

1 **BOTTINI & BOTTINI, INC.**  
Francis A. Bottini, Jr. (SBN 175783)  
2 Anne B. Beste (SBN 326881)  
Albert Y. Chang (SBN 296065)  
3 Yury A. Kolesnikov (SBN 271173)  
7817 Ivanhoe Avenue, Suite 102  
4 La Jolla, California 92037  
Telephone: (858) 914-2001  
5 Facsimile: (858) 914-2002  
6 *Attorneys for Plaintiff Edward Sanchez*

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **COUNTY OF SANTA CLARA**

9 EDWARD SANCHEZ, derivatively on  
behalf of CISCO SYSTEMS, INC.,

10 Plaintiff,

11 vs.

12 CHUCK ROBBINS, MARK CHANDLER,  
13 FRANCINE KATSOUDAS, KELLY A.  
KRAMER, M. MICHELE BURNS,  
14 WESLEY G. BUSH, MICHAEL D.  
15 CAPELLAS, MARK GARRETT, DR.  
KRISTINA M. JOHNSON, RODERICK C.  
16 MCGEARY, ARUN SARIN, KBE,  
17 BRENTON L. SAUNDERS, DR. LISA SU,  
and DOES 1-30,

18 Defendants,

19 - and -

20 CISCO SYSTEMS, INC.,  
21 Nominal Defendant.

Case No. \_\_\_\_\_

**SHAREHOLDER DERIVATIVE  
COMPLAINT FOR:**

1. **BREACH OF FIDUCIARY DUTY,**
2. **AIDING AND ABETTING  
BREACH OF FIDUCIARY DUTY,  
and**
3. **UNJUST ENRICHMENT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff Edward Sanchez (“Plaintiff”) submits this Shareholder Derivative  
2 Complaint against certain directors and officers of nominal defendant Cisco Systems,  
3 Inc., (“Cisco” or the “Company”) for, *inter alia*, breaches of fiduciary duties, and unjust  
4 enrichment. In support of these claims, Plaintiff alleges the following upon (1) personal  
5 knowledge with respect to the matters pertaining to himself; and (2) information and  
6 belief with respect to all other matters, based upon the investigations undertaken by his  
7 counsel, which include Cisco’s legal filings, regulatory filings, press releases, analyst  
8 reports, and media reports about the Company. Plaintiff believes that substantial  
9 additional evidentiary support will exist for the allegations set forth below after a  
10 reasonable opportunity for discovery.

11 **I. INTRODUCTION**

12 *Today we’re the most diverse Cisco since 1998. This is due in large part to*  
13 *diversity and inclusion starting at the top.*

14 *See* Cisco’s December 13, 2018 blog on diversity.<sup>1</sup>

15 1. Despite this platitude, repeated in its 2019 Corporate Social Responsibility  
16 Report<sup>2</sup>, Cisco has failed to create any meaningful racial and ethnic diversity at the very  
17 top of the Company — the Board of Directors (the “Board”), the CEO, and the Executive  
18 Leadership Team (“ELT”).

19 2. The Cisco Board has lacked racial and ethnic diversity at all relevant times,  
20 and is one of the few remaining publicly-traded companies without a single African  
21

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22 <sup>1</sup> *See* [https://blogs.cisco.com/diversity/between-where-we-stand-today-and-where-](https://blogs.cisco.com/diversity/between-where-we-stand-today-and-where-we-go-from-here-theres-a-bridge)  
23 [we-go-from-here-theres-a-bridge](https://blogs.cisco.com/diversity/between-where-we-stand-today-and-where-we-go-from-here-theres-a-bridge), December 13, 2018.

24 <sup>2</sup> *See* [https://www.cisco.com/c/dam/m/en\\_us/about/csr/csr-report/2019/\\_pdf/csr-](https://www.cisco.com/c/dam/m/en_us/about/csr/csr-report/2019/_pdf/csr-report-2019.pdf)  
25 [report-2019.pdf](https://www.cisco.com/c/dam/m/en_us/about/csr/csr-report/2019/_pdf/csr-report-2019.pdf), asserting, e.g., “We are the most diverse Cisco since we began tracking  
26 our diversity in 1998,” at 38, and “Our culture sets us apart, starting at the top with our  
27 diverse Executive Leadership Team (ELT)” at 39.  
28

1 American director. The following are the current members of the Board:

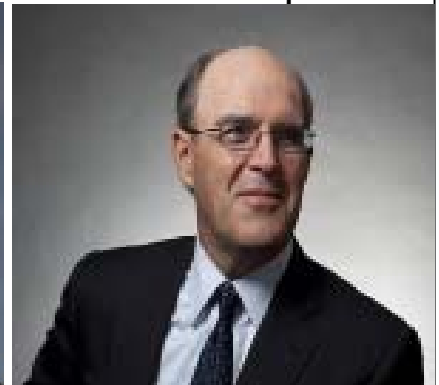
2 **M. Michele Burns**



**Wesley G. Bush**



**Michael D. Capellas**



9 **Mark Garrett**



**Dr. Kristina M. Johnson**



**Roderick C. McGeary**



16 **Chuck Robbins**



**Arun Sarin, KBE**



**Brenton L. Saunders**



**Dr. Lisa Su**



3. The Cisco ELT has lacked meaningful racial and ethnic diversity at all relevant times, and is one of the few remaining publicly-traded companies without a single African American executive leader. The following are the current members of the ELT and Cisco's Executive Officers:

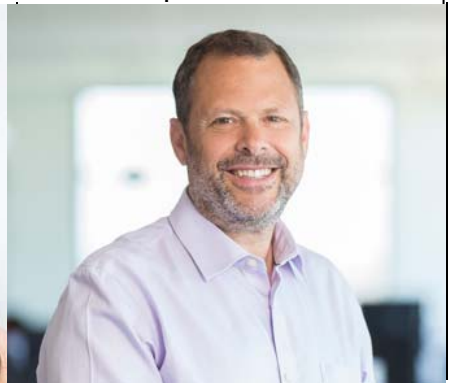
**Chuck Robbins**  
CEO & Chairman of the Board



**Liz Centoni**  
Senior Vice President,  
Strategy, Emerging  
Technologies & Incubation



**Mark Chandler**  
Executive Vice President,  
Chief Legal Officer, & Chief  
Compliance Officer



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**Amy Chang**  
Executive Vice President



**Eyal Dagan**  
Senior Vice President of the  
Common Hardware Group



**Jonathan Davidson**  
Senior Vice President &  
General Manager of Cisco's



**Gerri Elliott**  
Executive Vice President,  
Chief Sales & Marketing  
Officer



**Francine Katsoudas**  
Executive Vice President  
and Chief People Officer



**Kelly A. Kramer**  
Executive Vice President &  
CFO



**Stella Low**  
Chief Communications  
Officer



**Maria Martinez**  
Executive Vice President &  
Chief Customer Experience  
Officer



**Todd Nightingale**  
Senior Vice President &  
General Manager of  
Enterprise Networking &  
Cloud



**Jeetu Patel**  
Senior Vice President &  
General Manager of  
Security & Applications



**Mark Patterson**  
Senior Vice Presidency,  
Chief of Staff to the Office  
of the Chairman & CEO



**Irving Tan**  
Executive Vice President &  
Chief of Operations



**Michael D. Timmeny**  
Senior Vice President, Chief  
Government Strategy  
Officer



## II. NATURE AND SUMMARY OF THE ACTION

4. Cisco's persistent and pervasive lack of diversity has its roots in early actions that set the tone of intolerance at the Company. These actions began with the ouster of the female co-founder of the Company, continues through the Company's all-white male CEOs, is reinforced by a lack of racial and ethnic diversity at the Board level, extends through a lack of racial and ethnic diversity at the executive leadership level, and permeates the ranks of employees, particularly higher-paid technical employees.

5. Moreover, with respect to the small amount of diversity in its workforce, far from being valued for their unique backgrounds and perspectives, Cisco's diverse employees are regarded as inferior, undervalued, unworthy of mentoring or promotion, and frequently held out as the paradigmatic example of their category of diversity,



1 whether they wish to serve as a role model or not. It is not surprising that Cisco has  
2 trouble integrating its diverse employees into the Company, not to mention retaining  
3 them as employees at all.

4 6. As author Liz Fosslien notes, “Diversity is having a seat at the table.  
5 Inclusion is having a voice. And belonging is having that voice be heard.”

6 7. Discussion of race and racism remains challenging, and sometimes difficult  
7 to address directly, even in 2020. And directors of public companies are not immune  
8 from these difficulties, particularly where, as here, it is their public statements about  
9 diversity, and personal efforts to achieve diverse leadership, that have provoked the  
10 inquiry into the falsity of their publicly stated diversity objectives.

11 **A. Ouster of Female Co-Founder Lerner**

12 8. Promisingly, Cisco was co-founded in December 1984 by a woman, Sandy  
13 Lerner (“Lerner”), who counted a master’s degree in statistics and computer science  
14 from Stanford University among her many accomplishments.

15 9. Lerner holds the distinct honor of being one of only two female co-  
16 founders of any of the currently listed Fortune 500 companies, with Cisco listed in 2020  
17 as number 63 in the rankings.<sup>3</sup> Cisco has been listed as a Fortune 500 company since its  
18 debut at number 332 on the list in 1997.<sup>4</sup>

19 10. Little more than five and a half years after her founding of Cisco, and three  
20 years after Cisco debuted on the Fortune 500 list, in August 1990, Lerner was fired from  
21 Cisco by its then CEO, John Morgridge, at the urging of seven white male vice  
22 presidents. This firing ushered in an era of white-male domination of the Company that  
23

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24 <sup>3</sup> Estee Lauder, the other female co-founded company, is ranked 215 on the 2020  
Fortune 500 list.

25 <sup>4</sup> Fortune 500 company rankings for 1997, at  
26 <https://fortune.com/fortune500/1997/search/?hqState=CA>.

1 remains largely intact today.

2 **B. All White Male CEOs**

3 11. In its roughly 36-year history, Cisco has had five CEOs, including an early  
4 months-long interim CEO in 1988<sup>5</sup> All five CEOs were and are male, and all five CEOs  
5 were and are white. The Cisco traits that start “at the top” were, are, and continue to be,  
6 whiteness and maleness.

7 12. In 2015, Chuck Robbins, a then 15-year veteran worker for Cisco, became  
8 its 5th white, male CEO. He came up through Cisco’s ranks and holds a bachelor’s  
9 degree from the University of North Carolina. In 2017, Chuck Robbins boldly but  
10 misleadingly asserted that Cisco had a high concentration of both female and minority  
11 leaders, with diversity at the leadership level and diversity in the boardroom. “I think  
12 we have been a leader in advocating for an inclusive environment and a diverse  
13 workforce,” Robbins said. “Honestly, it’s just good business, but for us it just happened  
14 naturally that the best people for those roles [also matched] what we were looking for on  
15 our board ... and that’s the way it ought to be.” See 2017 Robbins Interview with The  
16 Street.<sup>6</sup>

17 13. According to the somewhat trite but still relevant adage, actions speak  
18 louder than words. *Cisco’s proxy materials and Corporate Social Responsibility*  
19 *Reports going back to at least 2012 demonstrate that there have been no African-*  
20 *Americans, no Hispanics, no American Indians, no Alaska Natives, no native*  
21 *Hawaiians and no Pacific Islanders on the Board.* Currently, and for at least the past  
22

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23 <sup>5</sup> William Graves, 1987-1988; interim CEO, 1988; John Morgridge, 1988-1995; John  
Chambers, 1995-2015; Chuck Robbins, 2015-present.

24 <sup>6</sup> “Cisco’s Chuck Robbins Says Tech’s Diversity Problem ‘Should Be a Nonissue,’”  
25 THE STREET, by Annie Palmer, Aug. 21, 2017.  
<https://www.thestreet.com/investing/stocks/cisco-s-chuck-robbins-says-tech-s-diversity-problem-should-be-a-nonissue-14277237>.

1 eight years, the only non-female ethnic minority serving on the Board is Arun Sarin. Mr.  
2 Sarin, born in India, is listed as Asian and is an honorary Knight of the British Empire.

3 14. Cisco states in its 2019 Corporate Social Responsibility Report that “[w]e  
4 are the most diverse Cisco since we began tracking our diversity in 1998.” Among  
5 Cisco’s Board and Executive Officers, however, diversity is conspicuously absent.

6 15. Cisco’s Board, which has no Black individuals, has consciously failed to  
7 carry out Cisco’s written proclamations about increasing full-spectrum diversity in its  
8 own ranks. *The Board, as well as the Company’s Executive Leadership team, remain*  
9 *devoid of Black people and significant other minorities.* Instead, Cisco lumps race and  
10 ethnicity with gender in its diversity statistics, misleadingly labeling the presence of  
11 women on the Board as “full-spectrum” diversity. A sign advising applicants “Blacks  
12 Need Not Apply” might as well hang at the entrance to the Company’s headquarters at  
13 170 W. Tasman Drive in San Jose, California.

14 16. The Company also is still today, in 2020, dominated by males, with *74% of*  
15 *its global workforce consisting of males and 79% of its Vice Presidents consisting of*  
16 *males and just 21% female. African Americans make up just 3.8% of Cisco’s U.S.*  
17 *workforce, and there are no Blacks on the Board or among the Company’s Executive*  
18 *Leadership team.*

19 17. Simply put, Cisco’s Directors have deceived stockholders and the market  
20 by repeatedly lying about the Company’s commitment to racial and ethnic diversity. In  
21 doing so, the Directors have breached their duty of candor and have also violated the  
22 federal proxy laws. Their conduct has also irreparably harmed Cisco. For those who  
23 care about diversity, inclusion, and honesty, those who do not adhere to these principles  
24 should be boycotted, especially if the perpetrator is one of the largest and most  
25 influential corporations in Silicon Valley.

26 18. Every business entity — whether publicly traded or not — has certain legal  
27 obligations and responsibilities to its shareholders, customers, investors, and the public.

1 These responsibilities include the obligation to be truthful and honest; to actually  
2 implement the policies and procedures that it represents it has adopted; and to not  
3 engage in racial discrimination, whether it is in its workforce or leadership positions.  
4 Cisco has failed on these counts.

