Board is vested with the responsibility of "Leading
28 by Example," it has failed miserably at that role with respect to diversity; the Board still,

1 in 2020, lacks any Black individuals, and only one minority (Hao), who was put on the
2 Board in connection with an investment by Silver Lake into the Company, not in order to
3 increase diversity. See NortonLifeLock 2019 Proxy at p. 69: “On February 3, 2016,
4 NortonLifeLock entered into an investment agreement with investment entities affiliated
5 with Silver Lake, a private equity firm, relating to the issuance to Silver Lake of \$500
6 million principal amount of 2.5% convertible unsecured notes, due in 2021. In connection
7 with the investment, Kenneth Y. Hao, a managing partner and managing director of
8 Silver Lake, was appointed to our Board.”

9 78. Even NortonLifeLock’s Chief People & Culture Officer is a white
10 individual. The Company’s lack of diversity stands in stark contrast to its statement that
11 “*NortonLifeLock (formerly Symantec) is committed to conducting our business with*
12 *attention to, and respect for, ethical operation, a diverse and inclusive workforce, the*
13 *environment, and positive societal impact.*”⁸

14 **A. NortonLifeLock Has Falsely Represented That It Has Made Substantial**
15 **Progress Towards Diversity and Inclusion in Its Workplace and on the**
16 **Board**

17 79. NortonLifeLock has represented that it promotes and achieves diversity
18 and inclusion at the Company. For example, the Company’s website states:

19 **NortonLifeLock is committed to building a diverse, safe, and inclusive**
20 **workplace culture.**

21 A culture where everyone is respected and encouraged to thrive. We
22 believe that an equitable and inclusive work environment, one where
23 people can be their authentic selves, can help amazing things come to life.

24 At NortonLifeLock, everyone has a voice. Diverse points of view help us
25 make better business decisions, to make sure the products and services we

26 ⁸ See <https://www.nortonlifelock.com/us/en/corporate-responsibility/corporate-responsibility-report/>, last visited July 20, 2020.

1 offer meet the needs of the broad spectrum of people we serve worldwide.
2 This starts with building teams with different backgrounds and
3 perspectives. It helps us understand our customers better, enables us to
4 respond to new trends more rapidly, and stimulates innovation. *We invest*
5 *in diversity not just because it's the right thing to do but because it*
6 *translates to a higher performing industry, company... and bottom line.*⁹

7 80. The Individual Defendants have not only caused the Company to make
8 vague statements about a “commitment” to diversity, but have approved false
9 statements that NortonLifeLock has been successful in those efforts:

10 **We have a multifaceted approach when it comes to driving diversity,**
11 **equity and inclusion at NortonLifeLock**

- 12 ● Continuously improve all touchpoints in the employee lifecycle:
13 *focusing on how we attract, retain, and develop the best diverse cyber*
14 *security talent in the world.*
- 15 ● *Cultivate an inclusive workplace* where everyone feels they belong
16 and can thrive by providing learning and development opportunities to
17 employees at all levels.
- 18 ● *Ensure that doing the right thing is built into our very foundation*
19 *by advising, crafting, and implementing globally inclusive policies and*
20 *guidelines.*
- 21 ● Improve our Employee Resource Groups’ impact on key business
22 objectives by investing more and partnering closely with internal and
23 external stakeholders.
- 24 ● Join the conversation and *be true thought leaders on diversity,*
25 *equity, and inclusion both internally and in the communities we impact.*
- 26 ● Invest in science, technology, engineering, and mathematics (STEM)
27 education to *increase the pipeline of diverse technology talent, globally.*¹⁰

28 81. The Company’s website also states:

24 ⁹See [https://www.nortonlifelock.com/us/en/corporate-responsibility/diversity-](https://www.nortonlifelock.com/us/en/corporate-responsibility/diversity-and-inclusion/)
25 [and-inclusion/](https://www.nortonlifelock.com/us/en/corporate-responsibility/diversity-and-inclusion/), last visited July 21, 2020.

26 ¹⁰ *Id.*

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At NortonLifeLock we are committed to supporting our employees through our Business Impact Communities (BIC) program. BICs play a vital role in helping create an inclusive work culture where everyone feels seen, heard, respected, and valued. Where everyone feels like they belong. Our belief is that when you give people equal opportunity, amazing things happen.

- Assist the company with the recruitment and onboarding of underrepresented talent.
- Identify opportunities to improve the retention and advancement of underrepresented employees.
- Host networking, educational, and engagement opportunities to help build cross-cultural awareness and career advancement skills.¹¹

82. The Individual Defendants have also caused NortonLifeLock to represent that the Company has taken active and concerted steps to recruit African American individuals:

We believe that a diverse and inclusive work environment helps us understand our customers better, enables us to respond to new trends more rapidly, and stimulates innovation. Investing in diversity is a business imperative and our support of Net Impact has helped establish undergraduate chapters at Historically Black Colleges and Universities (HBCUs) and helped create the Racial Equity Fellowship.¹²

83. In the Company’s 2019 Corporate Responsibility Report, the Company stated that the following issues were priorities:

- Priority Issues:**
- Information Security and Privacy:**
Protection of Symantec, customer, and employee data; appropriate use of data and technology.

¹¹ *Id.*

¹² See <https://www.nortonlifelock.com/blogs/corporate-responsibility/netimpact>, last visited July 21, 2020.

1 **Culture and Inclusion:** Employee
2 satisfaction; cultivation of an inclusive
3 work environment.

4 **Talent and Diversity:** Recruiting
5 and retaining top talent; career
6 development; employee, management,
7 *and Board diversity.*¹³

8 84. The Report also stated that:

9 We are one year into our two-year diversity and inclusion roadmap
10 strategy, and we are proud of our progress. This roadmap includes a
11 corporate-wide plan to drive greater diversity within job roles and to
12 invest more in developing diverse talent.¹⁴

13 85. NortonLifeLock stated in the Report that one of its major initiatives to try
14 to increase diversity in its workforce was to use “gender neutral” job descriptions:

15 [The Company] is dedicated to building a diverse and inclusive workforce
16 centered on our core values and a shared commitment to excellence. We’ve
17 made investing in talent and diversity a priority because it translates into a
18 higher performing company. To that end, we are amplifying cultural
19 values and implementing diverse and inclusive practices throughout the
20 organization.

21 **Emphasizing diversity in our talent strategy**

22 *In order to gain access to a more diverse slate of candidates, we knew we*
23 *needed to move beyond traditional hiring strategies. In FY19, we worked*
24 *towards developing gender-neutral job descriptions with phrases and*
25 *wording to attract a wider pool of diverse candidates.*

26 86. Using “gender neutral” job descriptions may encourage more women to
27 apply for certain jobs, but it does nothing to increase the number of African Americans
28

24 ¹³Available at file:///C:/Users/fbottini/Downloads/2019-corporate-responsibility-
25 report-en%20(2).pdf, last visited July 21, 2020.

26 ¹⁴ *Id.*

1 and minorities at the Company. The fact that NortonLifeLock trumpets the use of
 2 gender-neutral job descriptions as a “major initiative” reveals how far the Company has
 3 to go with respect to increasing true diversity at NortonLifeLock.

4 87. The failure of NortonLifeLock to increase the percentage of African
 5 Americans at the Company was disclosed in the 2019 Corporate Responsibility Report,
 6 which stated that:

7 **U.S. Ethnic Diversity**

8 **Total U.S. Jobs**

9 White: 58%
 10 Asian: 33%
 11 Hispanic: 5%
 12 **Black: 2%**

13 **Leadership Jobs**

14 White: 66%
 15 Asian: 27%
 16 Hispanic: 5%
 17 **Black: 1%**

18 **B. The Nominating and Governance Committee is Responsible for**
 19 **Nominating Individuals to the Company’s Board**

20 88. In 2019 and 2020, Directors Mahoney, Dangeard, Feld, Fuller & Schulman
 21 served on NortonLifeLock’s Nominating & Governance Committee.

22 89. As set forth in the Company’s 2019 Proxy Statement, the Committee is
 23 responsible for the following duties, among others:

24 Our Nominating and Governance Committee is currently comprised of Mr.
 25 Mahoney, who is the chair of the Nominating and Governance Committee,
 26 and Messrs. Dangeard, Feld, Fuller and Schulman. Our Nominating and
 27 Governance Committee oversees our Company's corporate governance
 28 procedures and policies, and ensures that they represent best practices and
 are in the best interests of our Company and its stockholders, which
 includes establishing appropriate criteria for nominating qualified
 candidates to the Board. Its duties and responsibilities include, among

1 other things:

- 2 • *Establishing the criteria and determining the desired qualifications,*
3 *expertise and characteristics of the Board, with the goal of developing a*
4 *diversity of perspectives, backgrounds, experiences, knowledge and skills*
5 *on the Board.*
- 6 • Considering the size, composition and needs of the Board and *evaluate*
7 *and recommending qualified candidates for election to the Board*
8 consistent with the established criteria to ensure the Board has the
9 appropriate skills and expertise.
- 10 • *Advising the Board on corporate governance matters* and recommend to
11 the Board appropriate or necessary actions to be taken by our Company,
12 the Board and the Board's committees.
- 13 • *Identifying best corporate governance practices* and develop and
14 recommend to the Board a set of corporate governance guidelines
15 applicable to our Company.
- 16 • *Reviewing and assessing the adequacy of our Company's corporate*
17 *governance policies, including our Company's Corporate Governance*
18 *Guidelines* and Code of Conduct, and recommend modifications to the
19 Board as appropriate.
- 20 • Overseeing and reviewing our Company's policies and programs
21 concerning: (i) corporate social responsibility; (ii) public policy; (iii)
22 philanthropy; (iv) political activities and expenditures; (v) our Company's
23 participation and visibility as a global corporate citizen; and (vi) our
24 Company's sustainability performance, including impacts to our business
25 of environmental, social and governance issues.
- 26 • Monitoring compliance under the stock ownership guidelines as set by the
27 Compensation Committee for the Board and executive officers.
- 28 • *Implementing and overseeing the processes for evaluating the Board, its*
committees and the CEO on an annual basis.
- Overseeing the management of risks that may arise in connection with our
Company's governance structures and processes.

1
2 90. Moreover, the 2019 Proxy stated that the members of the Nominating &
3 Governance Committee had actual knowledge about the Company's diversity &
4 inclusion efforts due to regular meetings with management:

5 *Our Nominating and Governance Committee has regular touchpoints with*
6 *management on the following topics:*

- 7 • Employee engagement and work-life integration initiatives;
8 • Monitoring our workforce planning, including required capabilities and
9 skills development;
10 • *Understanding our workforce demographics and diversity, equity and*
11 *inclusion strategies;* and
12 • *Monitoring our corporate culture.*

13 91. With respect to the nominating process to select individuals to serve on the
14 Company's Board, and the desired characteristics of the Board, the 2019 Proxy stated:

15 **Diversity.** In addition to a diverse portfolio of professional background,
16 experiences, knowledge and skills, *the composition of the Board should*
17 *reflect the benefits of diversity as to gender, race, ethnic, cultural and*
18 *geographic backgrounds that reflect the composition of our global*
19 *investors, customers, employees and partners.*¹⁵

20 92. In reality, NortonLifeLock has made no real efforts to promote diversity on
21 its Board and among its senior executives. Indeed, in the 2019 and 2020 Proxy the word
22 "diversity" only appears seven (7) times.

