



April 25, 2024

Mr. Yaw Gyebi, Jr., Director
Mr. Jeffrey Burstein, Regional Attorney
U.S. Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004

Investigation Request: Shake Shack, Inc.

Dear Director Gyebi and Regional Attorney Burstein:

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. We write pursuant to 29 C.F.R. § 1601.6(a), providing that “Any person or organization may request the issuance of a Commissioner charge for an inquiry into individual or systemic discrimination,” to request that the Equal Employment Opportunity Commission investigate Shake Shack, Inc. (“Shake Shack,” the “Company”) for violating Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.¹

Shake Shack, Inc. is a publicly traded corporation incorporated under the laws of the State of Delaware, with its principal executive offices located at 225 Varick Street, Suite 301, New York, New York, 10014.² It represents to shareholders, investors, and the public that it has and will continue limiting, segregating, or classifying employees or applicants for employment in ways that would deprive, or tend to deprive, white and/or male individuals of employment, training, or promotions because of their race, color, sex, or national origin. For example:

- A press release on Shake Shack’s website from 2021, titled “New Goals: Our Ongoing Commitment to Diversity, Equity & Inclusion,” reveals that the Company has been pursuing its race, color, and sex-based diversity goals since at least 2021 and is actively tracking its progress in meeting them. “By 2025, we want to have: 50% people of color in Shack Leadership (currently 34.7%) and 30% in Home Office Leadership roles (currently 19.6%); Gender parity

¹ Copies of this letter have also been sent to each Member of the Commission, and AFL makes the same request of them pursuant to 29 C.F.R. § 1601.6(a).

² Shake Shack, Inc., Form 10-K (Dec. 27, 2023), <https://bit.ly/4aA14Ts>.

between men and women in Shack Leadership (currently 23.7%) and Home Office Leadership roles (currently 49%).”³

- A June 2023 update on Shake Shack’s progress towards its DEI goals titled “Our Continued Action In Workplace, Diversity, Equity and Inclusion, Supply Chain and Sustainability Initiatives” touts the Company’s race, color, and sex-based employment decisions: **“Since establishing our 2025 diversity goals, we’ve increased the representation of women and people of color in Shack leadership by 33% and 18%, respectively. Our continued focus on the attraction, development and retention of diverse leadership moves us closer toward achieving our broader goals.”**⁴ The 2023 update also explains that Shake Shack is “dedicated to doing the work it takes to be a company that values diversity, not only in [its] words, but in [its] actions . . . Ensuring equal opportunity for success, diversity in leadership at all levels and a culture that embraces different backgrounds and ideals has been the focus of [Shake Shack’s] efforts since day one.”⁵

Shake Shack’s 2023 “Stand for Something Good” report (“2023 Report”), published this week, describes its diversity initiatives through the lens of race, color, and sex:

- **“We aspire to have diverse teams at all levels of the Company”** and “remain committed to **attaining gender parity and diverse representation** in terms of background, thought, and experiences...”⁶
- To achieve its goals, Shake Shack is **“implementing strategies that attract diverse talent”** and “continue[s] to explore **new recruiting channels and partnerships to engage diverse talent.**”⁷
- Shake Shack has accordingly established discriminatory targets for its workforce: **“By 2025, we are targeting 50% of Shack Leadership and 30% of Home Office Leadership roles filled by people of color, while also achieving gender parity across all leadership roles.”**⁸
- Diversity, in this context, clearly means considering employees’ race, color, and sex; on this page of the 2023 Report titled “Diversity as a Business Imperative,”

³ *New Goals: Our Ongoing Commitment to Diversity, Equity & Inclusion*, Shack News, SHAKE SHACK (Sept. 17, 2021), <https://bit.ly/3W1Irn2>.

⁴ *Our Continued Action In Workplace, Diversity, Equity and Inclusion, Supply Chain and Sustainability Initiatives*, Shack News, SHAKE SHACK (June 22, 2023), <https://bit.ly/49CIZTh> (emphasis added).

⁵ *Id.*

⁶ SHAKE SHACK, Stand For Something Good: 2023 Summary at 20 (Apr. 22, 2024), available at <https://bit.ly/4daJuqJ> (emphasis added).

⁷ *Id.* (emphasis added).

⁸ *Id.* (emphasis added).