5 19. Moreover, a company's statements about Board diversity are highly  
6 material to investors.<sup>7</sup> In the 2016 edition of its governance principles, the Business  
7 Roundtable, an influential association of chief executives of American companies,  
8 strongly endorsed a link between racial and ethnic diversity in boards and board  
9 effectiveness and the creation of long-term shareholder value. In doing so, the  
10 association made the first substantive "business case" for ethnic and gender diversity.<sup>8</sup>  
11 By correlating diverse boards with greater board effectiveness and the promotion of  
12 long-term value creation, the Business Roundtable's recommendation transcends public  
13 policy debates and moral imperatives. It is the most prominent acknowledgment of  
14 diversity as a governance principle, and a standard that nominating committees are  
15 advised to adopt. It does not retreat from principles of competency-based governance as  
16 much as it recasts concepts of competency in a more inclusive manner — one that  
17 attributes new value to skills, experience and expertise that is reflective of the broader  
18 range of society.<sup>9</sup>

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21 <sup>7</sup> See Arleen Jacobius, "Calpers Turns Focus to Board Diversity in Proxy Voting,"  
22 PENSIONS & INVESTMENTS, Sept. 17, 2018 (in 2018, Calpers voted against 438 directors at  
23 141 different companies based on the companies' failure to respond to Calpers' efforts to  
24 increase board diversity).

25 <sup>8</sup> See Michael W. Peregrine, "Corporate Board Diversity Gets Push From Business  
26 Leaders," NEW YORK TIMES, Oct. 12, 2016, available at  
27 [https://www.nytimes.com/2016/10/14/business/dealbook/corporate-board-diversity-gets-  
28 push-from-business-leaders.html?searchResultPosition=1](https://www.nytimes.com/2016/10/14/business/dealbook/corporate-board-diversity-gets-push-from-business-leaders.html?searchResultPosition=1), last visited Sept. 16, 2020.

<sup>9</sup> *Id.*

1           20.     Founded in 1984, Cisco’s Board today in 2020 has no African-Americans,  
2 no Latinos, and no other racial or ethnic minority save Asian-Americans; and Cisco’s  
3 self-published statistics dating back to at least 2015 demonstrate the same lack of  
4 diversity. And, no diverse appointments are in the offing. Significantly, while Cisco’s  
5 Robbins was asserting that Cisco was “driving diversity and inclusion *throughout* our  
6 *entire* organization,” *see* Cisco 2019 CSR Report at 3 (emphasis supplied), even the  
7 female gender representation at the Board level declined from 33 percent (2017) to 27  
8 percent (2018) to 20 percent (2019).

9           21.     Cisco’s ELT today in 2020 has no African-Americans; and Cisco’s self-  
10 published statistics dating back to at least 2015 demonstrate the same lack of diversity.  
11 Yet, Cisco consistently groups gender and diversity statistics in a way that misleads  
12 investors and the public into believing Cisco has achieved greater diversity at the Board  
13 and ELT levels than it has. *See* Cisco 2019 Annual Report, at 7.

14           22.     This lawsuit is about deception and a lack of truthfulness and effort on the  
15 part of the Board to fulfill their fiduciary duties which have resulted in racial  
16 discrimination in its leadership positions and have otherwise worked to the detriment of  
17 the Cisco shareholders.

18           23.     As recently as March 2020, Cisco agreed to pay \$2,000,000 in lost wages  
19 and interest to affected employees, and pay an additional \$2,750,000 over the next five  
20 years in pay-equity adjustments to its employees due to a Department of Labor (“DOL”)  
21 claim that “*the company paid women, black and Hispanic employees less than*  
22 *comparable male and white employees in similar positions.*” *See* March 16, 2020 DOL  
23 *News Release*. Statistics don’t lie, and Cisco’s Board and ELT reveal one of the lowest  
24 prevalence of Black individuals in Silicon Valley.

25           24.     Platitudes in proxy statements and Corporate Sustainability Reports are  
26 not progress. Simply put, Cisco has no *real* commitment to diversity and its Board is  
27 turning a blind eye to the Company’s failure to ensure the “diversity” trumpeted by the  
28

1 Directors in Cisco's public statements and filings with the Securities and Exchange  
2 Commission ("SEC") and its annual proxy reports to shareholders.

3 25. The Director Defendants named herein all signed each of Cisco's annual  
4 proxy statements. With such signatures come an obligation to ensure that the statements  
5 in the Proxy were true and accurate, and to correct any misleading statements. They  
6 failed to do so.

7 26. As demonstrated herein, the Defendants knew of, but failed to disclose,  
8 unlawful business practices at Cisco that put the Company at material risk — namely,  
9 discriminatory hiring and compensation practices. Had this information been disclosed,  
10 shareholders would not have voted to re-elect Board members, approve executive  
11 compensation packages, and reject an independent board chairman.

12 27. The time for change has come. If Cisco's directors want to continue to be  
13 part of the problem, not the solution, then they at least need to be held liable for their  
14 breaches of fiduciary duty to the Company's stockholders. If, on the other hand, they  
15 want to be part of real change, they hold the keys themselves. They can (and should),  
16 stand up and exercise the control of Cisco that they possess to make change NOW.

17 28. The shareholder derivative lawsuit has been the only judicial mechanism  
18 for shareholders to hold directors accountable for engaging in wrongdoing. Like the  
19 United State Supreme Court, California courts have long recognized that derivative suits  
20 play an important role in corporate governance where directors fail to do their jobs:

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

25 *Pearce v. Super. Ct.*, 149 Cal. App. 3d 1058, 1065 (1983); see also *Vega v. Jones, Day, Reavis &*  
26 *Pogue*, 121 Cal. App. 4th 282, 297 (2004); accord *Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 95  
27 (1991) (quoting *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 548 (1949)). As the  
28 California Supreme Court recognized in *Jones v. H. F. Ahmanson & Co.*, where, as here,

1 the company's board and management fail to perform their duties, stockholders have a  
2 "right" to bring derivative actions. *See* 1 Cal. 3d 93, 107 (1969). The courts of Delaware,  
3 Cisco's state of incorporation, likewise acknowledge that derivative actions serve an  
4 important function: "The machinery of corporate democracy and the derivative suit are  
5 potent tools to redress the conduct of a torpid or unfaithful management." *Aronson v.*  
6 *Lewis*, 473 A.2d 805, 811 (Del. 1984), *overruled in part on other grounds by Brehm v. Eisner*,  
7 746 A.2d 244 (Del. 2000).

8 29. Plaintiff, derivatively on behalf of Cisco, seeks the following relief from the  
9 Director Defendants:

10 (a) At least three of Cisco's directors should immediately resign prior to  
11 the Company's annual meeting which is scheduled for November 2020 and  
12 should insist that the Company nominate three new persons to serve in their  
13 stead, which applicants should include two Black persons and one other minority;

14 (b) All Director Defendants named in this suit should return all their  
15 2020 compensation received from Cisco (including any stock grants), and donate  
16 the money to an acceptable charity or organization whose efforts include the  
17 advancement of Black people and minorities in corporate America;

18 (c) Cisco should agree to add more particularized information in its  
19 annual CSR Report about the hiring, advancement, promotion, and pay equity of  
20 all minorities at Cisco;

21 (d) Cisco should replace Chuck Robbins as executive Chairman of the  
22 Board; Robbins is not independent, and the lack of a truly independent Chairman  
23 at Cisco has been a big part of the reason Cisco has not sufficiently made any real  
24 progress at achieving diversity.

25 (e) Cisco should create a \$775 million fund to hire Black individuals  
26 and other minorities, promote minorities to more management positions at the  
27 Company, establish and maintain a mentorship program at Cisco for minorities  
28

1 that is committed to providing the skills and mentorship necessary to succeed in  
2 corporate America;

3 (f) Cisco should require annual training of its entire Board and all  
4 Section 16 executive officers, including the ELT, which training should at a  
5 minimum focus on diversity, affirmative action, anti-discrimination and anti-  
6 harassment, and other relevant topics.

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

12 (h) Cisco should replace PricewaterhouseCoopers LLP ("PwC") as its  
13 auditor. Cisco is one of PwC's largest customers, listed in 2020 as PwC's 22nd  
14 largest client by audit revenues alone.<sup>10</sup> PwC (and its pre-merger predecessor  
15 Coopers & Lybrand L.L.P.) has served as Cisco's auditor *since 1988*,<sup>11</sup> giving rise  
16 to a cozy and clubby relationship between PwC and Cisco which is not conducive  
17 to effective auditing. The Company's compliance with its stated policies  
18 concerning the alleged commitment to racial and ethnic diversity at the Board and  
19 ELT have been abysmal to the point of being basically non-existent. The very  
20 purpose of an auditor is to assess the Company's internal controls and determine  
21 if they are functioning effectively. Rather than doing so, PwC has wrongfully and  
22 consistently given Cisco's internal controls a clean bill of health and has failed to  
23

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24 <sup>10</sup> See <https://big4accountingfirms.com/pwc-audit-clients-list/>.

25 <sup>11</sup> 2019 Proxy Statement, at 57, states: "PwC has audited Cisco's consolidated  
26 financial statements annually since fiscal 1988."  
27  
28



1 point out the obvious — that Cisco lacks an effective system of internal controls to  
2 ensure that the Company is not discriminating against minorities and is  
3 complying with its stated goals and initiatives regarding the promotion of  
4 diversity and the avoidance of discrimination at the top levels.

5 30. The Individual Defendants’ misconduct has caused severe financial and  
6 reputational damage to Cisco. The DOL claims which alleged pay discrimination  
7 against women and minorities resulted in a payout of almost \$5,000,000.

8 31. While systematically underpaying minorities and women, Cisco’s CEO has  
9 used the money saved to pay himself outsized amounts. Defendant Robbins is ranked  
10 26th on a 2019 list of the 100 highest paid CEOs. He made \$21.3 million in compensation  
11 in one year — *more than two hundred times greater than the average worker’s salary.*<sup>12</sup>

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

17 **III. JURISDICTION AND VENUE**

18 33. This Court has jurisdiction because the Defendants conduct business in  
19 California, including, but not limited to, the conduct here at issue, and because they have  
20 sufficient minimum contacts with California to render the exercise of jurisdiction by the  
21

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22 <sup>12</sup> Michael B. Sauter, “These are the highest-paid CEOs at America’s largest  
23 companies,” USA TODAY, April 30, 2019.  
24 [https://www.usatoday.com/story/money/2019/04/30/highest-paid-ceos-at-americas-  
25 largest-companies-tim-cook-robert-iger/39389897/](https://www.usatoday.com/story/money/2019/04/30/highest-paid-ceos-at-americas-largest-companies-tim-cook-robert-iger/39389897/); “Average Salary for Cisco Systems,  
26 Inc. Employees”,  
27 [https://www.payscale.com/research/US/Employer=Cisco\\_Systems\\_Inc/Salary#:~:text=Cis  
28 co%20Systems%20Inc%20employees%20with%20the%20job%20title,the%20title%20Net  
work%20Administrator%20make%20the%20least%20](https://www.payscale.com/research/US/Employer=Cisco_Systems_Inc/Salary#:~:text=Cisco%20Systems%20Inc%20employees%20with%20the%20job%20title,the%20title%20Net%20work%20Administrator%20make%20the%20least%20).

1 California courts permissible under traditional notions of fair play and substantial  
2 justice. The Court has jurisdiction over Cisco because Cisco is headquartered in San  
3 Jose, California and has substantial business operations in California.

4 34. Venue is proper in this Court because the conduct at issue took place and  
5 has effect in this County. The Company's headquarters and principal place of business  
6 are located at 170 W. Tasman Drive, San Jose, California 95134.

7 **IV. THE PARTIES**

8 **A. Plaintiff**

9 35. Plaintiff Edward Sanchez is a current shareholder of Cisco, and has  
10 continuously held Cisco stock at all relevant times. Plaintiff is a resident and citizen of  
11 California.

12 **B. Nominal Defendant**

13 36. Cisco Systems, Inc. is a California corporation with its headquarters at 170  
14 W. Tasman Drive, San Jose, California 95134, in the center of Silicon Valley. Cisco is an  
15 American multinational technology conglomerate that develops, manufactures and sells  
16 networking hardware, software, telecommunications equipment and other high-  
17 technology services and products. Through its numerous subsidiaries, such as  
18 OpenDNS, Webex, Jabber and Jasper, Cisco specializes in specific tech markets, such as  
19 the Internet of Things (IoT), domain security and energy management. Cisco is a  
20 California corporation and citizen of California.

21 **C. Executive Officer Defendants**

22 37. Defendant Chuck Robbins is the Chairman and CEO of Cisco. Robbins has  
23 been a member of the Board of Cisco Systems, Inc. since May 2015, has served as its  
24 chairman since December 2017, and has been CEO since July 2015. He joined the  
25 Company in 1997 and held various managerial positions in sales until being elevated to  
26 the position of Vice President in 2002. He is a member of the board of directors of  
27 BlackRock, Inc., which is the Company's second largest shareholder, owning 323,233,397  
28

1 shares, or 7.6% of all outstanding shares. Robbins lives in Los Gatos, which is part of  
2 Santa Clara County.

3 38. Defendant Mark Chandler is an Executive Vice President, Chief Legal  
4 Officer, and is also Cisco's Chief Compliance Officer. In these roles, he oversees Cisco's  
5 global legal activities and policies, as well as ethics, compliance and regulatory affairs,  
6 employee relations, investigations, and brand protection. He has been General Counsel  
7 since 2001. Chandler lived in San Francisco, California.

8 39. Defendant Francine Katsoudas is Executive Vice President and Chief  
9 People Officer of Cisco. She plays a major role in the Company's overall performance,  
10 leading organizational strategy, promoting operational effectiveness, and ensuring team  
11 performance. As Cisco's Chief People Officer, Katsoudas is responsible for diversity and  
12 inclusion efforts at the Company. Katsoudas has filled various leadership roles at Cisco  
13 for over 20 years. She lives in Los Gatos, which is part of Santa Clara County.

