



October 4, 2023

Ms. Robin L. Washington  
c/o Corporate Secretary  
Salesforce Tower  
415 Mission Street, 3rd Floor  
San Francisco, CA 94105

**Re: Violations of Federal Law and Waste of Corporate Assets**

Dear Ms. Washington,

America First Legal Foundation (“AFL”) is a national, nonprofit organization working to protect the rule of law, due process, and equal protection for all Americans.

The purpose of this letter is to alert you to potential mismanagement and apparently intentional and systemic violations of federal civil rights laws that threaten the waste of the Company’s assets. As you should know, workplace anti-discrimination mandates are an essential and mission-critical regulatory compliance risk. You and the Board, among your other fiduciary obligations, have a duty of oversight and must put into place a reasonable system of compliance monitoring and reporting relating to these mandates. However, it appears that management and the Board have failed to take these critical steps, suggesting both a lack of internal controls and an inappropriate disregard for your fiduciary duties to the Company and its shareholders. Furthermore, it appears that the Board has improperly failed to disclose the risks of its environmental, social, and governance (ESG) policies to shareholders.

**I. Unlawful Employment and Contracting Practices**

**A. Unlawful employment practices**

Salesforce openly admits—even touts—its racial, sexual, and gender discrimination in its recruitment and hiring programs. Since at least 2019, Salesforce has engaged in discriminatory hiring and promotion processes using a “Racial Equity and Justice Taskforce.”<sup>1</sup> Moreover, in the spring of 2023, Salesforce announced the launch of a new gender-discriminatory hiring program designed to favor candidates identifying

---

<sup>1</sup> Lori Castillo Martinez, *Our 2023 Annual Equality Update: Where We Are and Where We’re Going*, SALESFORCE, (Feb. 28, 2023), <https://sforce.co/3Xc6Ep7>; See also, *Racial Equity and Justice Taskforce*, SALESFORCE, <https://sforce.co/44sIKZu>.

as “non-binary” or “female.” Salesforce lists its desired hiring outcomes or quotas as the following:

- 40% of employees globally to be women-identifying and non-binary by the end of 2026.
- 50% increase in our U.S. representation of Black, Indigenous, Latinx, and Multiracial employees by the end of 2023.
- An aim to increase Black, Indigenous, Latinx, and Multiracial leadership by 50% by the end of 2023.<sup>2</sup>

To help Salesforce achieve its desired sex and race “balance,” Salesforce has tied its executive compensation to hiring quotas.<sup>3</sup>

These practices are prohibited. 42 U.S.C. § 2000e-2(a)(2) prohibits employers from limiting, segregating, or classifying employees in any way that deprives or tends to deprive an individual of employment opportunities or otherwise adversely affect his or her status as an employee because of such individual’s race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(d) prohibits discrimination against any individual because of his race, color, religion, sex, or national origin in admission to any workplace training program. However, Salesforce has created discriminatory “equality groups” that are designed to do both of these things.<sup>4</sup> For example, the “BOLDforce” is designed to “expand and empower the Salesforce black community,”<sup>5</sup> while the “Women’s Network,” is designed to “amplif[y] the progress of women in every step of their journey ... through professional and personal development.”<sup>6</sup> Tellingly, there are no comparable programs for white male employees.<sup>7</sup>

Salesforce acknowledges its use of preferred hiring outcomes and quotas and highlights its supposed need to go further, stating that “True representation goes beyond hiring,” and promising to continue “building out the levers needed to achieve our goal, including dedicated resources and programs to reach more women and members of the non-binary community.”<sup>8</sup> Salesforce has seen swift success with its discriminatory process, “doubling U.S. representation of black leaders at the VP level or above, more than a year ahead of schedule” and attaining “More than 50% of U.S. employee[s] ... [from] underrepresented groups.”<sup>9</sup> Specifically, Salesforce published data showing successful discrimination in its recruitment process with year-over-year

---

<sup>2</sup> *Let’s Build a More Inclusive World*, SALESFORCE, <https://sforce.co/44Ic1PE>.

<sup>3</sup> *Equality*, SALESFORCE, <https://sforce.co/47ZeOWS>.

<sup>4</sup> *Equality Groups*, SALESFORCE, <https://sforce.co/3Esrbxi>.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Brown v. Board of Education of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 495 (1954).