Shake Shack shares data on the race, color, and sex of its employees. Shake Shack acknowledges that it is “**making progress**” towards achieving these diversity targets and notes that “real change takes time.”⁹

- Shake Shack also has multiple Employee Research Groups. One group called “HEROIQ+” (which stands for “Helping to Educate Regarding Orientation, Identity, and Queerness+”) created a “a Transgender Ally Guide, sharing it Company-wide to help educate and foster more inclusion, and **curated resources to support team members who transition at work** and their managers in partnership with the People Resources Team.”¹⁰
- Another Employee Research Group called “SHE” (“Support. Honor. Empower.”) is “focused on **celebrating women within Shake Shack** last year. They published the Women to Know Series internally, **highlighting over 30 Shake Shack women** from across the business, sharing how they each live the mission of SHE to support, honor, and empower other women.”¹¹
- Shake Shack also supports the United Nations’ Sustainability Development Goals, which include a commitment to “[a]dvance gender equality and **empower all women and girls.**”¹²
- Shake Shack’s “**women’s leadership development**, new manager training for new people managers, and market leader training programs **help our teams gain the leadership skills and confidence they need to succeed.**”¹³

The 2022 version of Shake Shack’s “Stand for Something Good” report (“2022 Report”), published in June 2023, provides additional insight into how Shake Shack infused race, color, and sex into its employment actions:

- “We aim to be **as diverse as the communities we serve**. Women make up 51%, and people of color comprise 80% of our total workforce. Having diverse representation across all functions and levels of our business is key to our success and continued future growth. We know **we still have a lot of work to do**, and that work takes time. Our team is committed to **a continued focus on diversity.**”¹⁴

⁹ *Id.* (emphasis added).

¹⁰ *Id.* at 30 (emphasis added).

¹¹ *Id.* (emphasis added).

¹² *Id.* at 6 (emphasis added).

¹³ *Id.* at 27 (emphasis added).

¹⁴ SHAKE SHACK, Stand For Something Good: 2022 Summary at 27 (June 22, 2023), available at <https://bit.ly/3vV60TM>.

- **“By the end of 2025, we are targeting that 50% of our Shack Leadership and 30% of our Home Office Leadership roles will be filled by people of color and to achieve gender parity across all leadership roles, recognizing that change takes time.”**¹⁵ (Emphasis in original.)
- Idris Stover, Shake Shack’s Director of Diversity, Equity & Inclusion, is quoted stating that “[s]haring our five-year targets helps hold us accountable to cultivate a leadership team that is diverse, but more importantly, one that is positioned to support our future growth and success.”¹⁶
- The 2022 Report indicates that Shake Shack **“[i]ncreased the representation of women and people of color in Shack leadership and made progress toward achieving our five-year diversity targets,”** which is described as one of Shake Shack’s 2022 People Milestones.¹⁷
- Shake Shack reported **“[m]ore than 2.6k internal promotions, with 55% going to women and 77% going to people of color”** – another 2022 People Milestone.¹⁸ (Emphasis in original.) As part of Shake Shack’s commitment to a “highly diverse workforce at all levels of the company,” the 2022 Report states that Shake Shack **“require[s] at least two underrepresented minorities, women, or people of color to be considered and interviewed** when hiring for leadership positions in our Shacks and Home Office.”¹⁹ (Emphasis in original.)

Title VII targets and declares unlawful employment practices that treat a person worse because of race, color, religion, sex, or national origin. That “worse” treatment must pertain to—must be “with respect to”—employment “terms [or] conditions.” 42 U.S.C. § 2000e–2(a)(1). The “terms or conditions phrase is not used in the narrow contractual sense; it covers more than the economic or tangible.”²⁰

Shake Shack repeatedly admits that considerations of race, color, national origin, and sex play a motivating factor in the Company’s employment practices. Yet these considerations, purportedly embedded in the Company’s culture and day-to-day operations, are patently illegal. *See* 42 U.S.C. §§ 2000e-2(a), (d).²¹ The law is that an unlawful employment practice is established when the evidence demonstrates that

¹⁵ *Id.* at 27.

¹⁶ *Id.* at 27.

¹⁷ *Id.* at 19.

¹⁸ *Id.* (emphasis added).

¹⁹ *Id.* at 25 (emphasis added).

²⁰ *Muldrow v. City of St. Louis*, 601 U.S. ____ (2024) (cleaned up); *Bostock v. Clayton County*, 590 U. S. 644, 658, 681 (2020).