14 40. Defendant Kelly A. Kramer is Executive Vice President and Chief Financial  
15 Officer (CFO) at Cisco, managing financial strategy, and overseeing all financial  
16 functions, corporate development, mergers, acquisitions, integrations and investor  
17 relations for the Company with total revenue for fiscal year 2019 of \$51.7 billion and  
18 more than 76,000 employees. Before being named CFO in 2015, Kramer was Senior Vice  
19 President of Business Technology and Operations Finance, partnering with the  
20 Development organization across business groups, segments, and operations on  
21 strategic long-range planning, budgeting, and forecasting new-offer development, as  
22 well as the analysis and strategy of product pricing. In addition, her organization  
23 managed finance for the company's supply chain, marketing, corporate communications,  
24 operations, HR, and IT groups. Kramer joined Cisco in 2012 as Senior Vice President of  
25 Corporate Finance. She lives in Half Moon Bay, California.

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**D. Director Defendants**

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41. Defendant M. Michele Burns has been a member of the Cisco Board during all relevant times, and began her tenure on the Board in 2003. Burns was working as the CFO for Delta Airlines, Inc. when she was appointed to the Cisco Board. She currently serves on the Audit Committee and is the chair of the Finance Committee.

42. Defendant Wesley G. Bush joined the Cisco Board in May 2019. Prior to that, Bush served as the CEO of Northrop Grumman Corp. (“Northrop”) from 2010 through 2018 and was the chairman of the board of Northrop from 2011 through 2019. He currently serves on the Compensation and Management Development Committee and the Finance Committee.

43. Defendant Michael D. Capellas was a member of the Cisco Board during all relevant times and joined the Board in 2006. Capellas has served as founder and CEO of Capellas Strategic Partners (“CSP”) since 2012. Capellas has served as President or CEO for various large corporations before forming CSP. He serves as the Chair of both the Acquisition Committee and the Nomination and Governance Committee.

44. Defendant Mark Garrett was a member of the Cisco Board during all relevant times. He has been a member of the Board since April 2018. Garrett served as Executive Vice President and Chief Financial Officer of Adobe Systems Incorporated from February 2007 to April 2018. From January 2004 to February 2007, Garrett served as Senior Vice President and Chief Financial Officer of the Software Group of EMC Corporation. From August 2002 to January 2004 and from 1997 to 1999, Mr. Garrett served as Executive Vice President and Chief Financial Officer of Documentum, Inc., including throughout its acquisition by EMC in December 2003.

45. Defendant Dr. Kristina M. Johnson was a member of the Cisco Board during all relevant times. She has been a member of the Board since August 2012. Dr. Johnson has served as the chancellor of the State University of New York since September 2017. From January 2014 to September 2017, Dr. Johnson served as the Chief Executive Officer of Cube Hydro Partners, LLC, a clean energy company, and a joint

1 venture between Enduring Hydro, a company she founded in January 2011 and I  
2 Squared Capital, a private equity firm.

3 46. Defendant Roderick C. McGeary was a member of the Cisco Board during  
4 all relevant times. He has been a member of the Board since July 2003. He served as  
5 Chairman of Tegile Systems, Inc. from June 2010 to June 2012. From November 2004 to  
6 December 2009, he served as Chairman of the Board of BearingPoint, Inc. and also was  
7 interim Chief Executive Officer of BearingPoint from November 2004 to March 2005.  
8 McGeary currently serves on the boards of directors of PACCAR Inc. and Raymond  
9 James Financial, Inc.

10 47. Defendant Arun Sarin, KBE was a member of the Cisco Board during all  
11 relevant times. He has been a member of the Board since September 2009 and  
12 previously served on the Board from September 1998 to July 2003. In April 2003, he  
13 became CEO designate of Vodafone Group Plc and served as its Chief Executive Officer  
14 from July 2003 to July 2008. Sarin also served as a member of the board of directors of  
15 that company from 1999 to 2008. From July 2001 to January 2003, he was Chief  
16 Executive Officer of Accel-KKR Telecom. He was the Chief Executive Officer of  
17 InfoSpace, Inc., and a member of its board of directors from April 2000 to January 2001.  
18 He currently serves on the boards of directors of Accenture plc, Cerence Inc. and The  
19 Charles Schwab Corporation.

20 48. Defendant Brenton L. Saunders was a member of the Cisco Board during  
21 all relevant times. He has been a member of the Board since March 2017. Saunders has  
22 served as CEO and President of Allergan plc since July 2014. He has been a board  
23 member of Allergan plc since July 2014 and has served as its Chairman since October  
24 2016. Saunders previously served as Chief Executive Officer and President of Forest  
25 Laboratories, Inc. from October 2013 until July 2014 and had served as a board member  
26 of Forest Laboratories, Inc. beginning in 2011.

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1           49. Defendant Dr. Lisa Su was a member of the Cisco Board during all relevant  
2 times. She has been a member of the Board since January 2020. Dr. Su joined AMD in  
3 2012 and has held the position of President and Chief Executive Officer since October  
4 2014. She also serves on AMD's Board of Directors. Previously, Dr. Su served as Senior  
5 Vice President and General Manager, Networking and Multimedia at Freescale  
6 Semiconductor, Inc., and was responsible for global strategy, marketing and engineering  
7 for the company's embedded communications and applications processor business.

8           50. The defendants identified in paragraphs 37 through 40 are referred to  
9 herein as the "Executive Officer Defendants." The Defendants identified in paragraphs  
10 41 through 49 are referred to herein as the "Director Defendants." Collectively, all  
11 defendants are referred to herein as the "Individual Defendants."

12           **E. Doe Defendants**

13           51. Except as described herein, Plaintiff is ignorant of the true names of  
14 defendants sued as Does 1 through 30, inclusive, under California Code of Civil  
15 Procedure section 474 and, therefore, Plaintiff sues these defendants by such fictitious  
16 names. Following further investigation and discovery, Plaintiff will seek leave of this  
17 Court to amend this Complaint to allege their true names and capacities when  
18 ascertained. These fictitiously named defendants are Cisco officers, other members of  
19 management, employees, and/or consultants or third parties who were involved in the  
20 wrongdoing detailed herein. These defendants aided and abetted, and participated with  
21 and/or conspired with the named defendants in the wrongful acts and course of conduct  
22 or otherwise caused the damages and injuries claimed herein and are responsible in  
23 some manner for the acts, occurrences, and events alleged in this Complaint.

24           **F. Unnamed Participants**

25           52. Numerous individuals and entities participated actively during the course  
26 of and in furtherance of the wrongdoing described herein. The individuals and entities  
27 acted in concert by joint ventures and by acting as agents for principals, to advance the  
28

1 objectives of the scheme and to provide the scheme to benefit defendants and themselves  
2 to the detriment of Cisco.

## 3 **V. RESPONSIBILITIES AND DUTIES OF THE INDIVIDUAL DEFENDANTS**

### 4 **A. Responsibilities of the Individual Defendants**

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

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

9 55. The Company's Code of Business Conduct ("COBC") states that "[t]he  
10 COBC applies to all Cisco employees, subsidiaries, and members of our Board of  
11 Directors."

12 56. The Company's Code of Business Conduct ("COBC") states that:

13 We do not discriminate. We are proud of our global workforce. In all of our  
14 employment processes — recruiting, hiring, developing, and promoting  
15 employees — decisions are made without regard to gender, race, color,  
16 national origin, ancestry, citizenship, religion, age, physical or mental  
17 ability, medical condition, genetic information, pregnancy, sexual  
18 orientation, gender identity or gender expression, veteran status, or marital  
19 status, or any other basis protected by law.

20 57. The Company's COBC also states that:

21 Corporate Social Responsibility is integrated into our business strategy and  
22 functions. It's core to our purpose, our culture, and how we invest our  
23 resources. We focus on issues most relevant to our business and where we  
24 believe we can have the greatest impact. From our culture of integrity and  
25 inclusion, our strategic investments in building skills for the jobs of the  
26 future, and the way we manage and support our global supply chain, to  
27 how we operate in support of environmental sustainability, our CSR and  
28 business strategies are tightly integrated.

58. The Board obviously knew that it was white and lacked racial and ethnic,  
or non-gender, diversity. The Board and the Executive Officers also knew that racial and  
ethnic diversity was lacking in the Company's ELT and, to a lesser extent, the overall  
workforce. The Defendants' knowledge of the problem is reflected by their efforts to  
conceal the lack of racial and ethnic diversity by presenting combined gender and

1 ethnicity statistics.

2 59. The Board is responsible for oversight and compliance with the Company's  
3 internal controls regarding diversity, anti-discrimination, pay equity, hiring and  
4 promotion. As alleged herein, the Company's Board failed to act in good faith by failing  
5 to ensure compliance with these policies and controls, which existed on paper, but were  
6 knowingly disregarded.

7 60. Cisco's 2019 Proxy statement asserts that:

8 The Board of Directors, acting directly and through its committees, is  
9 responsible for the oversight of Cisco's risk management. With the  
10 oversight of the Board of Directors, Cisco has implemented practices,  
11 processes and programs designed to help manage the risks to which we are  
12 exposed in our business and to align risk-taking appropriately with our  
13 efforts to increase shareholder value.

14 61. The most glaring and recent evidence of the Board's lack of meaningful  
15 oversight of racial and ethnic discrimination in pay and treatment is highlighted in a  
16 recently filed government lawsuit ("the Caste Discrimination Lawsuit"):

17 "California regulators sued Cisco Systems Inc on Tuesday [June 30, 2020],  
18 accusing it of discriminating against an Indian-American employee and  
19 allowing him to be harassed by two managers because he was from a lower  
20 Indian caste than them. ... That caste hierarchy was enforced in the  
21 workplace, according to the lawsuit, which accuses the two former  
22 engineering managers of harassment. ... At Cisco, the unnamed employee  
23 reported his manager to human resources in November 2016 for outing his  
24 caste to colleagues. The manager allegedly retaliated, but Cisco determined  
25 caste discrimination was not illegal and issues continued through 2018, the  
26 lawsuit states. Cisco reassigned the employee's duties and isolated him  
27 from colleagues, rejected a raise and opportunities that would have led to  
28 one and denied him two promotions, according to the lawsuit."<sup>13</sup>

62. The Board knew the Company had policies in place on paper, but they  
failed to give the policies any teeth or enforcement. The Board's conduct represented

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<sup>13</sup> "California Accuses Cisco of Job Discrimination Based on Indian Employee's Caste," REUTERS, July 1, 2020; <https://www.news18.com/news/world/california-accuses-cisco-of-job-discrimination-based-on-indian-employees-caste-2695123.html>.



1 hypocrisy, bad faith, and disloyal conduct. The Board had a duty to cause the Company  
2 to comply with the law and its own Code of Ethics and Business Conduct, and failed to  
3 do so.

4 63. The direct involvement of Cisco's Board makes them interested in the  
5 outcome of this litigation because they face a substantial likelihood of liability. Demand  
6 is thus futile.

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

8 64. By reason of their positions as officers and directors of the Company, each  
9 of the Individual Defendants owed and continue to owe Cisco and its shareholders  
10 fiduciary obligations of trust, loyalty, good faith, and due care, and were and are  
11 required to use their utmost ability to control and manage Cisco in a fair, just, honest,  
12 and equitable manner. The Individual Defendants were and are required to act in  
13 furtherance of the best interests of Cisco and not in furtherance of their personal interest  
14 or benefit.

15 65. To discharge their duties, the officers and directors of the Company were  
16 required to exercise reasonable and prudent supervision over the management, policies,  
17 practices, and controls of the affairs of the Company. By virtue of such duties, the  
18 officers and directors of Cisco were required to, among other things:

19 (a) conduct the affairs of the Company in an efficient, business-like  
20 manner in compliance with all applicable laws, rules, and regulations so as to  
21 make it possible to provide the highest quality performance of its business, to  
22 avoid wasting the Company's assets, and to maximize the value of the  
23 Company's stock; and

24 (b) remain informed as to how Cisco conducted its operations, and,  
25 upon receipt of notice or information of imprudent or unsound conditions or  
26 practices, make reasonable inquiry in connection therewith, and take steps to  
27 correct such conditions or practices and make such disclosures as necessary to  
28

1           comply with applicable laws.

2           **C. Breaches of Fiduciary Duties by Individual Defendants**

3           66. The conduct of the Individual Defendants complained of herein involves a  
4 knowing and culpable violation of their obligations as officers and directors of Cisco, the  
5 absence of good faith on their part, and a reckless disregard for their duties to the  
6 Company.

7           67. The Individual Defendants breached their duty of loyalty and good faith  
8 by allowing defendants to cause, or by themselves causing, the Company to cover up  
9 Cisco's discrimination, and caused Cisco to incur substantial damage.

10          68. The Individual Defendants, because of their positions of control and  
11 authority as officers and/or directors of Cisco, were able to and did, directly or  
12 indirectly, exercise control over the wrongful acts complained of herein. The Individual  
13 Defendants also failed to prevent the other Individual Defendants from taking such  
14 improper actions. As a result, and in addition to the damage the Company has already  
15 incurred, Cisco has expended, and will continue to expend, significant sums of money.

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

17          69. At all relevant times, Individual Defendants were agents of the remaining  
18 Individual Defendants, and in doing the acts alleged herein, were acting within the  
19 course of scope of such agency. The Individual Defendants ratified and/or authorized  
20 the wrongful acts of each of the other Individual Defendants. The Individual  
21 Defendants, and each of them, are individually sued as participants and as aiders and  
22 abettors in the improper acts, plans, schemes, and transactions that are the subject of this  
23 Complaint.

24          70. In committing the wrongful acts alleged herein, the Individual Defendants  
25 have pursued, or joined in the pursuit of, a common course of conduct, and have acted  
26 in concert with and conspired with one another in furtherance of the improper acts,  
27 plans, schemes, and transactions that are the subject of this Complaint. In addition to  
28

1 the wrongful conduct herein alleged as giving rise to primary liability, the Individual  
2 Defendants further aided and abetted and/or assisted each other in breaching their  
3 respective duties.

4 71. The Individual Defendants engaged in a conspiracy, common enterprise,  
5 and/or common course of conduct, by failing to maintain adequate internal controls at  
6 the Company and covering up discrimination at the Company.

7 72. During all times relevant hereto, the Individual Defendants, collectively  
8 and individually, initiated a course of conduct that was designed to and did circumvent  
9 the internal controls at the Company and caused the Company to cover up Cisco  
10 executives' discrimination. In furtherance of this plan, conspiracy, and course of  
11 conduct, the Individual Defendants, collectively and individually, took the actions set  
12 forth herein.

