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# [***Moussouris v. Microsoft Corp.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RSJ-M7M1-F27X-60ND-00000-00&context=)

United States District Court for the Western District of Washington

February 16, 2018, Decided; February 16, 2018, Filed

Case No. 15-cv-1483 JLR

**Reporter**

2018 U.S. Dist. LEXIS 34685 \*

KATHERINE MOUSSOURIS, HOLLY MUENCHOW, and DANA PIERMARINI, on behalf of themselves and a class of those similarly situated, Plaintiffs, v. MICROSOFT CORPORATION, Defendant.

**Subsequent History:** Adopted by, Motion granted by, in part, Motion denied by, in part [*Moussouris v. Microsoft Corp., 2018 U.S. Dist. LEXIS 34558 (W.D. Wash., Mar. 1, 2018)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RSF-PDD1-F30T-B4WW-00000-00&context=)

**Prior History:** [*Moussouris v. Microsoft Corp., 2016 U.S. Dist. LEXIS 116131 (W.D. Wash., Mar. 7, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5KKB-CT11-F04F-J2TJ-00000-00&context=)

**Core Terms**

redacted, seal, Confidential, trade secret, Declaration, Diversity, Strategies, Non-Party, recommendations, Initiatives, Partially, identify information, human resources, documents, special master, Email, string, employees, compelling reason, promotions, motions, expert report, Exhibits, charts, Excerpt, motion to certify, good cause, Investigations, parties, revised

**Counsel:** **[\*1]**For Michelle Peterson, Special Master: Michelle Peterson, LEAD ATTORNEY, MICHELLE PETERSON LAW PLLC, SEATTLE, WA.

For Katherine Moussouris, on behalf of herself and a class of those similarly situated, Plaintiff: Adam T Klein, Elizabeth V Stork, Ossai Miazad, LEAD ATTORNEYS, PRO HAC VICE, OUTTEN & GOLDEN LLP, NEW YORK, NY; Anne B. Shaver, Kelly M Dermody, Michael Levin-Gesundheit, LEAD ATTORNEYS, PRO HAC VICE, LIEFF CABRASER HEIMANN & BERNSTEIN, SAN FRANCISCO, CA; Rachel J Geman, LEAD ATTORNEY, PRO HAC VICE, LIEFF CABRASER HEIMANN & BERNSTEIN (NY), NEW YORK, NY; Michael C Subit, FRANK FREED SUBIT & THOMAS, SEATTLE, WA; Sharon M Lee, LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP (WA), SEATTLE, WA.

For Holly Muenchow, Dana Piermarini, Plaintiffs: Adam T Klein, Elizabeth V Stork, Ossai Miazad, LEAD ATTORNEYS, PRO HAC VICE, OUTTEN & GOLDEN LLP, NEW YORK, NY; Anne B. Shaver, Kelly M Dermody, LEAD ATTORNEYS, PRO HAC VICE, LIEFF CABRASER HEIMANN & BERNSTEIN, SAN FRANCISCO, CA; Rachel J Geman, LEAD ATTORNEY, PRO HAC VICE, LIEFF CABRASER HEIMANN & BERNSTEIN (NY), NEW YORK, NY; Michael C Subit, FRANK FREED SUBIT & THOMAS, SEATTLE, WA; Sharon M Lee, LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP (WA), SEATTLE,**[\*2]** WA.

For Microsoft Corporation, Defendant: Jessica R Perry, Lynne C Hermle, LEAD ATTORNEYS, PRO HAC VICE, ORRICK HERRINGTON & SUTCLIFFE (MENLO PK), MENLO PARK, CA; Lauri A Damrell, LEAD ATTORNEY, PRO HAC VICE, ORRICK, HERRINGTON & SUTCLIFFE LLP, SACRAMENTO, CA; Wendy Butler Curtis, LEAD ATTORNEY, PRO HAC VICE, ORRICK HERRINGTON & SUTCLIFFE (DC), WASHINGTON, DC; Mark Steven Parris, ORRICK HERRINGTON & SUTCLIFFE LLP (SEA), SEATTLE, WA.

**Judges:** Michelle Peterson, Special Master. HONORABLE JAMES L. ROBART.

**Opinion by:** Michelle Peterson

**Opinion**

**REPORT AND RECOMMENDATION ON MOTIONS TO SEAL**

**I. INTRODUCTION**

This matter is before the special master on Plaintiffs Katherine Moussouris, Holly Muenchow, and Dana Piermarini's (collectively, "Plaintiffs") motion to seal Plaintiffs' motion to certify class (dkt. # 228 (sealed)), Exhibit C to the Declaration of Anne B. Shaver ("First Shaver Decl.") filed in support of Plaintiffs' motion to certify class and portions of Exhibits A, F, and H and references thereto (dkt ## 229 (sealed) and 233 (redacted)), the Expert Report of Dr. Henry S. Farber (dkt. # 230 (sealed)) and the Errata to the Expert Report of Dr. Henry S. Farber (dkt. # 332 (sealed)), and the Expert Report of Dr. Ann Marie**[\*3]** Ryan (dkt. # 231 (sealed)). Plaintiffs' Mot. (Dkt. # 227). Plaintiffs are not the proponents of this motion to seal. Plaintiffs move to seal these documents pursuant to the parties' stipulated protective order (dkt. # 48) regarding the filing of confidential material under seal and [*LCR 5(g)(3)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=). Defendant Microsoft Corporation's ("Microsoft") response to the opposition (dkt. # 269) sets forth the grounds for filing these materials under seal. The special master also reviewed Plaintiffs' reply (dkt. # 277), which is essentially the opposition to Microsoft's request to seal, and Microsoft's sur-reply (dkt. # 280).

Also before the special master is Microsoft's unopposed motion to seal documents submitted in support of its opposition to Plaintiffs' motion for class certification, including a motion to seal the Errata to the Expert Report of Dr. Ali Saad Ph.D. Mot. (Dkt. # 283); Mot. to Seal Errata (Dkt. # 333). Microsoft moves to seal the portions of the following documents filed in support of its opposition to Plaintiffs' motion for class certification: (1) Exhibit 1 to the Declaration of Mark Parris (dkt. # 288); (2) portions of the Declaration of Shinder Dhillon and Exhibits C, E, F,**[\*4]** H, I, J, and K attached thereto (dkt. ## 297 (sealed) and 298 (redacted)); (3) one sentence of the Declaration of Chris Helf (dkt. ## 301 (sealed) and 300 (redacted)); (4) Exhibit P to the Declaration of Amy M. Jantz (dkt. ## 305 (sealed) and 304 (redacted)); (5) Exhibit B to the Declaration of Joseph Whittinghill (dkt. ## 321 (sealed) and 320 (redacted)); (6) one sentence of the Declaration of Rukmini Iyer (dkt. ## 303 (sealed) and 302 (redacted)); and (7) portions of the Expert Report of Dr. Ali Saad, Ph.D (dkt. ## 290 (sealed) and 289 (redacted)) and portions of the Errata to the Expert Report of Dr. Ali Saad Ph.D (dkt. ## 336 (sealed) and 337 (redacted)).

Having considered the parties' submissions and the record before the special master, including the unredacted documents filed under seal, the special master recommends that the Plaintiffs' motion to seal (dkt. # 227) and Microsoft's motions to seal (dkt. ## 283 and 333)[[1]](#footnote-0)1 be GRANTED in part and DENIED in part, as described in detail in Sections E, F, and G. Neither party requests that the sealed document be withdrawn, rather than unsealed, if the motion to seal is denied pursuant to [*LCR 5(g)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=).

**II. BACKGROUND**

This is a putative**[\*5]** class action filed in September 2015 by former Microsoft employees alleging gender-based employment discrimination. During discovery Microsoft produced a number of documents marked "confidential" or "highly confidential." Pursuant to the parties' stipulated protective order, these documents were required to be filed under seal. Plaintiffs seek to rely on these documents to support their motion for class certification. Microsoft similarly filed "confidential" or "highly confidential" material in opposition to Plaintiffs' motion to certify class. Microsoft requests that the Court consider the confidential and highly confidential documents filed in support and in opposition to the motion to certify class but not to allow public access to these court filings.

Microsoft also filed a notice of non-opposition by Plaintiffs to its motion to seal (dkt. # 326). As with a stipulation to seal material filed with the Court, a non-opposition also requires a ruling by the Court on a motion to seal. [*LCR 5(g)(2)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=).

On April 18, 2017, the Court indicated its intent to appoint a special master to assist the Court with certain matters as the Court may determine after notice to the parties. (*See* Dkt. ##**[\*6]** 187, 191). The parties agreed to have the undersigned serve as a special master and, on January 3, 2018 (dkt. # 282), January 9, 2018 (dkt. # 324), and February 15, 2018 (dkt. # 350), the Court ordered the special master to issue a report and recommendation regarding Plaintiffs' motion to seal and Microsoft's motion to seal.

**III. ANALYSIS**

The parties do not agree on the appropriate legal standard for determining whether materials filed in support and in opposition to a motion to certify class should be filed under seal. Microsoft argues that the Court should evaluate the motions to seal using the "good cause" standard for sealing documents and not the "compelling reasons" standard as argued by Plaintiffs. Microsoft correctly cites *Center for Auto Safety v. Chrysler Group, LLC*, as the Ninth Circuit's most recent authority on the question of standards for motions to seal. [*809 F.3d 1092, 1096-97 (9th Cir. 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=), cert. denied sub nom. *FCA U.S. LLC v. Ctr. for Auto Safety, 137 S. Ct. 38, 196 L. Ed. 2d 26 (2016)*. The special master, however, does not agree with Microsoft's application of *Chrysler* to the motions before the Court. The special master recommends that the Court employ the "compelling reasons" standard in its own analysis of the motions to seal.

**A. Legal Standards**

The district court in *Chrysler****[\*7]*** was asked to rule on a third-party intervenor's motion to unseal materials filed in support of a motion for preliminary injunction. [*809 F.3d at 1095*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=). As a threshold question, the district court considered whether the motion to unseal was subject to a good cause or compelling reasons standard for sealing. *Id.* The district court relied on language from prior Ninth Circuit opinions that seemed to make a binary distinction between dispositive and non-dispositive motions. *Id.* Finding that the motion for preliminary injunction was non-dispositive because it could not "literally lead to the final determination on some issue," the district court applied the "good cause" standard and sealed the materials at issue. [*Id. at 1096*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=) (internal quotations omitted; emphasis omitted).

On appeal, the Ninth Circuit vacated and remanded the motion to seal finding that the district court should have applied the compelling reason standard. [*Id. at 1103*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=). In remanding the motion, the Ninth Circuit stated that "permitting the public's right of access to turn on what *relief* a pleading seeks—rather than on the relevance of the pleading—elevates form too far beyond substance and over reads language on our case law." *Id.* (emphasis in original). Historically,**[\*8]** courts have recognized a "general right to inspect and copy public records and documents, including judicial records and documents." [*Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597, 98 S. Ct. 1306, 55 L. Ed. 2d 570 & n.7 (1978)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8YJ0-003B-S2HP-00000-00&context=). "Unless a particular court record is one 'traditionally kept secret,' a 'strong presumption in favor of access' is the starting point." [*Kamakana v. City and Cnty. of Honolulu, 447 F.3d 1172, 1178 (9th Cir. 2006)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=) (quoting [*Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122, 1135 (9th Cir. 2003))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48W4-WRR0-0038-X1TD-00000-00&context=). The Ninth Circuit's pre-*Chrysler* case law suggested that there was a bright line rule regarding the applicable standard to apply to dispositive versus non-dispositive motions. Generally, the court has held that because the public's interest in non-dispositive motions is relatively low, a party seeking to seal a document attached to a non-dispositive motion need only demonstrate "good cause." *Pintos v. Pac. Creditors Ass'n, 605 F.3d 665, 678 (9th Cir. 2010)*. Conversely, "the resolution of a dispute on the merits, whether by trial or summary judgment, is at the heart of the interest in ensuring the 'public's understanding of the judicial process and of significant public events.'" [*Kamakana, 447 F.3d at 1179*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=) (quoting [*Valley Broadcasting Co. v. U.S. Dist. Court for Dist. of Nev., 798 F.2d 1289, 1294 (9th Cir. 1986))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1HH0-0039-P1V1-00000-00&context=).

The basis for the *Chrysler* court's clarification that there is not a binary, bright-line rule based on the dispositive versus non-dispositive distinction, as the sole determination of what standard to apply, focused on the reasons for adopting the lower good cause standard in the first**[\*9]** place. To begin, the court noted that the compelling standard is essentially the default standard because of the "strong presumption in favor of access to court records." [*Id. at 1096*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=) (quoting [*Foltz, 331 F.3d at 1135*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48W4-WRR0-0038-X1TD-00000-00&context=)). Despite the strong presumption for public access, the Ninth Circuit carved out a "good cause" exception for sealed material relating to discovery motions unrelated to the merits of the case. [*Id. at 1097*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=). The good cause standard is derived from *Federal Rule of Civil Procedure 26(c)*. *Fed. R. Civ. P. 26(c)* ("The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense . . . ."). When the court is asked to rule on issues relating to discovery and whether materials must be disclosed or produced pursuant to a protective order, it is the good cause standard that applies to the analysis of whether the discovery dispute is a private or public matter. This distinction rests on the premise that discovery in our system is largely "conducted in private as a matter of modern practice," so the public is not presumed to have a right of access to it. [*Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3DJ0-003B-S3MT-00000-00&context=) ("Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore,**[\*10]** restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.").