²¹ *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*, 590 U.S. at 644.

race, color, religion, sex, or national origin was *a* motivating factor for an employer. 42 U.S.C. § 2000e-2(m).

The Company’s self-described, ongoing employment practices are patently unlawful, deeply harmful, and immoral.²² Discrimination based on immutable characteristics such as race, color, national origin, or sex “generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely to ever be undone.”²³ Decades of case law hold that — no matter how well-intentioned — policies that seek to impose racial balancing are prohibited.²⁴ More broadly, the discrimination highlighted in this case necessarily foments contention and resentment; it is “odious and destructive.”²⁵ It truly “is a sordid business, this divvying us up” by race or sex.²⁶ A Commissioner’s charge should be issued here.

Thank you in advance for your cooperation.

Sincerely,
/s/ Will Scolinos
America First Legal Foundation

cc: The Honorable Charlotte A. Burrows, Chair
The Honorable Jocelyn Samuels, Vice Chair
The Honorable Keith E. Sonderling, Commissioner
The Honorable Andrea R. Lucas, Commissioner
The Honorable Kalpana Kotagal, Commissioner

²² *Bob Jones Univ. v. United States*, 461 U.S. 574, 593 (1983) (“racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals”).

²³ *Brown v. Bd. of Education*, 347 U.S. 484, 494 (1954).

²⁴ See, e.g., *United Steelworkers*, 443 U.S. at 208; *Johnson*, 480 U.S. at 621-641; see also *Bostock*, 590 U.S. at 650.

²⁵ *Texas v. Johnson*, 491 U.S. 397, 418 (1989).

²⁶ *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 511 (2006) (Roberts, C.J., concurring in part).

APPENDIX

Additional Selection Criteria

In evaluating director candidates, the Nominating and Corporate Governance Committee and the Board may also consider the following criteria as well as any other factor that they deem to be relevant:

- Experience in corporate management, such as serving as an officer or former officer of a publicly held company;
- Experience as a board member of another publicly held company;
- Experience as an executive of a publicly held retail restaurant company;
- Professional and academic experience relevant to the Company's industry;
- Diversity (race, ethnicity, gender, geography, sexual orientation, age, nationality, religious beliefs, socio-economic status, physical and/or mental capabilities);
- Strength of the candidate's leadership skills;
- Experience in finance and accounting and/or executive compensation practices;
- Experience in successfully scaled technology business(es);
- Whether the candidate has the time required for preparation, participation and attendance at Board meetings and committee meetings;
- Appreciation/understanding of the values of Daniel Meyer's vision of "Enlightened Hospitality"/ culture/brand strength;
- International business experience, in particular with respect to franchising or licensing;
- Understanding of technologies pertinent to the Company's business;
- Experience with raising and deploying capital; and
- Experience in addressing sustainability priorities.

In addition, the Board considers whether there are potential conflicts of interest with the candidate's other personal and professional pursuits.

Diversity

The Company values diversity on a Company-wide basis and seeks to achieve a mix of Board members that represent a diversity of background and experience, including with respect to race, ethnicity, gender, geography, sexual orientation, age, nationality, religious beliefs, and occupation. Although the Board does not establish specific goals with respect to diversity, **the Board's overall diversity is a significant consideration in the director nomination process.** The Company's Corporate Governance Guidelines provide that our Nominating and Corporate Governance Committee is to take into account the overall diversity of the Board when identifying possible nominees for director. The Nominating and Corporate Governance Committee implements that policy, and assesses its effectiveness, by examining the diversity of all the directors on the Board when it selects nominees for directors. The diversity of directors is one of the factors that the Nominating and Corporate Governance Committee considers, along with the other selection criteria described above. The Nominating and Corporate Governance Committee assesses the effectiveness of its efforts at pursuing diversity through its periodic evaluation of the Board's composition.

Board Diversity

The following table sets out the diversity of the Board, on an individual basis. We believe our Board of Directors is highly diverse, in terms of gender, religion, ethnicity, age, and experience and skill set.