23 **C. At All Relevant Times, the Individual Defendants Have Had Actual**
24 **Knowledge That, Contrary to Its Public Statements, NortonLifeLock Was**
25 **Not Achieving Success With Respect to Its Diversity and Inclusion**
26 **Initiatives**

27 93. NortonLifeLock, led by its Board, has consistently refused to appoint Black
28 and minority individuals to the Board and to management positions within the
Company. The Company was called out all the way back in 2013 for its refusal to do so,

¹⁵ See NortonLifeLock 2019 Proxy Statement at p. 15.

1 but has persisted in its intransigence.

2 94. And the lack of diversity at the top at NortonLifeLock has resulted in
3 economic discrimination. The pay of the Company's CEO in fiscal year 2020 was 222
4 times as high as the median pay of all other employees:

5 **Pay Ratio:**

- 6
- 7 • Mr. Pilette's fiscal 2020 annual total compensation was \$20,596,491 which
8 was calculated in the same manner as the amounts reported in the "Total"
9 column of the "2020 Summary Compensation Table" in this proxy
10 statement, except that Mr. Pilette's base salary was annualized.
 - 11 • The fiscal 2020 annual total compensation of our median employee (other
12 than our CEO) was \$92,914.
 - 13 • Based on this information, the pay ratio of the annual total compensation
14 of our CEO to the median of the annual total compensation of our
15 employees is 222.5 to 1.¹⁶

16 95. Instead of acknowledging the problem and demanding change,
17 NortonLifeLock has instead issued false statements claiming success in achieving
18 diversity and inclusion.

19 96. Defendants had actual knowledge of the specific requirements regarding
20 diversity that were required by law to be included in the Company's Proxy Statements.
21 After the 2008-2009 stock market crash, the SEC passed a major set of rules mandating
22 additional proxy disclosures regarding the board nomination process. At an open
23 meeting held on December 16, 2009, the Securities and Exchange Commission ("SEC")
24 approved a set of proposed rules to enhance the information provided to shareholders in
25 company proxy statements. Significantly, the rules required, among other things,

26 ¹⁶ See NortonLifeLock 2020 Proxy Statement at p. 74.

1 specific disclosures regarding:

2 **Diversity Considerations in the Director Nomination Process.** In the rule
3 proposals, the SEC asked whether it should amend its rules to *require*
4 *disclosure of additional factors that a nominating committee considers*
5 *when selecting someone for a position on the board, such as diversity,* and
6 whether it should amend the rules to *require additional or different*
7 *disclosure related to board diversity. The rules as adopted require*
8 *disclosure of whether, and if so how, a nominating committee considers*
9 *diversity in identifying nominees for directors.*¹⁷

10 97. The additional disclosures required in proxy statements regarding the
11 qualifications and nominating process of persons nominated to serve on Board of
12 Directors were necessary because, as the ultimate decision-making body of a company,
13 the Board bears ultimate responsibility for corporate decisions. Congress and the SEC
14 rightfully determined that shareholders needed additional information about the
15 qualifications of director nominees and the process by which a company's nominating
16 and corporate governance committee identifies and selects persons to serve on corporate
17 boards.

18 **D. False and Misleading 2018, 2019, and 2020 Proxy Statements Approved
19 by the Director Defendants**

20 98. Notwithstanding their knowledge about NortonLifeLock's failure to
21 promote and achieve diversity and its discriminatory hiring and promotion practices,
22 the Director Defendants caused NortonLifeLock to issue Proxy Statements that were
23 materially misleading.

24 99. The Company's 2018 Proxy was filed with the SEC on October 29, 2018 and
25

26 ¹⁷ See "SEC Adopts Final Rules on Enhanced Proxy Statement Disclosures," HARVARD
27 LAW SCHOOL FORUM ON CORPORATE GOVERNANCE, Dec. 21, 2009, available at
28 <https://corpgov.law.harvard.edu/2009/12/21/sec-adopts-final-rules-on-enhanced-proxy-statement-disclosures/>, last visited July 25, 2020.

1 approved by Directors Clark, Dangeard, Feld, Fuller, Hao, Humphrey, Laybourne,
2 Mahoney, Miller, Sands, Schulman, Unruh, and Vautrinot.

3 100. The Company's 2019 Proxy Statement was filed with the SEC on
4 November 7, 2019 and was approved by Defendants Dangeard, Barsamian, Denzel, Feld,
5 Hao, Humphrey, Pilette, and Unruh. The 2018 and 2019 annual meetings were held in
6 Mountain View, California.

7 101. The Company's 2020 Proxy Statement was filed with the SEC on July 22,
8 2020 and was approved by Defendants Dangeard, Barsamian, Denzel, Feld, Hao,
9 Humphrey, Pilette, and Unruh.

10 102. In the 2018, 2019, and 2020 Proxy Statements, the Company stated that:

11 **Diversity.** In addition to a diverse portfolio of professional background,
12 experiences, knowledge and skills, *the composition of the Board should*
13 *reflect the benefits of diversity as to gender, race, and ethnic background.*¹⁸

14 103. The 2020 Proxy similarly stated:

15 **Diversity.** In addition to a diverse portfolio of professional background,
16 experiences, knowledge and skills, *the composition of the Board should*
17 *reflect the benefits of diversity as to gender, race, ethnic cultural and*
18 *geographic backgrounds that reflect the composition of our global*
19 *investors, customers, employees and partners.*¹⁹

20 104. In the 2019 Proxy, the Directors admitted that the Company does not even
21 have a written policy regarding diversity of Board candidates:

22 *[W]e do not have a formal written policy with regard to the consideration*
23 *of diversity in identifying candidates;* however, as discussed above,
24 diversity is one of the numerous criteria the Nominating and Governance
25 Committee reviews before recommending a candidate.

26 105. The 2018 and 2020 Proxy Statements contained an identical statement:

27 ¹⁸ 2018 Proxy at p. 17; 2019 Proxy at p. 15.

28 ¹⁹ 2020 Proxy at p. 15.

1 “In addition, we do not have a formal written policy with regard to the
2 consideration of diversity in identifying candidates; however, as discussed
3 above, *diversity is one of the numerous criteria the Nominating and
4 Governance Committee reviews before recommending a candidate.*”²⁰

4 106. These statements were misleading. While acknowledging that the
5 Company “do[es] not have a formal written policy with regard to the consideration of
6 diversity in identifying candidates,” the Proxy nonetheless represented that “diversity is
7 one of the numerous criteria the Nominating and Governance Committee reviews.” The
8 statement misled shareholders into believing that the Board considers diversity an
9 important factor in deciding which candidates to nominate for Board seats. In reality, it
10 is not an important factor and the Company is not committed to racial and ethnical
11 diversity on the Board and among the Company’s senior executives.

12 107. These statements in the 2018, 2019, and 2020 Proxy Statements were also
13 misleading because they suggested that the Governance Committee has a goal of
14 achieving diversity on the Board by seeking to achieve representation of diverse persons
15 – *i.e.*, Blacks and other minorities. In reality, however, the Governance Committee does
16 not have a goal of increasing the racial diversity of applicants for Board seats and instead
17 only has a goal of placating the Company’s activist investors such as Starboard and
18 those investors providing the Company with financing such as Silver Lake.

19 108. The 2018, 2019, and 2020 Proxy Statements were also misleading because
20 they suggested that the Company was actively seeking to achieve racial and ethnic
21 diversity in its Board membership. Despite stating that the Nominating and Governance
22 Committee reviews diversity before recommending candidates to the Board, the fact
23 remains that NortonLifeLock has no African Americans on its Board, and that no African
24 American or other minority candidate has been elected to the NortonLifeLock Board in

25 _____
26 ²⁰ See 2018 Proxy Statement at p. 18; 2020 Proxy at p. 16.
27
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1 the last four years, and that Hao, who was nominated to the Board in 2016, was not
2 nominated in order to attempt to promote diversity but instead due to a deal the
3 Company made with Silver Lake as part of Silver Lake's investment in the Company.
4 The undisclosed truth therefore is that NortonLifeLock has no intention to actually
5 nominate African Americans or other minorities to its Board.

6 109. The false, misleading, and omitted information about diversity was highly
7 material, and is required by SEC rules governing proxy statements. In passing the 2009
8 rule, the SEC stated:

9 In the Proposing Release, we also requested comment on whether we
10 should amend our rules to require disclosure of additional factors
11 considered by a nominating committee when selecting someone for a
12 board position, such as board diversity. A significant number of
13 commenters responded that disclosure about board diversity was
14 important information to investors.²¹ Many of these commenters believed
15 that requiring this disclosure would provide investors with information on
16 corporate culture and governance practices that would enable investors to
17 make more informed voting and investment decisions.²² Commenters also
18 noted that there appears to be a meaningful relationship between diverse
19 boards and improved corporate financial performance, and that diverse
20 boards can help companies more effectively recruit talent and retain staff.²³
21 *We agree that it is useful for investors to understand how the board
22 considers and addresses diversity, as well as the board's assessment of the*

23 ²¹ See, e.g., letters from Board of Directors Network, Boston Common Asset
24 Management, CalPERS, CalSTRS, Calvert, Council of Urban Professionals, Ernst &
25 Young LLP ("E&Y"), Greenlining Institute, Hispanic Association on Corporate
26 Responsibility, Interfaith Center on Corporate Responsibility, InterOrganization
27 Network, Latino Business Chamber of Greater Los Angeles, Pax World Management
28 Corporation, Prout Group, Inc., RiskMetrics, Sisters of Charity BVM, Sisters of St. Joseph
Carondelet, and Trillium Asset Management Corporation.

²² See, e.g., letters from the Boston Club, Boston Common Asset Management,
CalPERS, Pax World Management Corporation, Trillium Asset Management
Corporation, and Social Investment Forum.

²³ See, e.g., letters from Catalyst and the Social Investment Forum.