The *Chrysler* court recognized that there were non-dispositive motions that may be directly related to the merits of the case. [*809 F.3d. at 1099*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=). Thus, the dispositive versus non-dispositive distinction cannot be the ultimate determination.[[2]](#footnote-1)2 Rather, the "focus in all of our cases is whether the motion at issue is more than tangentially related to the underlying cause of action." *Id.*

**B. Tangentially Related**

Microsoft argues that a motion to certify class is not tangentially related to the underlying cause of action unless the denial of a motion for class certification would constitute the death knell of a case. Microsoft's Resp. at 4 (citing [*Stoba v. Saveology.com, LLC, No. 13-CV-02925-BAS(NLS), 2016 U.S. Dist. LEXIS 44868, 2016 WL 1257501, at \*2 (S.D. Cal. Mar. 31, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5JF9-BVP1-F04C-T1C1-00000-00&context=) (ruling that "the 'vast majority of [ ] courts within this circuit' treat motions for class certification as non-dispositive motions to which the 'good cause' sealing standard applies.") (quoting [*Dugan v. Lloyds TSB Bank, PLC, No. 12-CV-02549-WHA(NJV), 2013 U.S. Dist. LEXIS 51162, 2013 WL 1435223, at \*1 (N.D. Cal. Apr. 9, 2013))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5859-0TB1-F04C-T17H-00000-00&context=). The origins of the *Dugan* court's statement that the vast majority of courts treat motions for class certification as**[\*11]** non-dispositive, is derived from one line in *In re High—Tech Employee* ***Antitrust*** *Litig.*, in which the district court found that non-dispositive motions are analyzed under the good cause standard and also cited *Federal Rule of Civil Procedure 26(c)*'s standard for a protective order. [*2013 U.S. Dist. LEXIS 6606, \*8 at n.1 (N.D. Cal. Jan. 15, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:57HC-V011-F04C-T1RK-00000-00&context=). Accordingly, the cases discussing the "death knell" outcome for class certification rely on the dispositive versus non-dispositive distinction.[[3]](#footnote-2)3

Microsoft also relies on a September 19, 2017 opinion from this jurisdiction that finds the good cause standard applies to motions to certify class. Microsoft's Sur-Reply at 1-2; Microsoft Mot. to Seal at 3 (citing [*Kautsman v. Carrington Mortg. Servs., LLC, No. 16-1040, Dkt. # 51, 2017 U.S. Dist. LEXIS 153550 (W.D. Wash. Sept. 19, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5PHV-9PW1-F04F-J2PG-00000-00&context=)). This case is significant, according to Microsoft, as it is the only one in this jurisdiction decided after *Chrysler*. In *Kautsman*, the court reasoned that a class certification motion primarily requires an analysis of whether the class device is appropriate and is not a motion on the merits. *Kautsman*, No. 16-1040, Dkt. # 51 at 2. The court also held that the reason it was applying the "good cause" standard was because the motion was non-dispositive. *Id.* The court in *Kautsman* therefore appears to**[\*12]** have followed the binary approach rejected by *Chrysler* and did not analyze the motion to certify class based on whether it was more than tangentially related to the merits of the case.

The proper question before the Court is whether this motion to certify class is more than tangentially related to the merits of the underlying case. As the Supreme Court noted in *Wal-Mart Stores, Inc. v. Dukes*, the "rigorous analysis" district courts engage in to ensure that the prerequisites of *Federal Rule of Civil Procedure 23(a)* have been satisfied at the class certification stage "frequently . . . will entail some overlap with the merits of the plaintiff's underlying claim." [*564 U.S. 338, 351, 131 S. Ct. 2541, 180 L. Ed. 2d 374 (2011)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:534M-F5W1-F04K-F4CT-00000-00&context=) (internal quotation marks omitted). Moreover, after *Chrysler*, district courts that have addressed the issue have found that the "compelling reasons" standard applies to motions for class certification. *See e.g.,* [*Opperman v. Path, Inc., 2017 U.S. Dist. LEXIS 39060, 2017 WL 1036652, at \*5 (N.D. Cal. Mar. 17, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N3Y-F591-F04C-T1HN-00000-00&context=) (ruling on a motion to seal exhibits attached to a motion to certify class under the compelling reason standard); [*Lucas v. Breg, Inc., 2016 U.S. Dist. LEXIS 134951, 2016 WL 5464549, at \*1 (S.D. Cal. Sept. 28, 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5KTX-9KJ1-F04C-T3C4-00000-00&context=) ("Thus, the Court finds that Plaintiffs' motion for class certification is more than tangentially related to the merits of the case, and that the compelling reasons standard applies.").

Here, at a minimum, the Court's determination of Plaintiffs'**[\*13]** motion to certify class will involve considerations relating to whether Microsoft has maintained a common, discriminatory pay and promotions process coined the "Calibration Process" throughout the class period. According to Plaintiffs, this Calibration Process resulted in lower pay and fewer promotions for women compared to their male peers. In order to succeed on a class certification motion, Plaintiffs argue that the Calibration Process is a specific employment practice that causes broad gender-based pay and promotion outcomes that negatively affect women. Because the motion for class certification will involve an evaluation of Microsoft's pay and promotions process as part of the analysis of whether there are common questions of law or fact under *Federal Rule of Civil Procedure 23(a)*, the special master recommends that the Court find that the motion to certify class is more than tangentially related to the merits of the case. The special master therefore recommends that the compelling reasons standard be applied to this motion.

**C. Compelling Reasons Standard**

"'[C]ompelling reasons' sufficient to outweigh the public's interest in disclosure and justify sealing court records exist when such 'court files might have become**[\*14]** a vehicle for improper purposes,' such as the use of records to gratify private spite, promote public scandal, circulate libelous statements, or release trade secrets." [*Kamakana, 447 F.3d at 1179*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=) (quoting [*Nixon, 435 U.S. at 598*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8YJ0-003B-S2HP-00000-00&context=)). The *Nixon* court also noted that the "common-law right of inspection has bowed before the power of a court to insure that its records" are not used as "sources of business information that might harm a litigant's competitive standing." [*435 U.S. at 598*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8YJ0-003B-S2HP-00000-00&context=).

To overcome this strong presumption, a party seeking to seal a judicial record must articulate justifications for sealing that outweigh the public policies favoring disclosure. *See* [*Kamakana, 447 F.3d at 1178-79*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=). To do this, pursuant to the Court's local rules, the proponent of a motion to seal a document, even if it is a stipulated motion, must include the following: a specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of:

i. the legitimate private or public interests that warrant the relief sought;

ii. the injury that will result if the relief sought is not granted; and

iii. why a less restrictive alternative to the relief sought is not sufficient.

Evidentiary support from declarations must be provided where necessary. [*LCR 5(g)(3)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=).**[\*15]** Accordingly, unopposed motions to seal are not presumptively sealed where there is no objection for sealing the document as implied by Microsoft in its notice of non-opposition. *See* Microsoft's Notice of Non-Opposition. A motion to seal that does not provide an explanation for sealing cannot be granted; a specific reason for sealing must be articulated by the Court. As explained in *Chrysler*, before the Court may seal a record, it must find a compelling reason to seal and be able to articulate the basis for its ruling without relying on hypothesis or conjecture. [*809 F.3d at 1096-97*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=) (quoting [*Kamakana, 447 F.3d at 1179*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=)). Nor would an unsupported motion to seal meet the requirements of [*LCR 5(g)(3)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=).

**D. Meet and Confer Requirement**

Prior to filing their motion to seal documents filed in support of Plaintiffs' motion to certify class, pursuant to [*LCR 5(g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=), Plaintiffs met and conferred with Microsoft's counsel to discuss whether certain documents that Microsoft had labeled "highly confidential" or "confidential" should be filed under seal. As a result of this process, Microsoft withdrew its confidential designations on forty-three of the one hundred and seventy documents that Plaintiffs provided to Microsoft. Declaration of Lauri A.**[\*16]** Damrell ("Damrell Decl.") (Dkt. # 273) at ¶ 4. Based on the dates and times provided in paragraph four of the Damrell Declaration, it appears that Microsoft's counsel was very responsive when Plaintiffs proposed filing documents that had been designated confidential by Microsoft. *Id.* (Microsoft responded to Plaintiffs' list of confidential documents within approximately 24 hours from the time they received the complete list from Plaintiffs.).

Nevertheless, Plaintiffs still filed their motion to seal documents in support of class certification that included additional documents not previously discussed with Microsoft's counsel. Had Plaintiffs consulted with Microsoft before filing these documents under seal, they would have learned that Microsoft would agree to withdraw some of the confidential designations to the documents thereby avoiding sealing them. *Id.* For example, Exhibit D to the First Shaver Declaration should not have been filed under seal by Plaintiffs. In an attempt to rectify the situation, Microsoft attached Exhibit D in its entirety to the Damrell Declaration as Exhibit 2. Microsoft also revised its position with respect to Exhibits E, F, G, and H to the First Shaver Declaration.**[\*17]** With respect to Exhibits E and G, Microsoft withdrew any confidentiality designations and filed Exhibits E and G in their entirety as Exhibits 3 and 5, respectively, to the Damrell Declaration. With respect to Exhibits F and H, Microsoft provided redacted versions of these documents attached as Exhibits 4 and 6 to the Damrell Declaration, respectively.

**E. Analysis of Categories of Sealed Documents**

Before the Court may seal a record, it must find a compelling reason to seal and be able to articulate the basis for its ruling without relying on hypothesis or conjecture. The Court must then balance the compelling reasons found for sealing the document with the public's interest in open access to the court's records. [*Chrysler, 809 F.3d at 1097*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=). Microsoft's compelling reasons for sealing the documents identified in the motions to seal generally fall into four categories that it seeks to protect from disclosure: (1) the privacy interests of non-parties; (2) confidential settlement agreements; (3) Office of Federal Contract Compliance Programs ("OFCCP") investigative information, notices of violations and responses thereto; and (4) confidential business records and to prevent competitive harm. Microsoft's Resp. at 5-12.**[\*18]** Each category is analyzed separately.

*a. Privacy Interests of Non-Parties*

Microsoft seeks to file under seal Exhibit C in its entirety and portions of Exhibit A to the First Shaver Declaration because they reveal the names and other identifying information of non-parties. First Shaver Decl., Exs. A and C. In its own motion to seal, Microsoft moves to seal one sentence of the Iyer Declaration found at pages three and four and limited portions of the Expert Report of Ali Saad Ph.D. and Errata also on the basis that they reveal the names and other identifying information of non-parties. The special master finds that the privacy interests of non-parties—most of whom raised allegations that they were discriminated against or harassed while employed by Microsoft—outweighs the public's interest in knowing the identity of the non-parties. "Such information is private to the individuals involved, who have not sought to place that private information in the public sphere." [*Nettles v. Farmers Ins. Exch., No. C06-5164RJB, 2007 U.S. Dist. LEXIS 104654, 2007 WL 858060, at \*1 (W.D. Wash. Mar. 16, 2007)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5RXG-1481-JBT7-X38G-00000-00&context=). The names of non-parties and any other identifying information should be redacted from the public record as explained specifically below.

i. Exhibit A to First Shaver Declaration**[\*19]**

With respect to Exhibit A to the First Shaver Declaration, Microsoft seeks to redact individuals' names to the greatest extent possible. Microsoft's Resp. at 6. Where redacting just the names of the non-party would not be sufficient to protect their identities, Microsoft seeks to redact further identifying information that would allow someone to identify the non-party. For example, unique job titles, specific client account information, and roles within the organization. *Id.* To determine what information should be redacted from Exhibit A to the First Shaver Declaration, the special master compared the sealed version of the First Shaver Declaration Exhibit A with the redacted version attached to the Damrell Declaration Exhibit 1 (dkt. # 273-1). The special master's recommendations are identified as "Non-Party Identifying Information" as the basis for granting the motion in the below charts titled "Exhibit A to First Shaver Declaration" in Section F.

ii. Exhibit C to First Shaver Declaration

Exhibit C to the First Shaver Declaration contains two summary charts revealing the names of Microsoft employees who asserted claims or allegations against Microsoft regarding themselves and others**[\*20]** that were investigated by the Employee Relations Investigation Teams ("ERIT"). Specifically, Exhibit C consists of two ERIT logs produced by Microsoft. The "First ERIT Log" is dated October 14, 2016; the "Second ERIT Log" is dated January 9, 2017. First Shaver Decl. at ¶ 7. Although Plaintiffs initially agreed to the sealing of Exhibit C, arguing that Exhibit C meets the compelling reason standard (mot. to seal at 1), in their reply to the motion, Plaintiffs now move to unseal Exhibit C with appropriate redactions to remove the names and identifiers of the complainants. Second Shaver Decl. (Dkt. ## 278 (redacted) and 279-3 (sealed)) ¶ 6 (chart prepared by Plaintiffs setting forth Plaintiffs' position with respect to sealed exhibits).