Total Number of Directors	12	
	Female	Male
Directors	4	8
Number of Directors Who Identify in Any of the Categories Below:		
Race/Ethnicity		
African American/Black	1	1
Asian/South Asian American	2	-
White/Caucasian	1	7
LGBTQ+	1	-

Diversity, Equity and Inclusion

Our commitment to our teams and their success is unwavering. We strive to uplift, inspire, and connect people and do so in an environment that is welcoming and inclusive. Our Diversity, Equity and Inclusion (DEI) program, All-In, is part of that mission. With the support of executive leaders, All-In works to ensure Shake Shack provides equal opportunities for all, and removes obstacles or barriers to success, while also fostering a culture of inclusion and belonging. Our All-In program's initiatives include:

- **5-Year Diversity Targets**—We set time-based goals that help to focus attention, clarify accountabilities, and demonstrate our commitment to increase the diversity within our Shack and home office leadership teams. Our 5-year diversity targets were set based on analysis of our industry, demographics of the workforce at large and the changing landscape of this country, and the reality of whom we employ today. We have focused our **attention on women and people of color specifically, as we look to match the demographics of our workforce and the country at large.**
- **Employee Resource Groups (ERG)**—We strive to foster a strong internal community and awareness for diverse groups and cultures through our ERGs. Our current ERGs focus on women, Black, Hispanic, Asian and LGBTQ+ identifying team members. These are voluntary, team member led groups of people who gather based on common interests, backgrounds or demographics such as gender, race or ethnicity. These groups support both personal and professional development while helping to foster an inclusive workplace.

Workforce Diversity

We aim to be as diverse as the communities we serve, and are proud of the diversity of our workforce. We highlight the diversity of our overall workforce as well as management and leadership in our Stand for Something Good Summary, including the overall gender and racial diversity of our overall

workforce, Shack management, Shack leadership, home office leadership, our new hires, and our overall promotions. **By 2025, we are targeting 50% of our Shack leadership and 30% of our home office leadership roles to be filled by people of color** and to achieve gender parity across all leadership roles, recognizing that change takes time.

PEOPLE	<i>Diversity as a Business Imperative</i>	Shake Shack Stand For Something Good 2023 Summary 29
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DIVERSITY AS A BUSINESS IMPERATIVE

At Shake Shack, we're all about embracing the different views, experiences, and backgrounds of our team. Diversity strengthens our business by improving decision-making and sparking innovation. We aspire to have diverse teams at all levels of the Company to help drive better business results.

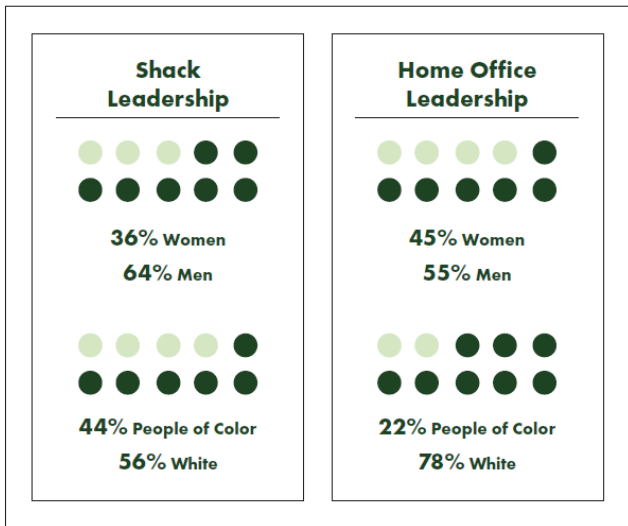
By implementing strategies that attract more diverse talent, support the unique development needs of our dynamic team, and provide leaders with training and tools to lead a dynamic team culture, we are supporting our aspiration.

By 2025, we are targeting 50% of Shack Leadership and 30% of Home Office Leadership roles filled by people of color, while also achieving gender parity across all leadership roles.

As of the end of 2023, our Shack Leadership Teams were comprised of 44% people of color and 36% women. Our recruitment strategies and partnerships, along with our growth as an organization, have created new opportunities for top talent to advance into key leadership roles.

In Home Office roles, director and above, 22% of leaders were people of color, and 45% were women as of the end of 2023. We are committed to ensuring that diverse talent is considered for all open roles, especially in these key leadership positions. We provide our people with targeted development opportunities to enhance their skills, and we continue to explore new recruiting channels and partnerships to engage diverse talent.

While we are making progress towards our goals, we acknowledge that real change takes time. We remain committed to attaining gender parity and diverse representation in terms of background, thought, and experiences for these critical leadership positions.