<sup>8</sup> Lori Castillo Martinez, *Salesforce Commits to a Workforce with at Least 40% Women, Non-Binary Employees in Four Years*, SALESFORCE, (Aug. 11, 2022), <https://sforce.co/3pgxvDN>.

<sup>9</sup> Lori Castillo Martinez, *Our 2023 Annual Equality Update: Where We Are and Where We’re Going*, SALESFORCE, (Feb. 28, 2023), <https://sforce.co/3Xc6Ep7>.

increases from 2021 to 2022 in the hiring of Latinx, Women, and Black new workers of roughly 21%, 13%, and 5%, respectively.<sup>10</sup> Unsurprisingly, providing financial compensation to encourage executives to illegally discriminate leads to illegal discrimination.

## **B. Unlawful contracting practices**

On August 27, 2020, Craig Cuffie (then the Salesforce Chief Procurement Officer) announced that “[Salesforce is] committed to spending \$100 million with Black-owned businesses over the next three years. Salesforce Ventures, our venture arm, has also committed to invest \$100 million in companies led by Black and underrepresented founders.”<sup>11</sup>

In 2023, Salesforce renewed a sponsorship program for Black business owners. In this program, Salesforce provides “25 Black-owned business founders with sponsorship, education, and networking opportunities.”<sup>12</sup> Only Black individuals, and no others, are eligible to contract for these benefits.

42 U.S.C. 1981 prohibits racial preferences in contracting.<sup>13</sup> This unlawful use of race to award contracts poses grave risks to the financial health of the company, as it appears widespread, and Section 1981 actions have no damages cap. Many successful plaintiffs also receive punitive damages reaching into the millions. For example, a recent Section 1981 race discrimination verdict in the Eastern District of Texas resulted in a judgment of over \$70 million (plus fees and pre/post-judgment interest).<sup>14</sup> In a different Section 1981 case, a white employee brought action against her employer for race discrimination under Section 1981 (and related state laws), resulting in a jury verdict of over \$25 million.<sup>15</sup>

## **C. These programs needlessly create legal and reputational risk and threaten the waste of corporate assets**

Racial, ethnic, and sex-based “balancing” and quotas in hiring, training, compensation, and promotion are patently unlawful. *See* 42 U.S.C. §§ 2000e-2(a),

---

<sup>10</sup> Lori Castillo Martinez, *Our 2022 Annual Equality Update: Accelerating Representation and Racial Equality*, SALESFORCE, (Feb. 10, 2022), <https://sforce.co/3OxIm6q>.

<sup>11</sup> Craig Cuffie, *National Black Business Month: How Salesforce is Taking Action*, SALESFORCE (Aug. 27, 2020), <https://sforce.co/3r3jVVw>.

<sup>12</sup> 42 U.S.C. 2000e-2(d).

<sup>13</sup> *McDonald v. Santa Fe Trail Transp. Corp.*, 427 U.S. 273, 295 (1976) (holding that Section 1981 bars discrimination against white persons, as well as discrimination against racial minorities).

<sup>14</sup> *Yarbrough v. Glow Networks, Inc.*, No. 4:19-CV-905-SDJ, 2022 WL 1143295 (E.D. Tex. Apr. 18, 2022).

<sup>15</sup> Judgment in Favor of Plaintiff, *Phillips v. Starbucks Corp.*, 624 F. Supp. 3d 530 (D.N.J. 2022) ECF No. 153.

(d).<sup>16</sup> Here, the evidence is that the Company is knowingly and intentionally discriminating with respect to compensation, terms, conditions, or privileges of employment because of race and sex in violation of 42 U.S.C. § 2000e-2(a)(1). Similarly, race-based contracting and procurement practices plainly violate applicable federal laws. Since the Civil Rights Act of 1866, codified at 42 U.S.C. § 1981, federal law has prohibited all forms of racial discrimination in private contracting. As the late Justice Ginsburg noted, § 1981 is a “‘sweeping’ law designed to ‘break down all discrimination between black men and white men’ regarding ‘basic civil rights.’”<sup>17</sup> “By intentionally setting out a rule that makes hiring turn on sex, the employer violates the law, whatever he might know or not know about individual applicants.”<sup>18</sup>

Management’s admissions strongly suggest that it is knowingly and intentionally violating well-established federal civil rights laws. Alternatively, if management has not actually engaged in the above-described conduct but merely pretended to do so, then it is cynically and intentionally misleading customers, workers, and investors. There is no third alternative. Management’s conduct, as outlined above, has recklessly exposed the Company both to potential state and federal civil rights investigations and enforcement actions and to significant reputational harm. Such conduct suggests either a disregard for management’s fiduciary obligations or a major breakdown in its compliance controls.