1 *implementation of its diversity policy, if any. Consequently, we are*
2 *adopting amendments to Item 407(c) of Regulation S-K to require*
3 *disclosure of whether, and if so how, a nominating committee considers*
4 *diversity in identifying nominees for director.*²⁴ In addition, if the
5 nominating committee (or the board) has a policy with regard to the
6 consideration of diversity in identifying director nominees, disclosure
7 would be required of how this policy is implemented, as well as how the
8 nominating committee (or the board) assesses the effectiveness of its
9 policy.²⁵

10 110. In further expanding on the importance and materiality to investors of the
11 new diversity disclosures mandated by the 2009 rule, the SEC stated:

12 Required disclosure of whether, and if so, how a nominating committee (or
13 the board) considers diversity in connection with identifying and
14 evaluating persons for consideration as nominees for a position on the
15 board of directors may also benefit investors. *Board diversity policy is an*
16 *important factor in the voting decisions of some investors.*²⁶ *Such investors*
17 *will directly benefit from diversity policy disclosure* to the extent the
18 policy and the manner in which it is implemented is not otherwise clear
19 from observing past and current board selections. Although the
20 amendments are not intended to steer behavior, *diversity policy disclosure*
21 *may also induce beneficial changes in board composition.* A board may
22 determine, in connection with preparing its disclosure, that it is beneficial
23 to disclose and follow a policy of seeking diversity. Such a policy may
24 encourage boards to conduct broader director searches, evaluating a wider
25 range of candidates and potentially improving board quality. *To the extent*
26 *that boards branch out from the set of candidates they would ordinarily*
27 *consider, they may nominate directors who have fewer existing ties to the*
28

29 ²⁴ See Item 407(c)(2)(vi) of Regulation S-K. Funds will be subject to the diversity
30 disclosure requirement of Item 407(c)(2)(vi) of Regulation S-K under Item 22(b)(15)(ii)(A)
31 of Schedule 14A. See 17 CFR 240.14a-101, Item 22(b)(15)(ii)(A).

32 ²⁵ See United States Securities & Exchange Commission, Release Nos. 33-9089; 34-
33 61175; IC-29092; File No. S7-13-09, Dec. 16, 2009, available at
34 <https://www.sec.gov/rules/final/2009/33-9089.pdf>, last visited July 25, 2020.

35 ²⁶ See, e.g., letters from Calvert, Trillium, Boston Common Asset Management, CII,
36 Florida State Board of Administration, and Sisters of Charity BVM. See also letter from
37 Lissa Lamkin Broome and Thomas Lee Hazen.

1 *board or management and are, consequently, more independent. To the*
2 *extent that a more independent board is desirable at a particular company,*
3 *the resulting increase in board independence could potentially improve*
4 *governance.* In addition, in some companies a policy of increasing board
diversity may also improve the board's decision making process by
encouraging consideration of a broader range of views.²⁷

5 111. As a result of the 2009 rule enacted by the SEC, Item 407 of Regulation S-K
6 now requires all companies in their proxy statements to:

7 Describe the nominating committee's process for identifying and
8 evaluating nominees for director, including nominees recommended by
9 security holders, and any differences in the manner in which the
10 nominating committee evaluates nominees for director based on whether
11 the nominee is recommended by a security holder, and whether, and if so
12 how, the nominating committee (or the board) considers diversity in
13 identifying nominees for director. If the nominating committee (or the
14 board) has a policy with regard to the consideration of diversity in
identifying director nominees, describe how this policy is implemented, as
well as how the nominating committee (or the board) assesses the
effectiveness of its policy.²⁸

15 112. The Nominating & Governance Committee at NortonLifeLock is
16 responsible for nominating candidates to the Board. The Company's 2019 Proxy stated
17 that:

18 The Nominating and Governance Committee will consider candidates
19 submitted by NortonLifeLock stockholders, as well as candidates
20 recommended by directors and management, for nomination to the Board.
21 The Nominating and Governance Committee has generally identified
22 nominees based upon recommendations by outside directors, management
23 and executive recruiting firms. The goal of the Nominating and
24 Governance Committee is to assemble a Board that offers a diverse
portfolio of perspectives, backgrounds, experiences, knowledge and skills
derived from high-quality business and professional experience. The

25 ²⁷ *Id.*

26 ²⁸ See Item 407(c)(2)(vi) of Regulation S-K, 17 CFR §229.407.

1 Nominating and Governance Committee annually reviews the appropriate
2 skills and characteristics required of directors in the context of the current
3 composition of the Board, our operating requirements and the long-term
4 interests of our stockholders.²⁹

4 113. The 2020 Proxy Statement stated:

5 The Nominating and Governance Committee will consider potential
6 nominees properly submitted by stockholders. Stockholders seeking to do
7 so should provide the information set forth in our corporate Bylaws
8 regarding director nominations. The Nominating and Governance
9 Committee will apply the same criteria for candidates proposed by
10 stockholders as it does for candidates proposed by management or other
11 directors.³⁰

10 114. At NortonLifeLock, one of the ways the Company has inhibited and
11 prevented diverse candidates from being nominated to serve on the Board is through
12 restrictive and unreasonable provisions that place a high bar on shareholders' ability to
13 nominate candidates other than the incumbent directors. As admitted in the 2020 Proxy:

14 Our Bylaws contain "proxy access" provisions which permit a stockholder,
15 or a group of up to 50 stockholders, owning continuously for at least three
16 years a number of shares of our common stock that constitutes at least 3%
17 of our outstanding shares of common stock, to nominate and include in our
18 proxy materials director nominees constituting up to the greater of two
19 individuals or 20% of the Board, provided that the stockholder(s) and the
20 nominee(s) satisfy the requirements specified in the Bylaws.³¹

20 115. As this statement indicates, any NortonLifeLock shareholder wanting to
21 nominate a new individual to the Board – for example, an African American individual –
22 has to own 3% of the Company's stock, or alternatively somehow get in contact with and
23

24 ²⁹ See 2019 Proxy at p. 15.

25 ³⁰ See 2020 Proxy at p. 16.

26 ³¹ See 2020 Proxy at p. 7.

1 convince 49 other shareholders who collectively own 3% of the Company's stock to
2 agree to nominate the individual. The Company's 2020 Annual Report disclosed that
3 "The number of shares of NortonLifeLock common stock, \$0.01 par value per share,
4 outstanding as of May 12, 2020 was 589,028,713 shares." Thus, 3% of NortonLifeLock's
5 shares equates to 17,670,861 shares.

6 116. At NortonLifeLock's current stock price of approximately \$21.00,³² a
7 shareholder would have to own \$371,088,081 in NortonLifeLock stock in order to have
8 the right to nominate an African American individual to NortonLifeLock's Board. No
9 wonder there are no Blacks on NortonLifeLock's Board.

10 117. But the restrictions do not end there. In addition to having to own 3% of
11 NortonLifeLock's stock, a shareholder has to have owned the stock "continuously for at
12 least the last three years." So, there is a three-year waiting period even after a person
13 buys NortonLifeLock stock in order to be able to nominate a director to the Board.

14 118. NortonLifeLock's Proxy Statement was also materially misleading because
15 it contained material omissions: it failed to disclose that the purpose and effect of its
16 "proxy access" rules, in combination with the policies of its Nominating & Governance
17 Committee, was to inhibit the nomination and election of Blacks and minorities to the
18 Board. These material omissions would have been material to a shareholder's decision
19 as to whether to re-elect the incumbent directors at the annual meeting. In the 2018,
20 2019, and 2020 Proxy Statements, the reelection of the incumbent directors was Item No.
21 1. For example, in the 2020 Proxy, with respect to the election, the Board asked
22 shareholders to vote in favor, stating:

23
24
25 _____
26 ³² As of July 23, 2020.
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At the recommendation of the Nominating and Governance Committee, the Board has nominated the following eight persons to serve as directors for the term beginning at the Annual Meeting on September 8, 2020: Sue Barsamian, Eric K. Brandt, Frank E. Dangeard, Nora M. Denzel, Peter A. Feld, Kenneth Y. Hao, David W. Humphrey and Vincent Pilette. Each director will be elected on an annual basis.

Eric K. Brandt, a director who was appointed in February 2020, was recommended by the Nominating and Governance Committee after an extensive and careful search was conducted by the Committee and numerous candidates were considered. Mr. V. Paul Unruh, a member of our Board of Directors since 2005, is not standing for re-election at the Annual Meeting. The Board thanks Mr. Unruh for his leadership and years of service to NortonLifeLock.

THE BOARD RECOMMENDS A VOTE “FOR” THE ELECTION OF EACH OF THE EIGHT NOMINATED DIRECTORS.³³

119. In the 2018 Proxy, the nominated directors were Clark, Dangeard, Feld, Fuller, Hao, Humphrey, Mahoney, Sands, Schulman, Unruh, and Vautrinot.

120. In the 2019 Proxy, the nominated directors were Sue Barsamian, Frank E. Dangeard, Nora M. Denzel, Peter A. Feld, Kenneth Y. Hao, David W. Humphrey, Paul Unruh, and Vincent Pilette.

121. The Proxy Statements were also materially misleading because they failed to disclose that the Company does not have term limits, and that the purpose of the lack of term limits is to entrench the current directors in office and prevent African Americans and minorities from having fair opportunities to be elected to the Board.

122. To attempt to justify its racism, NortonLifeLock’s Board has resisted efforts to appoint new members to its Board by claiming that the individuals who have served on the Board for, in some cases more than a decade, have experience that is valuable to

³³ See 2020 Proxy at pp. 18- 29.

1 the Company. The Proxy was false and misleading for failing to disclose the lack of term
2 limits and the true reasons and effect of the lack of term limits.

3 123. In reality, longer-tenured directors do not serve the best interests of the
4 Company, as amply demonstrated by leading academics and professionals in the field of
5 best corporate governance principles. A report by the Harvard Law School Forum on
6 Corporate Governance noted that:

7 Investor respondents to ISS' 2016–2017 Global Policy Survey
8 (conducted between Aug. 2, 2016 and Aug. 30, 2016) were asked which
9 tenure-related factors — with multiple answers allowed — would give rise
10 to concern about a board's nominating and refreshment processes. *Among*
11 *the 120 institutional investors (one-third of whom each own or manage*
12 *assets in excess of \$100 billion) who responded, 68 percent pointed to a*
13 *high proportion of directors with long tenure as cause for concern, 53*
14 *percent identified an absence of newly-appointed independent directors in*
15 *recent years as a potential problem, and 51 percent flagged lengthy average*
16 *tenure as problematic.* Just 11 percent of the investor respondents said that
17 tenure is not a concern, although even several of those respondents
18 indicated that an absence of newly-appointed directors is a concern.³⁴

19 124. The Director Defendants' refusal to adopt director term limits and to
20 appoint new Black and minority members to the Board represents explicit or implicit
21 racism at NortonLifeLock, and an improper pretext for failing to add Black and minority
22 individuals to the Board. By falsely asserting that term limits would deprive
23 NortonLifeLock of the "experience" of older white members who have served on the
24 Board for more than a decade, the Director Defendants made intentionally or recklessly
25 false statements in order to get themselves reelected and to conceal the true reasons for
26 NortonLifeLock's long-standing failure to add African Americans to its Board.

27 ³⁴ Available at <https://corpgov.law.harvard.edu/2017/02/09/board-refreshment-trends-at-sp-1500-firms/> (last visited June 21, 2020).

1 125. The 2018, 2019, and 2020 Proxy Statements were also materially misleading
2 because they asked shareholders to vote in favor of executive compensation “say on
3 pay” proposals, but failed to disclose that none of NortonLifeLock’s executive
4 compensation decisions take into consideration whether the executives have been
5 successful in achieving the Company’s critical diversity and inclusion goals.