Even with the identifying information redacted from Exhibit C, Microsoft continues to object to unsealing Exhibit C on the basis that the charts reveal the number of internal complaints lodged by employees and the number of times that Microsoft found a company policy violation. Microsoft's Sur-Reply at 5. Microsoft's basis for sealing the number and outcomes of its investigations is confusing. Microsoft seems to argue that this type of information may be**[\*21]** protected by attorney-client privilege or the work product doctrine. *Id.* These charts were produced to Plaintiffs without redaction so privilege cannot form the basis of its objections. Microsoft next argues that it keeps these investigations confidential and they are stored in confidential ERIT files or legal files which have restricted access. *Id.* This does not explain why, after redaction, there is a compelling reason to keep the numbers and outcomes sealed from the public view.

Microsoft also argues without explanation that the numbers and outcomes of its investigations could "easily be associated with frequent training and communications designed to encourage employees to come forward and may also reflect the positive reputation of the investigation process and staff as an effective problem solving mechanism." *Id.* It appears that Microsoft is implying that if the numbers and outcomes of its investigations, with the dates, is unsealed it could disclose how often it does trainings regarding harassment and discrimination. *Id.* The special master finds that argument too remote a possibility of harm to satisfy the compelling reasons standards for sealing documents.

Finally, Microsoft**[\*22]** argues that Plaintiffs' attempts to paint a picture with just the raw data as to the effectiveness of Microsoft's investigatory process may deter Microsoft employees from taking advantage of the process in the future. *Id.* Again, Plaintiffs' ability to paint a negative picture of the effectiveness of Microsoft's investigatory process and whether that picture will deter future Microsoft employees from taking advantage of the process is far too remote a competitive or business harm to meet the compelling reason standard. The special master therefore recommends that the Complainant Alias, Complainant Name from the First ERIT chart, and the Complainant's name in the Second ERIT attached to the First Shaver Declaration as Exhibit C be redacted and the charts be filed on the public docket. *See, e.g.*, Second Shaver Decl., Ex. D (redacted version of Exhibit C to First Shaver Declaration).

In other documents filed by Plaintiffs, Microsoft seeks to redact any reference to the number of complaints it has received as well as the outcomes of those complaints. Microsoft offers the same arguments for redacting this information as for First Shaver Declaration, Exhibit C. The special master similarly**[\*23]** finds Microsoft's arguments regarding its need to redact the numbers and outcomes of internal investigations to fall short of the compelling reason standard.

iii. One Sentence of the Iyer Declaration

Asserting the privacy interests of non-parties, Microsoft seeks to redact a sentence found at paragraph nine of the Iyer Declaration wherein the declarant discusses a situation in which she mentored a direct report through a difficult time. Iyer Decl., at ¶ 9. Because a description of the employee's difficult period may reveal the identity of the employee, the special master recommends that the one sentence of the Iyer Declaration remain redacted.

iv. Portions of the Expert Report of Dr. Ali Saad Ph.D. and Errata

Microsoft also moves the Court to allow redactions of the Expert Report of Dr. Ali Saad Ph.D. to protect the identity of non-parties to this lawsuit as they have not chosen to place this information in the public record. Mot. at 7.[[4]](#footnote-3)4 At paragraphs 41-42, including charts and footnotes, Dr. Saad discusses Plaintiff Moussouris's total compensation, as well as the compensation of non-parties to the lawsuit. Moussouris has put her compensation at issue by filing this lawsuit and therefore**[\*24]** her own compensation is not subject to protection on the basis of protecting non-parties. However, as discussed below at Section E(d), Moussouris's compensation as it relates to her peers does reveal information about Microsoft's confidential compensation structure and therefore there is a compelling reason to keep this information under seal.

Paragraphs 161-165 of Dr. Saad's report gives a detailed description of multiple employees' compensation, job duties, and performance evaluation. Although the employees are identified by employee number, the descriptions in their evaluations and the references to their first names in the evaluations would make it easy to identify the employee. The redactions in paragraphs 161-165 protect non-party identifying information that meets the compelling reasons standard.

Paragraph 188-192 of Dr. Saad's report compares employees in the same role with their corresponding salary. The personnel number for each employee is not redacted but the descriptions of their roles and responsibilities is redacted. Thus, it is not clear whether Microsoft is attempting to protect the employee non-parties or the description of their roles and responsibilities. The special**[\*25]** master recommends that Microsoft unredact the descriptions of the employees' roles and responsibilities unless the description reveals a trade secret relating to product development, as discussed further below.

*b. Confidential Settlement Agreements*

Microsoft argues that portions of Exhibit A to the First Shaver Declaration should be sealed because they include settlement agreements in other cases. As pointed out by Microsoft, in another matter, this Court previously sealed the contents of confidential settlement negotiations from related litigation under a compelling reasons analysis. Microsoft's Resp. at 7 (citing [*Microsoft v. Motorola, No. 2:10-CV-01823-JLR, 2012 U.S. Dist. LEXIS 164255, 2012 WL 5476846, at \*2 (W.D. Wash. Nov. 12, 2012*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:572J-Y171-F04F-J07K-00000-00&context=) (Robart, J.)). The Court in *Motorola* did find that the "importance of encouraging frank settlement negotiations outweighs the public's interest in knowing what was discussed in those settlement negotiations" and thus sealed the exhibit relating to the parties' prior negotiations. *Id.* The *Motorola* Court, however, viewed the sealing requirement from a [*Federal Rule of Evidence 408*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11XP-00000-00&context=) basis. *Id.* (noting the purpose of [*Fed. R. Evid. 408*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11XP-00000-00&context=) "encourages the compromise and settlement of existing disputes"). Here, Microsoft seeks to seal wholly unrelated confidential**[\*26]** settlement agreements as opposed to settlement negotiations involving similar parties and allegations as was the case in [*Motorola*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:572J-Y171-F04F-J07K-00000-00&context=).

In further support of its motion, Microsoft cites [*Phillips ex rel. Estates of Byrd v. Gen. Motors Corp., 307 F.3d 1206, 1212 (9th Cir. 2002)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:470P-2JW0-0038-X244-00000-00&context=), in which the court permitted the sealing of confidential settlement agreements. The Ninth Circuit in *Phillips* analyzed whether the confidential settlement agreements could be filed under seal pursuant to a "good cause" standard and found that they could. [*Id. at 1212*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:470P-2JW0-0038-X244-00000-00&context=). The court did not address whether the agreements would be filed under seal based on a compelling reason standard.

The only basis given by Microsoft for sealing all settlement negotiations and agreements in Exhibit A is that the parties agreed to keep these agreements confidential and for "attorneys eyes only." The existence of a confidentiality provision, without more, does not constitute good cause, let alone a compelling reason, to seal. *See e.g.,* [*Foltz, 331 F.3d at 1136-38*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48W4-WRR0-0038-X1TD-00000-00&context=); [*Select Portfolio Servicing v. Valentino, No. C 12-0334 SI, 2013 U.S. Dist. LEXIS 60907, 2013 WL 1800039, at \*3 (N.D. Cal. Apr. 29, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:589J-9091-F04C-T29G-00000-00&context=) (that the parties agreed among themselves to make the settlement agreement confidential was insufficient to shield the information from public access); [*Bernstein v. Target Stores, Inc., No. 13-CV-01018 NC, 2013 U.S. Dist. LEXIS 154464, 2013 WL 5807581, at \*3 (N.D. Cal. Oct. 28, 2013)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:59PC-51D1-F04C-T1D8-00000-00&context=) **[\*27]**("The existence of a confidentiality provision [in a settlement agreement], without more, does not constitute good cause, let alone a compelling reason, to seal.").

The fact that the settlement agreements are confidential is not a sufficient basis for sealing the agreements. Microsoft does not explain the legitimate private or public interests that warrant the relief sought other than to say the that parties wanted them to be confidential. Nor does Microsoft explain what injury will result if the relief sought is not granted or whether there is a less restrictive alternative to the relief sought. *See* [*LCR 5(g)(3)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=). Without such information, the special master recommends that the Court find that the confidentiality provision in the settlement agreements is insufficient justification to grant the Microsoft's motion to seal the entire agreements where redaction of non-party identifying information would suffice.

*c. OFCCP Investigative Information*

Microsoft argues that the OFCCP documents attached to Exhibit A to the Shaver Declaration are exempt from disclosure under Exemption 7A of the Freedom of Information Act ("FOIA") and should therefore**[\*28]** be filed under seal. Microsoft's Resp. at 8 (citing *5 U.S.C. § 552(b)(7)(A)*). Microsoft alternatively argues that the information it submitted to the OFCCP was confidential business information. Microsoft's Sur-Reply at 2. And, Microsoft argues that because they are in the conciliation and resolution process with OFCCP, the Notice of Violation ("NOV") is tantamount to a confidential settlement communication. *Id.* at 3.

Whether the OFCCP documents are protected from public release under FOIA is not dispositive on the issue of whether the documents must be filed under seal. Such exempt documents "are not automatically privileged in civil discovery." [*Kamakana, 447 F.3d at 1185*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=) (citing [*Friedman v. Bache Halsey Stuart Shields, Inc., 738 F.2d 1336, 1344, 238 U.S. App. D.C. 190 (D.C. Cir. 1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4W-WMT0-003B-G2K8-00000-00&context=) ("If information in government documents is exempt from disclosure to the general public under FOIA, it does not automatically follow the information is privileged . . . and thus not discoverable in civil litigation.")). Even if discoverable, "FOIA is a statutory scheme directed to ***regulating*** the public access to documents held by the federal government; the public's 'need' for a document is unrelated to whether it will be disclosed." *Id.* (citations omitted). By contrast, the public right of access to *court* documents is grounded on principles related to the public's**[\*29]** right and need to access court proceedings. According to the *Kamakana* court, "it is unsound to equate the FOIA exemptions and similar discovery privileges" because the two schemes serve different purposes. *Id.* (holding that the court would not import wholesale FOIA exemptions as new categories of documents that are traditionally kept secret for sealing purposes). The fact that the documents are exempt under FOIA is not support for sealing documents on the court docket under a compelling reasons standard.

As with the other confidential business information that is properly redacted by Microsoft, as discussed below, the business information that is revealed in the OFCCP documents that Microsoft would like to keep confidential can easily be redacted from the public filing. Thus, the special master does not find that this basis is adequate to seal all the communications regarding the OFCCP investigation. *See* [*LCR 5(g)(3)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=).

The special master is persuaded, however, that the OFCCP conciliation process is an attempt to settle the claims by the OFCCP relating to similar allegations as are present in this case and therefore are confidential settlement communications. *See* [*Motorola, 2012 U.S. Dist. LEXIS 164255, 2012 WL 5476846, at \*2*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:572J-Y171-F04F-J07K-00000-00&context=) ("The court views settlement**[\*30]** negotiations between Microsoft and Motorola related to Motorola's standard essential patent portfolios in a similar light . . . the purpose of [*Federal Rule of Evidence 408*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2991-FG36-11XP-00000-00&context=) is to encourage the compromise and settlement of existing disputes. *See* *Josephs v. Pac. Bell, 443 F.3d 1050, 1064 (9th Cir. 2006)*."). By preventing settlement negotiations from being admitted as evidence, full and open disclosure is encouraged, thereby furthering the policy toward settlement. *Id.* (citing [*United States v. Contra Costa Cnty. Water Dist., 678 F.2d 90, 92 (9th Cir. 1982))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3240-003B-G30X-00000-00&context=).

Here, Microsoft seeks to seal the OFCCP NOV, Amended Notice of Violation ("ANOV"), and Microsoft's counsel's responses thereto. The OFCCP Compliance Manual explains that the NOV initiates the conciliation and resolution process. [*Office of Federal Contract Compliance Programs, Federal Contract Compliance Manual 264, §8F01*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-36J0-003B-J46H-00000-00&context=) (2014). The conciliation and resolution process is a negotiation between a compliance officer and a contractor to resolve findings of noncompliance. *Id.* at 265, §8G. The process involves discussions using various methods of communication including the exchange of letters and emails, telephone conferences, and in-person meetings. *Id.* at §8G01. If these negotiations are successful, the compliance officer will document the terms of the settlement in a formal conciliation agreement. *Id.* The compliance evaluation**[\*31]** is not complete until the compliance officer issues a closure letter to the contractor. *Id.* at §8G00. Given that the OFCCP documents represent Microsoft's attempts to settle the NOV and ANOV with the OFCCP, the special master recommends that the Court find that the importance of encouraging frank settlement negotiations between the OFCCP and Microsoft outweighs the public's interest in knowing what was discussed in those settlement negotiations.[[5]](#footnote-4)5 That said, if there is a final closure letter or final conciliation agreement, the analysis would change and the OFCCP closure documents would likely be made public.