## II. Waste and Breach of Fiduciary Duty

In its 2023 Annual Report to investors, management states that the technology industry “is subject to substantial and continuous competition for engineers with high levels of experience in designing, developing and managing software and Internet-related services, as well as competition for sales executives, data scientists and operations personnel.”<sup>19</sup>

If true, then the company’s unlawful employment and contracting practices, as described above, waste shareholder assets without competent business justification. By law, hiring should be based solely on engineering and operational competence and not on immutable characteristics such as race, color, national origin, religion, and sex. Management’s decision to compensate executives based on the race, color, national origin, religion, and sex of the employees they hire<sup>20</sup> necessarily and irrationally limits the talent pool.

---

<sup>16</sup> See, e.g., *United Steelworkers of Am. v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 621-641 (1987); see also *Bostock v. Clayton Cnty., Georgia*, 140 S. Ct. 1731 (2020).

<sup>17</sup> *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 140 S.Ct. 1009, 1020 (2020) (Ginsburg, J. concurring) (quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 432 (1968)).

<sup>18</sup> *Bostock*, 140 S. Ct. at 1736.

<sup>19</sup> Salesforce Inc., Annual Report at 19, (Form 10-K) (Mar. 8, 2023) (available at <https://bit.ly/3LCpwsK>) (hereinafter “Form 10-K”).

<sup>20</sup> Salesforce, Inc., 2023 Proxy Statement at 25, (available at <https://bit.ly/3EYiN8E>).

Additionally, management has failed to fully assess the risks related to its environmental, social, and governance (“ESG”) policies. Specifically, management is focused solely on the risks associated with the company’s failure to, *inter alia*, maintain and execute unlawful hiring and contracting policies.<sup>21</sup> Management, however, has wrongly concealed the patent risks associated with its ESG policies from investors. Neither the relevant Annual Report nor the company’s Proxy Statements acknowledge the market and reputational risk associated with its extreme ESG stance.<sup>22</sup>

### III. Conclusion

The Company is organized and carried on primarily for the profit of shareholders. If the Company’s officers and directors are unable to demonstrate that the above-described conduct and policies clearly and concretely create shareholder value, then they have violated their fiduciary duty to shareholders by spending the Company’s funds to advance idiosyncratic political and social views. Even if every part of management’s obsessive “anti-racism,” “equity,” and “sustainability” agenda is legal (which it is not), none of it has anything to do with the quality of the products and services the Company provides to customers and consumers.

To prevent the waste of the Company’s assets, to repair and safeguard the Company’s brand, goodwill, and reputation, to protect the Company’s shareholders, and in fulfillment of your fiduciary duty to ensure the Company complies with civil rights laws and uses corporate funds for business-related matters only, the Board should immediately take the following steps:

1. Retain an independent counsel for a full investigation of and a report on the events and circumstances behind management’s decision to explicitly focus on a clear pattern of unlawful hiring, training, promotion, and contracting practices for admittedly race-based and sex-based purposes. To avoid the

---

<sup>21</sup> The Annual Report states:

If our ESG practices do not meet evolving investor or other stakeholder expectations and standards, then our reputation, our ability to attract or retain employees, and our attractiveness as an investment, business partner, acquiror or service provider could be negatively impacted. Further, our failure or perceived failure to pursue or fulfill our goals and objectives or to satisfy various reporting standards on a timely basis, or at all, could have similar negative impacts or expose us to government enforcement actions and private litigation.

Salesforce Inc., Annual Report at 29, (Form 10-K) (Mar. 8, 2023) (available at <https://bit.ly/3LCpwsK>).

