

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

INTERNATIONAL BUSINESS  
MACHINES CORPORATION,

Plaintiff,

v.

LINDSAY-RAE MCINTYRE,

Defendant.

Case No. 18-cv-1210-VB

**DECLARATION OF  
LINDSAY-RAE MCINTYRE**

I, Lindsay-Rae McIntyre, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the defendant in this action and a former employee of International Business Machines Corporation (“IBM”). I submit this declaration in opposition to IBM’s motion for a temporary restraining order and preliminary injunction.

**Introduction**

2. I was an IBM employee for more than two decades in a variety of human resources (“HR”) roles in all of IBM’s core and services units. Most recently, I served as the HR Vice President, IBM Executive Succession and Development and Chief Diversity Officer.

3. On January 12, 2018, I accepted a position with Microsoft to serve as its Chief Diversity and Inclusion Officer in Seattle, Washington. This is an excellent professional opportunity where I will be much closer to my extended family, who will provide much needed support for me, my husband, and my three young children, who range in age between 3 and 6 years old.

4. Unfortunately, IBM now is attempting to prevent me from working for Microsoft, despite the fact that IBM has no legitimate reason to prevent me from working at Microsoft. As explained below, my work at Microsoft will not put IBM at any competitive disadvantage

whatsoever, and Microsoft and I have committed to address any legitimate concerns IBM could claim to have by restricting my duties at Microsoft. In contrast, as explained further below, my family and I will suffer severe hardship if I am restrained from working for Microsoft or any competitor of IBM. I respectfully request that this Court deny IBM's motion for an injunction preventing me from working for Microsoft and supporting my family.

**My Former Employment at IBM**

5. I joined IBM in June 16, 1997, as a research associate in IBM's healthcare consulting division just after completing my undergraduate degree.

6. I held a variety of roles in the HR function at IBM from 2000 until 2015, including at locations outside the United States from 2008 through 2015.

7. In 2015, I returned to the United States to serve as HR Vice President for Executive Succession and Development, and as IBM's Chief Diversity Officer.

8. As the HR VP for Executive Succession and Development, I was responsible for the corporate processes to identify, assess, grow, and advance executive talent for IBM, as well as progress the pipeline of future talent. I taught in IBM's management and executive leadership classes and served as the staff lead to prepare IBM's Chief Executive Officer, Ginni Rometty, and Diane Gherson, Senior VP HR, for the Board of Directors presentations twice a year on the subjects of leadership and diversity. I led IBM's "Chairman's Review" process annually where I prepared Ms. Rometty and Ms. Gherson for 18-21 talent and organization discussions with the most senior leaders in the firm.

9. As Chief Diversity Officer, I was responsible for global compliance with equal employment opportunity ("EEO") laws. I represented IBM in the media, at conferences, and with clients as the expert on diversity programs and IBM policy related to diversity. I also

partnered with and managed vendors and was available to consult with IBM's business leaders. I participated in discussions at IBM, including with Ms. Rometty, regarding, whether from a marketing perspective, IBM should be transparent with its EEO data.

10. On January 25, 2012, I signed a Noncompetition Agreement with IBM. A copy of that agreement is attached as Exhibit A.

**My Position at Microsoft Will Not Put IBM at Any Competitive Disadvantage**

11. At Microsoft, I will serve as the Chief Diversity Officer, reporting to Kathleen Hogan, Executive Vice President of HR. In this role, I will be focused on diversity engagement and planning. I will engage Microsoft's diverse communities and interface with these constituencies to ensure that all employees feel welcome and included.

12. For diversity work to be effective, it has to be specific and customized to the company and workforce at issue. My work at Microsoft must be centered on Microsoft's corporate culture and its internal goals as an organization, which are entirely distinct from IBM's culture and goals. Similarly, inclusion focuses on what it feels like to belong and is entirely focused on management and culture. Therefore, while the work that IBM (or any other technology company) does on these issues may be interesting, it is not practically useful in my role at Microsoft.

13. Although I was involved in succession planning discussions at IBM, I will not be doing any work at Microsoft related to succession planning. I understand Microsoft has assured IBM of that as well.

14. I anticipate that IBM will raise a number of specific concerns related to my position at Microsoft; however, as explained below, none provide any concrete cause for concern.

15. First, IBM may allege that I have been exposed to diversity data which has not been made public about every segment of IBM's workforce. I was exposed to IBM's diversity data across its various business segments; however, as one would expect in an organization of over 380,000 employees, I certainly have not committed any of this to memory, nor have I taken any materials from IBM that would reveal this data. I am subject to a non-disclosure agreement and will not disclose any of this information. Moreover, this information is of no use in my new position. And as discussed below, IBM has disclosed significant information about its diversity statistics and programs.

16. Second, IBM may claim that I have knowledge of proprietary software developed and used by IBM to help IBM extract value from its diversity data. The only software that I was aware of is a cognitive bot/assistant that examines EEO data and highlights where a group can improve diversity in its applicant pool and interview selections. I do not have any knowledge of the analytics or the algorithm design. I do not possess the technical skill or knowledge to recreate this software, and I am advised that Microsoft has its own systems for measuring and tracking diversity. Additionally, IBM publicly discusses its use of cognitive bots in recruitment and retention, and offers commercially available Watson products to provide this technology to others. See Shari Feinzig, IBM, *Discover the Sweet Spot for Cognitive HR* (July 3, 2017), <https://www.ibm.com/blogs/watson-talent/2017/07/discover-sweet-spot-cognitive-hr/>. IBM has even published a report to explain how cognitive capabilities can address a company's HR challenges in the area of talent acquisition, onboarding, talent development, and HR operations. IBM, *Extending Expertise: How Cognitive Computing Will Transform HR And The Employee Experience*, [https://www-01.ibm.com/marketing/iwm/dre/signup?source=mrs-form-10440&S\\_PKG=ov55524](https://www-01.ibm.com/marketing/iwm/dre/signup?source=mrs-form-10440&S_PKG=ov55524).