13 73. The purpose and effect of the Individual Defendants' conspiracy, common  
14 enterprise, and/or common course of conduct was, among other things, to disguise the  
15 Individual Defendants' violations of law, breaches of fiduciary duty, and waste of  
16 corporate assets; and to conceal adverse information concerning the Company's  
17 operations.

18 74. The Individual Defendants accomplished their conspiracy, common  
19 enterprise, and/or common course of conduct by intentionally circumventing internal  
20 controls at the Company and causing the Company to cover up discrimination at the  
21 Company. Because the actions described herein occurred under the authority of the  
22 Board, each the Individual Defendants was a direct, necessary, and substantial  
23 participant in the conspiracy, common enterprise, and/or common course of conduct  
24 complained of herein.

25 75. Each of the Individual Defendants aided and abetted and rendered  
26 substantial assistance in the wrongs complained of herein. In taking such actions to  
27 substantially assist the commission of the wrongdoing complained of herein, each  
28

1 Individual Defendant acted with knowledge of the primary wrongdoing, substantially  
 2 assisted in the accomplishment of that wrongdoing, and was aware of his or her overall  
 3 contribution to and furtherance of the wrongdoing.

4 **E. The Directors’ Roles and Committees at Cisco**

5 76. The following chart sets forth the directors of Cisco as set forth in the  
 6 Company’s most recent Proxy Statement and the committees on which they serve:

	Audit	Compensation and Management Development	Nomination and Governance	Acquisition	Finance
M. Michele Burns					
Wesley G. Bush					
Michael D. Capellas 					
Mark Garrett					
Dr. Kristina M. Johnson					
Roderick C. McGeary					
Chuck Robbins ★					
Arun Sarin, KBE					
Brenton L. Saunders					
Dr. Lisa Su*					

Lead Independent Director    Chair    Member    ★ Inside Director

22 **VI. SUBSTANTIVE ALLEGATIONS**

23 77. Cisco says that its commitment to diversity starts at the top. If that is true,  
 24 then Cisco is not actively committed to diversity at the Company. The statistics bear this  
 25 out. Cisco’s Board has no Black members. There are no Blacks on Cisco’s executive  
 26 management team. Overall, there are a meager 3.8% Black employees at the Company.  
 27 *Cisco’s proxy materials and Corporate Social Responsibility Reports going back to at*  
 28

1 *least 2012 demonstrate that there have been no African-Americans, no Hispanics, no*  
2 *American Indians, no Alaska Natives, no native Hawaiians and no Pacific Islanders on*  
3 *the Board.*

4 78. The lack of diversity at the top at Cisco is significant. The Board bears  
5 ultimate responsibility for ensuring the Company's compliance with federal and state  
6 laws prohibiting discrimination based on race, gender, and other factors. Diversity in  
7 the workforce is a strong indication of a lack of discrimination; conversely, a lack of  
8 diversity provides a strong indication that discrimination is present.

9 **A. At All Relevant Times, the Individual Defendants Have Had Actual**  
10 **Knowledge that Cisco has Repeatedly Violated Anti-Discrimination**  
11 **Laws, and That Cisco Has Failed to Comply with Its Own Policies of**  
12 **Promoting Diversity and Prohibiting Discrimination, Yet the Individual**  
13 **Defendants Have Continued to Refuse to Nominate Black Individuals**  
14 **and Minorities to the Board**

15 79. Cisco, led by Chuck Robbins and the Board, has consistently failed to  
16 appoint Black individuals and minorities to its Board and to management positions  
17 within the Company.

18 80. Cisco's overall workforce, as of 2019, was 89 percent white or Asian, and a  
19 full 93 percent of its vice president level workforce was white or Asian.<sup>14</sup> Those numbers  
20 represent a mere 1 percentage point decrease in the overall workforce number for 2017  
21 and 2018 and remain completely static for the vice president level workforce from 2017  
22 and 2018.

23 ///

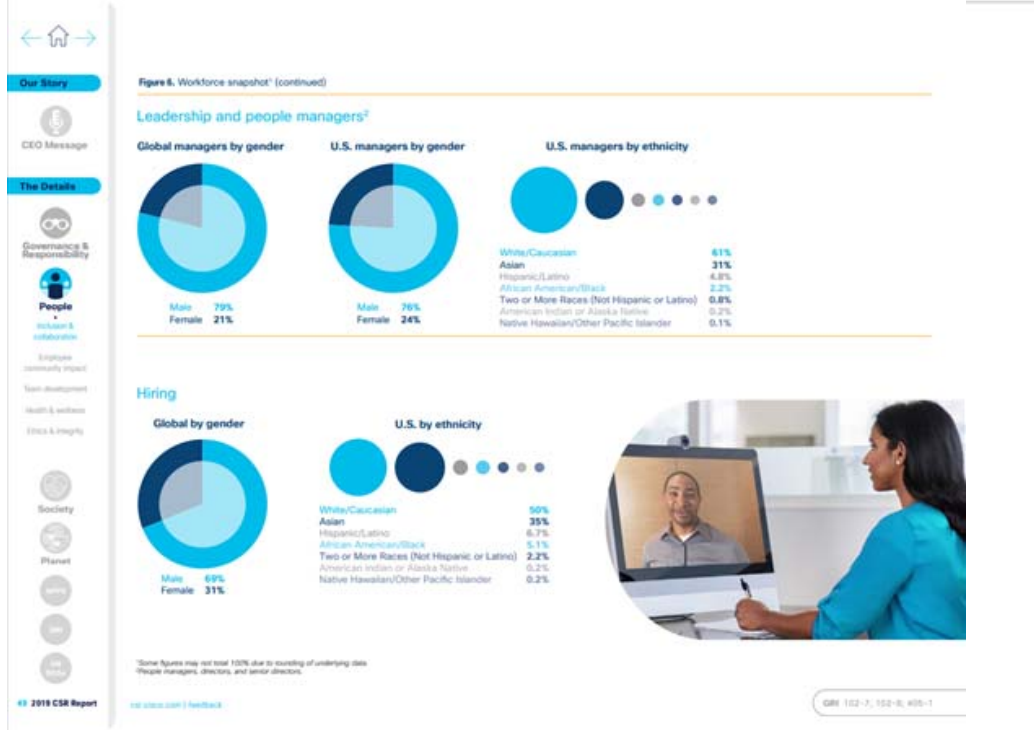
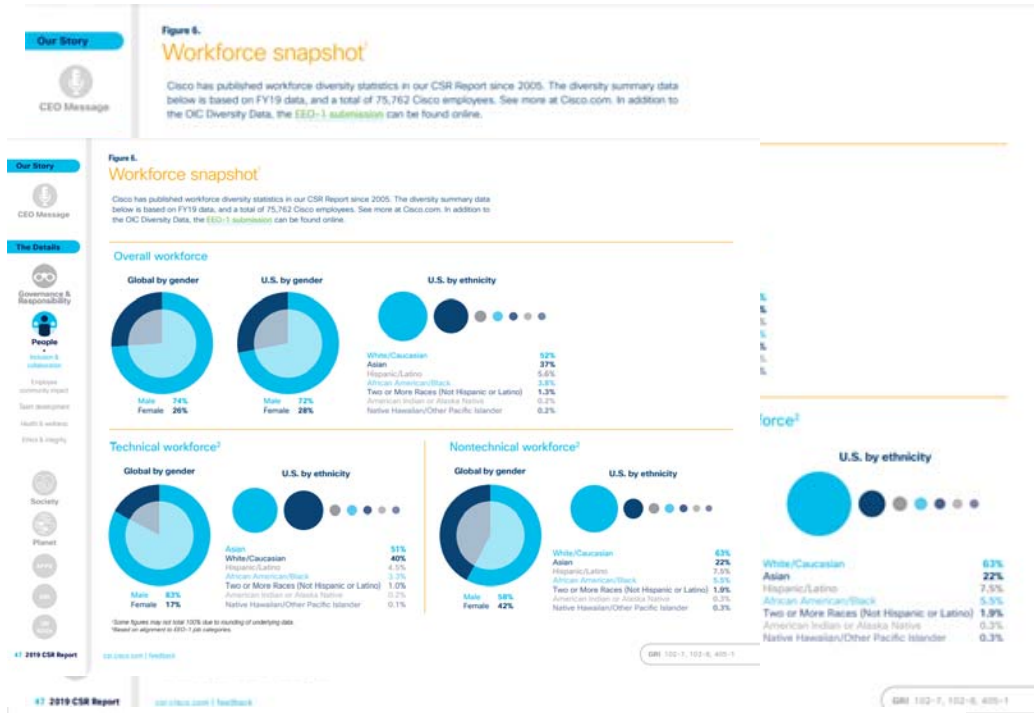
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26 <sup>14</sup> Cisco's 2019 CSR Report, at 47-8.

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81. Despite touting its signatory status on the White House Equal Pay Pledge and its participation in the Employers for Pay Parity Consortium, Cisco does not include identifiable pay parity statistics in its Proxy Statements and Annual Reports for the years

1 2017, 2018 and 2019.

2 82. Further, even the cursory, summary pay parity statements included in  
3 Cisco's CSR Reports from 2018 and 2019 demonstrate that twice as many employees  
4 experienced discriminatory pay disparity in 2019 as in 2018.

5 83. The Caste Discrimination Lawsuit points out that pay disparity is but one  
6 symptom of a more widespread discrimination and lack of diversity problem. Cisco has  
7 not yet responded to or made a public statement regarding the Caste Discrimination  
8 Lawsuit.

9 84. The Board has had actual knowledge of all these facts at all relevant times.

10 **B. The Director Defendants Breached Their Fiduciary Duty of Candor by**  
11 **Causing Cisco to Include False and Misleading Statements in Cisco's**  
12 **Proxy Statements**

13 85. Notwithstanding their knowledge about Cisco's failure to promote and  
14 achieve diversity and its discriminatory pay practices, the Director Defendants have  
15 breached their fiduciary duty of candor by causing Cisco to consistently make false  
16 statements about Cisco's commitment to diversity and the promotion of Blacks and  
17 other minority employees to positions of management and power at Cisco. In the 2019  
18 Proxy, signed by Directors Burns, Bush, Capellas, Garrett, Johnson, McGeary, Robbins,  
19 Sarin, Saunders, and Tomé, the Directors represented that:

20 **Board Refreshment**

21 ...

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

1 86. The 2019 Proxy also stated:

2 **Business Experience and Qualifications of Nominees**

3 ...

4 The table below summarizes key qualifications, skills and attributes most  
5 relevant to the decision to nominate the candidates to serve on the Board of  
6 Directors. A mark indicates a specific area of focus or experience on which  
7 the Board relies most. The lack of a mark does not mean the director  
8 nominee does not possess that qualification or skill. Each director nominee  
9 biography above in this section describes each nominee’s qualifications  
10 and relevant experience in more detail.

Director Nominees	Leadership	Technology	Financial Experience	Global Business	Gender/ Ethnic Diversity	Sales and Marketing	Academia	Public Company Board Experience
10 M. Michele Burns	✓		✓	✓	✓			✓
11 Wesley G. Bush	✓	✓	✓	✓				✓
12 Michael D. Capellas	✓	✓	✓	✓		✓		✓
13 Mark Garrett	✓	✓	✓	✓				✓
14 Dr. Kristina M. Johnson	✓	✓			✓		✓	✓
15 Roderick C. McGearv	✓	✓	✓	✓				✓
16 Charles H. Robbins	✓	✓		✓		✓		✓
17 Arun Sarin	✓	✓	✓	✓	✓	✓		✓
18 Brenton L. Saunders	✓		✓	✓		✓		✓
19 Carol B. Tomé	✓		✓	✓	✓			✓

20 87. These statements were false and misleading. In reality, regardless of  
21 whether Cisco’s Nomination and Governance Committee (comprised of Defendants  
22 Capellas, Garrett and McGearv) ever made any efforts to recruit any Black individuals  
23 and other racial and ethnic, non-Asian minorities to the Board, no Black individuals  
24 currently serve on the Board. Actions speak louder than words. In fact, the Board has  
25 never in good faith actively sought minority candidates. The phrase “believes it is  
26 important to consider diversity of race, ethnicity” implies that in fact active, good faith  
27 efforts have been made, when in reality Cisco has not actively sought to recruit racial  
28 and ethnic minorities and has just attempted to create the false impression that it is  
“important” to do so. This is the very definition of a misleading statement.



1           88.     Moreover, Cisco’s statements about Board diversity were highly material  
2 to investors.<sup>15</sup>

3           89.     To attempt to justify its failure to break from a status quo rooted in  
4 systemic racism, Cisco’s Board has resisted efforts to appoint racially and ethnically  
5 diverse members to its Board by claiming that the individuals who have served on the  
6 Board for, in some cases going on two decades, are already diverse or have experience  
7 that is valuable to the Company. But the statements caused to be made by the Board in  
8 the 2019 Proxy show that the single non-gender diverse member of the Board has been  
9 serving since 2009.<sup>16</sup> This is true even though six of the other nine available director  
10 positions have been filled or re-filled since that time.

11           90.     These statements were made with knowledge or reckless disregard of their  
12 falsity and with intent to mislead shareholders.

13           91.     In reality, the Director Defendants’ refusal to appoint new Black and non-  
14 gender-based minority members to the Board represents explicit or implicit racism at  
15 Cisco and an improper pretext for failing to add Black and non-gender-based minority  
16 individuals to the Board. In misrepresenting the reason for failing to add new members  
17 to its Board, the Director Defendants made intentionally or recklessly false statements in  
18 order to get themselves re-elected and to conceal the true reasons for Cisco’s long-  
19 standing failure to add Black individuals to its Board.

20           92.     The 2019 Proxy contained a “Shareholder Proposal 4 – Independent Board  
21 Chairman,” which asked shareholders to vote in favor of requiring Cisco to replace  
22

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23           <sup>15</sup> See Arleen Jacobius, “Calpers Turns Focus to Board Diversity in Proxy Voting,”  
24 PENSIONS & INVESTMENTS, Sept. 17, 2018 (in 2018, Calpers voted against 438 directors at  
25 141 different companies based on the companies’ failure to respond to Calpers’ efforts to  
increase board diversity).