<sup>22</sup> See, e.g., David Rutz, *Target May Have ‘Lost Control of the Narrative’ as Financial Losses, LGBT Anger Mount: Consumer Researchers, Target’s Market Value has Declined More Than \$12 Billion in Recent Days*, FOX NEWS (May 31, 2023), <https://fxn.ws/3ZxpsQQ>; James Bickerton, *Bud Light Stock Suffers Huge Tumble as Company Loses \$4 Billion in One Week*, NEWSWEEK (June 1, 2023), <https://bit.ly/3qmQQ6E>; Suzanne O’Halloran, *Target Losses Swell to \$12.4 Billion; Shares at Lowest Since 2020*, FOX BUSINESS (May 30, 2023), <https://fxn.ws/42iho6c>; Phil Hall, *The Crisis at Disney: Part 1, Bob Chapek’s Blunder Road*, MARKETS INSIDER (June 21, 2022), <https://bit.ly/3zTe6vM>.

expense and disruption of litigation enforcing the Company's disclosure obligations under 8 Del. Code § 220, the Board should affirmatively and transparently disclose all of management's contemporaneous emails and other communications on this topic to the Company's employees and shareholders. Among other things, all communications to or from the Company's General Counsel regarding this matter should be made available. The Company should promptly and transparently publish all studies and analytics data that it possesses, demonstrating that these policies enhance the Company's brand reputation and promote alignment between its business and the tastes and preferences of its core customers.

2. Compel the Company to: (a) Immediately cease and desist from all employment practices that discriminate based on race, color, sex, or national origin, and/or that are designed to "diversify" the race, color, national origin, religion, and/or sex of the Company's workforce; (b) immediately cease and desist from making any statements or representations promoting or promising employment outcomes based on race, color, sex, and/or national origin; (c) cease providing compensation based on discriminatory practices; and (d) retain an independent counsel to conduct a compliance audit of the Company's hiring, promotion, recruitment, and purchasing practices and to ensure compliance with federal civil rights laws. Again, to avoid the expense and disruption of litigation enforcing the Company's disclosure obligations under 8 Del. Code § 220, the compliance audit and all relevant emails and other management communications regarding the racial balancing and other prohibited hiring and contracting practices described in the Company's 10-K should be made promptly and fully available.
3. In anticipation of litigation, direct the Company to preserve all records relevant to the issues and concerns noted above, including but not limited to paper records and electronic information, including email, electronic calendars, financial spreadsheets, PDF documents, Word documents, and all other information created and/or stored digitally. This list is intended to give examples of the types of records you should retain. It is not exhaustive.
4. Disclose all material facts related to the adverse political and economic risk associated with the measures management has taken to achieve its stated ESG goals and targets in compliance with Section 14(a) of the Exchange Act and Rule 14a-9 promulgated thereunder; with Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder; and with Section 20(a) of the Exchange Act.

[Signature page follows]

Thank you in advance for your cooperation.

Sincerely,

/s/ Nicholas R. Barry

Nicholas R. Barry

Senior Litigation Counsel

America First Legal Foundation

CC: Marc Benioff, Chair of the Board  
Parker Harris, Board Member  
Laura Alber, Board Member  
Craig Conway, Board Member  
Arnold Donald, Board Member  
Neelie Kroes, Board Member  
Sachin Mehra, Board Member  
Mason Morfit, Board Member  
Oscar Munoz, Board Member  
John V. Roos, Board Member  
Maynard Webb, Board Member  
Susan Wojcicki, Board Member

While we take all of our stakeholders into account, with respect to our stockholders in particular, we evaluate and seek to align our governance practices and principles to the Corporate Governance Principles for U.S. Listed Companies published by the Investor Stewardship Group ("ISG"), a collective of some of the largest U.S.-based institutional investors and global asset managers, and we believe that our governance policies and practices are consistent with the ISG principles. The following table shows how our key governance practices align with the ISG principles:

