

EXHIBIT 11

Reply Expert Report of Dr. Ann Marie Ryan

Moussouris v. Microsoft

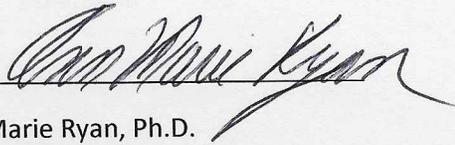
1. I was asked by Plaintiffs' counsel to respond to the portions of Microsoft's Opposition to Class Certification and supporting documents ("Opposition") that address the topics of my October 26, 2017 Report ("Report"), including reviewing the declarations of Microsoft corporate witnesses that address the pay and promotion systems I examined in my Report, and the expert report of Ms. Rhoma Young. Microsoft's Opposition does not change any of the conclusions in my Report. In fact, it supports my Report's findings and strengthens my conclusions.
2. First, Microsoft ignores my specific and detailed criticisms where I apply the well-accepted methodologies of the field of Industrial/Organizational Psychology to Microsoft's challenged pay and promotion policies. I find that: (a) Microsoft employs vague and unweighted criteria for making pay and promotion decisions and failed to standardize how common criteria were evaluated, precluding reliable comparisons by senior managers of their reviewed employees, and freeing evaluators to weight competencies and key results in ways not aligned with job requirements; (b) Microsoft's Career Stage Profiles do not define job-related criteria on which common manager decisions to differentiate pay within career stage can be made; (c) Microsoft's common promotion process is not aligned sufficiently with job requirements, as outlined in the common Career Stage Profiles; and (d) Microsoft did not adequately monitor its personnel decisions for adverse impact. As a result, there is no evidence in the record that the common systems for pay and promotion decision-making at Microsoft led to reliable or valid decisions. Microsoft fails to acknowledge or address this absence.
3. Second, Microsoft witnesses confirm that uniform factors underlie performance, pay, and promotion decision making.
 - a. As one example, manager and HR witnesses discussed employee "Impact" as the criterion upon which pay recommendations are made post-2014. DeCaprio, ¶¶13-14; Helf Decl., ¶31; Jarvis Decl., ¶4; Ku, ¶10; Liuson Decl., ¶¶15-16; Lockard Decl., ¶6; Mao ¶7; Shepherd ¶¶4,15; Wilson ¶¶ 10, 23. Yet, "impact" is ill-defined and/or not defined to a common standard related to the job requirements of each job. This reinforces my conclusion that common criteria are not applied consistently by the reviewing managers. In addition, to be compliant with professional standards outlined in the Uniform Guidelines and SIOP Principles, managers should evaluate impact as defined against the established requirements of each job. This does not happen.
 - b. Further, while Microsoft witnesses confirm the common criteria for promotion as: (1) employee readiness (2) business need, and (3) available budget, these criteria were likewise vague and ill-defined. As Microsoft explains, the "reasons for promotion decisions were not always memorialized and were highly individualized." Microsoft's Opposition to Plaintiffs' Motion for Class Certification at 7 (citing Saad Rpt. ¶¶161-65 & n.125, 188-92). This is the crux of the lack of reliability evidence and is fundamentality at odds with the requirements of the Uniform Guidelines and SIOP Principles. Microsoft has no way of substantiating that given the same set of facts about an individual employee's performance, the same conclusions regarding their promotability will be reached by a common group of managers.

See also Helf Decl., ¶ 39 (what is written in the box justifying a promotion decision “ranges from very little to an exhaustive list of everything about the individual being recommended for promotion”); Shepherd Decl., ¶ 23 (“there is wide variability in the comprehensiveness of the business justifications drafted by managers”). Where there is a systematic difference in promotion rates for men and women, the Uniform Guidelines require validation evidence to show that these differences are due to job related reasons. The Uniform Guidelines are specific in terms of what is considered acceptable evidence of validation; Microsoft has not provided such evidence.