*d. Confidential Business Records and to Prevent Competitive Harm*

Microsoft moves to seal portions of Exhibits A, F, and H to the Second Shaver Declaration, the Expert Report of Dr. Ann Marie Ryan and the Expert Report of Dr. Henry S. Farber and its Errata on the basis that they reflect Microsoft's confidential business strategy. Microsoft's Resp. at 9 (citing First Declaration of Shinder Dhillon ("First Dhillon Decl.") (Dkt. # 272), ¶ 3; First Declaration of Joseph Whittinghill ("First Whittinghill Decl.") (Dkt. # 270), ¶ 3). Microsoft also seeks to seal portions of exhibits it filed**[\*32]** in opposition to the motion to certify class: Exhibit 1 to the Declaration of Mark Parris ("Parris Decl."); Exhibit P to the Declaration of Amy M. Jantz ("Jantz Decl."); Exhibit B to the Second Whittinghill Declaration and portions of the Expert Report of Dr. Ali Saad Ph.D. and its Errata; lines 5:8-9 and 6:13-14 of the Second Dhillon Declaration (dkt. ## 296 (redacted); 297 (sealed)) and Exhibits C, E, F, H, I, J, and K also attached to the Second Dhillon Declaration. Specifically, Microsoft asserts that portions of these documents reflect its confidential business strategies relating to (1) product development; (2) confidential human resources strategies reflecting how Microsoft compensates and evaluates its employees; and (3) confidential diversity initiatives and strategies. *Id.* at 10-11.

The special master has reviewed the materials filed in redacted form and begins the analysis with the understanding that "[t]he mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records." [*Kamakana at 1179*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=) (citing [*Foltz, 331 F.3d at 1136*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48W4-WRR0-0038-X1TD-00000-00&context=)). "In general, 'compelling reasons' . . . . exist when such 'court files might**[\*33]** have become a vehicle for improper purposes,' such as the use of records to . . . release trade secrets." [*Id.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=) (citing [*Nixon, 435 U.S. at 598*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8YJ0-003B-S2HP-00000-00&context=)). The Ninth Circuit adopted the Restatements' definition of "trade secret" for purposes of sealing, holding that "[a] 'trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." [*In re Electronic Arts, 298 Fed. App'x 568, 569 (9th Cir.2008)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4TT3-7B20-TXFX-D345-00000-00&context=) (quoting *Restatement of Torts § 757, cmt. b*). Additionally, "compelling reasons" may exist if sealing is required to prevent judicial documents from being used 'as sources of business information that might harm a litigant's competitive standing." [*Id. at 569*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4TT3-7B20-TXFX-D345-00000-00&context=) (citing [*Nixon, 435 U.S. at 598*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8YJ0-003B-S2HP-00000-00&context=)) (holding that "the common-law right of inspection has bowed before the power of a court to insure that its records are not used . . . as sources of business information that might harm a litigant's competitive standing").

Thus, there is tension between what is considered information that may harm a litigant's competitive standing and information that is simply embarrassing or incriminating to the business. Although the special master does not find that Microsoft attempted to redact all embarrassing or incriminating**[\*34]** materials, there is some material that may be harmful but is not a trade secret as the Ninth Circuit defines that term. When supported by argument or declarations, the special master recommends that Microsoft be permitted to redact materials that relate to (1) current product development or product information that Microsoft keeps a secret; (2) confidential human resources strategies including compensation and evaluations; and (3) Microsoft's confidential diversity initiatives.

i. Current Product Development

Microsoft redacted confidential product development strategies related to the development, promotion, and implementation of new Microsoft product. These redactions are reflected below in Exhibit A to the Shaver Declaration as "Confidential Product Development." There are only two redactions that Microsoft requests in this category and the special master finds that the redactions are narrowly tailored to protect its confidential product development information.

ii. Confidential Human Resources Strategies

Microsoft argues that the information contained in the exhibits to the Shaver Declaration, as well as the Expert Reports of Dr. Ann Marie Ryan and Dr. Henry S. Farber reflect confidential**[\*35]** human resources strategy describing how Microsoft compensates its employees and how Microsoft evaluates employees for compensation and promotion. First Whittinghill Decl., ¶ 3. The processes explained in these documents were developed by and for Microsoft management to further Microsoft's ability to meet strategic objectives. *Id.* Microsoft does not allow the general employee population to access these materials; they are only accessible by Human Resources and Microsoft management. *Id.* Also, Whittinghill declares that the information redacted from the Farber Report "could be used to reverse engineer the compensation of Microsoft's engineers and IT operations professionals." *Id.*

Microsoft's Director of Compensation, Amy M. Jantz, likewise submitted a declaration in support of Microsoft's motion to seal wherein she explained that "Microsoft is just one of many companies competing for skilled engineering employees. Some of our primary competitors for engineers include Amazon, Facebook, Google, Oracle, and Salesforce. This competition for engineering employees is a factor that affects compensation at Microsoft in various ways." Jantz Decl. at ¶ 18. Jantz provided an example of a PowerPoint**[\*36]** presentation entitled Project Inoculate II which provides details about this campaign to retain a specific type of highly sought-after engineering employees. *Id.* at ¶ 20 (Project Inoculate II as it relates to holographic computing — "there is a war for talent"). According to its declarants, human resource strategies is the type of information that Microsoft's competitors highly desire.

Accordingly, documents reflecting Microsoft's compensation structure and strategies to retain employees as reflected in the exhibits to the Shaver Declaration and the expert reports are designated as "Confidential Human Resource Strategies."

iii. Confidential Diversity Initiatives

Microsoft's position is that diversity and inclusion is a business imperative for it. Microsoft's Resp. at 11. Microsoft relies on the First Dhillon Declaration to support its explanation as to why its diversity initiatives are the equivalent of trade secrets for its business operations. Dhillon explains that Microsoft's diversity initiatives give it an advantage over its competitors. First Dhillon Decl., ¶ 4. These initiates help build the "emotional connection" employees need to demonstrate high-levels of commitment and contribution.**[\*37]** *Id.* Microsoft's ability to foster greater diversity in the workforce and to recruit top diverse talent in a highly competitive labor market is important to its success. *Id.* To this end, Dhillon declares that Microsoft invests tens of millions of dollars in developing and implementing its diversity initiatives. *Id.* Dhillon also explains that Microsoft's competitors could unjustly gain access to Microsoft's diversity initiatives, strategies, and representation data to implement on their own and to try to recruit Microsoft's talent. *Id.* at ¶ 5.

Microsoft is also concerned that if its diversity data is released it could be misconstrued by outsiders and cause unnecessary disruption to Microsoft's business or improperly confuse and/or influence Microsoft's customers, employees, or potential employees. *Id.* To avoid this, Dhillon explains that Microsoft treats the diversity metrics and related strategy and analytics in Exhibit A as non-public and highly-sensitive. *Id.* at ¶ 6. Microsoft requires its employees that have access to diversity data to sign non-disclosure agreements. *Id.* at ¶ 7.

The special master finds Microsoft's argument that its diversity initiatives and strategies are trade secrets**[\*38]** to be very persuasive and supported by the First Dhillon Declaration. The argument that the actual raw diversity data is highly confidential and could cause competitive harm and what is essentially business reputational harm is less persuasive. Microsoft's own statements that releasing diversity demographic analyses could be misconstrued to cause business harm, suggests that Microsoft's concern is that the release of the data would have a negative effect on its reputation and not so much that it is a trade secret. Therefore, the special master does not recommend that this information be redacted unless it also reveals confidential information regarding Microsoft's diversity initiatives and strategies. The redactions based on confidential diversity initiatives are identified in the First Dhillon Declaration at n.1. Microsoft's Resp. at 11 n.6. These redactions are reflected below in Exhibit A to the Shaver Declaration as "Confidential Diversity Initiatives."

**F. Recommendations Regarding Plaintiffs' Motion to Seal (Dkt. # 227)**

**Exhibit A to First Shaver Declaration**

**(Dkt. # 229-1 (sealed); Dkt. # 233 (redacted))**

[*Go to table1*](#Table1)



**Excerpts from Deposition of John Ritchie**

**(Dkt. # 229-6 (sealed); Dkt. # 273-10 (redacted))**

[*Go to table2*](#Table2)



Both sides provided a list of pages and lines where redactions where made to the deposition transcript of John Ritchie. *See* Dkt. ## 278-3, 269-1. None of the page and line cites provided match up to any of the redactions from the Ritchie transcript. Accordingly, the special master went through each page to determine what had been redacted.

**Excerpts from Deposition of Melinda De Lanoy**

**(Dkt. # 229-8 (sealed); (Dkt. # 273-11 (redacted))**

[*Go to table3*](#Table3)



Both sides provided a list of pages and lines where redactions where made to the deposition transcript of Melinda De Lanoy. *See* Dkt. ## 278-3, 269-1. None of the page and line cites provided match up to any of the redactions from the Lanoy Ritchie transcript. Accordingly, the special master went through each page to determine what had been redacted.

**Expert Report of Dr. Henry S. Farber**

**(Dkt. ## 230 (sealed); 273-14 (Microsoft's redactions); 279-2 (sealed version with Plaintiffs' proposed redactions) Errata # 332 (sealed))**[[6]](#footnote-5)6

Microsoft's primary concern is that Dr. Farber's report reflects**[\*57]** Microsoft's confidential business strategy. Specifically, Microsoft's confidential human resources strategy reflecting how it compensates its employees and how it evaluates and promotes them. Microsoft's Resp. (Dkt. # 269) at 11 n.5. Accordingly, Microsoft seeks to redact all compensation figures stated in the report or for which a reverse engineer analysis would lead to the discovery of compensation figures. The special master relies entirely on the declarations of Joseph Whittinghill (dkt. # 270) for the proposition that revealing person-year numbers that correspond to the compensation class and advancement class would allow for a reverse engineering of the figures to identify specific compensation rates. If this assertion turns out to be not accurate, then the special master would recommend that the figures be unredacted.

[*Go to table4*](#Table4)



**Expert Report of Dr. Ann Marie Ryan**

**(Dkt. # 231 (sealed); 273-13 (Microsoft's Redactions))**

[*Go to table5*](#Table5)



**G. Recommendations Regarding Microsoft's Motions to Seal (Dkt. ## 283 and 333)**

**Exhibit 1 to Parris Declaration**

**(Dkt. ## 288-1 parts 1, 2, and 3 (sealed); 287-1,-2,-3 (redacted))**

[*Go to table6*](#Table6)



There are many redactions in the exhibits to the Parris Declaration that are redacted in both the public version and the sealed version.**[\*62]** For example, MSFT\_MOUSSOURIS\_00029679 and MSFT\_MOUSSOURIS\_00029690 are redacted in both versions. As Microsoft is not asking the Court to rely on information that it has redacted from both the public and judicial view, there is no compelling reason analysis required. Redactions in both the public record and the sealed judicial record do not implicate the public's right of access to judicial records. *See* Microsoft Mot. to Seal at 1, n.1.

**Excerpts from Deposition of Katie Moussouris**

**(Dkt. ## 287-3 (redacted); 288-5 (sealed))**

Before filing excerpts from the Deposition of Katie Moussouris on the public record, Microsoft contacted Plaintiffs' counsel and provided them with a copy of the documents it intended to file in opposition to the motion to certify class. Damrell Decl., ¶ 3. In response, Plaintiffs provided a list of deposition excerpts that should be filed under seal. *Id.* Pursuant to [*LCR 5(g)(3)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P43W-00000-00&context=), Microsoft filed the depositions in redacted form but did not provide the justification for sealing leaving that task to Plaintiffs as the proponents of sealing this information. Plaintiffs failed to provide an explanation for sealing this information. Accordingly, because neither party offered**[\*63]** an articulable justification for sealing the excerpts, the special master recommends that the entire Exhibit 9 to the Parris Declaration be unsealed. *See* [*Kamakana, at 1178-79*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4K01-XR50-0038-X18T-00000-00&context=).