26           <sup>16</sup> 2019 Proxy, at 7.

1 Robbins as Chairman with an independent director. The proposal stated in part:

2 Shareholders request our Board of Directors to adopt a policy to  
3 require that the Chairman of the Board be an independent member of the  
4 Board whenever possible. The Board would have the discretion to phase in  
5 this policy for the next Chief Executive Officer transition, implemented so  
6 it does not violate any existing agreement.

7 If the Board determines that a Chairman, who was independent when  
8 selected is no longer independent, the Board shall select a new Chairman  
9 who satisfies the requirements of the policy within a reasonable amount of  
10 time. Compliance with this policy is waived if no independent director is  
11 available and willing to serve as Chairman.

12 Caterpillar was an example of a company changing course and  
13 naming an independent board chairman. Caterpillar had even opposed a  
14 shareholder proposal for an independent board chairman at its annual  
15 meeting shortly before changing course. Wells Fargo also changed course  
16 and named an independent board chairman.

17 An independent board chairman can better focus on improving the  
18 performance of our directors. Improvement is needed since Carol Bartz,  
19 Michele Burns, Charles Robbins and Steven West each received more than  
20 190 million against votes at our 2018 annual meeting. This compares poorly  
21 with 3 Cisco directors who received less than 9 million against votes each.  
22 This proposal topic received 35%-support at the 2018 Cisco annual meeting  
23 – up from [sic] 27%-support previously. Adoption of this proposal will cost  
24 our company virtually nothing – yet can lead to improved director  
25 performance.

26  
27 93. In response to this proposal, the Director Defendants caused Cisco to file  
28 an opposition position in the Proxy which stated:

29 The Board of Directors believes that it should maintain flexibility to set  
30 Cisco's Chairman and board leadership structure as it deems appropriate  
31 from time to time. Effective corporate governance is not merely a "one size  
32 fits all" approach, and we believe it is not in the best interest of our  
33 shareholders to place arbitrary constraints on the Board of Directors'  
34 ability to determine a leadership structure that will work best given the  
35 complex dynamics of the Board of Directors, senior management and other  
36 factors at any particular time.

37 In particular, as corporate governance experts have recognized, a strong,  
38 empowered and independent Lead Independent Director role, such as  
39 Cisco has, fulfills the goals espoused by those who want to arbitrarily  
40 require an independent Chairman. In our view, the decision of who should  
41 serve in the role of Chairman, and whether the role should be filled by an  
42 independent or a non-independent director, at any given time should be  
43 the responsibility of the Board of Directors, rather than be dictated by a  
44 rigid rule that assumes that the same leadership structure would work best  
45 at all times. Departing from Cisco's current policy of permitting a non-

1 independent director to serve as Chairman would limit the Board’s ability  
2 to select the director it believes is best suited to serve as Chairman based  
3 on the circumstances at the time.

4 The Board of Directors believes that it is currently in the best interest of  
5 Cisco and its shareholders for Mr. Robbins to serve as both CEO and  
6 Chairman, and that the role of Chairman and CEO, together with the role  
7 of the Lead Independent Director and Cisco’s other strong corporate  
8 governance policies and practices, provides an appropriate balance in  
9 Cisco’s leadership. As discussed under “Corporate Governance – Board  
10 Leadership Structure” above, in designating Mr. Robbins as Chairman, the  
11 Board of Directors considered Mr. Robbins’ demonstrated leadership  
12 during his tenure at Cisco, and the Board of Directors believes that Mr.  
13 Robbins’ ability to speak as Chairman and CEO provides strong unified  
14 leadership for Cisco. The Board believes that the 61 Table of Contents  
15 flexibility to make such a determination with respect to a future CEO, just  
16 as in the case of Mr. Robbins, is justified by the features of Cisco’s  
17 corporate governance structure:

- 18 • Robust Lead Independent Director role. The role given to the Lead  
19 Independent Director helps ensure a strong independent and active Board  
20 of Directors. Our Lead Independent Director is elected by and from the  
21 independent board members, and each term of service in the Lead  
22 Independent Director position is one year. As further described in our  
23 corporate governance policies and under “Corporate Governance – Board  
24 Leadership Structure” above, the Lead Independent Director has clearly  
25 delineated and comprehensive duties.

26 94. These statements were false and misleading because the Director  
27 Defendants did not genuinely believe them. Cisco at all relevant times has lacked an  
28 independent Chairman, resulting in great harm to Cisco as the Company, controlled by  
Robbins, engaged in unlawful conduct with respect to discriminatory hiring and pay  
practices. A statement of support from the Directors would have likely substantially  
altered the votes at the 2019 Annual Meeting and been material to the voting decisions of  
shareholders.

95. The false statements had their desired effect. At Cisco’s annual meeting in  
December 2019, all the incumbent directors were re-elected, and the one white, non-  
gender minority board-proposed new director was elected. No competing Black or  
minority candidates made it on the ballot. The shareholder proposal to replace Robbins  
as Chairman with an independent Chairman was defeated. PwC was re-appointed as  
the Company’s auditor for the 32nd year in a row.

1 96. Cisco published the results of the voting at its annual meeting in a Form 8-  
 2 K filed on Dec. 10, 2019:

3 **Submission of Matters to a Vote of Security Holders.**

4 The Annual Meeting of Shareholders (the “Meeting”) of Cisco Systems, Inc. (“Cisco”) was held on  
 5 December 10, 2019. At the Meeting, the shareholders voted on the following four proposals and cast their  
 6 votes as follows:

<u>Nominee</u>	<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
M. Michele Burns	2,796,477,870	120,135,867	10,317,660	621,656,476
<del>Wesley G. Bush</del>	<del>2,909,371,948</del>	<del>6,430,788</del>	<del>11,128,661</del>	<del>621,656,476</del>
Michael D. Capellas	2,752,930,202	163,330,894	10,670,301	621,656,476
<del>Mark Garrett</del>	<del>2,905,449,640</del>	<del>10,348,837</del>	<del>11,132,900</del>	<del>621,656,476</del>
Dr. Kristina M. Johnson	2,892,190,934	24,124,062	10,616,401	621,656,476
<del>Roderick C. McGeary</del>	<del>2,766,732,128</del>	<del>149,483,344</del>	<del>10,716,223</del>	<del>621,656,476</del>
Charles H. Robbins	2,730,378,728	160,932,487	35,620,182	621,656,476
<del>Arun Sarin</del>	<del>2,862,841,927</del>	<del>53,033,908</del>	<del>11,035,962</del>	<del>621,656,476</del>
Brenton L. Saunders	2,887,800,540	28,026,394	11,104,463	621,656,476
<del>Carol B. Tomé</del>	<del>2,909,791,629</del>	<del>5,982,906</del>	<del>11,146,862</del>	<del>621,656,476</del>

7 Proposal 2: To approve, on an advisory basis, executive compensation:

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
2,751,321,171	154,791,806	20,818,420	621,656,476

8 Proposal 3: To ratify the appointment of PricewaterhouseCoopers LLP as Cisco’s independent registered public accounting firm for the fiscal year ending July 25, 2020:

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
3,375,076,971	161,943,974	11,566,928	0

9 Proposal 4: A shareholder proposal to have Cisco’s Board adopt a new policy to have an independent Board chairman.

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
833,821,241	2,076,320,186	16,789,970	621,656,476

10 97. The 2019 Proxy was materially misleading because it failed to disclose:

11 (a) That the Company’s stated policies with respect to diversity and  
 12 anti-discrimination were not effective and were not being complied with;

13 (b) That the Board’s Governance Committee did not take racial and  
 14 ethnic diversity into consideration when evaluating potential Board candidates,  
 15 and instead simply claimed to do so in order to create a false appearance of  
 16 compliance with the law;

17 (c) That the Director Defendants did not genuinely believe the  
 18 statement in the Proxy that it was not in the Company’s best interests, or  
 19 necessary, to have an independent Chairman since the current governance  
 20 structure was working effectively; in fact, as demonstrated herein and below, the  
 21 Individual Defendants all knew that Cisco’s best interests were not being  
 22 adequately protected by Robbins serving as Chairman, as amply demonstrated by  
 23 the recently filed California Department of Fair Employment and Housing  
 24  
 25  
 26  
 27  
 28

1 lawsuit alleging Indian caste harassment and pay discrimination at Cisco and  
2 Cisco's March 2020 \$4.75 million settlement of a Department of Labor claim that  
3 Cisco underpaid its female and minority employees compared to its white male  
4 employees;

5 (d) That Defendants had knowledge that the Company's internal  
6 controls and systems were inadequate and ineffective to protect minorities against  
7 discrimination in hiring, promotion, and other critical terms of employment and  
8 equal access, and that rampant unlawful discrimination exists at the Company;

9 (e) That the Defendants had knowledge of continuing and repeated  
10 violations of federal policies and laws due to discriminatory pay practices that  
11 adversely affected minorities and women;

12 (f) That the Company was preferring the hiring of Asian Indians of the  
13 Brahmin, Hindu and other upper castes over other minorities and women;

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

17 (h) That Defendants failed to appropriately address the Company's lack  
18 of diversity and discriminatory practices towards minorities in hiring and  
19 promotion and misleading claims regarding the same; and

20 (i) That, as a result, the Company was at substantial risk of large  
21 monetary fines, penalties, and adverse judgments in pending lawsuits due to the  
22 fact that the Company was not in compliance with federal and state laws  
23 regarding hiring, promotion, and pay practices.

24 98. The 2019 Proxy harmed the Company by interfering with the proper  
25 governance on its behalf that requires stockholders' informed voting of directors. As a  
26 result of the false or misleading statements in the 2019 Proxy, stockholders voted to re-  
27 elect all of the Defendants to the Board and voted against requiring Cisco to have an  
28

1 independent Chairman.

2 99. The statements in the 2019 Proxy conveyed that the Company's corporate  
3 governance structure was "effective" and that the Board's leadership structure allowed it  
4 to "participate actively in the oversight of management's actions." In reality, the  
5 Company's corporate governance structure and defective internal controls allowed  
6 senior executives and the Board to sidestep real accountability and instead continue  
7 perpetuating the discriminatory practices that led to the DOL investigation regarding  
8 the Company's discriminatory pay practices, the California Caste Discrimination  
9 Lawsuit, and other discrimination in hiring practices and lack of racial and ethnic  
10 diversity on both the Board and management.

11 100. The 2019 Proxy, which contained materially misleading statements and  
12 thus deprived shareholders of adequate information necessary to make a reasonably  
13 informed decision, caused the Company's stockholders to re-elect nine of the Defendants  
14 to the Board while they were breaching their fiduciary duties to the Company and  
15 deliberately concealing material information concerning the Company's discrimination  
16 against Black individuals and other minorities and its effects on the Company's business  
17 and reputation.

18 101. The Company and its shareholders were harmed by the approval of  
19 incentive compensation awards to certain of the Individual Defendants, such as  
20 executive officer Robbins, and others, who helped perpetrate the illegal discriminatory  
21 hiring and compensation practices. Had shareholders known of the underlying  
22 misconduct at the Company, they would not have voted to keep the same Directors who  
23 were allowing the illegal practices to continue. Even if the alleged discriminatory  
24 practices began before the Proxy Statements issued, they continued after the Proxy  
25 Statements issued because Board members elected by shareholders pursuant to the  
26 Proxy Statements allowed the practice to continue.

27 ///

1 102. **2018 PROXY** – The statements above that the Director Defendants caused  
 2 the Company to make in the 2019 Proxy were substantially identical to statements they  
 3 had caused Cisco to include in the 2018 Proxy, which was filed by Cisco with the SEC on  
 4 October 24, 2018. The 2018 Proxy contained a shareholder proposal asking that Cisco be  
 5 required to have an independent Chairman that was substantially identical to the same  
 6 proposal in the 2019 Proxy.

7 103. The 2018 Proxy was approved by the Directors below, and the table below  
 8 identifies committee membership as of October 15, 2018, the record date of the 2018  
 9

<u>Current Directors</u>	<u>Leadership</u>	<u>Technology</u>	<u>Financial Experience</u>	<u>Global Business</u>	<u>Gender/ Ethnic Diversity</u>	<u>Sales and Marketing</u>	<u>Academia</u>	<u>Public Company Board Experience</u>
Carol A. Bartz	✓	✓		✓	✓	✓		✓
M. Michele Burns	✓		✓	✓	✓			✓
Michael D. Capellas	✓	✓	✓	✓		✓		✓
Mark Garrett	✓	✓	✓	✓				✓
Dr. John L. Hennessy	✓	✓					✓	✓
Dr. Kristina M. Johnson	✓	✓			✓		✓	✓
Roderick C. McGeary	✓	✓	✓	✓				✓
Charles H. Robbins	✓	✓		✓		✓		✓
Arun Sarin	✓	✓	✓	✓	✓	✓		✓
Brenton L. Saunders	✓	✓	✓	✓		✓		✓
Steven M. West	✓	✓	✓	✓				✓

16  
 17 104. For example, similar to the language in the 2019 Proxy, the 2018 Proxy  
 18 stated the following:

19 The Board believes it is important to consider diversity of race,  
 20 ethnicity, gender, age, education, cultural background, and professional  
 21 experiences in evaluating board candidates in order to provide practical  
 insights and diverse perspectives.<sup>17</sup>

22 105. The 2018 Proxy also contained a proposal submitted by the Director  
 23 Defendants asking shareholders to approve executive compensation at the Company:

24  
 25 \_\_\_\_\_  
 26 <sup>17</sup> See Cisco's 2018 Proxy at 26.

## Proposal No. 3 – Advisory Vote to Approve Executive Compensation

Under Section 14A of the Exchange Act, Cisco shareholders are entitled to cast an advisory vote to approve the compensation of Cisco’s named executive officers, known as a “Say on Pay” vote. The shareholder vote is an advisory vote only and is not binding on Cisco or its Board of Directors. Although the vote is non-binding, the Board of Directors and the Compensation Committee value the opinions of our shareholders, and will consider the outcome of the vote when making future compensation decisions for our named executive officers.

