



September 22, 2022

Mr. Jeff Lawson  
Co-Founder, Chief Executive Officer and Chairperson of the Board  
Twilio, Inc.  
101 Spear Street, First Floor  
San Francisco, CA 94105

Dear Mr. Lawson:

We write to you in your capacity as Chief Executive Officer and Chairperson of the Board on behalf of Twilio, Inc. (“Company”) shareholders and customers.

The purpose of this letter is to alert you to apparent mismanagement and violations of federal civil rights laws that threaten the waste of Company assets. As you may 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 board-level system of compliance monitoring and reporting relating to these mandates. *See Marchand v. Barnhill*, 212 A.3d 805, 824 (Del. 2019); *In re Clovis Oncology, Inc. Derivative Litig.*, No. CV 2017-0222-JRS, 2019 WL 4850188, at \*12 (Del. Ch. Oct. 1, 2019). However, it appears that you and the Board have failed to do these critical things, suggesting both a lack of internal controls and an inappropriate disregard for your fiduciary duties to the Company and its shareholders.

The Company describes itself as “the leader in the cloud communications platform category.” It acknowledges that “negative publicity about us ... could adversely impact our ability to attract and retain customers, and otherwise harm our business, results of operations and financial condition.” It further acknowledges that shareholder value also depends “on our ability to continue to attract and retain highly skilled employees,” and the Company “may in the future become subject to legal proceedings and claims that arise in the ordinary course of business, such as disputes or employment claims made by our current or former employees.” Significantly, the Company “ha[s] a history of losses and may not achieve or sustain profitability in the future.” Twilio, Inc., 2021 Form 10-K at 6, 24, 29, 44, 61 (Feb. 22, 2022), <https://tinyurl.com/2nkx5krj>.

On September 14, 2022, you announced the Company’s decision to reduce its workforce by approximately 11 percent. Disturbingly, you explained the “rigorous selection process” for deciding which roles would be impacted was “particularly focused on ensuring our layoffs ... were carried out through an Anti-Racist/Anti-Oppression lens”

611 Pennsylvania Ave SE #231  
Washington, DC 20003

because “[l]ayoffs like this can have a more pronounced impact on marginalized communities (sic).” As a result, you made employment decisions based explicitly on race, color, sex, and/or national origin. See Kylie Robison, *Twilio Promises ‘Anti-racist’ Layoffs as CEO Says 11% Job Cuts Won’t Hit Workers From ‘Marginalized Communities’ More Than Others*, FORBES (Sep. 14, 2022), <https://tinyurl.com/37yhdeh8>. Ironically, you attributed the need for the layoffs to your choice “to grow the team faster and to pursue many priorities beyond [the Company’s] four priorities [for reaching profitability and leading in customer engagement.]” Twilio, *A Message from Twilio CEO Jeff Lawson* (Sep. 14, 2022), <https://tinyurl.com/5h2cbkyf>.

On June 15, 2020, management committed itself to violating federal civil rights laws. See Twilio, *Twilio’s Commitment to Equity and Anti-racism* (June 15, 2020), <https://tinyurl.com/4xxxpfbd>. Specific violations include, but are not limited to:

- Race-based hiring quotas to achieve “representation parity (sic) for Black Twilions at every level of the company.”
- “Pioneering an anti-racism (sic) -focused approach to DEI” and setting company-wide goals to drive “DEI” around its business, initiatives necessarily predicated upon and constructed to implement overt discrimination based on race, color, sex, religion, and national origin.
- Opening its “Hatch” software engineering apprenticeship program for only “underrepresented persons” (sic).
- Opening its “BetterUp” online coaching program for managers to only “Black and LatinX” (a word without fixed or intelligible legal meaning).
- Opening a “RiseUp” leadership development and career advancement program for only “Black and LatinX” employees.
- Enrolling only “Black Twilions” into Executive Leadership and Manager Accelerator programs offered by McKinsey & Company and leadership programming hosted by the Executive Leadership Council. Furthermore, the Company “want[s] to see increasing hiring rates” while “taking steps to ‘move’” the attrition rate for “Black Twilions” lower.

See Twilio 2021 Impact and DEI Report: Integrating Social Impact and Antiracism Into Our Business at 25, 26, 28, 29, 31, 32 (Feb. 23, 2022), <https://tinyurl.com/39hjuzbt>.