**Excerpts from the Second Declaration of Shinder Dhillon**

**(Dkt. ## 296 (redacted); 297 (sealed))**

**Exhibit C, E, F, H, I, J, and K to Dhillon Declaration**

[*Go to table7*](#Table7)



**Declaration of Chris Helf**

**(Dkt. ## 300 (redacted); 301 (sealed))**

[*Go to table8*](#Table8)



**Exhibit P to the Jantz Declaration**

**(Dkt. ## 304 (redacted); 305 (sealed))**

[*Go to table9*](#Table9)



**Exhibit B to the Whittinghill Declaration**

**(Dkt. ## 320 (redacted); 321 (sealed))**

[*Go to table10*](#Table10)



This exhibit is a detailed chart of employees and provides the following information: Standard Title, Career Stage, Stock Level, Org Exec. Summary, Org Exec, Org Exec Detail And Function Exec Summary. Whittinghill Declaration, Ex. B. Microsoft argues that this exhibit "describe[s] processes developed by and for Microsoft management to further its ability to meet strategic objectives and advance its competitive interests." Microsoft's Mot. to Seal at 4. The special master is not convinced that the raw, underlying data constitutes confidential human resources strategies. Accordingly, the special master recommends that Exhibit B be unsealed.

**Declaration of Rukmini Iyer**

**(Dkt. ## 302 (redacted); 303 (sealed))**

[*Go to table11*](#Table11)



**Expert Report of Dr. Ali Saad Ph.D.**

**(Dkt. ## 290 (sealed); 289 (redacted); Errata 336 (sealed); 337 (redacted)**

[*Go to table12*](#Table12)



**IV. CONCLUSION**

With respect to Plaintiffs' motion to seal (dkt. # 227), the special master recommends that the Court order as follows:

1. Microsoft file a revised Exhibit A to the First Shaver Declaration (dkt. # 233) consistent with recommendations in Section F above;

2. The Clerk partially unseal Exhibit C to the First Shaver Declaration by unsealing the version of Exhibit C that is attached**[\*70]** to the Second Shaver Declaration as Exhibit D (dkt. # 279-3) as discussed in Section E(ii) above;

3. The Clerk unseal Exhibits D (dkt. # 229-4), E (dkt. #229-5), and G (dkt. # 229-7) to the First Shaver Declaration as discussed in Section D above;

4. Microsoft file a revised version of the Excerpts from the Deposition of John Ritchie (dkt. # 273-10) consistent with recommendations in Section F above;

5. Microsoft file a revised version of the Excerpts from the Deposition of Melinda De Lanoy (dkt. # 273-11) consistent with recommendations in Section F above;

6. Microsoft file a revised Expert Report of Dr. Henry S. Farber's Errata (dkt. # 332) consistent with recommendations in Section F above; and

7. Microsoft file a revised Expert Report of Dr. Ann Marie Ryan (dkt. # 273-13) consistent with recommendations in Section F above.

With respect to Microsoft's motions to seal (dkt. ## 333; 227), the special master recommends that the Court order as follows:

1. No revisions recommended to Exhibit 1 to the Parris Declaration (dkt. # 288-1, 2, 3) consistent with recommendations in Section G above;

2. The Clerk unseal Exhibit 9 (excerpts from the Deposition of Katie Moussouris) (dkt. # 288-5) consistent**[\*71]** with recommendations in Section G above;

3. Microsoft file a revised Dhillon Declaration (dkt. # 296) consistent with recommendations in Section G above;

4. No revisions recommended to Exhibits C, E, F, H, I, J, and K of the Second Dhillon Declaration (dkt. # 296-1, 2) consistent with recommendations in Section G above;

5. No revisions recommended to the Helf Declaration (dkt. # 300) consistent with recommendations in Section G above;

6. No revisions recommended to Exhibit P to the Jantz Declaration (dkt. # 304) consistent with recommendations in Section G above;

7. Microsoft file a revised Exhibit B to the Whittinghill Declaration (dkt. # 320) consistent with recommendations in Section G above;

8. No revisions recommended to Iyer Declaration (dkt. # 302) consistent with recommendations in Section G above; and

9. Microsoft file a revised Expert Report of Dr. Ali Saad Ph.D. Errata (dkt. # 337) consistent with recommendations in Section G above.

Objections to this Report and Recommendation, if any, should be filed with the clerk and served upon all parties to this suit by no later than February 26, 2018. Failure to file objections within the specified time may affect the parties' right to appeal.**[\*72]** Objections should be noted for consideration on the Court's motion calendar for the second Friday after they are filed. Responses and replies to objections may be filed in accordance with [*LCR 7(d)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5S7G-6SH0-004G-P441-00000-00&context=). If no timely objections are filed, the matter will be ready for consideration by the Court on February 27, 2018.

The special master further recommends that the Court order the parties to file revised redacted version of the motion to certify class (dkt. # 232) and Microsoft's opposition (dkt. # 285) within 10 days of the final order of the Court on the motions to seal.