### Fiscal 2018 Pay Levels

The following table compares fiscal 2017 and fiscal 2018 total direct compensation (“TDC”) for our CEO against Cisco’s total shareholder return (“TSR”):

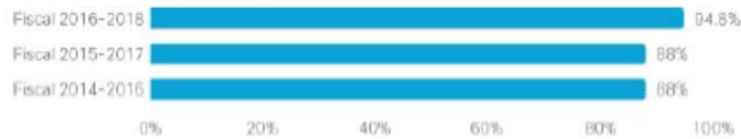
	Fiscal 2018 (\$)	Fiscal 2017 (\$)	Year over Year Change
<b>Absolute Total Shareholder Return <sup>1</sup></b>			<b>39%</b>
<b>CEO Total Direct Compensation</b>			<b>21%</b>
Reported Earned Base Salary	\$ 1,231,250	\$ 1,187,308	
Reported Earned Bonus	4,990,711	2,532,352	
Target LTI Value <sup>2</sup>	14,691,830	13,511,474	
<b>Total Direct Compensation <sup>3</sup></b>	<b>\$20,913,791</b>	<b>\$17,231,134</b>	

<sup>1</sup> TSR is measured against the stock price as of the end of fiscal 2017 and includes the reinvestment of all dividends.

<sup>2</sup> Represents the target value of equity awards granted in fiscal 2017 and fiscal 2018. For a more detailed description, see the “Fiscal 2018 Compensation — Long-Term, Equity-Based Incentive Awards” section in the CD&A.

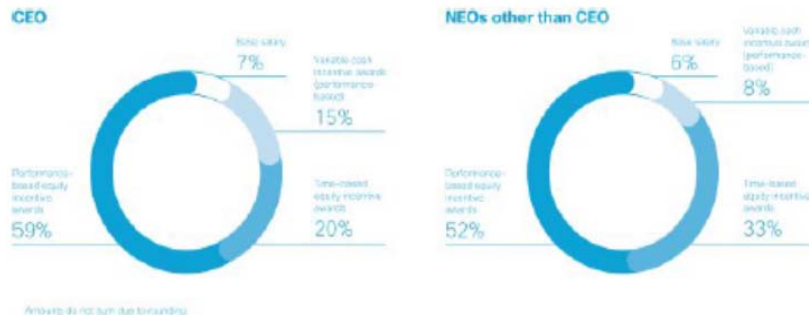
<sup>3</sup> This table is not intended to be a substitute for the “Compensation Committee Matters — Fiscal 2018 Compensation Tables — Summary Compensation Table.” This table does not include certain amounts which appear in the Summary Compensation Table, and the Target LTI Value for fiscal 2017 and fiscal 2018 is different from the amounts reported in the “Stock Awards” column of the Summary Compensation Table for such fiscal years.

The payouts for PRSUs with a three-year performance period granted in fiscal 2016, 2015, and 2014 were as follows:



### Fiscal 2018 Pay Structure — Pay for Performance

The majority of our named executive officers’ pay is performance-based and we have limited perquisites and benefits, as illustrated below:



Our named executive officers have:

- NO supplemental executive retirement plans
- NO defined benefit pension plans
- NO employment agreements

- NO severance agreements
- NO change in control agreements
- NO “golden parachute” excise tax gross-ups



106. These statements in the 2018 Proxy were false and misleading for the same reasons alleged above with respect to the false statements in the 2019 Proxy. Similar to the 2019 Proxy, the 2018 Proxy contained shareholder proposals for an independent chairman of the Board and for a Pay Equity Report. Similar to 2019, in 2018 the Director Defendants caused Cisco to oppose those proposals with language that was substantially identical to the language quoted *supra* from the 2019 Proxy. Both such proposals were defeated in 2018, too.

107. On November 16, 2018, Cisco filed a Form 8-K disclosing the results of the voting at the 2018 annual meeting. The Form 8-K stated:

At the Annual Meeting of Shareholders (the “Meeting”) of Cisco Systems, Inc. (“Cisco”) held on December 12, 2018, Cisco’s shareholders approved the amendment and restatement of the Cisco Employee Stock Purchase Plan (the “Purchase Plan”). The amendment and restatement of the Purchase Plan was approved by Cisco’s Board of Directors (the “Board”) on October 3, 2018, subject to the approval of Cisco’s shareholders, and became effective with such shareholder approval on December 12, 2018. As a result of such shareholder approval, the Purchase Plan was materially amended and modified to (i) extend the term by ten years and (ii) increase the maximum number of shares of common stock authorized for issuance over the term of the Purchase Plan by 100 million shares.

**Proposal 1:** To elect nine members of Cisco’s Board:

<u>Nominee</u>	<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
M. Michele Burns	2,987,137,258	188,248,050	7,833,805	746,069,777
Michael D. Capellas	3,083,717,498	91,232,387	8,269,228	746,069,777
Mark Garrett	3,169,175,897	5,737,183	8,306,033	746,069,777
Dr. Kristina M. Johnson	3,152,852,274	20,219,443	10,147,396	746,069,777
Roderick C. McGeary	2,985,266,146	189,605,490	8,347,477	746,069,777
Charles H. Robbins	2,959,004,742	201,859,995	22,354,376	746,069,777
Arun Sarin	3,165,962,435	8,821,057	8,435,621	746,069,777
Brenton L. Saunders	3,118,091,435	56,989,890	8,137,788	746,069,777
Steven M. West	3,023,630,638	151,143,284	8,445,191	746,069,777

**Proposal 2:** To approve the amendment and restatement of the Cisco Employee Stock Purchase Plan:

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
3,150,813,537	21,552,319	10,853,257	746,069,777

1 **Proposal 3:** To approve, on an advisory basis, executive compensation:

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
2,602,505,244	564,105,464	16,608,405	746,069,777

4 **Proposal 4:** To ratify the appointment of PricewaterhouseCoopers LLP as Cisco's independent registered public accounting firm for the fiscal year ending July 27, 2019:

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
3,801,651,221	117,681,779	9,955,890	0

8 **Proposal 5:** A shareholder proposal to have Cisco's Board adopt a new policy to have an independent Board chairman.

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
1,120,274,550	2,046,111,148	16,833,415	746,069,777

12 **Proposal 6:** A shareholder proposal to have Cisco's Board adopt a proposal relating to executive compensation metrics.

<u>For</u>	<u>Against</u>	<u>Abstained</u>	<u>Broker Non-Votes</u>
192,505,222	2,971,515,256	19,198,635	746,069,777

16 **C. Cisco's Nominating and Corporate Governance Committee Members Have Repeatedly Breached Their Fiduciary Duties to Ensure Diversity on the Board**

17 108. The Charter of the Nominating and Governance Committee states the  
18 following with respect to the duties of the Board members serving on such committee:

20 **RESPONSIBILITIES AND DUTIES**

21 In carrying out the purpose set forth in Section 1 above, the Committee shall:

- 22 1. *Identify and review candidates for the Board and recommend to the*  
23 *full Board candidates for election to the Board, and from time to*  
24 *time review the process for identifying and evaluating candidates*  
25 *for election to the Board.* The Committee may engage consultants or  
third-party search firms to assist in identifying and evaluating  
potential nominees.

26 ///

27 ///

28

- 1 2. *Review from time to time the appropriate skills and characteristics*  
2 *required of Board members, including such factors as business*  
3 *experience, diversity, and personal skills in technology, finance,*  
4 *marketing, international business, financial reporting and other*  
5 *areas that are expected to contribute to an effective Board.*
- 6 3. Review and assess director independence with respect to continuing  
7 and prospective directors, and make recommendations to the Board.
- 8 4. Make recommendations to the Board regarding the size, structure  
9 and composition of the Board and its committees.
- 10 5. *Oversee the annual Board performance evaluation process,*  
11 *including performance evaluation of each committee of the Board*  
12 *and individual Board members.*
- 13 6. Periodically review the Company's corporate governance policies  
14 and recommend to the Board modifications to the policies as  
15 appropriate.
- 16 7. Review the Company's policies and programs concerning corporate  
17 social responsibility, including environmental, social and  
18 governance matters.
- 19 8. Review and recommend compensation for non-employee members  
20 of the Board, including but not limited to the following elements:  
21 retainer, meeting fees, committee fees, committee chair fees, equity  
22 or stock compensation, deferred compensation, benefits and  
23 perquisites.
- 24 9. Have full access to the Company's executives as necessary to carry  
25 out this responsibility.
- 26 10. Perform any other activities consistent with this Charter, the  
27 Company's Bylaws and governing law as the Committee or the  
28 Board deems necessary or appropriate.
- 29 11. Review the Committee Charter from time to time for adequacy and  
30 recommend any changes to the Board.
- 31 12. Report to the Board on the major items covered at each Committee  
32 meeting.<sup>18</sup>

33 ///

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34 <sup>18</sup> Available at <https://investor.cisco.com/corporate-governance/nomination-and-governance-committee-charter/default.aspx>, last visited September 11, 2020.

1           109. The 2019 Proxy also stated the following with respect to the Nominating  
2 and Governance Committee responsibilities:

3           The Nomination and Governance Committee is responsible for  
4 overseeing, reviewing and making periodic recommendations concerning  
5 Cisco’s corporate governance policies, for reviewing Cisco’s policies and  
6 programs concerning CSR (including ESG matters), for reviewing and  
7 assessing director independence, for making recommendations regarding  
8 the size, structure and composition of the Board and its committees, for  
9 overseeing the annual Board evaluation process, for recommending to the  
10 full Board of Directors candidates for election to the Board of Directors,  
11 and for reviewing and recommending compensation for non-employee  
12 members of the Board. Each member of this committee is an independent  
13 director under applicable Nasdaq listing standards.

14           110. The members of the Committee (Capellas, Garrett, and McGeary) have  
15 breached their fiduciary duties as directors by failing to fulfill these duties. Rather than  
16 causing Cisco to comply with the principles it claims to follow with respect to its  
17 corporate governance, Capellas, Garrett, and McGeary have caused Cisco to merely pay  
18 lip service to these principles. Instead of recommending well-qualified Black and  
19 minority candidates to serve on Cisco’s Board, Capellas, Garrett, and McGeary have  
20 perpetuated the all-white Board under the pretext that the existing members’  
21 “experience” and long tenure on the Board is beneficial to Cisco.

22           111. Moreover, to entrench themselves and their fellow directors in office, all  
23 the Director Defendants have opposed term limits in order to prevent the addition of  
24 qualified Black and minority candidates to the Board.

25           112. As the saying goes, the rich get richer while the poor get poorer. Serving  
26 on Cisco’s Board has enriched the already-rich elites whose profitable sinecure has been  
27 perpetuated by the Defendants’ wrongdoing. Many qualified Black and minority  
28 candidates would benefit greatly from the prestige and compensation that comes with a  
29 position on Cisco’s Board. The following chart sets forth the compensation earned by  
30 outside directors on Cisco’s Board in 2019:

31 ///

32 ///

1 **Fiscal 2019 Director Compensation**

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

4 **Director Compensation**

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

12 **D. The Director Defendants Breached Their Duties of Loyalty and Good**  
 13 **Faith by Failing to Ensure the Company’s Compliance with Federal and**  
 14 **State Laws Regarding Diversity and Anti-Discrimination**

15 113. The Director Defendants have known for years that Cisco has been  
 16 violating federal and state laws regarding diversity, equal pay, and discrimination  
 17 against minorities.

18 114. Defendants’ knowledge is reflected by the fact that, as recently as 2017,  
 19 Cisco was still trying to hide the facts and statistics about its lack of workforce diversity,  
 20 arguing the demographic data was a trade secret. Cisco was one of the few companies in  
 21 Silicon Valley doing so; another company which tried to hide the information was  
 22 Palantir.<sup>19</sup>

23 115. In addition to improperly claiming that the diversity statistics were trade  
 24 secrets, Cisco refused to publish annual diversity reports, thus enabling the Company to

25 <sup>19</sup> See Natasha Tiku, *Cisco Allegedly Underpaid Women and Minorities by \$400*  
 26 *Million. Now the Details Are Set to Come out in Court*, THE WASHINGTON POST, Dec. 5, 2019.

1 attempt to hide the lack of diversity. The Director Defendants were aware of this and  
2 were complicit in these acts, thus demonstrating their scienter about Cisco's failure to  
3 ensure diversity and failure to pay minorities equal pay.

4 **E. The Board Has Breached Its Duties by Failing to Ensure an Independent**  
5 **Chairman**

6 116. There is no independent Chairman of the Board at Cisco. Chuck Robbins  
7 fills that role as well as serving as CEO and member of the Board. Given his multiple,  
8 high level positions within Cisco, as Chairman, Robbins is not independent.

9 117. Simply put, the Director Defendants had a fiduciary duty to ensure that the  
10 Chairman of the Board was independent. They have completely failed to do so, and  
11 their failure to do so has been a huge part of the problem, allowing the lack of diversity  
12 to continue at Cisco, both among the management ranks and on the Board itself. The  
13 Director Defendants' failure to insist upon an independent Chairman at Cisco allowed  
14 Robbins to pursue a meritless personal gain, thus creating its financial statements to  
15 present a false and misleading picture of its financial condition.

16 **F. The Director Defendants Have Breached Their Duties by Continually**  
17 **Re-Hiring PricewaterhouseCoopers LLP as the Company's Auditor**

18 118. PricewaterhouseCoopers LLP ("PwC") is the Company's auditor, and has  
19 been so since 1988 — *thirty-two* years and counting.

20 119. As Cisco's Proxy Statement from 2019 disclosed, the following table sets  
21 forth the approximate aggregate fees billed to Cisco by PwC for fiscal 2019 and fiscal  
22 2018:

<u>Fee Category</u>	<u>Fiscal 2019 Fees</u>	<u>Fiscal 2018 Fees</u>
Audit Fees .....	\$ 25,040,000	\$ 23,305,000
Audit-Related Fees .....	1,980,000	11,135,000
Tax Fees .....	3,730,000	4,375,000
All Other Fees .....	50,000	50,000
<b>Total Fees .....</b>	<b>\$ 30,800,000</b>	<b>\$ 38,865,000</b>

1 120. Despite billing Cisco over \$38 million in fees in both 2018 and 2019, PwC  
2 has completely failed to properly audit and assess the Company's internal controls.