ISG Principle	Salesforce Governance Policy or Practice
<b>Principle 1:</b> Boards are accountable to stockholders.	<ul style="list-style-type: none"> <li>• Annual election of each director for a one-year term (no classified board)</li> <li>• Majority voting in uncontested director elections</li> <li>• Proxy access on market terms</li> <li>• No poison pill</li> <li>• Extensive disclosure of our corporate governance practices</li> </ul>
<b>Principle 2:</b> Stockholders should be entitled to voting rights in proportion to their economic interest.	<ul style="list-style-type: none"> <li>• Each stockholder entitled to one vote per share (no dual class structure)</li> </ul>
<b>Principle 3:</b> Boards should be responsive to stockholders and be proactive in order to understand their perspectives.	<ul style="list-style-type: none"> <li>• Extensive year-round stockholder engagement program, with director participation as appropriate and feedback reported directly to the Board</li> <li>• Board responsive to stockholder feedback, including on our Board structure and composition, ESG disclosures, executive compensation and governance matters pertaining to stockholder rights</li> <li>• All directors participated in our 2022 Annual Meeting and were available to respond to stockholder questions</li> </ul>
<b>Principle 4:</b> Boards should have a strong, independent leadership structure.	<ul style="list-style-type: none"> <li>• Strong, credible Lead Independent Director with expansive duties selected by the independent directors</li> <li>• Non-management directors meet regularly in executive session</li> <li>• Fully independent audit, compensation and governance committees (with independent chairs)</li> </ul>
<b>Principle 5:</b> Boards should adopt structures and practices that enhance their effectiveness.	<ul style="list-style-type: none"> <li>• Approximately 77% of our director nominees are independent, with diverse backgrounds, skills and experiences</li> <li>• No overboarded directors</li> <li>• Annual Board and committee self-evaluation program</li> <li>• Consistent track record of open dialogue between Board and various levels of management</li> </ul>
<b>Principle 6:</b> Boards should develop management incentive structures that are aligned with the long-term strategy of the company.	<ul style="list-style-type: none"> <li>• Compensation Committee annually reviews and approves incentive program design, goals and objectives for alignment with compensation and business strategies</li> <li>• Annual and long-term incentive programs are designed to reward financial and operational performance that furthers short- and long-term strategic objectives</li> <li>• Executive compensation program received over 89% support in 2022</li> <li>• A portion of senior executive compensation is tied to ESG measures</li> </ul>

## Board Meeting Attendance and Director Communications

During the fiscal year ended January 31, 2023 ("fiscal 2023"), the Board held nine meetings. During fiscal 2023, all directors attended at least 75% of the aggregate of the total number of meetings of the Board and the total number of meetings held by any of the committees of the Board on which such director served during the period the director was on the Board or committee, as applicable. On average, our directors attended 99% of meetings in fiscal 2023. The non-management members of the Board also meet regularly in executive sessions without management present, and the independent directors separately meet in executive session at least once per year. At these sessions, the Lead Independent Director acts as Presiding Director.

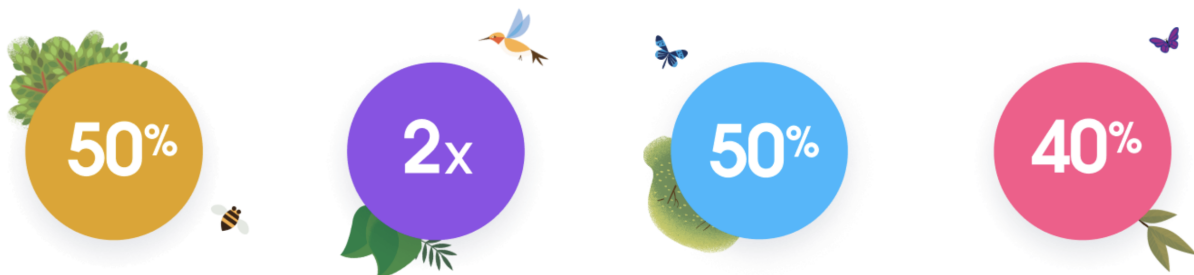
Directors are also expected to participate in our annual meeting of stockholders absent an unavoidable and irreconcilable conflict. All directors participated in the 2022 Annual Meeting of Stockholders. Stockholders and other interested parties may communicate with the Lead Independent Director, or with any and all other members of the Board, by mail addressed to the intended recipient in care of our Corporate Secretary at our principal executive offices or by email to [corporatesecretary@salesforce.com](mailto:corporatesecretary@salesforce.com). The Corporate Secretary will periodically forward such communications or a summary thereof to the Board or the applicable director or directors, to the extent appropriate. The purpose of this screening is to allow the Board to avoid having to consider irrelevant or inappropriate communications (such as advertisements, solicitations and hostile communications).



“ We continue to advance representation and inclusion at our company, building meaningful employee experiences and expanding programs that foster greater belonging and help grow careers.

And we help our customers, partners, and [Trailblazers](#) drive greater equality and boost business value in the process, exponentially increasing our impact. Through our [Racial Equality and Justice Task Force](#) we are supporting societal change and building more resilient businesses and communities, through our philanthropic, purchasing, and policy efforts.