4. Third, Microsoft asserts that appropriate, common guidance to managers is provided via training. Jarvis Decl., ¶ 9 (managers must watch the same training video prior to using the promotion tool), ¶ 20 (common information exists regarding the mechanics of the promotion process). However:
 - a. There is no evidence that this training leads to reliable and valid decision making in pay setting and promotions. As an example, Microsoft guidance indicates that managers must assess “impact”, and the three factors to consider when making judgments of employee “impact”, but none of the training videos I reviewed, including videos defense counsel suggested were the basis for Microsoft witness’ assertions about common training (Jan. 18, 2018 Ltr. to plaintiffs’ counsel at 3-4) provide concrete examples as to what each of these factors means (and thus are vague), guidance as to their relative consideration if impact (i.e., weighting), connects impact to specific job requirements, or provides any materials or practice to ensure that managers are considering impact in reliable ways. The training focuses on functionality of the decision making tool (i.e., how to fill out the information) rather than on how to make reliable and valid decisions. This is an inadequate basis for ensuring valid inferences are being made regarding employees in relation to pay and promotion decisions.
 - b. Neither Ms. Young’s report nor other witnesses or materials respond to my critique regarding the efficacy of Microsoft’s training, or address any professional guidance regarding training effectiveness. See, e.g., Sitzmann and Weinhard (2015), at 2 (describing training effectiveness as “the extent to which training produced the intended results”). More specifically, Ms. Young’s arguments for the effectiveness of the training and initiatives undertaken by Microsoft rest on dollars spent and numbers attending. No evidence is provided for training or initiative effectiveness in achieving outcomes. Professional criteria for evaluating training effectiveness were established years ago with Kirkpatrick’s model (reaction, learning, behavior, results) and have been expanded (see Alvarez, Salas & Garofano, 2004 and Goldstein & Ford (2002) for reviews of training evaluation and effectiveness approaches). As any teacher from preschool through doctoral level will tell you, attendance or mere physical presence is not an indicator of learning. From a professional standpoint, the effectiveness of training requires further evidence than what is provided here.¹

¹ This is of particular importance in the area of diversity training because the cumulative body of research suggests a wide variance in the effectiveness of these interventions. See Berzrukova, Spell, Perry & Jehn, 2016 for a meta-analytic review of diversity training evaluation; see also, e.g., Dobbin & Kalev, 2016 referencing literature on effectiveness/ineffectiveness of certain training and how it can create backlash.

5. In conclusion, under the Uniform Guidelines, when adverse impact exists (e.g., women are adversely affected in pay and promotion), the organization needs to demonstrate that its employment practices are both job related and have supporting validity evidence. These terms have specific technical definitions and generally require an employer to evaluate that its employment practices meet minimum professional standards under the Uniform Guidelines. Microsoft has not done so here. Based on the materials I have reviewed, including Microsoft's fact witness declarations and the Young Report, I conclude that the systemic difference in pay and promotion rates identified by Dr. Farber arise from decision-making that is neither reliable nor valid and fails to meet basic professional standards set forth by the Uniform Guidelines and SIOP Principles.

By: 
Ann Marie Ryan, Ph.D.

February 8, 2018

DOCUMENTS REVIEWED FOR REBUTTAL REPORT

Microsoft's Opposition to Plaintiffs' Motion for Class Certification

Expert Report of Rhoma Young

Declaration of Chris Helf

Declaration of Jamie Silvestri

Declaration of Ian Wilson

Declaration of Shannon Shepherd

Declaration of Roanne Sones

Declaration of Julia Liuson

Declaration of Eric Lockard

Declaration of David Ku

Declaration of JC Mao

Declaration of Shinder Dhilloon

Declaration of Olivia Jarvis

Declaration of Rukmini Iyer

Declaration of Kathy Decaprio

Declaration of Amy Jantz

Declaration of Joseph Whittinghill

Declaration of Maria Alvarez

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January 18, 2018 Letter from Jessica Perry to Plaintiffs' Counsel

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MSFT 00808604

Society for Industrial and Organizational Psychology (2003). *Principles for the validation and use of personnel selection procedures* (4th ed). Bowling Green, OH: SIOP.

Equal Employment Opportunity Commission, Civil Service Commission, Department of Justice & Department of Labor (1978). *Uniform guidelines on employee selection procedures*. Federal Register, 43 (166), 38290-38315.

Sitzmann, T. & Weinhardt, JM (2015). Training engagement theory: a multilevel perspective on the effectiveness of work-related training.

Alvarez, K, Salas, E. & Garofano, C.M. (2004). An integrated model of training evaluation and effectiveness. *Human Resource Development Review*, 3, 385-416.

Goldstein I. L. & Ford K. (2002) *Training in Organizations: Needs assessment. Development and Evaluation* (4th Ed.). Belmont: Wadsworth

Berzrukova, K., Spell, CS, Perry, JL, & Jehn, KA (2016). A meta-analytical integration of over 40 years of research on diversity training evaluation. *Psychological Bulletin*, 142, 1227-1274.

Dobbin, F. & Kalev, A. (2016). Why diversity programs fail. *Harvard Business Review*