6 126. For example, the 2019 Proxy stated:

7
8 In executive session without our CEO or other executive officers present,
9 the Compensation Committee approved our CEO’s and other executive
10 officers’ fiscal 2018 equity award amounts, the fiscal 2018 ACIP earned
11 amounts, and any adjustments to base salaries and ACIP targets for fiscal
12 2019. In making these decisions, and in determining the amounts and mix
13 of executive compensation, the Compensation Committee considered the
14 following factors, among others:

- 15 • Feedback from other Board members regarding the leadership
16 contributions of our CEO and other executive officers to our annual
17 and long-term performance;
- 18 • Feedback from the Compensation Committee members;
- 19 • Our business performance;
- 20 • Feedback from our CEO regarding our business performance, his
21 performance and his evaluation of and compensation
22 recommendations for the other executive officers;
- 23 • The executive officers’ individual performance and contributions to
24 financial and strategic objectives, including expertise, skills and
25 tenure in position;
- 26 • Labor market conditions and the executive officers’ potential to
27 assume increased responsibilities;
- 28 • Operational management, such as project milestones, process
improvements and expense management;
- Internal working and reporting relationships and teamwork among
our executive officers (for example, using the same ACIP financial
metrics and objectives for all executive officers promotes teamwork
and collaboration and our executive officers’ contribution to
Company-wide initiatives);
- The Compensation Committee’s intention for compensation to be
internally fair and equitable relative to roles, responsibilities and
relationships, in addition to being competitively reasonable;

- 1 • *Developing and motivating employees* (such as establishing
2 processes for identifying and assessing high potential employees)
3 and *attracting and retaining employees (such as initiatives to*
4 *increase the pipeline of women in leadership roles)*; and
- 5 • *Leadership actions that support our ethical standards and*
6 *compliance culture.*

7 127. The 2020 Proxy had an almost identical statement with respect to the
8 factors considered by NortonLifeLock's Compensation Committee when determining
9 executive compensation:

10 In executive session without our CEO or other executive officers present,
11 the HR and Compensation Committee approved the fiscal 2019 equity
12 award amounts, the fiscal 2019 ACIP earned amounts and any adjustments
13 to base salaries and ACIP targets for fiscal 2020. In making these decisions
14 and determining the amounts and mix of executive compensation, the HR
15 and Compensation Committee considered the following factors, among
16 others:

- 17 • Labor market conditions, competitive compensation for comparable
18 positions and threats to our business due to retention-related risks.
- 19 • Business performance including operational management such as
20 project milestones, process improvements and expense management.
- 21 • Feedback from our CEO regarding the performance of our business,
22 his performance and his evaluation of and compensation recommendations
23 for the other executive officers.
- 24 • *The executive officers'* individual performance and *contributions to*
25 financial and *strategic objectives*, including expertise, skills, tenure in
26 position and potential to assume increased responsibilities.
- 27 • Internal working and reporting relationships and teamwork among
28 our executive officers (for example, using the same ACIP financial metrics
and objectives for all executive officers promotes teamwork and
collaboration and our executive officers' contribution to Company-wide
initiatives).

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- The HR and Compensation Committee's intention for compensation to be internally fair and equitable relative to roles, responsibilities and relationships, in addition to being competitively reasonable.
- *Leadership actions that support our ethical standards and compliance culture.*
- *Developing and motivating employees (such as establishing processes for identifying and assessing high potential employees) and attracting and retaining employees (such as initiatives to increase the pipeline of women in leadership roles).*

128. These statements about executive compensation were false and misleading. The statements suggested that executive compensation took into consideration “leadership actions that support our ethical standards and *compliance culture*” and efforts towards increasing diversity and increasing the pipeline of women in leadership roles. In reality, those kinds of salutary and important goals do not count for any kind of significant weighting towards the amount of compensation that gets awarded to executives at NortonLifeLock. In fact, at NortonLifeLock over 90% of executive compensation is based on the Company’s financial performance.

129. These omitted facts, had they been disclosed, would have been highly material to stockholders’ decisions as to 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 shareholders, including Plaintiff, and the omitted fact that NortonLifeLock does not include any significant weight (if any) to executives’ success or lack thereof in achieving the Company’s diversity goals would have been very important to shareholders’ voting deliberations.

130. The false statements and material omissions in the Proxy Statements had their desired effect. At NortonLifeLock’s annual meetings in 2018 2019, all the

1 incumbent white directors were reelected. No competing Black or minority candidates
2 made it on the ballot or were elected. The executive compensation “say on pay”
3 proposals were approved. PWC was reappointed as the Company’s auditor.³⁵

4 131. The 2018, 2019, and 2020 Proxy Statements were false and misleading
5 because they omitted and failed to disclose:

6 (a) That the statement in the Proxies that “diversity is one of the
7 numerous criteria the Nominating and Governance Committee reviews
8 before recommending a candidate” was misleading because it suggested
9 that the Company was actively seeking to achieve racial and ethnic
10 diversity in its Board membership, while the undisclosed reality is that
11 NortonLifeLock either has no intention to actually nominate such persons
12 to its Board or it engages in efforts to thwart the nomination of such
13 persons and prefers non-diverse applicants in the pool;

14 (b) That the Company does not have term limits due to a desire
15 to retain the experience of the incumbent Director Defendants, but instead
16 to keep minorities off the Board;

17 (c) That the Company’s failure to disclose its median salary and
18 pay/employment data in an annual report is due to a desire to conceal
19 existing, known pay disparity at the Company which adversely affects
20 women and minorities;

21 (d) That the Company’s executive compensation decisions do not
22 take into consideration in any way the executives’ success or lack thereof in
23 achieving the Company’s diversity and inclusion goals; moreover, that the
24

25 ³⁵ The 2020 Annual Meeting had not yet occurred at the time this complaint was
26 filed.

1 Company's stated policies with respect to diversity and anti-discrimination
2 were not effective and were not being complied with;

3 (e) That the Board's Nominating and Governance Committee
4 did not take racial and ethnic diversity into consideration when
5 nominating Board candidates and instead simply sought to create a false
6 appearance of seeking diversity among potential Board candidates;

7 (f) That Defendants had knowledge that the Company's internal
8 controls and systems were inadequate and ineffective to protect minorities
9 against discrimination in hiring, promotion, and other critical terms of
10 employment and equal access;

11 (g) That Defendants failed to maintain appropriate policies,
12 internal controls, and procedures to ensure that the Company's stated
13 policies with respect to diversity and inclusion were being complied with;

14 (h) That the statement in the Proxies that "the composition of the
15 Board should reflect the benefits of diversity as to gender, race, ethnic,
16 cultural and geographic backgrounds that reflect the composition of our
17 global investors, customers, employees and partners" was misleading in
18 that it failed to disclose that the Board composition did not in fact reflect
19 the gender, race, ethnic, cultural, and geographic backgrounds reflective of
20 the composition of the Company's investors, customers, employees and
21 partners; and

22 (i) That the Company's diversity and inclusion programs were
23 not achieving measurable and actionable results, and needed substantial
24 improvement.

25 132. The 2018, 2019 and 2020 Proxy Statements harmed the Company by
26 interfering with the proper governance on its behalf that requires stockholders' informed
27 voting of directors. As a result of the false or misleading statements in the Proxies,
28

1 stockholders voted to reelect all of the Defendants to the Board in 2018 and 2019.

2 133. The statements in the 2018, 2019, and 2020 Proxy Statements conveyed that
3 the Company's corporate governance structure was "effective" and provided "oversight
4 of management and Board accountability." In reality, the Company's corporate
5 governance structure and defective internal controls allowed senior executives and the
6 Board to sidestep real accountability and instead continue perpetuating the
7 discriminatory practices in hiring practices, and lack of diversity on both the Board and
8 management.

9 134. The 2018 and 2019 Proxies, which contained materially misleading
10 statements and thus deprived shareholders of adequate information necessary to make a
11 reasonably informed decision, caused the Company's stockholders to reelect all of the
12 Defendants to the Board and approve executive compensation proposals while the
13 Defendants were breaching their fiduciary duties to the Company and deliberately
14 concealing material information concerning the Company's discrimination against Black
15 and other minority individuals and its effects on the Company's business and
16 reputation.

17 **E. NortonLifeLock's Nominating and Governance Committee Members**
18 **Have Repeatedly Breached Their Fiduciary Duties to Ensure Diversity**
on the Board

19 135. The Charter of the Nominating and Governance Committee sets forth the
20 duties of the Board members serving on such committee. Among those duties, with
21 respect to the nomination of candidates to serve on NortonLifeLock's Board, are the
22 following:

23 *Board Composition, Nomination and Evaluation*

24 1. *Establish the criteria and determine the desired*
25 *qualifications, expertise and characteristics of the Board, with the goal of*
26 *developing a diversity of background and experience on the Board.*

27 2. *Consider and recruit qualified candidates, in consultation*
28 *with the Company's Chairman and Chief Executive Officer and after*

1 taking into account input from the Board’s ongoing succession planning
2 process, for membership on the Board.

3 3. Consider the size, composition and needs of the Board and
4 *evaluate and recommend qualified candidates for election to the Board*
5 consistent with the established criteria to ensure the Board has the
6 appropriate skills and expertise. The Committee shall recommend to the
7 Board each year the director nominees for election at the next annual
8 meeting of stockholders. Upon the recommendation of the Committee, the
9 Board may appoint a director to the Board during the course of the year to
10 serve until the next annual meeting of stockholders.

11 4. *Evaluate and make recommendations to the Board regarding*
12 *the structure and operations, size, and composition of the Board*
13 *committees, committee member qualifications, committee member*
14 *appointment and removal, and committee reporting to the Board.*³⁶

15 136. The 2020 Proxy also stated the following with respect to the Nominating
16 and Governance Committee responsibilities:

17 **Process for Identifying and Evaluating Nominees**

18 The Nominating and Governance Committee typically
19 considers candidates by first evaluating the current members of the Board
20 who intend to continue in service, balancing the value of continuity of
21 service with that of obtaining new perspectives, skills and experience. If
22 the Nominating and Governance Committee determines that an opening
23 exists, it identifies the desired skills and experience of a new nominee,
24 including the need to satisfy rules of the SEC and Nasdaq.

25 The Nominating and Governance Committee generally will
26 evaluate each candidate based on the extent to which the candidate
27 contributes to the range of talent, skill and expertise appropriate for the
28 Board generally, as well as the candidates.

36 See
25 [https://s24.q4cdn.com/151081985/files/doc_corporate_governance/committee/2020/02/NLOK-NGC-Charter-\(02.03.20\).pdf](https://s24.q4cdn.com/151081985/files/doc_corporate_governance/committee/2020/02/NLOK-NGC-Charter-(02.03.20).pdf), last visited July 23, 2020.