While we have more work to do on our journey to becoming **the most inclusive company**, we made considerable progress last year.



50% of our U.S. employees are made up of underrepresented groups - a goal we reached a year early.

We've doubled U.S. representation of Black leaders (VP and above), and aim to increase Black, Indigenous, Latinx, and Multiracial leadership by 50% by the end of 2023.

We are aiming for a 50% increase in our U.S. representation of Black, Indigenous, Latinx, and Multiracial employees by the end of 2023.

We are aiming for 40% of employees globally to be women-identifying and non-binary by the end of 2026.

## Advancing Representation

Our ultimate goal is to create a company that reflects the world around us. We've set ambitious multi-year representation goals to continue to recruit talent from underrepresented groups, including: women; people who identify as Black, Latinx, Indigenous, Multiracial, or LGBTQ+; people with disabilities; and veterans. Our Office of Equality works directly with our diversity recruiting team to ensure our strategies for bringing in diverse talent continuously move us forward. We have recruitment teams dedicated to sourcing talent from Underrepresented Minority (URM) communities, inclusive training for all hiring managers and recruiters, and a URM referral process. Additionally, we have created the Salesforce Insiders program, which connects candidates to employees from their community. And, to build greater accountability and accelerate our equality initiatives, we have included representation goals as part of our executive compensation programs.



## BOLDforce

### BLACK COMMUNITY

"BOLDforce stands for Black Organization for Leadership and Development. Our goal is to expand and empower the Salesforce black community. We provide a platform for employees of color to elevate their voices and develop their careers through a supportive network of allies across the company. We work to make Salesforce an inclusive place for all by facilitating conversations and managing programs addressing race, diversity, and Equality. Giving back is also a top priority – we partner with organizations to support workforce development and education opportunities for underrepresented youth."



## Women's Network

### COMMUNITY FOR GENDER EQUALITY

"Salesforce Women's Network amplifies the progress of women in every step of their journey. We achieve this through professional and personal development, allyship, supportive connections, and taking action on gender equality. We are the largest Equality group and our programs include content and activities to support our values of empathy, trust, well-being, and advancement of women. This includes supporting the #IamRemarkable initiative, Gender Equality focused VTO, and conducting Safe Space Discussions."

# Increasing gender diversity with a new representation goal

Today, we [published](#) our latest representation goal: to reach 40% women identifying and non-binary employees globally by the end of 2026. This multi-year commitment builds on our [ESG representation goals](#), and allows us to think not only about how we'll continue to drive current gender diversity among our 77,000 employees worldwide, but also into the future as we continue to grow at scale. In the past year alone, we've hired more than 20,000 people. This is made more complex by our macro environment and looming recession, but no matter what is happening in the world, our commitment to equality doesn't waiver.

In order to move the needle at a high-growth company of our size, we are reimagining how, when, and where we hire – with equality at the center of our processes. We are building out the levers needed to achieve our goal, including dedicated resources and programs to reach more women and members of the non-binary community, and key investments in our global team and strategies to ensure our approach is localized in each region where we operate.

This year, we also began tying [executive compensation to representation goals](#), so everyone is accountable for driving this work.

# Progress on representation

Our ambitious representation goals continue to drive accountability in our efforts to become a workplace that looks more like society. In 2020, we set ambitious [multi-year goals](#) to advance representation in critical areas by the end of 2023. We've made great progress and have already hit two goals ahead of plan and last year, added a new gender representation goal:

- More than **50% of our U.S. employees are now made up of underrepresented groups** (Women, Black, Latinx, Indigenous, Multiracial, LGBTQ+ employees, People with Disabilities, and Veterans), a goal we reached in early 2022.
- We've doubled **U.S. representation of Black leaders** at the VP level or above, more than a year ahead of schedule.
- We continue to work toward a 50% increase in the **U.S. representation of underrepresented minority, or URM, leaders** (Black, Indigenous, Latinx, and Multiracial identities) at the VP level or above and a 50% increase in the U.S. representation of URM employees overall.
- We've introduced a new multi-year **global gender goal** to reach [40% women-identifying and non-binary employees](#) globally by the end of 2026.

Each year we also set representation **goals tied to our environmental, social, and governance (ESG)** priorities. Last year, we began tying a portion of executive compensation to reaching these goals, which focus on driving greater women's and URM representation.