3 121. Defendants Garrett (Chair), Burns and McGeary, as the members of Cisco's  
4 Audit Committee, are responsible for selecting and monitoring PwC. The Company's  
5 2019 Proxy states:

6 ... The Audit Committee has appointed PwC as Cisco's independent  
7 registered public accounting firm for fiscal 2020 and is responsible for pre-  
8 approving all audit and permissible non-audit services to be provided by  
9 PwC. PwC has audited Cisco's consolidated financial statements annually  
10 since fiscal 1988. In order to assure continuing auditor independence, the  
11 Audit Committee considers non-audit fees and services when assessing  
12 auditor independence and periodically considers whether there should be  
13 a regular rotation of the independent registered public accounting firm.  
14 Further, in conjunction with the mandated rotation of the audit firm's lead  
15 engagement partner, the Chairman and other members of the Audit  
16 Committee are directly involved in the selection of PwC's new lead  
17 engagement partner, including the most recent selection of PwC's lead  
18 engagement partner for the period of service beginning with fiscal 2019.  
19 The members of the Audit Committee and the Board believe that the  
20 continued retention of PwC to serve as Cisco's independent registered  
21 public accounting firm is in the best interests of Cisco and its shareholders.

22 122. The 2019 Proxy Statement also represented that:

23 The Audit Committee's policy is to pre-approve all audit and  
24 permissible non-audit services to be provided by the independent  
25 registered public accounting firm. These services may include audit  
26 services, audit-related services, tax services and other services. Pre-  
27 approval is generally provided for up to one year and any pre-approval is  
28 detailed as to the particular service or category of services and is generally  
subject to a specific budget. The independent registered public accounting  
firm and management are required to report periodically to the Audit  
Committee regarding the extent of services provided by the independent  
registered public accounting firm in accordance with this pre-approval,  
and the fees for the services performed to date. The Audit Committee may  
also pre-approve particular services on a case-by-case basis.

123. Defendants Garrett (Chair), Burns and McGeary, as the members of Cisco's  
Audit Committee, also prepared and included a report in the 2019 Proxy as follows:

**Audit Committee Report**

The Audit Committee has reviewed and discussed with Cisco's  
management and PricewaterhouseCoopers LLP the audited consolidated  
financial statements of Cisco contained in Cisco's Annual Report on Form  
10-K for the 2019 fiscal year. The Audit Committee has also discussed with  
PricewaterhouseCoopers LLP the matters required to be discussed by the

1 applicable requirements of the Public Company Accounting Oversight  
Board and the SEC.

2 The Audit Committee has received and reviewed the written  
3 disclosures and the letter from PricewaterhouseCoopers LLP required by  
4 applicable requirements of the Public Company Accounting Oversight  
5 Board regarding the independent accountant's communications with the  
Audit Committee concerning independence, and has discussed with  
PricewaterhouseCoopers LLP its independence from Cisco.

6 Based on the review and discussions referred to above, the Audit  
7 Committee recommended to the Board of Directors that the audited  
8 consolidated financial statements be included in Cisco's Annual Report on  
Form 10-K for its 2019 fiscal year for filing with the Securities and  
Exchange Commission.

9 Submitted by the Audit Committee

10 Mark Garrett, Chairperson  
11 M. Michele Burns  
12 Roderick C. McGeary  
13 Steven M. West

14 124. PwC has served as Cisco's auditor *since 1988*, giving rise to a cozy and  
15 clubby relationship between PwC and Cisco which is not conducive to effective  
16 auditing. The Company's compliance with its stated policies concerning the alleged  
17 commitment to diversity has been abysmal to the point of being basically non-existent.

18 125. The very purpose of an auditor is to assess the Company's internal  
19 controls and determine if they are functioning effectively. Rather than doing so, PwC  
20 has wrongfully and consistently given Cisco's internal controls a clean bill of health and  
21 has failed to point out the obvious — that Cisco lacks an effective system of internal  
22 controls to ensure that the Company is not discriminating against minorities and is  
23 complying with its stated goals and initiatives regarding the promotion of diversity and  
24 the avoidance of discrimination and harassment.

25 126. Defendants Garrett, Burns and McGeary, as the members of the Audit  
26 Committee, breached their fiduciary duties by failing to perform their duties on the  
27 Audit Committee, including failure to ensure that an adequate audit was being  
28 performed of the Company's internal controls regarding diversity, anti-discrimination,  
anti-harassment, pay equity, and other relevant areas of critical importance to the



1 Company. They also signed the 2019 Proxy Statement that contained false statements  
2 regarding the Company's internal controls being effective and adequate, which were  
3 false and gave a very misleading and inaccurate portrayal of these key issues to  
4 stockholders.

5 127. Defendants Burns (Chair), Bush, and Johnson, as the members of the  
6 Finance Committee, breached their fiduciary duties by failing to perform their duties on  
7 the Finance Committee, including failure to ensure that Cisco's compensation policies  
8 and programs do not entail excessive risk. At all relevant times, Cisco's compensation  
9 policies encouraged excessive risk by providing the potential for huge compensation to  
10 Cisco's officers, while at the same time not adequately tying compensation to the  
11 achievement of non-financial goals such as diversity and compliance with the law. As a  
12 result, the Finance Committee defendants breached their duties to help protect Cisco  
13 from legal liability.

14 128. Defendants Burns (Chair), Bush, and Johnson, as the members of Cisco's  
15 Finance Committee, also prepared and included a statement in the 2019 Proxy as  
16 follows:

17 *The Finance Committee reviews and approves Cisco's global*  
18 *investment policy; oversees Cisco's stock repurchase programs; and*  
19 *reviews minority investments, fixed income assets, insurance risk*  
20 *management policies and programs, tax programs, currency, interest rate*  
21 *and equity risk management policies and programs, and capital structure*  
22 *and capital allocation strategy. This committee is also authorized to*  
23 *approve the issuance of debt securities, certain real estate acquisitions and*  
24 *leases, and charitable contributions made on behalf of Cisco.*

25 **G. The Unjust Compensation Awarded to the Individual Defendants**

26 129. Some of the Defendants received unjust compensation and/or  
27 compensation and payments that were higher due to Defendants' wrongdoing and  
28 because the Company was more profitable by paying Black individuals and minorities  
less.

130. Defendants Robbins and Kramer received excessive dividends and equity  
awards than they would have but for the wrongdoing. If Black and minority employees

1 working at Cisco had received fair and equal pay, Cisco would have had higher  
 2 compensation expenses. Moreover, Robbins and Kramer are large beneficiaries of the  
 3 Company's dividends because they own 89,660 and 218,113 shares of the Company's  
 4 stock, respectively. As a result, Robbins received dividends in the last twelve months in  
 5 the amount of \$1.41 per share, or \$126,420.60, and Kramer received dividends in the  
 6 amount of \$1.41 per share, or \$307,539.33. Further, Robbins' equity awards are reflected  
 7 in the attached chart from the 2019 Proxy Statement with respect to the cash-based  
 8 performance awards and stock unit awards in fiscal 2019:

Name	Estimated Future Payouts Under Non-Equity Incentive Plan Awards			Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number of Shares of Stock or Units (#) (1)	Grant Date Fair Value of Stock Awards (\$)(2)
	Grant Date	Threshold (\$)	Target (\$)	Maximum (\$)	Threshold (#)	Target (#)(1)		
Charles H. Robbins . . . .	(3)	—	\$2,981,250	\$7,155,000				
	9/18/18(4)				—	276,454	414,681	\$9,048,316
	9/18/18(5)							99,940 \$4,429,111
Kelly A. Kramer . . . . .	(3)	—	\$1,147,500	\$2,754,000				
	9/18/18(4)				—	157,974	236,961	\$5,170,492
	9/18/18(5)							57,109 \$2,530,940
David Goeckeler . . . . .	(3)	—	\$1,113,750	\$2,673,000				
	9/18/18(4)				—	157,974	236,961	\$5,170,492
	9/18/18(5)							57,109 \$2,530,940
Maria Martinez . . . . .	(3)	—	\$ 911,250	\$2,187,000				
	9/18/18(4)				—	126,379	189,568	\$4,136,406
	9/18/18(5)							45,687 \$2,024,743
Gerri Elliott . . . . .	(3)	—	\$1,012,500	\$2,430,000				
	9/18/18(4)				—	126,379	189,568	\$4,136,406
	9/18/18(5)							45,687 \$2,024,743

21 131. Much of the information about the exact amount of the unjust payments is  
 22 not publicly available, and has been concealed by Defendants. As a result, Plaintiff  
 23 requires discovery in order to properly allege the full extent and details of the  
 24 Defendants' wrongdoing.

25 132. However, at a minimum, based on publicly available information,  
 26 Defendant Robbins, Kramer, and other Defendants have received substantial unjust  
 27 compensation.

133. The Individual Defendants' receipt of this compensation during the relevant time period was unjust in light of their direct participation in the wrongful conduct alleged herein, which constituted bad faith and disloyal conduct. The defendants' receipt of such compensation while they were knowingly or recklessly breaching their fiduciary duties to the Company constitutes unjust compensation that should be recouped by Cisco.

134. The following table provides some additional information about some of the Officer Defendants' compensation during part of the relevant time period:

<u>Named Executive Officer</u>	<u>Base Salary</u>	<u>Target Award Percentage<sup>1</sup></u>	<u>Company Performance Factor</u>	<u>Individual Performance Factor</u>	<u>EIP Payment</u>
Charles H. Robbins .....	\$ 1,325,000	225%	1.08	1.80	\$ 5,795,550
Kelly A. Kramer .....	\$ 850,000	135%	1.08	1.70	\$ 2,106,810
David Goeckeler .....	\$ 825,000	135%	1.08	1.70	\$ 2,044,845
Maria Martinez .....	\$ 675,000	135%	1.08	1.60	\$ 1,574,640
Gerri Elliott .....	\$ 750,000	135%	1.08	1.80	\$ 1,968,300

135. The Officer Defendants' compensation during the relevant period was also unjust because it significantly exceeded the average employees' pay, as disclosed by the Company in its Proxy:

**CEO Pay Ratio**

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

136. If Defendant Robbins' 2019 pay was more than 181 times the median employee's compensation, then it must have been an even higher multiple of the median Black or minority employee's compensation given the government's allegations that Cisco unlawfully paid such employees less than other employees for similar jobs. When viewed in light of these facts, the Defendants' compensation was unjust under equitable

1 principles.

2 137. The following chart provides information about the compensation that the  
3 Director Defendants received during 2019:

4 **Director Compensation**

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

17 138. The Defendants' compensation and stock awards detailed herein were  
18 unjust and should be disgorged or returned by such Defendants because they acted in  
19 bad faith and in a disloyal manner by virtue of the conduct alleged in this complaint.

20 **VII. THE COMPANY HAS SUFFERED SIGNIFICANT DAMAGES**

21 139. The Company has suffered significant harm and damages due to  
22 Defendants' wrongdoing and breaches of duty.

23 140. As a direct and proximate result of the Individual Defendants' conduct, the  
24 Company has expended and will continue to expend significant sums of money. Such  
25 expenditures include, but are not limited to, the amounts paid to outside lawyers,  
26 accountants, and investigators in connection with internal and external investigations  
27 into issues pertaining to the lack of diversity at Cisco, discrimination lawsuits,  
28 harassment claims, wrongful termination lawsuits, and lack of pay equity claims.

141. As recently as March 2020, Cisco agreed to pay \$2,000,000 in lost wages  
and interest to affected employees, and pay an additional \$2,750,000 over the next five  
years in pay-equity adjustments to its employees due to a DOL claim that "*the company*

1 *paid women, black and Hispanic employees less than comparable male and white*  
2 *employees in similar positions."*

3 142. Moreover, Cisco's reputation, goodwill, and market capitalization have  
4 been harmed as a result of the Individual Defendants' misconduct.

5 143. Further, as a direct and proximate result of the Individual Defendants'  
6 actions, Cisco has expended, and will continue to expend, significant sums of money.  
7 Such expenditures include, but are not limited to:

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

11 (b) costs incurred from defending and paying settlements in  
12 discrimination lawsuits, since the Individual Defendants' wrongdoing caused  
13 discrimination to proliferate at Cisco;

14 (c) costs incurred from defending and settling governmental  
15 investigations into the Individual Defendants' misconduct;

16 (d) loss of reputation; and

17 (e) costs incurred from compensation and benefits paid to the  
18 Individual Defendants who have breached their duties to Cisco.

## 19 **VIII. DEMAND FUTILITY**

20 144. Plaintiff brings this action derivatively in the right and for the benefit of  
21 Cisco to redress injuries suffered, and to be suffered, by Cisco and its stockholders as a  
22 direct result of the Officer Defendants' violations of federal securities laws and breaches  
23 of fiduciary duty.

24 145. Cisco is named as a nominal defendant solely in a derivative capacity.

25 146. This is not a collusive action to confer jurisdiction on this Court that it  
26 would not otherwise have.

27 147. At the time this action was commenced, Cisco's Board consisted of the  
28

1 following 10 members: Defendants Burns, Bush, Capellas, Garrett, Johnson, McGeary,  
2 Robbins, Sarin, Saunders, and Su.

3 148. Plaintiff has not made any demand on Cisco to institute this action because  
4 such a demand would be a futile, wasteful, and useless act.

5 149. Under California law, demand is futile if a majority of the directors are  
6 either interested in or not independent of a person interested in the claims asserted.  
7 Further, where a board is made up of an even number of directors, a majority of  
8 directors is considered to be half the Board.

9 150. Based on these principles, demand is futile here if five (5) of the ten (10)  
10 directors are either interested in or not independent of a person interested in the claims  
11 asserted herein. As discussed below, demand is futile because (i) the Officer Defendants  
12 face a substantial likelihood of liability for violating the federal securities laws and  
13 breaching their duty of due care, and (ii) at least four other directors are not independent  
14 of the Officer Defendants.

15 A. **Demand is Futile Because All the Board Members Face a Substantial**  
16 **Likelihood of Liability for Breaching Their Duties of Candor and**  
17 **Loyalty**

18 151. The challenged misconduct at the heart of this case involves the direct  
19 facilitation of unlawful activity, including the Board knowingly and/or consciously  
20 presiding over the Company's discrimination against women, Blacks and other  
21 minorities at Cisco. In their capacity as corporate directors, the Board members  
22 affirmatively adopted, implemented, and/or condoned a business strategy based on  
23 Cisco's deliberate and widespread violations of law. The Board members cannot  
24 plausibly claim ignorance concerning these wide-ranging compliance failures. Indeed,  
25 the Board was specifically and uniquely accountable and responsible for the compliance  
26 failures discussed herein given that the Board was repeatedly made aware of the  
27 Company's failed internal controls and failure to comply with regulations.