1 137. The members of the Nominating and Governance Committee (Mahoney,
 2 Dangeard, Feld, Fuller and Schulman) have breached their fiduciary duties as directors
 3 by failing to fulfill these duties. Rather than causing NortonLifeLock to comply with its
 4 corporate governance principles, Mahoney, Dangeard, Feld, Fuller and Schulman have
 5 caused NortonLifeLock to merely pay lip service to these principles. Instead of
 6 recommending well-qualified black and minority candidates to serve on
 7 NortonLifeLock's Board, Mahoney, Dangeard, Feld, Fuller and Schulman have
 8 perpetuated the all-white Board under the pretext that the existing members'
 9 "experience" and long tenure on the Board is beneficial to NortonLifeLock.

10 138. Moreover, to entrench themselves and their fellow directors in office, all
 11 the Director Defendants have opposed term limits in order to prevent the addition of
 12 qualified African Americans and other minorities to the Board.

13 139. As the saying goes, the rich get richer while the poor get poorer. Serving
 14 on NortonLifeLock's Board has enriched the already-rich elites whose profitable
 15 sinecure has been perpetuated by the Defendants' wrongdoing. Many qualified Black
 16 and minority candidates would enjoy the prestige and compensation that comes with a
 17 position on NortonLifeLock's Board. The following chart sets forth the compensation
 18 earned by outside directors on NortonLifeLock's Board in 2020:

Fiscal 2020 Director Compensation

| Name | Fees Earned or Paid in Cash (\$)(1)(2) | Stock Awards (\$)(3)(4) | Total (\$) |
|--------------------------------------|---|-------------------------------|---------------|
| Susan P. Barsamian ⁽⁵⁾⁽⁶⁾ | 119,659 | 324,993 | 444,652 |
| Eric K. Brandt ⁽⁷⁾ | 2,120 | 34,147 | 36,267 |
| Frank E. Dangeard ⁽⁸⁾ | 121,636 | 274,994 | 396,630 |
| Nora Denzel ⁽⁹⁾ | 22,618 | 79,309 | 101,927 |
| Peter A. Feld ⁽⁵⁾ | 55,007 | 324,993 | 380,000 |
| Dale Fuller* | 85,006 | 274,994 | 360,000 |
| Kenneth Y. Hao ⁽⁵⁾ | 7 | 324,993 | 325,000 |
| Richard S. Hill ⁽¹⁰⁾ | 2,243 | 35,883 | 38,126 |
| David W. Humphrey ⁽⁵⁾ | 7 | 324,993 | 325,000 |
| David L. Mahoney* | 95,006 | 274,994 | 370,000 |
| Anita Sands* | 70,006 | 274,994 | 345,000 |

| | | | |
|-----------------------|---------|---------|---------|
| Daniel H. Schulman* | 140,006 | 274,994 | 415,000 |
| V. Paul Unruh* | 95,006 | 274,994 | 370,000 |
| Suzanne M. Vautrinot* | 70,006 | 274,994 | 345,000 |

140. The following table sets forth the compensation paid to the Company's directors in fiscal year 2019:

Fiscal 2019 Director Compensation

| Name | Fees Earned or Paid in Cash (\$)(1)(2) | Stock Awards (\$)(3)(4) | Total (\$) |
|--|--|-------------------------|------------|
| Susan P. Barsamian ⁽⁵⁾ | 3,383 | 73,210 ⁽⁶⁾ | 76,593 |
| Frank E. Dangeard | 85,018 | 274,982 | 360,000 |
| Peter A. Feld ⁽⁷⁾ | 16,071 | 174,108 ⁽⁸⁾ | 190,179 |
| Dale L. Fuller ⁽⁷⁾ | 34,821 | 147,321 | 182,142 |
| Kenneth Y. Hao | 21 | 324,979 ⁽⁹⁾ | 325,000 |
| Richard S. Hill ⁽⁵⁾ | 15,772 | 61,948 | 77,720 |
| David W. Humphrey | 21 | 324,979 ⁽⁹⁾ | 325,000 |
| Geraldine B. Laybourne ⁽¹⁰⁾ | 80,018 | 274,982 | 355,000 |
| David L. Mahoney | 105,024 | 274,976 | 380,000 |
| Robert S. Miller ⁽¹⁰⁾⁽¹¹⁾ | 120,639 | 124,635 | 245,274 |
| Anita M. Sands | 70,018 | 274,982 | 345,000 |
| Daniel H. Schulman | 195,018 | 274,982 | 470,000 |
| V. Paul Unruh | 95,018 | 274,982 | 370,000 |
| Suzanne M. Vautrinot | 70,018 | 274,982 | 345,000 |

141. In addition to awarding themselves substantial compensation for serving on the Board, the Director Defendants lavished the Company's executives with the following compensation in fiscal year 2020:

Summary Compensation Table for Fiscal 2020

| Name and Principal Position | Fiscal Year | Salary (\$) | Bonus (\$) | Stock Awards (\$)(1) | Option Awards (\$) | Non-Equity Incentive Plan Compensation (\$)(2) | All Other Compensation (\$)(3) | Total (\$) |
|--|-------------|-------------|------------|----------------------|--------------------|--|--------------------------------|------------|
| Continuing NEOs: | | | | | | | | |
| Vincent Pilette ⁽⁴⁾ CEO | 2020 | 568,750 | — | 19,446,262 | — | 552,500 | 28,979 | 20,596,491 |
| Matthew C. Brown ⁽⁵⁾ Former Interim CFO and Current CAO | 2020 | 330,000 | — | 565,907 | — | 112,200 | 189,617 | 1,197,724 |
| Samir Kapuria ⁽⁶⁾ President | 2020 | 516,667 | — | 5,685,892 | — | 439,167 | 90,643 | 6,732,369 |
| | 2019 | 443,864 | — | 10,311,650 | — | — | 220,667 | 10,976,180 |
| Bryan S. Ko ⁽⁷⁾ Chief Legal Officer, Secretary and Head of Corporate Affairs | 2020 | 123,333 | 1,000,00 | 4,490,760 | — | 82,938 | 4,241 | 5,701,272 |

Transitioned NEOs:

| | | | | | | | | |
|--|------|-----------|-----------|------------|-----------|-----------|-----------|------------|
| Gregory S. Clark(8)(a) <i>Former President and CEO</i> | 2020 | 132,925 | — | — | — | — | 180,816 | 313,741 |
| | 2019 | 1,000,000 | — | — | — | — | 1,921,039 | 2,921,038 |
| | 2018 | 1,000,000 | — | 15,982,645 | — | — | 364,936 | 17,347,581 |
| Richard S. Hill(9)(b) <i>Former Interim President and CEO</i> | 2020 | 557,780 | — | 1,023,885 | 7,735,000 | 1,076,712 | 392,575 | 10,785,952 |
| Nicholas R. Noviello(10)(c) <i>Former Executive Vice President and CFO</i> | 2020 | 114,767 | 2,145,417 | 2,092,780 | — | 487,500 | 779,442 | 5,619,907 |
| | 2019 | 650,000 | 1,000,000 | 10,706,470 | — | — | 943,325 | 13,229,795 |
| | 2018 | 650,000 | — | 7,458,549 | — | — | 47,606 | 8,156,155 |
| Amy L. Cappellanti-Wolf(11)(d) <i>Former Senior Vice President and CHRO</i> | 2020 | 385,000 | — | 4,152,283 | — | 199,867 | 2,640,359 | 7,377,509 |
| | 2019 | 440,000 | — | 3,462,911 | — | — | 558,163 | 4,461,075 |
| Arthur W. Gilliland(12)(e) | 2020 | 413,636 | — | 7,654,685 | — | 311,321 | 20,209 | 8,399,851 |

142. The following chart sets forth the compensation that the Director Defendants awarded to the Company's top executives in fiscal year 2019:

Summary Compensation Table for Fiscal 2019

| Name and Principal Position | Fiscal Year | Salary (\$) | Bonus (\$) | Stock Awards (\$)(1)(2)(3) | Non-Equity | | All Other Compensation (\$)(4) | Total (\$) |
|--|-------------|------------------------|------------|----------------------------|--------------------|----------------------------------|--------------------------------|------------|
| | | | | | Option Awards (\$) | Incentive Plan Compensation (\$) | | |
| Gregory S. Clark Former President and CEO* | 2019 | 1,000,000 | — | — ⁽⁵⁾ | — | — | 1,921,039 | 2,921,038 |
| | 2018 | 1,000,000 | — | 15,982,645 | — | — | 364,936 | 17,347,581 |
| | 2017 | 666,667 | — | 4,269,815 ⁽⁶⁾ | — | 743,333 | 379,937 | 6,059,752 |
| Nicholas R. Noviello Former Executive Vice President and CFO** | 2019 | 650,000 | 1,000,000 | 10,706,470 ⁽⁷⁾ | — | — | 943,325 | 13,299,795 |
| | 2018 | 650,000 | — | 7,458,549 | — | — | 47,606 | 8,156,155 |
| | 2017 | 433,333 | — | 1,077,917 ⁽⁶⁾ | — | 479,673 | 172,740 | 2,163,663 |
| Amy L. Cappellanti-Wolf Senior Vice President and CHRO | 2019 | 440,000 | — | 3,462,911 | — | — | 558,163 | 4,461,075 |
| Samir Kapuria President (effective November 8, 2019) | 2019 | 443,864 ⁽⁸⁾ | — | 10,311,650 | — | — | 220,667 | 10,976,180 |
| Scott C. Taylor Executive Vice President, General Counsel and Secretary | 2019 | 600,000 | — | 4,672,177 | — | — | 871,628 | 6,143,804 |
| | 2018 | 600,000 | — | 4,794,772 | — | — | 621,788 | 6,016,560 |
| | 2017 | 600,000 | 150,000 | 4,831,307 ⁽⁶⁾ | — | 568,374 | 363,462 | 6,513,143 |