DATED this 16th of February, 2018

MICHELLE PETERSON LAW, PLLC

By /s/ Michelle Peterson

Michelle Peterson, WSBA No. 33598

Special Master

**Table1 (**[*Return to related document text*](#Table1_insert)**)**

| **Bates** | **Description** | **Recommendation** |
| --- | --- | --- |
| **Number** |  |  |
| **Prefix: MSFT-** |  |  |
| **MOUSSOURIS** |  |  |
| 00002273- | Performance**[\*39]** Calibration: | **GRANT** |
| 00002300 | Roles and Responsibilities | Trade Secret — Confidential |
|  | by Phase — Chart and Guide | Human Resource Strategies |
| 000022538- | Email string last dated | **GRANT IN PART** |
| 000022549 | June 19, 2015 regarding | Partially Trade Secret — |
|  | notes from another C&E | Confidential Product |
|  | WLC Dinner Redacted names | Development |
|  | and descriptions | This document is over redacted, |
|  |  | for example Microsoft redacted |
|  |  | benign statements such as "great |
|  |  | opportunity to hear from *C&E* |
|  |  | *leadership*" and the ratio of |
|  |  | women to men on PM team. |
|  |  | Appropriate redactions include |
|  |  | conversations relating to business |
|  |  | operations/trade secrets and |
|  |  | business performance |
| 00059215- | Attorney letter regarding | **GRANT** |
| 00059242 | settlement of gender | Non-Party Identifying |
|  | discrimination claim and | Information |
|  | attached exhibits |  |
| 00064918- | Attorney letter regarding | **GRANT IN PART** |
| 00064931 | settlement of gender | Non-Party Identifying |
|  | discrimination claim | Information except |
|  |  | 00064918 — no basis to redact |
|  |  | last sentence |
|  |  | 00064292 — redacted portion of |
|  |  | email that does not reveal |
|  |  | thirdparty information |
| 00064978- | Attorney letter regarding | **GRANT** |
| 00064983 | settlement of gender | Non-Party Identifying |
|  | discrimination claim and | Information |
|  | attached exhibits |  |
| 00064984- | Attorney letter regarding | **GRANT** |
| 00064991 | settlement**[\*40]** of sexual | Non-Party Identifying |
|  | harassment claim and | Information |
|  | attached exhibits |  |
| 00065680- | EEOC Charge and attachments | **GRANT** |
| 00065683 | for sex discrimination and | Non-Party Identifying |
|  | retaliation | Information |
| 00065719- | OFCCP Notice of Violation | **GRANT** |
| 00065738 | dated May 5, 2016 and | OFCCP Settlement Negotiation |
|  | attachments | Fully redacted and Sealed |
|  |  | version partially redacted |
|  |  | (assuming as irrelevant) except |
|  |  | for Violations 6 and 7 |
| 00067920 | PowerPoint Presentation | **GRANT** |
|  | produced in native titled | Trade Secret — Confidential |
|  | Gender Retention Analysis | Diversity Initiatives Fully |
|  | Recommendations | redacted |
| 00072044- | Rainbow PUSH Coalition | **GRANT IN PART** |
| 00072046 | Forum + ChrisCap Marketing | Trade Secret — Confidential |
|  | Call Draft Q&A dated | Diversity Initiatives except |
|  | December 3, 2014 | redaction of leadership team |
|  |  | acronyms and pay equity |
|  |  | percentage should not be |
|  |  | redacted |
| 00074974 | Email regarding Women of | **GRANT** |
|  | Office dated November 5, | Non-Party Identifying |
|  | 2011 | Information |
|  |  | Confidential Diversity Initiatives |
| 00074988- | Email regarding L3/L4 | **DENY** |
| 00074990 | Diversity Snapshot dated | Not Trade Secret — Results of |
|  | October 25, 2012 | Diversity Initiatives |
| 00150613 | PowerPoint Presentation | **GRANT** |
|  | produced in native titled | Trade Secret — Confidential |
|  | MOD Diversity & Inclusion | Diversity**[\*41]** Initiatives |
|  | Council Report dated March | Fully redacted |
|  | 2012 |  |
| 00150735- | Microsoft on Yammer dated | **GRANT** |
| 00150754 | October 23, 2014 | Trade Secret — Confidential |
|  |  | Product Development Partially |
|  |  | redacted business confidences |
| 00166305- | Email string regarding | **GRANT** |
| 00166309 | Unconscious Bias Training | Non-Party Identifying |
|  | dated last dated October | Information |
|  | 15, 2015 | Partially redacted to remove |
|  |  | names of third parties |
| 00187720 | PowerPoint Presentation | **GRANT** |
|  | produced in native titled | Trade Secret — Confidential |
|  | Actions in Progress and | Human Resource Strategies |
|  | Career Model | Fully redacted |
| 00201435 | Email dated February 15, | **DENY** |
|  | 2010 regarding Data Dive | Not Trade Secret — Partially |
|  | Themes | redacted to remove information |
|  |  | regarding promotions at |
|  |  | Microsoft |
| 00231183 | Email string dated October | **GRANT IN PART** |
|  | 16, 2014 regarding | Non-Party Identifying |
|  | Yesterday's Q&A Session | Information of individuals may |
|  |  | be redacted. Division names |
|  |  | within Microsoft are not Trade |
|  |  | Secret |
| 00231184- | Email string last dated | **MOOT** |
| 00231185 | October 15, 2014 regarding | No redactions made to public |
|  | Today's Q&A Session | filing |
| 00243465 | PowerPoint Presentation | **GRANT IN PART** |
|  | produced in native titled | Trade Secret — Confidential |
|  | Women's Career Framework — | Diversity Initiatives |
|  | Speaker name | Fully redacted —**[\*42]** addresses |
|  |  | concerns of female attrition and |
|  |  | how to address it |
|  |  | Survey results are not Trade |
|  |  | Secret and should not be redacted |
| 00259655- | Email string last dated | **GRANT** |
| 00259658 | July 26, 2010 regarding IT | Trade Secret — Confidential |
|  | Diversity and Inclusion | Diversity Initiatives |
|  | Recap and Next Steps | Fully redacted includes IT |
|  |  | initiatives, next steps, mission |
|  |  | statement |
| 00278390 | PowerPoint Presentation | **GRANT** |
|  | produced in native titled | Trade Secret — Confidential |
|  | FY 15 D&I Core Priorities | Diversity Initiatives Fully |
|  | and Action Plan | redacted includes action plan |
|  |  | detailing accountabilities, key |
|  |  | steps, timeline, etc. |
| 00284174- | PowerPoint slides titled | **GRANT** |
| 00284212 | One Engineering GD&I | Trade Secret — Confidential |
|  | Strategy | Diversity Initiatives |
|  |  | Fully redacted — Detailed |
|  |  | information regarding GD&I |
|  |  | Strategy and Focus Areas, Hiring |
|  |  | Trends and Goals |
| 00308243 - | Microsoft outside counsel | **GRANT** |
|  | July 29, 2016 letter to | OFCCP Settlement Negotiation |
|  | OFCCP regarding Amended | Fully redacted — includes |
|  | NOV | confidential and proprietary |
|  |  | business information — sealed |
|  |  | version also redacted for |
|  |  | nonresponsive — communications |
|  |  | as part of the conciliation process |
| 00341320- | PowerPoint slides titled | **GRANT** |
| 00341400 | EVP Succession Planning | Trade Secrets — Confidential |
|  | Compensation**[\*43]** Committee | Diversity Initiatives |
|  | March 9, 2015 | Fully redacted — Sensitive |
|  |  | Business Information |
| 00342925- | PowerPoint slides titled | **GRANT** |
| 00342937 | ASG D&I Updated dated | Trade Secret — Confidential |
|  | December 8, 2015 | Diversity Initiatives |
|  |  | Fully redacted — vision, strategy |
|  |  | for Microsoft D&I, overview of |
|  |  | competitors in the space |
| 00371657- | Email string last dated | **GRANT** |
| 00371660 | December 4, 2015 regarding | Non-Party Identifying |
|  | Microsoft has a long way | Information — |
|  | to go | Partially redacted to remove |
|  |  | names and roles that may |
|  |  | identify the non-party |
| 00418344- | Email string last dated | **GRANT** |
| 0418345 | April 27, 2015 regarding | Non-Party Identifying |
|  | ABI\_TopCompanyForWomenIn | Information |
|  | Computing | Partially redacted to remove |
|  |  | names and roles that may |
|  |  | identify the third-party |
| 00420916- | PowerPoint slides titled | **GRANT** |
| 00420948 | MOD Diversity & Inclusion | Trade Secret — Confidential |
|  | dated May 3, 2012 | Diversity Initiatives |
|  |  | Fully redacted — information |
|  |  | regarding diversity strategy, |
|  |  | including recruiting, leadership |
|  |  | development, flexible work |
| 00432789- | Email string last dated | **GRANT** |
| 00432791 | April 16, 2014 regarding | Trade Secret — Confidential |
|  | D&I update-diagnostics and | Diversity Initiatives |
|  | planning for FY15 | Fully redacted relating to a |
|  |  | Maturity Model Survey and |
|  |  | Diagnostic effort**[\*44]** regarding D&I |
| 00441086- | Email string last dated | **DENY** |
| 00441090 | June 2, 2015 Diversity | Not Trade Secret — Fully |
|  | Transparency | redacted email string relating to |
|  |  | response to email questioning |
|  |  | diversity initiatives and an |
|  |  | article regarding Google's |
|  |  | announcement |
|  |  | Non-Party Identifying |
|  |  | Information may be redacted |
| 00441092- | Email string last dated | **DENY** |
| 00441097 | June 2, 2015 Diversity | Not Trade Secret — Partially |
|  | Transparency (part of | redacted email string relating to |
|  | string from above) | response to email questioning |
|  |  | diversity initiatives |
|  |  | Non-Party Identifying |
|  |  | Information may be redacted |
| 00561670- | Email string last dated | **GRANT** |
| 00561673 | November 30, 2014 | Non-Party Identifying |
|  | regarding redacted names | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00562093- | Email string last dated | **GRANT** |
| 00562094 | October 15, 2014 "any | Non-Party Identifying |
|  | comment on this" | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00563277- | Email string last dated | **GRANT** |
| 00563278 | October 15, 2014 regarding | Non-Party Identifying |
|  | "Today's Q&A Session" | Information — |
|  |  | Partially redacted to redact |
|  |  | names |
| 00592294 | Pay Equity Meeting March | **DENY** |
|  | 11, 2016 | Not Trade Secret — Fully |
|  |  | redacted meeting notes relating |
|  |  | to pay equity transparency |
|  |  | Non-Party**[\*45]** Identifying |
|  |  | Information may be redacted |
| 00623396- | Email string last dated | **GRANT** |
| 00623399 | August 4, 2015 regarding | Non-Party Identifying |
|  | redacted name investigation | Information — |
|  | summary | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00631799- | ER Investigations Summary | **GRANT** |
| 00631824 | Memo Dated January 15, | Non-Party Identifying |
|  | 2013 with attachments | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00632037- | ER Investigations Summary | **GRANT** |
| 00632117 | Memo Dated December 17, | Non-Party Identifying |
|  | 2012 with attachments | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00632500- | ER Investigations Summary | **GRANT** |
| 00632528 | Memo Dated August 20, 2012 | Non-Party Identifying |
|  | with attachments | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying info. |
| 00645459 | Excerpt from OneNote file | **GRANT** |
|  | regarding Investigation | Non-Party Identifying |
|  |  | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00646449 | Additional Excerpt from | **GRANT** |
|  | OneNote file regarding | Non-Party Identifying |
|  | Investigation | Information —Partially redacted |
|  |  | to redact names and identifying |
|  |  | information (page 676 has a |
|  |  | redaction of the date and time |
|  |  | that should not be redacted) |
| 00677331 | PowerPoint Presentation**[\*46]** | **GRANT IN PART** |
|  | produced in native titled | Trade Secret — Confidential |
|  | Insight Diagnostic for | Diversity Initiatives |
|  | Senior Level and Mid-Level | Fully redacted Business strategy |
|  | Women Dated June 11, 2015 | presentation on actionable |
|  |  | pathways for gender inclusion |
|  |  | and diversity in technical field |
|  |  | except quotes from employees |
|  |  | are not Trade Secret |
| 00677712- | PowerPoint slides dated One | **GRANT** |
| 00667733 | Engineering D&I Board | Trade Secret — Confidential |
|  | Review Meeting March 3, | Diversity Initiatives Fully |
|  | 2016 | redacted business secrets |
|  |  | regarding strategy and focus |
|  |  | areas |
| 00678321- | Microsoft Diversity and | **GRANT IN PART** |
| 00678327 | Inclusion May 2015 | Trade Secret — Confidential |
|  | progress update | Diversity Initiatives |
|  |  | Fully redacted strategies, Q&A |
|  |  | marketing answers regarding |
|  |  | diversity and inclusions should |
|  |  | be redacted |
|  |  | Messaging about confidential |
|  |  | diversity initiatives is not Trade |
|  |  | Secret |
|  |  | (MSFT\_MOUSSOURIS\_006783 |
|  |  | 22-3) |
| 00688508- | Career Guide FAQ for GHRO | **GRANT** |
| 00688523 | Only | Trade Secret — Confidential |
|  |  | Human Resource Strategies |
|  |  | Fully redacted internal script on |
|  |  | how to answer questions |
| 00703435- | Email string last dated | **GRANT** |
| 00703436 | April 11, 2016 regarding | Non-Party Identifying |
|  | equal pay for equal work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information**[\*47]** |
| 00705352- | Email string last dated | **GRANT** |
| 00705354 | April 20, 2016 regarding | Non-Party Identifying |
|  | equal pay for equal work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00705901- | Email string last dated | **GRANT** |
| 00705904 | April 21, 2016 regarding | Non-Party Identifying |
|  | equal pay for equal work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00708659- | Email string last dated | **GRANT** |
| 00708663 | April 25, 2016 regarding | Non-Party Identifying |
|  | equal pay for equal work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00714794- | Email string last dated | **GRANT** |
| 00715795 | April 21, 2016 regarding | Non-Party Identifying |
|  | Missed conversation with | Information — |
|  | redacted name | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00743994- | Email string last dated | **GRANT IN PART** |
| 00743995 | April 30, 2016 regarding | Non-Party Identifying |
|  | Mid-Year 2016 Promotions in | Information — |
|  | FUN PM | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
|  |  | Redacted ratios of men versus |
|  |  | women promotions are — Not |
|  |  | Trade Secret and should be |
|  |  | unredacted |
| 00744097- | Email string last dated | **GRANT** |
| 00744099 | April 19, 2016 regarding | Non-Party Identifying |
|  | Equal Pay for Equal Work | Information — |
|  |  | Partially redacted**[\*48]** to redact |
|  |  | names and identifying |
|  |  | information |
| 00744107- | Email string last dated | **GRANT** |
| 00744109 | April 19, 2016 regarding | Non-Party Identifying |
|  | Equal Pay for Equal Work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00744109- | Email string last dated | **GRANT** |
| 00744111 | April 19, 2016 regarding | Non-Party Identifying |
|  | Equal Pay for Equal Work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00744230- | Email string last dated | **GRANT IN PART** |
| 00744232 | April 14, 2016 regarding | Non-Party Identifying |
|  | Gender Equity | Information should be redacted |
|  |  | Redactions relating to marketing |
|  |  | strategy conversations are not |
|  |  | Trade Secret and should be |
|  |  | unredacted |
| 00744437- | Email string last dated | **GRANT** |
| 0074438 | April 20, 2016 regarding | Non-Party Identifying |
|  | Equal Pay for Equal Work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00744437- | Email string last dated | **GRANT** |
| 0074438 | April 20, 2016 regarding | Non-Party Identifying |
|  | Equal Pay for Equal Work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying info. |
| 00775226- | Email string last dated | **DENY** |
| 00775228 | April 19, 2016 regarding | Partially redacted — legal advice |
|  | Equal Pay for Equal Work - | redacted from sealed version |
|  | ACP | No explanation as to**[\*49]** basis for |
|  |  | redacting remaining portions of |
|  |  | document |
| 00784718- | Responses to KH Equal Pay | **DENY** |
| 00784732 | email — Batches 1-5 | Fully redacted — chart of |
|  |  | responses that Microsoft received |
|  |  | after sending out the email from |
|  |  | 00744437-38 — internal |
|  |  | collection of employee feedback |
|  |  | on equal pay for equal work is |
|  |  | not Trade Secret |
| 00792417- | Email string last dated | **GRANT** |
| 00792420 | October 15, 2011 regarding | Non-Party Identifying |
|  | attorney client privilege | Information — |
|  | — advice needed | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — privileged |
|  |  | information redacted from sealed |
|  |  | version |
| 00797920- | Email string last dated | **GRANT** |
| 00797924 | April 28, 2016 | Non-Party Identifying |
|  | Equal Pay for Equal Work | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — privileged |
|  |  | information redacted from sealed |
|  |  | version |
| 00801714- | US Department of Labor | **GRANT** |
| 00801714\_00 | OFCCP letter | OFCCP Settlement Negotiation — |
| 20 | to Microsoft Chief | Fully redacted nonresponsive |
|  | Executive Officer | information redacted from sealed |
|  | dated June 22, 2016 | version |
|  | regarding Amended NOV |  |
| 00802741- | US Department of Labor | **GRANT** |
| 00802741\_00 | OFCCP letter to Microsoft | OFCCP Settlement Negotiation — |
| 69 | Chief Executive Officer | Fully redacted letter and |
|  | dated August 17, 2016 | nonresponsive**[\*50]** information |
|  | regarding Amended NOV | redacted from sealed version — |
|  |  | continue the conciliation process |
|  |  | — attachments to letter not sealed |
| 00806770- | Email string last dated | **GRANT** |
| 00806771 | April 11, 2016 regarding | Non-Party Identifying |
|  | Early Coverage on Equal Pay | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00809030- | Confidential Draft of | **GRANT** |
| 00809031 | Executive Summary dated | Non-Party Identifying |
|  | March 1, 2016 | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00809046- | Report of Investigation | **GRANT** |
| 00809079 | dated September 1, 2015 | Non-Party Identifying |
|  |  | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — large redactions |
|  |  | are organizational charts that |
|  |  | would identify the complainant |
| 00809106 | Excerpt from OneNote file | **GRANT** |
|  | regarding Investigation of | Non-Party Identifying |
|  | Complaint | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information |
| 00814864- | Closure Information | **GRANT** |
| 00814899 | regarding Investigation of | Non-Party Identifying |
|  | Complaint dated July | Information — |
|  | 20, 2016 | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — large redactions |
|  |  | are organizational charts that |
|  |  | would identify the complainant |
| 00815228- | ER Investigations Summary**[\*51]** | **GRANT** |
| 00815234 | Memo dated April 14, 2014 | Non-Party Identifying |
|  |  | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — large redactions |
|  |  | are organizational charts that |
|  |  | would identify the complainant |
| 00815540- | ER Investigations Summary | **GRANT** |
| 00815544 | Memo dated April 20, 2010 | Non-Party Identifying |
|  |  | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — large redactions |
|  |  | are organizational charts that |
|  |  | would identify the complainant |
| 00816432- | ER Investigations Summary | **GRANT** |
| 00816436 | Memo dated September 23, | Non-Party Identifying |
|  | 2013 | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — large redactions |
|  |  | are organizational charts that |
|  |  | would identify the complainant |
| 00818175- | ER Investigations Summary | **GRANT** |
| 00819179 | Memo dated March 20, 2014 | Non-Party Identifying |
|  |  | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — large redactions |
|  |  | are organizational charts that |
|  |  | would identify the complainant |
| 00819252- | Closure Information | **GRANT** |
| 00819286 | regarding Investigation of | Non-Party Identifying |
|  | Complaint dated October | Information — |
|  | 19, 2016 | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information — large redactions |
|  |  | are organizational charts that |
|  |  | would identify**[\*52]** the complainant |
| 00825924- | Microsoft Global Diversity | **GRANT** |
| 00825929 | and Inclusion Messaging | Trade Secret — Confidential |
|  | and Narrative — April 2015 | Diversity Initiatives |
|  | progress update Draft | Fully redacted — strategy, |
|  |  | initiatives, and business ops. |
| 00859406- | Microsoft outside counsel | **DENY** |
| 00859426 | September 27, 2013 letter | Not Confidential Settlement |
|  | to law firms regarding | Negotiations |
|  | results of commitments it | If there is Confidential Diversity |
|  | made in *Codwell, et al. v.* | Initiatives revealed in the letter |
|  | *Microsoft Corporation* | that should be redacted |
| 00865592- | Attorney letter regarding | **GRANT** |
|  | settlement of gender | Non-Party Identifying |
|  | discrimination claim | Information — |
|  |  | Partially redacted to redact |
|  |  | names and identifying |
|  |  | information. |