Team members at our West Hollywood shack in Los Angeles, CA.

**Employee
Resource
Groups**



HEROIQ+ (Helping to Educate Regarding Orientation, Identity, and Queerness+)

HEROIQ+ developed a Transgender Ally Guide, sharing it Company-wide to help educate and foster more inclusion, and curated resources to support team members who transition at work and their managers in partnership with the People Resources Team.

SHE (Support. Honor. Empower.)

ERG focused on celebrating women within Shake Shack last year. They published the Women to Know Series internally, highlighting over 30 Shake Shack women from across the business, sharing how they each live the mission of SHE to support, honor, and empower other women.



Gender Equality

Advance gender equality and empower all women and girls.

Our women’s leadership development, new manager training for new people managers, and market leader training programs help our teams gain the leadership skills and confidence they need to succeed.

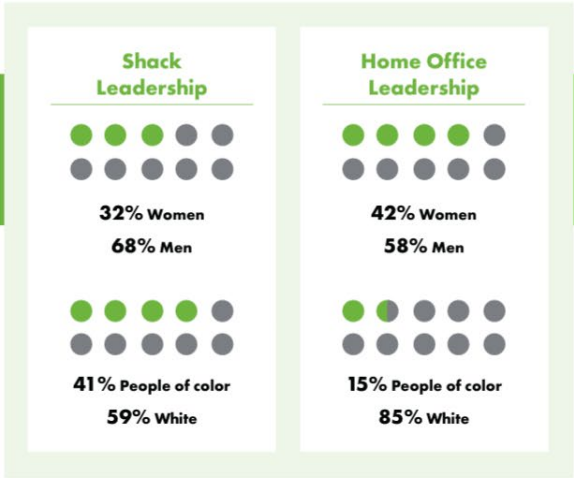
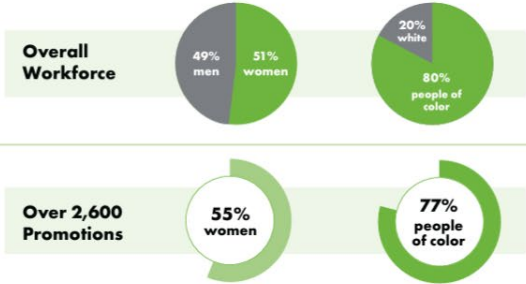


REDUCED INEQUALITIES

By the end of 2025, we are targeting that 50% of our Shack Leadership and 30% of our Home Office Leadership roles will be filled by people of color, recognizing that change takes time.

WORKFORCE DIVERSITY


We aim to be as diverse as the communities we serve. Women make up 51%, and people of color comprise 80% of our total workforce. Having diverse representation across all functions and levels of our business is key to our success and continued future growth. We know we still have a lot of work to do, and that work takes time. Our team is committed to a continued focus on diversity.




“Sharing our five-year targets helps hold us accountable to cultivate a leadership team that is diverse, but more importantly, one that is positioned to support our future growth and success.”
 — Idris Stover, Director of Diversity, Equity & Inclusion

By the end of 2025, we are targeting that 50% of our Shack Leadership and 30% of our Home Office Leadership roles will be filled by people of color and to achieve gender parity across all leadership roles, recognizing that change takes time.

At the end of 2022, people of color held 41% of Shack leadership roles, and women 32%. The representation of people of color and women has increased by 18% and 33%, respectively, since we established our 2025 diversity goals. Our continued focus on the attraction, development, and retention of diverse leadership moves us closer toward achieving our broader goals.



Increased the representation of women and people of color in Shack leadership and made progress toward achieving our five-year diversity targets.



More than 2.6k internal promotions, with 55% going to women and 77% going to people of color.

DIVERSITY, EQUITY + INCLUSION

We remain committed to having a highly diverse workforce at all levels of the company while fostering a culture of inclusion and belonging.

- We require at least two underrepresented minorities, women, or people of color to be considered and interviewed when hiring for leadership positions in our Shacks and Home Office.
- All team members are required to take our foundational diversity, equity, and inclusion (“DEI”) course which aims to help them understand what DEI means and why it’s important to Shake Shack.
- In 2023, we intend to launch unconscious bias learning modules for leaders to help them recognize bias and provide them with tools to address its harmful impacts in the workplace.