143. The Director Defendants lavished the Company's executives with the following compensation in fiscal year 2018:

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Summary Compensation Table for Fiscal 2018

| Name and Principal Position | Fiscal Year | Salary (\$) | Bonus (\$) | Stock Awards ⁽¹⁾⁽²⁾ (\$) | Option Awards (\$) | Non-Equity Incentive Plan Compensation (\$) | All Other Compensation (\$) | Total (\$) |
|--|-------------|-------------------------|-------------------------|-------------------------------------|--------------------|---|-----------------------------|--------------------------|
| Gregory S. Clark Chief Executive Officer | 2018 | 1,000,000 | — | 15,982,645 | — | — ⁽³⁾ | 364,936 ⁽⁴⁾ | 17,347,581 |
| Nicholas R. Noviello Executive Vice President and CFO | 2017 | 666,667 ⁽⁵⁾ | — | 4,269,815 ⁽⁶⁾ | — | 743,333 ⁽⁷⁾ | 379,937 ⁽⁸⁾ | 6,059,752 ⁽⁶⁾ |
| | 2018 | 650,000 | — | 7,458,549 | — | — ⁽³⁾ | 47,606 ⁽⁹⁾ | 8,156,155 |
| | 2017 | 433,333 ⁽⁵⁾ | — | 1,077,917 ⁽⁶⁾ | — | 479,673 ⁽⁷⁾ | 172,740 ⁽¹⁰⁾ | 2,163,663 ⁽⁶⁾ |
| Michael D. Fey President and COO | 2018 | 865,000 | — | 14,917,133 | — | — ⁽³⁾ | 41,832 ⁽¹¹⁾ | 15,823,965 |
| | 2017 | 544,167 ⁽⁵⁾ | — | 2,856,660 ⁽⁶⁾ | — | 909,370 ⁽⁷⁾ | 131,000 ⁽¹²⁾ | 4,441,197 ⁽⁶⁾ |
| Scott C. Taylor Executive Vice President, General Counsel and Secretary | 2018 | 600,000 | — | 4,794,772 | — | — ⁽³⁾ | 621,788 ⁽¹³⁾ | 6,016,560 |
| | 2017 | 600,000 | 150,000 ⁽¹⁴⁾ | 4,831,307 | — | 568,374 ⁽⁷⁾ | 363,462 ⁽¹⁵⁾ | 6,513,143 |
| | 2016 | 593,939 | — | 3,082,307 | — | 283,380 ⁽¹⁶⁾ | 86,028 ⁽¹⁷⁾ | 4,045,654 |
| Francis C. Rosch Former Executive Vice President, Consumer Digital Safety* | 2018 | 700,000 | — | 12,786,109 | — | — ⁽³⁾ | 755,059 ⁽¹⁸⁾ | 14,241,168 |
| | 2017 | 612,500 ⁽¹⁹⁾ | — | 6,039,114 | — | 623,970 ⁽⁷⁾ | 461,965 ⁽²⁰⁾ | 7,737,549 |
| | 2016 | 504,394 | — | 5,137,221 | — | 320,750 ⁽¹⁶⁾ | 97,334 ⁽²¹⁾ | 6,059,699 |

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144. These huge salaries to the Company's executives have been awarded by the Compensation Committee Directors (Barsamian, Feld, Mahoney, Schulman and Denzel) while systematically underpaying minorities and women. The Compensation Committee Defendants have consistently awarded massive pay packages to the Company's CEOs which dwarf the median pay of the Company's other employees. The pay of the Company's CEO in fiscal year 2020 was 222 times as high as the median pay of all other employees:

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21

Pay Ratio:

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- Mr. Pilette's fiscal 2020 annual total compensation was \$20,596,491 which was calculated in the same manner as the amounts reported in the "Total" column of the "2020 Summary Compensation Table" in this proxy statement, except that Mr. Pilette's base salary was annualized.
 - The fiscal 2020 annual total compensation of our median employee (other than our CEO) was \$92,914.

- Based on this information, *the pay ratio of the annual total compensation of our CEO to the median of the annual total compensation of our employees is 222.5 to 1.*³⁷

F. The Director Defendants Breached Their Duties of Loyalty and Good Faith by Failing to Ensure the Company's Compliance with Federal and State Laws Regarding Diversity and Anti-Discrimination

145. The Director Defendants have known for years that NortonLifeLock (and its predecessor Symantec) has been violating federal and state laws regarding diversity, equal pay, and discrimination against women and minorities.

146. Defendants' knowledge is reflected by the fact that, in 2018, the Company was forced to publish its first Gender Pay Gap Report 2018 as a result of legislation passed in England. While the report only pertained to workers in the Company's UK locations, the Company failed to publish similar figures pertaining to the Company's US operations.

147. As the Company admitted in the Gender Pay Gap Report 2018, the Company paid women less than men and employed significantly less women than men in senior leadership roles. The Report stated:

A key driver for the gender pay gap at Symantec is due to the lower representation of females in senior, leadership roles. This is compounded by the overrepresentation of males in sales, engineering, and technical roles. . . In summary, more men than women are in senior roles receiving a greater level of pay, resulting in a gender pay gap. Although impact takes time, we are committed to the continuous effort required to ensure that the actions and initiatives detailed in this report create desired change in the future.

148. The Director Defendants, however, knew that NortonLifeLock had not

³⁷ See NortonLifeLock 2020 Proxy Statement at p. 74.

1 corrected all the problems with respect to fair and equitable pay to women and
2 minorities and disclosures and best practices regarding pay equity.

3 149. The Company's 2019 Corporate Responsibility Report revealed the extent
4 of the problems still persisting at NortonLifeLock, including:

- 5 (1) Only 25% of the Company's workforce is comprised of
6 women;
- 7 (2) Women only hold 23% of the leadership roles at the
8 Company;
- 9 (3) *African Americans only hold 2% of the Company's U.S. jobs;*
- 10 (4) *African Americans only hold 1% of leadership positions at
11 the Company.*

12 150. In their efforts to avoid detailed disclosures that would shed light of the
13 true extent of pay inequity at NortonLifeLock afflicting African Americans and
14 minorities, the Director Defendants continue to refuse to publish the unadjusted median
15 gender/racial pay disclosures which are industry best practices and standards.

16 151. NortonLifeLock has refused to publish annual diversity reports, thus
17 enabling the Company to attempt to hide the lack of diversity. The Director Defendants
18 were aware of this and were complicit in these acts, thus demonstrating their scienter
19 about NortonLifeLock's failure to ensure diversity and failure to pay minorities equal
20 pay.

21 **G. The Unjust Compensation Awarded to Defendants Pilette and Clark**

22 152. Defendants Pilette and Clark received unjust compensation and/or
23 compensation and payments that were higher due to Defendants' wrongdoing and
24 because the Company was more profitable by paying women, Blacks and minorities less.

25 153. Much of the information about the exact amount of the unjust payments is
26 not publicly available, and has been fraudulently concealed by Defendants. As a result,
27 Plaintiff requires discovery in order to properly allege the full extent and details of
28 Defendants' wrongdoing.

154. However, at a minimum, based on publicly available information,

1 Defendants Clark and Pilette have received substantial unjust compensation during the
2 time the wrongdoing has occurred and persisted.

3 155. Defendants' receipt of this compensation during the relevant time period
4 was unjust in light of their direct participation in the wrongful conduct alleged herein,
5 which constituted bad faith and disloyal conduct. Defendants' receipt of such
6 compensation while knowingly or recklessly breaching their fiduciary duties to the
7 Company constitutes unjust compensation that should be recouped by NortonLifeLock.

8 156. The tables set forth *supra* provide some additional information about some
9 of Defendants' compensation during part of the relevant time period (*i.e.*, 2018-2020).

10 157. *In fiscal year 2020, the Company paid its CEO Vincent Pilette total*
11 *compensation of \$20,596,491. In fiscal year 2018, the Company paid its CEO Gregory*
12 *Clark total compensation of \$17,347,581. In fiscal year 2019, the Company paid its CFO*
13 *Nick Noviello \$13,299,795 and its President Samir Kapuria \$10,976,180.*

14 158. And the lack of diversity at the top at NortonLifeLock has resulted in
15 economic discrimination. Defendants' compensation during the relevant period was
16 also unjust because it significantly exceeded the average employees' pay, as disclosed by
17 the Company in its Proxy. The pay of the Company's CEO in fiscal year 2020 was 222
18 times as high as the median pay of all other employees:

19 **Pay Ratio:**

- 20 • **Mr. Pilette's fiscal 2020 annual total compensation was \$20,596,491** which was calculated in the same manner as the
21 amounts reported in the "Total" column of the "2020 Summary
22 Compensation Table" in this proxy statement, except that Mr.
23 Pilette's base salary was annualized.
- 24 • The fiscal 2020 annual total compensation of our median
25 employee (other than our CEO) was \$92,914.
- 26 • Based on this information, *the pay ratio of the annual total*
- 27
- 28

*compensation of our CEO to the median of the annual total compensation of our employees is 222.5 to 1.*³⁸

159. In fiscal year 2018, Defendant Clark's pay ratio was reported as follows in the Proxy:

Pay Ratio:

- **Mr. Clark's fiscal 2018 annual total compensation was \$17,347,581**, as reported in the "Total" column of the "2018 Summary Compensation Table" in this proxy statement.
- The fiscal 2018 annual total compensation of our median employee (other than our CEO) was \$102,869.
- Based on this information, *the pay ratio of the annual total compensation our CEO to the median of the annual total compensation of our employees is 168.6 to 1.*

160. Instead of acknowledging the problem and demanding change, NortonLifeLock has instead issued false statements claiming success in achieving diversity and inclusion.

161. If Defendant Clark's and Pilette's 2018 and 2020 pay was more than 225 and 168 times, respectively, the median employees' compensation, then it was an even higher multiple of the median pay of Black and minority employees if NortonLifeLock paid such employees less than other employees for similar jobs.

162. When viewed in light of these facts, Defendants' compensation was unjust under equitable principles.

163. Defendants' compensation detailed herein was unjust and should be disgorged or returned by them because they acted in bad faith and in a disloyal manner

³⁸ See NortonLifeLock 2020 Proxy Statement at p. 74.

1 by virtue of the conduct alleged in this complaint.

2 **VIII. THE COMPANY HAS SUFFERED SIGNIFICANT DAMAGES**

3 164. The Company has suffered significant harm and damages due to
4 Defendants' wrongdoing and breaches of duties.

5 165. As a direct and proximate result of the Individual Defendants' conduct, the
6 Company has expended and will continue to expend significant sums of money. Such
7 expenditures include, but are not limited to, the amounts paid to outside lawyers,
8 accountants, and investigators in connection with internal and external investigations
9 into issues pertaining to the lack of diversity at NortonLifeLock, discrimination lawsuits,
10 harassment claims, wrongful termination lawsuits, and lack of pay equity claims.

11 166. Moreover, NortonLifeLock's reputation, goodwill, and market
12 capitalization have been harmed as a result of the Individual Defendants' misconduct.

13 167. Further, as a direct and proximate result of the Individual Defendants'
14 actions, NortonLifeLock has expended, and will continue to expend, significant sums of
15 money. Such expenditures include, but are not limited to:

16 (a) costs incurred from having to hire new employees, as
17 employees have quit in protest over Defendants' misconduct and the
discriminatory practices employed by NortonLifeLock;

18 (b) costs incurred from defending and paying settlements in
19 discrimination lawsuits, since the Individual Defendants' wrongdoing
caused discrimination to proliferate at NortonLifeLock;

20 (c) loss of reputation; and

21 (d) costs incurred from compensation and benefits paid to the
Individual Defendants who have breached their duties to NortonLifeLock.

22 **IX. DEMAND FUTILITY**

23 168. Plaintiff brings this action derivatively in the right and for the benefit of
24 NortonLifeLock to redress injuries suffered, and to be suffered, by NortonLifeLock and
25 its stockholders as a direct result of the Defendants' violations of federal securities laws
26 and breaches of fiduciary duty.