**Table1 (**[*Return to related document text*](#Table1_insert)**)**

**Table2 (**[*Return to related document text*](#Table2_insert)**)**

| **Page: Line-** | **Recommendation** |
| --- | --- |
| 137:2-3, | **GRANT** - Size of cohort in stack ranking system — Trade Secret |
| 9-10 |  |
| 139:3-9, | **GRANT** - Guidance regarding size of cohort in stack ranking |
| 13-16, | system — Trade Secret |
| 24-25 |  |
| 150:5-8 | **GRANT** - Confidential Human Resource Strategies — Calibration |
|  | Groupings - Trade Secret |
| 156:15-17 | **GRANT** - Confidential Human Resource Strategies — Calibration |
|  | Groupings - Trade Secret |
| 221:7-19 | **GRANT** - Confidential**[\*53]** Human Resource Strategies — Calibration |
|  | Groupings - Trade Secret |
| 222:3- | **GRANT** - Confidential Human Resource Strategies — Microsoft's |
| 223:12; | internal process for finalizing its Calibration Groupings — Trade |
| 223:16 | Secret |
| 228:25- | **DENY** - Difference between a people discussion and calibration |
| 229:6 | discussion — Not Trade Secret |
| 229:11-22 | **GRANT** - Confidential Human Resource Strategies — Calibration |
|  | Groupings - Trade Secret |
| 230:2-25 | **GRANT** - Confidential Human Resource Strategies — Discussion of |
|  | tool used to manage rewards — Trade Secret |
| 233:25- | **GRANT** - Confidential Human Resource Strategies — Discussion of |
| 235:15 | MRT tool and rating process — Trade Secret |
| 236:11-12; | **GRANT** - Confidential Human Resource Strategies — Discussion of |
| 236:23-25; | tool used to manage rewards, budget constraints and who is a |
| 237:2-12 | recipient of the tool — Trade Secret |
| 267:24-25; | **GRANT** - Confidential Human Resource Strategies — Discussion of |
| 268:5-23; | who sees the final rewards information — Trade Secret |
| 269:8-25 |  |
| 308:9-13 | **DENY** - Description of who is on Ritchie's team — Not Trade Secret |
| 358:6-10 | **GRANT** - Confidential Human Resource Strategies — Guidance on |
|  | salary increases — Trade Secret |
| 392:15-25; | **DENY** - Discussion of historical salary ranges at Microsoft**[\*54]** — Not |
| 393:1-23 | Trade Secret |
| 394:6-11; | **GRANT** - Confidential Human Resource Strategies — Discussion |
| 39422-24 | regarding salary ranges — Trade Secret |
| 447:15 | **DENY** - Name of employee at Microsoft does not reveal any private |
|  | information about the employee — Not Trade Secret |
| 447:19-23 | **GRANT** - Confidential Human Resource Strategies — Discussion of |
|  | tool used to manage rewards — Trade Secret |
| 448:4-449:8 | **GRANT** - Confidential Human Resource Strategies — Discussion of |
|  | tool used to manage rewards — Trade Secret |
| 520:1-3 | **DENY** - An expectation regarding promotion — Not Trade Secret |
| 520:17-25 | **GRANT** - Confidential Human Resource Strategies — Discussion of |
|  | promotion tool — Trade Secret |
| 521:15-25 | **GRANT** - Confidential Human Resource Strategies — Discussion of |
|  | promotion tool — Trade Secret |
| 522:6-7; | **GRANT** - Confidential Human Resource Strategies — Discussion of |
| 522:11-15; | promotion tool — Trade Secret |
| 52220-21; |  |
| 522:24-25 |  |
| 526:23- | **GRANT** - Confidential Human Resource Strategies — Discussion of |
| 527:1 | rewards calculations — Trade Secret |
| 527:13-17; | **GRANT** - Confidential Human Resource Strategies — Discussion of |
| 528:12 | which department has final review of compensation and promotion |
|  | decision — Trade Secret |
| 528:16-17 | **DENY** - Discussion of whether Microsoft**[\*55]** attempted to determine |
|  | whether there was pay equity — Not Trade Secret |

**Table2 (**[*Return to related document text*](#Table2_insert)**)**

**Table3 (**[*Return to related document text*](#Table3_insert)**)**

| **Page: Line-** | **Recommendation** |
| --- | --- |
| 89:3; 89:6-10 | **DENY** - The term Senior Leadership Team — Not Trade Secret |
| 89:11-17; | **GRANT** - Confidential Diversity Initiatives (although Microsoft |
| 89-19-25; | referred to this discussion as Confidential Human Resources |
| 91:2-25 | Strategies) — discussion of diversity reports, who it goes to, |
|  | etc. — Trade Secret |
| 92:1-5; 92:25 | **DENY** - Nonresponsive answer and "I don't know" — Not Trade |
|  | Secret |
| 96:16-20; | **DENY** - Questions regarding witness's knowledge — Not Trade |
| 96:24 | Secret |
| 97:2-9; | **DENY** - Questions relating to witness's knowledge regarding |
| 97:15-25 | tracking diversity and inclusion priorities — Not Trade Secret |
| 98:2-28 | **DENY** - Questions relating to witness's knowledge changes to |
|  | tracking promotions**[\*56]** — Not Trade Secret |
| 99:3-4; | **DENY** - Questions relating to witness's knowledge regarding |
| 99:8-10; | focus groups relating to diversity and inclusion — Not Trade |
| 13-18; | Secret |
| 99:19-25; |  |
| 118:1-20 | **DENY** - Discussion of results of diversity initiatives — Not |
|  | Trade Secret |
| 118:22-119:1 | **GRANT** - Confidential Diversity Initiatives — Discussion of how |
|  | the initiative works — Trade Secret |
| 119:3-24 | **DENY** - Discussion of results of diversity initiatives — Not |
|  | Trade Secret |
| 120:1-15 | **DENY** - Discussion of results of diversity initiatives — Not |
|  | Trade Secret |
| 120:17-21 | **GRANT** - Confidential Diversity Initiatives — Discussion of |
|  | specific metrics — Trade Secret |

**Table3 (**[*Return to related document text*](#Table3_insert)**)**

**Table4 (**[*Return to related document text*](#Table4_insert)**)**

| **Paragraph-** | **Description** | **Recommendation** |
| --- | --- | --- |
| Report at ¶ 11 | Microsoft seeks to redact the | **GRANT** — Trade Secret |
|  | number of person-year that | — Confidential Human |
|  | correspond to the putative | Resource Strategies — |
|  | compensation class and the | potential to reverse |
|  | putative advancement class | engineer compensation |
|  | numbers | data. Whittinghill Decl. ¶ |
|  |  | 3 |
| Report at ¶ 26 | Microsoft seeks to redact the | **GRANT [\*58]** — Trade Secret |
|  | ratings scale used to measure | — Confidential Human |
|  | performance | Resource Strategies — |
|  |  | reflects information that |
|  |  | is part of the back-end |
|  |  | logic used to calculate |
|  |  | employee compensation. |
|  |  | Whittinghill Decl. ¶ 3 |
| Report at ¶ 50 | Microsoft seeks to redact the | **GRANT** — Trade Secret |
|  | actual dollar amount of Dr. | — Confidential Human |
|  | Farber's findings regarding | Resource Strategies — |
|  | the differences in average | potential to reverse |
|  | total compensation | engineer compensation |
|  |  | data. Whittinghill Decl. ¶ |
|  |  | 3 |
| Report at ¶ 75 | Microsoft seeks to redact the | **GRANT** — Trade Secret |
|  | number of person-year | — Confidential Human |
|  | observations and woman-year | Resource Strategies — |
|  | observations | potential to reverse |
|  |  | engineer compensation |
|  |  | data. Whittinghill Decl. ¶ |
|  |  | 3 |
| Report at ¶¶ | Microsoft seeks to redact the | **GRANT** — Trade Secret |
| 79, 80 | amount that the compensation | —Confidential Human |
|  | class earned during the class | Resource Strategies — |
|  | period | potential to reverse |
|  |  | engineer compensation |
|  |  | data. Whittinghill Decl. ¶ |
|  |  | 3 |
| Report at Table | Microsoft seeks to redact all | **GRANT** — Trade Secret |
|  | references to Employee Years | — Confidential Human |
|  | numbers and Woman Years numbers | Resource Strategies — |
|  | from Dr. Farber's tables, the | potential to reverse |
|  | difference in mean total | engineer compensation**[\*59]** |
|  | compensation from Table 2 and | data. Whittinghill Decl. ¶ |
|  | his conclusions on damages | 3 |

**Table4 (**[*Return to related document text*](#Table4_insert)**)**

**Table5 (**[*Return to related document text*](#Table5_insert)**)**

| **Paragraph-** | **Description** | **Recommendation** |
| --- | --- | --- |
| Report at ¶ 19 | Microsoft seeks to redact two sentences | **DENY** |
|  | from the Dr. Ryan report on the grounds | Not Trade Secret — |
|  | that it reveals confidential human | *see reference* Shaver |
|  | resource strategy reflecting how | Decl., Ex. A at |
|  | Microsoft compensates its employees and | 00859406 |
|  | how Microsoft evaluates employees for |  |
|  | compensation and promotion. Microsoft's |  |
|  | Resp. at 11, n.5 |  |

**Table5 (**[*Return to related document text*](#Table5_insert)**)**

**Table6 (**[*Return to related document text*](#Table6_insert)**)**

| **Bates Number** | **Description** | **Recommendation** |
| --- | --- | --- |
| **Prefix: MSFT-** |  |  |
| **MOUSSOURIS-** |  |  |
| 00001595 | Performance Calibration: Roles and | **GRANT** — Trade Secret |
|  | Responsibilities by Phase (Not Bates | — Confidential Human |
|  | Numbered) | Resource Strategies — |
|  |  | Fully Redacted |
| 00001955- | Methods of Calibration | **GRANT** — Trade Secret |
| 00001956 |  | — Confidential Human |
|  |  | Resource Strategies — |
|  |  | Fully Redacted |
| 00001984- | Promotion Philosophy and Guidelines | **GRANT** — Trade Secret |
| 00001985 |  | — Confidential Human |
|  |  | Resource Strategies — |
|  |  | Fully Redacted |
| 00002269-**[\*60]** | HR and Manger Performance Calibration | **GRANT** — Trade Secret |
| 00002300 | Guide | — Confidential Human |
|  |  | Resource Strategies — |
|  |  | Partially Redacted |
| 00004097- | Microsoft's Performance and | **GRANT** — Trade Secret |
| 00004113 | Development Philosophy, Objectives, | — Confidential Human |
|  | Strategies | Resource Strategies — |
|  |  | Fully Redacted |
| 00004281- | Promotion Overview, Guidelines, | **GRANT** — Trade Secret |
| 00004288 | Budgets, | — Confidential Human |
|  |  | Resource Strategies — |
|  |  | Partially Redacted |
| 00004299 | Human Resource Process & Tasks | **GRANT** — Trade Secret |
|  |  | — Confidential Human |
|  |  | Resource Strategies — |
|  |  | Fully Redacted |
| 00022538- | Email string last dated June 19, 2015 | **GRANT** - Non-Party |
| 00022549 | regarding Notes from another great C+ | Identifying Information |
|  | WLC Dinner Series dinner | — Partially Redacted |
|  |  | Unrelated Product |
|  |  | Development Discussion |
| 00065921 | Independent Analysis of Microsoft's | **GRANT** - Non-Party |
|  | Technology & Strategy -Corporate | Identifying Information |
|  | Organization Chart with names | — Trade Secret — |
|  |  | Confidential Human |
|  |  | Resource Strategies — |
|  |  | Fully Redacted |
| 00123431- | Email string last dated August 9, 2012 | **GRANT** - Non-Party |
| 00123433 | regarding FINAL . . . 5 PPComms | Identifying Information |
|  |  | — Trade Secret — |
|  |  | Confidential Human |
|  |  | Resource Strategies |
|  |  | Both sealed version and |
|  |  | public version are |
|  |  | Partially Redacted**[\*61]** |
| 00238536- | Diversity and Inclusion at Microsoft | **GRANT** — Trade Secret |
| 00238542 | Goals redacted | — Confidential Human |
|  |  | Resource Strategies — |
|  |  | Partially Redacted |
| 00306526- | Hiring & Attrition Slides and FY13 | **GRANT** — Trade Secret |
| 00306530 | Diversity & Inclusion Execution Plan | — Confidential Human |
|  |  | Resource Strategies — |
|  |  | Fully Redacted |
| 00677331 | PowerPoint Presentation produced in | **GRANT** - |
|  | native titled Insight Diagnostic for | Trade Secret — |
|  | Senior Level and Mid-Level Women | Confidential Human |
|  | dated June 11, 2015 | Resource Strategies — |
|  |  | Fully redacted |
| 00822237- | Executive Retreat Slides — Diversity & | **GRANT** — Trade Secret |
| 00822333 | Inclusion at Microsoft — Overview of | — Confidential Human |
|  | D&I Challenges & Opportunities for | Resource Strategies — |
|  | Microsoft; D&I Investments and | Fully redacted |
|  | Initiatives |  |
| 00835957- | Slides titled "D&I Path Forward: A | **GRANT** - |
| 00835964 | Proposal for Strategic Transformation | Trade Secret — |
|  |  | Confidential Human |
|  |  | Resource Strategies — |
|  |  | Fully redacted except |
|  |  | Title |
| P007578 | Correspondence to Moussouris from EEOC | **GRANT** — Trade Secret |
|  |  | — Confidential Human |
|  |  | Resource Strategies |
|  |  | — Partially Redacted |
|  |  | Salary information |