28 152. Indeed, the lack of diversity challenged by this lawsuit pertains to the

1 Board itself, which does not contain a single African American individual. The  
2 Company's 2019 Proxy, which was approved by all the directors, stated:

3       Additionally, due to the global and complex nature of our business, *the*  
4       *Board believes it is important to consider diversity of race, ethnicity,*  
5       *gender, age, education, cultural background, and professional experiences*  
6       *in evaluating board candidates in order to provide practical insights and*  
7       *diverse perspectives.*

8       153. All Director Defendants thus knew that the Company's Board composition  
9       was required to reflect the benefits of diversity, including diversity as to race and  
10       ethnicity.

11       154. Despite having actual knowledge of this requirement, all Director  
12       Defendants knew that, year after year, Cisco did not choose any racially or ethnically  
13       diverse candidates to be Board members.

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

26       156. Moreover, despite touting its signatory status on the White House Equal  
27       Pay Pledge and its participation in the Employers for Pay Parity Consortium, Cisco does  
28       not include identifiable pay parity statistics in its Proxy Statements and Annual Reports  
for the years 2017, 2018 and 2019.

1           157. The Director Defendants had actual knowledge that the summary pay  
2 parity statements included in Cisco's CSR Reports from 2018 and 2019 demonstrate that  
3 twice as many employees experienced discriminatory pay disparity in 2019 as in 2018.

4           158. The Director Defendants were also aware that the Caste Discrimination  
5 Lawsuit points out that pay disparity is but one symptom of a more widespread  
6 discrimination and lack of diversity problem. Cisco has not yet responded to or made a  
7 public statement regarding the Caste Discrimination Lawsuit.

8           159. The Board has had actual knowledge of all these facts at all relevant times.

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

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

24           162. Furthermore, Defendants Burns, Garrett, and McGeary have all been  
25 members of the Audit Committee during the relevant period, and are conflicted from  
26 considering a demand because they each face a substantial likelihood of liability as a  
27 result of their conduct on the committee. As stated in the Proxy Statement, the Audit  
28



1 Committee's charter imposes specific duties on members of this committee to, among  
2 other things, review the Company's practices with respect to risk assessment and risk  
3 management and meet with management and members of internal audit to discuss the  
4 Company's significant risk exposures and the steps management has taken to monitor,  
5 control and mitigate such exposures.

6 163. In accordance with its charter, the Audit Committee also reviews the  
7 Company's policies and practices with respect to the financial reporting and control  
8 aspects of risk management, and must review the status of risk oversight activities  
9 performed by the Board and its other committees.

10 164. As members of the Audit Committee, Defendants Burns, Garrett, and  
11 McGeary violated their fiduciary duties to act in good faith to address the pervasive  
12 legal violations discussed herein, including the unlawful pay equity gap and  
13 discrimination against women and minorities with respect to hiring and promotion.  
14 Accordingly, Defendants Burns, Garrett, and McGeary face a substantial likelihood of  
15 liability and cannot impartially consider a demand. Therefore, demand is excused with  
16 respect to these defendants.

17 165. Furthermore, the Director Defendants were on the Board during the  
18 relevant period, and thus were exposed to and had knowledge of the "red flags" alleged  
19 herein regarding unlawful discrimination and failure to abide by the Company's stated  
20 policies to promote diversity. The directors' inaction in the face of red flags subjects  
21 them to a substantial likelihood of liability for their conduct and, therefore, demand is  
22 excused.

23 166. The Board is likewise conflicted from and unable to pursue Cisco's claims  
24 against members of the Company's management, including Defendant Robbins. Any  
25 effort to prosecute such claims against these Defendants for their direct roles in  
26 implementing a business strategy designed to ignore or otherwise circumvent laws  
27 prohibiting discrimination would necessarily expose the Board's own culpability for the  
28

1 very same conduct. In other words, given that the Board had been on notice of the  
2 wrongdoing, any effort by the Board to hold Defendants liable would surely lead these  
3 executives to defend on the ground that their own conduct was consistent with Cisco's  
4 corporate policy and practice, as established by and known to the Board.

5 **B. The Entire Board Faces a Substantial Likelihood of Liability for**  
6 **Failure to Discharge Their Oversight Obligations in Good Faith**

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

19 168. All of the Board's directors, at the time this action was initiated, failed to  
20 act in the face of known duties. Indeed, as explained herein, they were presented with –  
21 but consciously ignored (and/or perpetuated) – substantial “red flag” warnings that  
22 Cisco was discriminating against Blacks and other minorities with respect to hiring,  
23 promotion, and evaluation of Board candidates. The Board also knew that *African*  
24 *Americans make up just 3.8% of Cisco's U.S. workforce, and there are no Blacks on the Board or*  
25 *among the Company's Executive Leadership team.*

26 169. These and other wrongful acts have caused and will continue to cause the  
27 Company to be subjected to significant potential fines and penalties and numerous  
28 lawsuits. They have also resulted in severe harm to the Company's business reputation.

1 Since the wrongdoing and harm alleged in this Complaint flows directly from the  
2 Board's conscious decision to permit the sustained and systemic violations of law in  
3 question, the Director Defendants are incapable of exercising the independent judgment  
4 required to determine whether the initiation of an action against the Defendants is  
5 appropriate.

6 **C. Demand Is Futile Against a Majority of the Board Who Are Not Officer**  
7 **Defendants Due to a Lack of Independence, Because Robbins Controls**  
8 **Cisco and Its Board**

8 170. Because Defendant Robbins faces a substantial likelihood of liability,  
9 demand is futile if four of the remaining nine directors lack independence from  
10 Defendant Robbins. As discussed herein, Defendant Robbins has complete control over  
11 the Board with deep ties to many of the Non-Party Directors, which renders them  
12 incapable of assessing a demand.

13 171. Robbins is the Chairman of the Board and CEO of Cisco. Robbins  
14 dominates and controls the Board due to his ownership interests and position, and his  
15 domination of the Board. He is a member of the board of directors of BlackRock, Inc.,  
16 which is the Company's second largest shareholder, owning 323,233,397 shares, or 7.6%  
17 of all outstanding shares.

18 172. Robbins' dual roles of Chairman & CEO, combined with his position on the  
19 board of BlackRock, which is the Company's second largest shareholder, as well as the  
20 other facts alleged herein, demonstrate that Robbins is a control person at Cisco, and that  
21 he dominates and controls the Board. As a result of Robbins' control and influence over  
22 Cisco, no director could ever be appointed or reelected to the Board over Robbins'  
23 objections. As part of his effort to control the Board, Robbins richly rewards those who  
24 demonstrate their loyalty to him, and purges those who question his decisions or  
25 otherwise threaten his leadership.

26 173. Further, as discussed below, each director or officer has received  
27 significant compensation while serving as a fiduciary of Cisco. Given Defendant  
28

1 Robbins' prominent role in retaining the employ of these individuals, as well as their  
2 material ties to Robbins, the Individual Defendants are incapable of assessing demand as  
3 to the claims alleged herein.

4 **IX. CAUSES OF ACTION**

5 **COUNT I**

6 **Breach of Fiduciary Duty**

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

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

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

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

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

21 **COUNT II**

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

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

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

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

28 180. The Individual Defendants owed the Company certain fiduciary duties as  
fully set out herein. By committing the acts alleged herein, the Individual Defendants

1 breached their fiduciary duties owed to the Company.

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

8 182. The Company was injured as a direct and proximate result of the  
9 aforementioned acts.

10 **COUNT III**  
11 **Unjust Enrichment**  
12 **Against All Individual Defendants and Does 1-30**

13 183. Plaintiff incorporates by reference and realleges each and every allegation  
14 contained above as though fully set forth herein.

15 184. By their wrongful acts and omissions, the Individual Defendants were  
16 unjustly enriched at the expense of, and to the detriment of, the Company.

17 185. During the Relevant Period, the Individual Defendants either received  
18 annual stipends, bonuses, stock options, or similar compensation from the Company  
19 that was tied to the financial performance of the Company or received compensation  
20 that was unjust in light of the Individual Defendants' bad faith conduct.

21 186. Plaintiff, as shareholder and representative of the Company, seeks  
22 restitution from the Individual Defendants and seeks an order from this Court  
23 disgorging all profits, benefits, and other compensation, including any performance-  
24 based compensation, obtained by the Individual Defendants due to their wrongful  
25 conduct and breach of their fiduciary duties.

26 187. Plaintiff, on behalf of the Company, has no adequate remedy at law.

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1 **X. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of the Company, requests judgment and relief  
3 as follows:

4 A. Against all of the Defendants, jointly and severally, and in favor of the  
5 Company for the amount of damages sustained by the Company along with pre- and  
6 post-judgment interest as allowed by law resulting from Defendants' breaches of  
7 fiduciary duty, abuse of control, gross mismanagement, and violation of the federal  
8 proxy laws;

9 B. Directing the Company to take all necessary actions to reform and  
10 improve its corporate governance and internal procedures to comply with applicable  
11 laws and to protect the Company and its shareholders from a repeat of the damaging  
12 events described herein, including, but not limited to, putting forward for shareholder  
13 vote, resolutions for amendments to the Company's By-Laws or Articles of  
14 Incorporation and taking such other action as may be necessary to place before  
15 shareholders for a vote of the following Corporate Governance Policies:

16 (1) a proposal to require at least three current Directors to resign from  
17 the Board and setting forth a resolution to replace such Directors with two Black  
18 persons and one other minority;

19 (2) a proposal to replace Chuck Robbins as Chairman with a non-  
20 executive director who is independent;

21 (3) all Director Defendants named in this suit should return all their  
22 2020 compensation received from Cisco (including any stock grants), and donate  
23 the money to an acceptable charity or organization whose efforts include the  
24 advancement of Black people and minorities in corporate America;

25 (4) reformation of the annual Corporate Social Responsibility Report so  
26 that it contains particularized information about the hiring, advancement,  
27 promotion, and pay equity of all minorities at Cisco;

28 (5) dedication of a \$775 million fund to hire Black and minority

1 employees, promote them to more management positions at the Company,  
2 establish and maintain a mentorship program at Cisco for Black and minority  
3 employees that is committed to providing the skills and mentorship necessary to  
4 succeed in corporate America, and bolster the Conscious Culture framework,  
5 inclusive Workforce Planning, and Diverse Talent Accelerator solutions;

6 (6) dedication of a \$100 million fund for corporate donations to non-  
7 profits combatting racial, ethnic and gender discrimination and harassment in the  
8 workforce, and itemize donations by fund;

9 (7) requirement of annual training of Cisco's entire Board and all  
10 Section 16 executive officers, which training should at a minimum focus on racial  
11 and ethnic diversity, affirmative action, anti-discrimination and anti-harassment,  
12 and other relevant topics;

13 (8) immediately setting specific goals with respect to the number of  
14 Black and minority candidates to hire at the Company over the next five years,  
15 and Cisco should adopt a revised executive compensation program that makes  
16 30% of executives' compensation tied to the achievement of the racial and ethnic  
17 diversity goals;

18 (9) replacement of PricewaterhouseCoopers LLP as its auditor. Cisco is  
19 one of PwC's largest customers, and PwC has served as Cisco's auditor *since*  
20 *1988*, giving rise to a cozy and clubby relationship between PwC and Cisco which  
21 is not conducive to effective auditing. The Company's compliance with its stated  
22 policies concerning the alleged commitment to racial and ethnic diversity at the  
23 top level have been abysmal to the point of being basically non-existent. The very  
24 purpose of an auditor is to assess the Company's internal controls and determine  
25 if they are functioning effectively. Rather than doing so, PwC has wrongfully and  
26 consistently given Cisco's internal controls a clean bill of health and has failed to  
27 point out the obvious – that Cisco lacks an effective system of internal controls to  
28

1 ensure that the Company is not discriminating against minorities and is  
2 complying with its stated goals and initiatives regarding the promotion of non-  
3 gender based diversity and the avoidance of discrimination and harassment;

4 (10) a proposal to strengthen the Board's supervision of operations and  
5 develop and implement procedures for greater non-controlling shareholder input  
6 into the policies and guidelines of the Board;

7 (11) a proposal to strengthen Cisco's oversight of its procedures  
8 regarding the termination of employees, executives, and Board members accused  
9 of discrimination;

10 (12) a proposal to strengthen internal controls concerning  
11 discrimination;

12 (13) a proposal to eliminate the use of Non-Disclosure Agreements at the  
13 Company so that current and former employees can report any and all instances  
14 of suspected discrimination without threat of legal action; and

15 (14) a proposal to eliminate the use of mandatory arbitration for  
16 employee disputes and claims of wrongful termination and discrimination.

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

22 D. Awarding to Cisco restitution from Defendants, and each of them, and  
23 ordering disgorgement of all profits, benefits, and other compensation obtained by  
24 Defendants;

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

26 F. Awarding to Plaintiff the costs and disbursements of the action, including  
27 reasonable attorneys' fees, accountants' fees, experts' fees, costs, and expenses; and  
28



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

2 **DEMAND FOR JURY TRIAL**

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

5 Dated: September 24, 2020

Respectfully submitted,  
6 BOTTINI & BOTTINI, INC.  
7 Francis A. Bottini, Jr. (SBN 175783)  
8 Anne B. Beste (SBN 326881)  
9 Albert Y. Chang (SBN 296065)  
Yury A. Kolesnikov (SBN 271173)

10 s/ Francis A. Bottini, Jr.  
Francis A. Bottini, Jr.

11 7817 Ivanhoe Avenue, Suite 102  
12 La Jolla, California 92037  
13 Telephone: (858) 914-2001  
14 Facsimile: (858) 914-2002  
15 Email: fbottini@bottinilaw.com  
abeste@bottinilaw.com  
achang@bottinilaw.com  
ykolesnikov@bottinilaw.com

16 *Attorneys for Plaintiff Edward Sanchez*

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