27 169. NortonLifeLock is named as a nominal defendant solely in a derivative
28

1 capacity.

2 170. This is not a collusive action to confer jurisdiction on this Court that it
3 would not otherwise have.

4 171. At the time this action was commenced, NortonLifeLock's Board consisted
5 of the following 8 members: Defendants Dangeard, Pilette, Feld, Barsamian, Denzel,
6 Brandt, Hao, and Humphrey.³⁹

7 172. Plaintiff has not made any demand on NortonLifeLock to institute this
8 action because such a demand would be a futile, wasteful, and useless act.

9 173. Under Delaware law, demand is futile if a majority of the directors are
10 either interested in or not independent of a person interested in the claims asserted.
11 Further, where a board is made up of an even number of directors, a majority of
12 directors is considered to be half the Board. Because NortonLifeLock's Board is
13 currently comprised of eight (8) directors, Plaintiff need only allege that demand is futile
14 as to four (4) of the current Board members.

15 **A. Demand on the Board is Excused as Futile**

16 174. The challenged misconduct at the heart of this case involves the direct
17 facilitation of illegal activity, including the Board knowingly and/or consciously
18 presiding over the Company's discrimination against women, Blacks and other
19 minorities at NortonLifeLock. In their capacity as corporate directors, the Board
20 members affirmatively adopted, implemented, and/or condoned a business strategy
21 based on NortonLifeLock's deliberate and widespread violations of law. The Board
22 members cannot plausibly claim ignorance concerning these wide-ranging compliance
23 failures. Indeed, the Board was specifically and uniquely accountable and responsible
24

25 ³⁹ The Company filed its 2020 Proxy Statement on July 22, 2020, in which it stated
26 that Paul Unruh was resigning from the Board and would not stand for re-election.
27
28

1 for the compliance failures discussed herein given that the Board was repeatedly made
2 aware of the Company's failed internal controls and failure to comply with regulations.

3 175. Indeed, the lack of diversity challenged by this lawsuit pertains to the
4 Board itself, which does not contain a single African American individual. The
5 Company's 2019 Proxy, which was approved by all the directors, stated:

6 **"Diversity.** In addition to a diverse portfolio of professional background,
7 experiences, knowledge and skills, *the composition of the Board should*
8 *reflect the benefits of diversity as to gender, race, ethnic, cultural and*
9 *geographic backgrounds that reflect the composition of our global*
investors, customers, employees and partners."

10 176. Defendants Pilette, Dangeard, Feld, Barsamian, Denzel, Hao, and
11 Humphrey thus all knew that the Company's Board composition was required to reflect
12 the benefits of diversity, including diversity as to race and ethnicity.

13 177. Despite having actual knowledge of this requirement, Defendants Pilette,
14 Dangeard, Feld, Barsamian, Denzel, Hao, and Humphrey all knew that, year after year,
15 NortonLifeLock did not choose any racially or ethnically diverse candidates to be Board
16 members.

17 178. Rather than undertake their duty to investigate all complaints and
18 concerns related to the Company's financial reporting and internal controls, the Board
19 undertook minimal action. This essential "do nothing" strategy in the face of
20 information evidencing the systematic violations of applicable laws and regulations is
21 not a legally protected business decision and such conduct can in no way be considered
22 a valid exercise of business judgment. A derivative claim to recoup damages for harm
23 caused to the Company by pervasive unlawful activity represents a challenge to conduct
24 that is outside the scope of appropriate business judgment – conduct for which the
25 Individual Defendants should face potential personal liability. As such, the protections
26 of the "business judgment rule" do not extend to such malfeasance. Nor can such
27 malfeasance ever involve the "good faith" exercise of directorial authority. Accordingly,
28 any demand on the Board to initiate this action would be futile.

1 **B. Demand Is Excused Because a Majority of the Director Defendants is**
2 **Either Not Independent or is Conflicted Because These Defendants Face**
3 **a Substantial Likelihood of Liability Arising From Their Misconduct**

4 179. Even if knowingly presiding over illegal conduct somehow falls within the
5 ambit of the business judgment rule (which it does not), demand is also futile and
6 excused because a majority of the members of the Board are not disinterested or
7 independent and cannot, therefore, properly consider any demand.

8 180. As an initial matter, the Board has conceded in the Company's SEC filings,
9 including its July 22, 2020 proxy statement, that Pilette is not an independent director of
10 the Company. Specifically, Pilette is not independent and faces a substantial likelihood
11 of liability because his principal occupation is serving as the Company's Chief Executive
12 Officer. Moreover, a significant portion of Pilette's compensation is incentive-based,
13 which means that he was personally incentivized to perpetuate misconduct (such as that
14 described herein) that artificially inflates the performance of the Company. As a
15 NortonLifeLock executive, he had exposure to and knowledge of the wrongdoing
16 alleged, including any "red flags." Pilette cannot realistically distance himself from the
17 misconduct alleged herein. Pilette is therefore incapable of impartially considering a
18 demand to commence this action.

19 181. Furthermore, Defendants Brandt, Dangeard, Denzel, and Unruh have all
20 been members of the Audit Committee during the relevant period, and are conflicted
21 from considering a demand because they each face a substantial likelihood of liability as
22 a result of their conduct on the committee. As stated in the 2020 Proxy Statement, the
23 Audit Committee's charter imposes specific duties on members of this committee to,
24 among other things, "Review[] our Company's practices with respect to risk assessment
25 and risk management and meet with management and members of internal audit to
26 discuss our Company's significant risk exposures and the steps management has taken
27 to monitor, control and mitigate such exposures."

28 182. In accordance with its charter, the Audit Committee also reviews the
 Company's policies and practices with respect to the financial reporting and control

1 aspects of risk management, and must review the status of risk oversight activities
2 performed by the Board and its other committees.

3 183. As members of the Audit Committee, Defendants Brandt, Dangeard,
4 Denzel, and Unruh violated their fiduciary duties to act in good faith to address the
5 pervasive legal violations discussed herein, including the unlawful pay equity gap and
6 discrimination against women and minorities with respect to hiring and promotion.
7 Accordingly, Defendants Brandt, Dangeard, Denzel, and Unruh face a substantial
8 likelihood of liability and cannot impartially consider a demand. Therefore, demand is
9 excused with respect to these defendants.

10 184. Furthermore, the Director Defendants were on the Board during the
11 relevant period, and thus were exposed to and had knowledge of the “red flags” alleged
12 herein regarding unlawful discrimination and failure to abide by the Company’s stated
13 policies to promote diversity. The directors’ inaction in the face of red flags subjects
14 them to a substantial likelihood of liability for their conduct and, therefore, demand is
15 excused.

16 185. The Board is likewise conflicted from and unable to pursue
17 NortonLifeLock’s claims against members of the Company’s management, including
18 Defendant Pilette and Clark. Any effort to prosecute such claims against these
19 Defendants for their direct roles in implementing a business strategy designed to ignore
20 or otherwise circumvent federal and state laws prohibiting discrimination would
21 necessarily expose the Board’s own culpability for the very same conduct. In other
22 words, given that the Board had been on notice of the wrongdoing, any effort by the
23 Board to hold Defendants liable would surely lead these executives to defend on the
24 ground that their own conduct was consistent with NortonLifeLock’s corporate policy
25 and practice, as established by and known to the Board.

26 ///

1 **C. The Entire Board Faces a Substantial Likelihood of Liability for Failure to**
2 **Discharge Their Oversight Obligations in Good Faith**

3 186. Under Delaware law and NortonLifeLock's Corporate Governance
4 Principles, the Board, as the Company's highest decision-making body, is charged with
5 ensuring that processes are in place for ensuring legal and regulatory compliance. This is
6 particularly true when such compliance concerns a core operation of the Company such
7 as its employment practices. Here, the misconduct alleged was pervasive, took place
8 over many years, and involved the Company's core business operations since the
9 employment practices affected all Company operations. Organized and long-running
10 violations of the law do not result from an isolated failure of oversight. The entire Board
11 was obligated to oversee the Company's risk, including potential liability for
12 NortonLifeLock's violations of federal and state laws regarding discrimination. At the
13 very least, the Director Defendants consciously turned a blind eye to these pervasive
14 violations of law, creating a substantial likelihood of liability. Accordingly, demand is
15 excused.

16 187. All of the Board's directors, at the time this action was initiated, failed to
17 act in the face of known duties. Indeed, as explained herein, they were presented with –
18 but consciously ignored (and/or perpetuated) – substantial “red flag” warnings that
19 NortonLifeLock was discriminating against Blacks and other minorities with respect to
20 hiring, promotion, and evaluation of Board candidates. The Board also knew that the
21 Company's workforce has consistently only had 2% or less African American workers,
22 and only 1% of African Americans in leadership positions. The Board was also aware of
23 other systematic gender discrimination at NortonLifeLock, as reflected in the Company's
24 2018 Pay Equity Gap Report.

25 188. These and other wrongful acts have caused and will continue to cause the
26 Company to be subjected to significant potential fines and penalties and numerous
27 lawsuits. They have also resulted in severe harm to the Company's business reputation.
28 Since the wrongdoing and harm alleged in this Complaint flows directly from the

1 Board's conscious decision to permit the sustained and systemic violations of law in
2 question, the Director Defendants are incapable of exercising the independent judgment
3 required to determine whether the initiation of an action against the Defendants is
4 appropriate.

5 **X. CAUSES OF ACTION**

6 **COUNT I**

7 **Breach of Fiduciary Duty**

8 **Against All Individual Defendants and Does 1–30**

9 189. Plaintiff incorporates by reference and realleges each and every allegation
10 contained above, as though fully set forth herein.

11 190. The Individual Defendants and Does 1–30 owed and owe the Company
12 fiduciary obligations. By reason of their fiduciary relationships, the Individual
13 Defendants owed and owe the Company the highest obligation of good faith, fair
14 dealing, loyalty, and due care.

15 191. The Individual Defendants and Does 1–30, and each of them, as a result of
16 the facts alleged herein, violated and breached their fiduciary duties of candor, good
17 faith, and loyalty.

18 192. As a direct and proximate result of the Individual Defendants' and Does 1–
19 30's breaches of their fiduciary obligations, the Company has sustained significant
20 damages, as alleged herein. As a result of the misconduct alleged herein, Defendants are
21 liable to the Company.

22 **COUNT II**

23 **Aiding and Abetting Breach of Fiduciary Duty**

24 **Against All Individual Defendants and Does 1–30**

25 193. Plaintiff incorporates by reference and re-alleges each of the preceding
26 paragraphs as if fully set forth herein.

27 194. Each of the Individual Defendants aided and abetted the other Individual
28 Defendants in breaching their fiduciary duties owed to the Company.

1 195. The Individual Defendants owed the Company certain fiduciary duties as
2 fully set out herein. By committing the acts alleged herein, the Individual Defendants
3 breached their fiduciary duties owed to the Company.