**Table6 (**[*Return to related document text*](#Table6_insert)**)**

**Table7 (**[*Return to related document text*](#Table7_insert)**)**

| **Excerpt/Exhibit** | **Description** | **Recommendation** |
| --- | --- | --- |
| Declaration | Statement as to why high-level | **DENY** - Not Trade |
| 5:8-9 | employees were leaving Microsoft | Secret |
| Declaration | Description of specific diversity | **GRANT** — Trade Secret |
| 6:13-14 | initiatives for particular groups | — Confidential Diversity |
|  | within Microsoft | Initiatives |
| Exhibit C | Collective guidance for | **GRANT** — Trade Secret |
|  | facilitators using Microsoft's | — Confidential Diversity |
|  | Inclusive Dialogues Toolkit | Initiatives — |
|  |  | Fully Redacted |
| Exhibit E | PowerPoint presentation explaining | **GRANT** — Trade Secret |
|  | the Microsoft's Maturity Model | — Confidential Diversity |
|  | Framework tool assessment results | Initiatives — |
|  |  | Fully Redacted |
| Exhibit F | PowerPoint presentation explaining | **GRANT** — Trade Secret |
|  | Microsoft's Infusing D&I program | — Confidential Diversity |
|  | tool | Initiatives — |
|  |  | Partially Redacted |
| Exhibit H | Engineering 5-Point Plan — Key | **GRANT** — Trade Secret |
|  | Execution Slides for 3 Year GD&I | — Confidential Diversity**[\*64]** |
|  | Plan | Initiatives — |
|  |  | Fully Redacted |
| Exhibit I | SLT D&I Core Priorities plan for | **GRANT** — Trade Secret |
|  | ASG | — Confidential Diversity |
|  |  | Initiatives — |
|  |  | Partially Redacted |
| Exhibit J | C&E Guidance | **GRANT** — Trade Secret |
|  |  | — Confidential Diversity |
|  |  | Initiatives — |
|  |  | Partially Redacted |
| Exhibit K | Q&A regarding D&I Basics; The | **GRANT** — Trade Secret |
|  | Business Case for Diversity; | — Confidential Diversity |
|  | Cultural Awareness; Hiring; | Initiatives — |
|  | Leadership; Legal; Data; and Cost | Fully Redacted |

**Table7 (**[*Return to related document text*](#Table7_insert)**)**

**Table8 (**[*Return to related document text*](#Table8_insert)**)**

| **Excerpt-** | **Description** | **Recommendation** |
| --- | --- | --- |
| Declaration | Statement regarding the percentage | **GRANT** — Trade Secret |
| 14:17-18 | target for top rewards | — Confidential Human |
|  |  | Resource Strategies |

**Table8 (**[*Return to related document text*](#Table8_insert)**)**

**Table9 (**[*Return to related document text*](#Table9_insert)**)**

| **Excerpt** | **Description** | **Recommendation** |
| --- | --- | --- |
| Exhibit P | PowerPoint presentation entitled | **GRANT** — Trade Secret |
|  | Project Inoculate II details | — Confidential Human |
|  | Microsoft's campaign to retain | Resource Strategies — |
|  | highly sought-after engineering | Fully Redacted |
|  | employees |  |

**Table9 (**[*Return to related document text*](#Table9_insert)**)**

**Table10 (**[*Return to related document text*](#Table10_insert)**)**

| **Excerpt** | **Description** | **Recommendation** |
| --- | --- | --- |
| Exhibit B | Data for employees in the United | **DENY** - Not Trade |
|  | States in Engineering and IT | Secret — Data**[\*65]** is not a |
|  | Operations Professions in roles | Confidential Human |
|  | at Stock Levels 59-67 for years | Resource Strategies |
|  | 2013-2016 |  |

**Table10 (**[*Return to related document text*](#Table10_insert)**)**

**Table11 (**[*Return to related document text*](#Table11_insert)**)**

| **Excerpt-** | **Description** | **Recommendation$** |
| --- | --- | --- |
| Declaration | *See* Section E(a)(iii) above | **GRANT** - Non-Party |
| 3:27-4:2. |  | Identifying Information |

**Table11 (**[*Return to related document text*](#Table11_insert)**)**

**Table12 (**[*Return to related document text*](#Table12_insert)**)**

| **Excerpt-** | **Description** | **Recommendation** |
| --- | --- | --- |
| Report at ¶ 7 | Microsoft seeks to redact the | **DENY** |
|  | proportion of promotions that | Not Trade Secret — |
|  | take place during**[\*66]** the annual | This fraction alone does |
|  | review cycle | not identify a human |
|  |  | resources strategy and |
|  |  | Microsoft does not |
|  |  | otherwise articulate why |
|  |  | this is a trade secret |
| Report at ¶¶ 8, 14, | Microsoft redacted | **GRANT** — Trade Secret |
| 19, 26, 27, table at | compensation numbers for a | — Confidential Human |
| 28, 43, 50 | group of employees and total | Resource Strategies |
|  | compensation | **DENY** |
| Report at ¶¶ 52 | Redacted "Employee Years" | Not Trade Secret — |
| table, 55 table, 56, | column and other mentions of | No articulated basis for |
| 57 table, 97 table, | this category throughout the | redacting the employee |
| 104 table, 167 | report | years variable from the |
| table, 175 table, |  | entire report |
| 186 table, |  |  |
| Appendix 2 |  |  |
| Report at ¶¶ 14, | Microsoft seeks to redact the | **DENY** |
| 104 table, 118 | percentage of promotions | Not Trade Secret — |
| table, 119, 120, | during the annual review | This fraction alone does |
| 122 table | period versus mid-year review | not identify a human |
|  | and other periods | resources strategy and |
|  |  | Microsoft does not |
|  |  | otherwise articulate why |
|  |  | this is a trade secret |
| Report at ¶¶ 41, 42, | Microsoft seeks to redact | **GRANT** — Trade Secret |
| including tables | compensation information of | — Confidential Human |
| and footnotes | the Plaintiffs as compared | Resource Strategies |
|  | to her peers |  |
| Report at ¶ 54 | Report discusses business**[\*67]** | **GRANT** — Trade Secret |
|  | strategy information as to | — Confidential Human |
|  | how stock awards, reward | Resource Strategies |
|  | bonuses and merit increases |  |
|  | are calculated |  |
| Report at ¶ 71 | Microsoft seeks to redact its | **GRANT** — Trade Secret |
|  | reward outcome measures for | — Confidential Human |
|  | 2014-2016 as it reveals | Resource Strategies |
|  | Microsoft's reward outcome |  |
|  | measures for this period |  |
| Report at ¶¶ 76, 81, | Microsoft seeks to redact | **GRANT IN PART**— |
| 81 table, 82 table | reward outcome various and | Trade Secret — |
|  | review ratings range and how | Confidential Human |
|  | they correlate to Annual | Resource Strategies as it |
|  | bonus Stock awards and merit | relates to the reward |
|  | increases as well as the | outcome various and |
|  | number of female employees | review ratings range and |
|  | to male employees in the | how they correlate to |
|  | table at ¶ 82 | Annual bonus Stock |
|  |  | awards and merit |
|  |  | increases as well |
|  |  | The number of female |
|  |  | verses male employees is |
|  |  | not Trade Secret |
| Report at ¶ 92 | Microsoft seeks to redact | **DENY** — Not Trade |
|  | discussions relating to the | Secret — The number of |
|  | number of promotions that | promotions that occur at |
|  | occur in connection with the | the annual performance |
|  | annual fiscal year | review does not identify |
|  | performance rating process | a human resources |
|  |  | strategy and Microsoft |
|  |  | does not otherwise**[\*68]** |
|  |  | articulate why this is a |
|  |  | trade secret |
| Report at ¶ 103 | Promotion Budget Numbers | **GRANT** — Trade Secret |
|  |  | — Confidential Human |
|  |  | Resource Strategies |
| Report at ¶ 109 | The report, in searching for | **GRANT** — Trade Secret |
|  | other justifications for | generally |
|  | variable, provides examples |  |
|  | of business developments at |  |
|  | Microsoft that are not public |  |
|  | knowledge |  |
| Report at ¶ 110, | Microsoft seeks to redact the | **DENY** |
| table | proportion of promotions that | Not Trade Secret — |
|  | take place during the annual | This information does |
|  | review cycle versus other | not identify a human |
|  | times | resources strategy and |
|  |  | Microsoft does not |
|  |  | otherwise articulate why |
|  |  | this is a trade secret |
| Report at ¶ 113 | Microsoft seeks to redact | **GRANT** — Trade Secret |
|  | detailed discussion of how | — Confidential Human |
|  | managers nominate their | Resource Strategies |
|  | employees for promotion |  |
|  | within Microsoft |  |
| Report at ¶ 131 | Microsoft seeks to redact the | **DENY** |
|  | average velocity for female | Not Trade Secret — |
|  | employees and male employees | This information does |
|  |  | not identify a human |
|  |  | resources strategy and |
|  |  | Microsoft does not |
|  |  | otherwise articulate why |
|  |  | this is a trade secret |
| Report at ¶¶ 138, | These redactions represent | **GRANT** — Trade Secret |
| 143 and table, 146 | Microsoft's compensation | — Confidential Human |
| table, 152 and | structures, including**[\*69]** | Resource Strategies |
| table, 153, 157 | salaries for specific |  |
| table, 158 table, | positions and total |  |
| 159 table, 189, 193 | compensation numbers |  |
| and table,194 table, |  |  |
| 201, 202 and 209 |  |  |
| Appendix 1 & 2 |  |  |
| table 8 |  |  |
| Report at ¶ 144 and | Report summarizes employee | **GRANT** — Trade Secret |
| table | educational data — including | — Confidential Human |
|  | advanced degrees etc. | Resource Strategies |
| Report at ¶ 167 | Microsoft seeks to redact the | **DENY** |
|  | number of data points used in | Not Trade Secret — |
|  | the analysis | This information does |
|  |  | not identify a human |
|  |  | resources strategy and |
|  |  | Microsoft does not |
|  |  | otherwise articulate why |
|  |  | this is a trade secret |
| Report at ¶ 176 | Microsoft seeks to redact the | **DENY** |
|  | number of observations used | Not Trade Secret — |
|  | in the analysis | This information does |
|  |  | not identify a human |
|  |  | resources strategy and |
|  |  | Microsoft does not |
|  |  | otherwise articulate why |
|  |  | this is a trade secret |

**Table12 (**[*Return to related document text*](#Table12_insert)**)**

**End of Document**

1. 1Objections to the appointment of the special master to assist with the remaining motions to seal (dkt. #333 and 339) are not due until February 19, 2018. Microsoft's motion to seal the Errata to the Expert Report of Dr. Ali Saad Ph.D. does not present any new arguments or request to seal new material. *Cf.* Mot. to Seal (dkt. # 283) with Mot. to Seal Errata (dkt. # 333). Accordingly, the special master includes the motion to seal Errata with these recommendations. [↑](#footnote-ref-0)
2. 2While noting that "public access to filed motions and their attachments does not merely depend on whether the motion is technically 'dispositive,'" the *Chrysler* court nevertheless pointed out that the Ninth Circuit already considers motions for preliminary injunctions to be dispositive in the context of magistrate jurisdiction. Thereby suggesting that even under the dispositive non-dispositive distinction the preliminary injunction motion before the district court in *Chrysler* should have been treated as a dispositive motion. [*Id. at 1101 n.8*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HTX-9WT1-F04K-V1H8-00000-00&context=) (citing [*Flam v. Flam, 788 F.3d 1043, 1046 (9th Cir. 2015))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5G5M-H431-F04K-V001-00000-00&context=). Motions to dismiss or to permit maintenance of a class action are also listed as not pretrial matters under the Federal Magistrate Act and therefore "dispositive" according to *Flam. See* ***28 U.S.C. § 636(b)(1)(A)***. [↑](#footnote-ref-1)
3. 3Microsoft argues that a denial of Plaintiffs' motion to certify class would not be the "death knell" of the case because the Plaintiffs allege damages of over $10,000 per individual. Microsoft's Resp. at 4. Even if the "death knell" standard applied, the special master is not persuaded by this argument as this matter is at its core a putative class action and not three individual claims for gender discrimination. [↑](#footnote-ref-2)
4. 4Microsoft filed an Errata to the Expert Report of Dr. Ali Saad Ph.D. at 136. The Errata relates to errors in numbers and compensation figures only and does not change the analysis of non-party identifying information. [↑](#footnote-ref-3)
5. 5The recommendations regarding OFCCP documents are reflected in the chart of recommendations to Exhibit A to the First Shaver Declaration. [↑](#footnote-ref-4)
6. 6The Errata to the Expert Report Henry S. Farber does not alter any of Microsoft's requested redactions to the report. [↑](#footnote-ref-5)