Management’s actions are immoral, utterly disconnected from the creation of shareholder value, and patently illegal. First, racial “parity” in hiring, firing, training, internships, and promotion is prohibited by Title VII of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000e-2(a), (d). Decades of case law have held that policies seeking to impose racial balancing or quotas in employment, training, or recruitment, such as those pursued by Company, are prohibited. See, e.g., *United Steelworkers of America v. Weber*, 443 U.S. 193, 208 (1979); *Johnson v. Transp. Agency*, 480 U.S. 616, 612, 632 (1987).

Second, the terms “underrepresented persons,” and “LatinX,” are without fixed or intelligible legal meaning. Management apparently uses these terms as a proxy for all persons who are not White or Asian males, and as a vehicle for raw, undiluted racism. This is morally repulsive and, particularly for a struggling business, inexplicably self-destructive. The Company is obviously desperate for talent, yet management has chosen to stigmatize and reject potentially outstanding individuals simply because they lack the favored immutable characteristics.

Third, management’s racist violation of federal civil rights laws is antithetical to the Company’s “four priorities” for reaching profitability and leading in customer engagement. Management owes its shareholders a fiduciary duty to grow the business and manage it well. Yet, while the Company has yet to find a way to achieve profitability, management has bizarrely chosen to invest \$1 million of shareholder funds into Kapor Capital’s Fund III, which only invests in “BIPOC founders.” *Twilio 2021 Impact and DEI Report: Integrating Social Impact and Antiracism Into Our Business* at 16 (Feb. 23, 2022), <https://tinyurl.com/39hjuzbt>. See also Kapor Capital Managing Partners Raise Largest Fund to Date (Sep. 7, 2022), <https://www.kaporcapital.com/fund-iii/> (“53% of investments have a founder who identifies as Black and 100% of investments have a founder who identifies as an underrepresented person of color.”). Similarly, management has taken \$18 million of shareholder capital and spent it, not to improve the Company’s products or financial performance, but “to build vaccine equity.” *Twilio 2021 Impact and DEI Report* at 10; Twilio, *One Billion People To Receive COVID-19 Communication Powered by Twilio Within 12-24 Months* (Mar. 17, 2021); <https://tinyurl.com/3pbjv54w>; Twilio, *How to Combat COVID-19 Vaccine Misinformation Through Digital Communications* (Mar. 24, 2021), <https://tinyurl.com/2898cux2>.

The Company is organized and carried on primarily for the profit of its shareholders, and the powers of its officers and directors are to be employed solely for that end. Management’s conduct in pursuit of social impact and anti-racism, as outlined above, has needlessly exposed the Company to potential state and/or federal investigations and enforcement actions and raises serious concerns regarding management’s commitment to maximizing shareholder value. Since management announced its commitment to violating federal civil rights laws on June 15, 2020, *shareholder value has decreased by approximately 75%*. Management’s idiosyncratic political and social agenda is wholly detached from the Company’s business (cloud communications) and it is destroying shareholder value. See also Phil Hall, *The Crisis at Disney: Part 1, Bob Chapek’s Blunder Road*, *MARKETS INSIDER* (June 21, 2022), <https://bit.ly/3zTe6vM>.

Therefore, to prevent the waste of the Company’s assets, to repair and safeguard the Company’s brand, goodwill, and reputation among its core customers, to protect the Company’s shareholders, and in fulfillment of your fiduciary duty to ensure the Company’s compliance with civil rights laws, we demand that you and the Board immediately take the following steps:

1. Immediately cease and desist from all employment practices that discriminate based on race, color, sex, or national origin, and/or that are designed to impose racial parity or balancing.
2. Retain an independent counsel to conduct a comprehensive compliance audit of the Company's employment practices and to design appropriate internal controls to ensure the Company's hiring, firing, promoting, and training practices comply with federal civil rights laws. 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 employment practices described in the Company's "Impact and DEI Report" should be made promptly and fully available.
3. In anticipation of litigation, 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.

Thank you in advance for your cooperation.

Sincerely,

*/s/ Michael Ding*

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Michael Ding  
America First Legal Foundation

Cc: Jeff Epstein, Lead Independent Director  
Richard Dalzell, Director  
Byron Deeter, Director  
Donna L. Dubinsky, Director  
Jeffrey Immelt, Director  
Erika Rottenberg, Director  
Deval Patrick, Director