4 196. Each of the Individual Defendants colluded in or aided and abetted the
5 other Individual Defendants' breaches of fiduciary duties, and actively and knowingly
6 participated in the other Individual Defendants' breaches of fiduciary duties. Each of
7 the Individual Defendants knew about or recklessly disregarded the other Individual
8 Defendants' breaches of fiduciary duty, which were and are continuing, as set forth in
9 particularity herein.

10 197. The Company was injured as a direct and proximate result of the
11 aforementioned acts.

12 **COUNT III**
13 **Abuse of Control**
14 **Against all Defendants**

15 198. Plaintiff incorporates by reference and realleges each and every allegation
16 contained above, as though fully set forth herein.

17 199. By virtue of their positions and financial holdings at NortonLifeLock, the
18 Director Defendants exercised control over NortonLifeLock and its operations, and
19 owed duties as controlling persons to NortonLifeLock not to use their positions of
20 control for their own personal interests and contrary to NortonLifeLock's interests.

21 200. Defendants' conduct alleged herein constitutes an abuse of their ability to
22 control and influence the Company, for which they are legally responsible.

23 201. As a result of Defendants' abuse of control, the Company has sustained
24 and will continue to sustain damages and injuries for which it has no adequate remedy
25 at law.

26 ///

27 ///

COUNT IV

Unjust Enrichment

Against All Individual Defendants and Does 1–30

1
2
3 202. Plaintiff incorporates by reference and realleges each and every allegation
4 contained above as though fully set forth herein.

5 203. By their wrongful acts and omissions, the Individual Defendants were
6 unjustly enriched at the expense of, and to the detriment of, the Company.

7 204. During the Relevant Period, the Individual Defendants either received
8 annual stipends, bonuses, stock options, or similar compensation from the Company
9 that was tied to the financial performance of the Company or received compensation
10 that was unjust in light of the Individual Defendants' bad faith conduct.

11 205. Plaintiff, as shareholder and representative of the Company, seeks
12 restitution from the Individual Defendants and seeks an order from this Court
13 disgorging all profits, benefits, and other compensation, including any performance-
14 based compensation, obtained by the Individual Defendants due to their wrongful
15 conduct and breach of their fiduciary duties.

16 206. Plaintiff, on behalf of the Company, has no adequate remedy at law.

COUNT V

Violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9

Against All Individual Defendants

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18
19
20 207. Plaintiff incorporates by reference and re-alleges each allegation contained
21 above, as though fully set forth herein, except to the extent those allegations plead
22 knowing or reckless conduct by Defendants. This claim is based solely on negligence,
23 not on any allegation of reckless or knowing conduct by or on behalf of Defendants.
24 Plaintiff specifically disclaims any allegations of, reliance upon any allegation of, or
25 reference to any allegation of fraud, scienter, or recklessness with regard to this claim.

26 208. SEC Rule 14a-9 (17 C.F.R. § 240.14a-9), promulgated under Section 14(a) of
27 the Exchange Act, provides:
28

1 No solicitation subject to this regulation shall be made by means of
2 any proxy statement form of proxy, notice of meeting or other
3 communication, written or oral, containing any statement which, at the
4 time and in the light of the circumstances under which it is made, is false
5 or misleading with respect to any material fact, or which omits to state any
6 material fact necessary in order to make the statements therein not false or
7 misleading or necessary to correct any statement in any earlier
8 communication with respect to the solicitation of a proxy for the same
9 meeting or subject matter which has become false or misleading.

6 209. Defendants negligently issued, caused to be issued, and participated in the
7 issuance of materially misleading written statements to stockholders that were contained
8 in the 2018, 2019, and 2020 Proxy Statements. The Proxy Statements contained proposals
9 to the Company's stockholders urging them to reelect the members of the Board and to
10 approve "say on pay" executive compensation proposals. The 2018, 2019, and 2020
11 Proxy Statements were false and misleading because they omitted and failed to disclose:

12 (a) That the statement in the Proxies that "diversity is one of the
13 numerous criteria the Nominating and Governance Committee reviews
14 before recommending a candidate" was misleading because it suggested
15 that the Company was actively seeking to achieve racial and ethnic
16 diversity in its Board membership, while the undisclosed reality is that
17 NortonLifeLock either has no intention to actually nominate such persons
18 to its Board or it engages in efforts to thwart the nomination of such
19 persons and prefers non-diverse applicants in the pool;

20 (b) That the Company does not have term limits due to a desire
21 to retain the experience of the incumbent Director Defendants, but instead
22 to keep minorities off the Board;

23 (c) That the Company's failure to disclose its median salary and
24 pay/employment data in an annual report is due to a desire to conceal
25 existing, known pay disparity at the Company which adversely affects
26 women and minorities;

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1 (d) That the Company's executive compensation decisions do not
2 take into consideration in any way the executives' success or lack thereof in
3 achieving the Company's diversity and inclusion goals; moreover, that the
4 Company's stated policies with respect to diversity and anti-discrimination
5 were not effective and were not being complied with;

6 (e) That the Board's Nominating and Governance Committee
7 did not take racial and ethnic diversity into consideration when
8 nominating Board candidates and instead simply sought to create a false
9 appearance of seeking diversity among potential Board candidates;

10 (f) That Defendants had knowledge that the Company's internal
11 controls and systems were inadequate and ineffective to protect minorities
12 against discrimination in hiring, promotion, and other critical terms of
13 employment and equal access;

14 (g) That Defendants failed to maintain appropriate policies,
15 internal controls, and procedures to ensure that the Company's stated
16 policies with respect to diversity and inclusion were being complied with;

17 (h) That the statement in the Proxies that "the composition of the
18 Board should reflect the benefits of diversity as to gender, race, ethnic,
19 cultural and geographic backgrounds that reflect the composition of our
20 global investors, customers, employees and partners" was misleading in
21 that it failed to disclose that the Board composition did not in fact reflect
22 the gender, race, ethnic, cultural, and geographic backgrounds reflective of
23 the composition of the Company's investors, customers, employees and
24 partners; and

25 (i) That the Company's diversity and inclusion programs were
26 not achieving measurable and actionable results, and needed substantial
27 improvement.

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1 210. By reasons of the conduct alleged herein, Defendants violated Section 14(a)
2 of the Exchange Act and SEC Rule 14a-9. As a direct and proximate result of Defendants'
3 wrongful conduct, the Company misled or deceived its stockholders by making
4 misleading statements that were an essential link in stockholders heeding the
5 Company's recommendation to reelect the current Board and vote in favor of executive
6 compensation proposals.

7 211. Plaintiff, on behalf of the Company, seeks injunctive and equitable relief
8 because the conduct of the Individual Defendants interfered with Plaintiff's voting rights
9 and choices at the 2018, 2019 and 2020 annual meetings. Plaintiff does not seek any
10 monetary damages for the proxy law violations.

11 212. This action was timely commenced within three years of the date of the
12 2019 and 2020 Proxy Statements and within one year from the time Plaintiff discovered
13 or reasonably could have discovered the facts on which this claim is based.

14 **XI. PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of the Company, requests judgment and relief
16 as follows:

17 A. Against all of the Defendants, jointly and severally, and in favor of the
18 Company for the amount of damages sustained by the Company along with pre- and
19 post-judgment interest as allowed by law resulting from Defendants' breaches of
20 fiduciary duty;

21 B. Directing the Company to take all necessary actions to reform and
22 improve its corporate governance and internal procedures to comply with applicable
23 laws and to protect the Company and its shareholders from a repeat of the damaging
24 events described herein, including, but not limited to, putting forward for shareholder
25 vote, resolutions for amendments to the Company's By-Laws or Articles of
26 Incorporation and taking such other action as may be necessary to place before
27 shareholders for a vote the following Corporate Governance Policies:
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(1) The Chief People and Culture Officer should immediately create a substantive plan for diversity and inclusion for the Board, upper management levels, and throughout the corporation with the authority to implement such a plan; and if unable to do so, the Chief People and Culture Officer shall be replaced by a person of color with the skill set and authority to do so;

(2) At least one of NortonLifeLock’s directors should immediately resign prior to the Company’s annual meeting set for September 8, 2020 and a Black person nominated to the Board at that time. Thereafter, within a year and prior to the next annual meeting at least one other person of color shall be nominated to the Board;

(3) All Director Defendants named in this suit should return all of their 2020 compensation received from NortonLifeLock (including any stock grants), and donate the money to an acceptable charity or organization whose efforts include the advancement of Blacks and minorities in corporate America;

(4) NortonLifeLock should agree to publish an annual Diversity Report that contains particularized information about the hiring, advancement, promotion, and pay equity of all minorities at NortonLifeLock;

(5) NortonLifeLock should create a \$500 million fund to hire Blacks and minorities, promote minorities to more management positions at the Company, establish and maintain a mentorship program at NortonLifeLock for minorities that is committed to providing the skills and mentorship necessary to succeed in corporate America;

1 (6) NortonLifeLock should require annual training of its entire
2 Board and all Section 16 executive officers, which training should at a
3 minimum focus on diversity, affirmative action, anti-discrimination and
4 anti-harassment, and other relevant topics; and

5 (7) NortonLifeLock should immediately set specific goals with
6 respect to the number of Blacks and minorities to hire at the Company over
7 the next five years, and NortonLifeLock should adopt a revised executive
8 compensation program that makes 30% of executives' compensation tied to
9 the achievement of the diversity goals.

10 C. Extraordinary equitable and/or injunctive relief as permitted by law,
11 equity, and state statutory provisions sued hereunder, including attaching, impounding,
12 imposing a constructive trust on, or otherwise restricting the proceeds of Defendants'
13 trading activities or their other assets so as to assure that Plaintiff on behalf of
14 NortonLifeLock has an effective remedy;

15 D. Awarding to NortonLifeLock restitution from Defendants, and each of
16 them, and ordering disgorgement of all profits, benefits, and other compensation
17 obtained by Defendants;

18 E. Awarding punitive damages at the maximum amount permitted by law;

19 F. Awarding to Plaintiff the costs and disbursements of the action, including
20 reasonable attorneys' fees, accountants' fees, experts' fees, costs, and expenses; and

21 G. Granting such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

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2 Plaintiff, on behalf of NortonLifeLock, hereby demands a trial by jury of all issues
3 that are subject to adjudication by a trier of fact.

4 Dated: August 5, 2020

Respectfully submitted,
BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr. (SBN 175783)
Albert Y. Chang (SBN 296065)
Yury A. Kolesnikov (SBN 271173)

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19
20 *Attorneys for Plaintiff EllieMaria Toronto*
ESA

VERIFICATION

I, Sal Toronto, verify that I am the custodian of the EllieMaria Toronto ESA, which is a shareholder of NortonLifeLock Inc. I have reviewed the allegations in this Verified Shareholder Derivative Complaint. As to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and counsel's investigation, and believe them to be true. Having received a copy of the complaint and reviewed it with counsel, I authorize its filing.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 24, 2020.

Sal Toronto

Sal Toronto, Custodian of the
Elliemaria Toronto ESA