17. IBM also offers commercial products in this space, such as Watson Candidate Assistant to provide interview questions and assess interviews with personality insight to reduce unconscious bias. See Amber Grewal, LinkedIn, *9 Ways IBM is Reinventing Recruiting*, <https://www.linkedin.com/pulse/9-ways-ibm-reinventing-recruiting-amber-grewal/> (Jan. 3, 2018); IBM, IBM Watson Recruitment, <https://www.ibm.com/talent-management/hr-solutions/recruiting-software> (last visited Jan. 29, 2018) (“IBM Watson Recruitment is a cognitive talent management solution that increases recruiter efficiency to allow HR to improve and accelerate people’s impact on the business. It automatically predicts, without bias, the best suited candidates who are most likely to succeed in an organization.”).

18. Third, IBM may claim that I was involved in the development of proprietary methodology for monitoring diversity metrics which were used to incentivize and reward managers who met diversity goals. I was not involved in developing any proprietary methodology used to reward managers. Before I became the Chief Diversity Officer, IBM already had, as part of its annual review process for executives, a qualitative metric that scored business segments on achieving the organization’s aspirational diversity goals. I am advised that Microsoft has its own methodology for monitoring diversity metrics and any IBM methodology for monitoring diversity metrics will be of no use at Microsoft.

19. Fourth, IBM may claim that I am aware of artificial intelligence (“AI”) tools which have been developed by IBM to track career development goals. I do not have any knowledge of the analytics or the AI algorithm design. I do not possess the technical experience to replicate any such program. Moreover, any such program related to my work on succession planning at IBM; succession planning is not a part of my job at Microsoft.

20. Fifth, IBM may claim that I was involved in confidential initiatives to hire 50 diverse candidates from across the country into IBM management. I am aware that the Global Executive Search Practice (“GESP”) engaged in a project to recruit 50 diverse candidates. I was not involved in the identification or selection of the prospective candidates. The recruiting experience and reporting was done solely by the GESP team which was outside of my diversity organization. I merely served as a pass-through from GESP to share updates on the program to Ms. Rometty and her operating team in monthly brief five-minute succession updates. I am not aware of the candidates not yet hired, the status of any such candidates, or of any individuals being pursued or interviewed.

**IBM Has Publicly Made Available a Variety of Its EEO Data**

21. IBM may claim that, if I continue my chosen profession of being a senior diversity professional at Microsoft (which also addresses my needs of moving closer to my family on the West Coast), I will be unfairly competitive because I had access to IBM confidential information in my diversity inclusion and succession roles. While I generally had access to IBM’s voluminous statistical EEO data, that data is constantly changing and would be of no competitive use to Microsoft. More to the point though, I have not taken any of this data and certainly have not committed to memory EEO data about IBM’s approximately 380,000 employees. That said, I am well aware of my contractual obligation not to disclose any IBM confidential information in any setting, including disclosing or relying on such data in the performance of my duties at Microsoft, and hereby affirm to respect that contractual commitment. In any event, statistical EEO data about IBM’s workforce is of no use to Microsoft and there would be no reason to have to use that data in performing the job I have accepted at Microsoft.

22. Technology companies generally share their EEO data with the public. For example, Microsoft and Accenture have websites dedicated to diversity and inclusion that display the company's gender and ethnicity diversity statistics broken down by sector. Microsoft, Global Diversity and Inclusion, Inside Microsoft, <https://www.microsoft.com/en-us/diversity/inside-microsoft/default.aspx#epgDivFocusArea> (last visited Jan. 29, 2018); Accenture, Inclusion and Diversity in the United States, <https://www.accenture.com/us-en/company-diversity-inclusion-workforce-data> (last visited Jan. 29, 2018).

23. Amazon, Apple, Facebook, Google, and Intel also publish diversity data. *See, e.g.*, Open Diversity Data, <http://opendiversitydata.org/> (last visited Jan. 29, 2018) (collecting organizations that provide diversity data); Thomas Ricker, *How do tech's biggest companies compare on diversity?*, The Verge (Aug. 20, 2015) <https://www.theverge.com/2015/8/20/9179853/tech-diversity-scorecard-apple-google-microsoft-facebook-intel-twitter-amazon> (explaining Twitter, Intel, Facebook, and Amazon all provided EEO-1 reports permitting "Apple's-to-apples comparison across much of the industry").

24. In fact, in 2016, a large segment of the industry signed onto a White House pledge, the "Tech Inclusion Pledge," committing to set specific diversity and hiring goals, to publish the data annually on the demographics of their workforce, and to invest in partnerships that would build a larger pipeline of diverse candidates. Tech Inclusion Pledge, <https://www.tech-inclusion.org/#pledge> (last visited Jan. 29, 2018).

25. While IBM until now has chosen not to publish its actual EEO data, IBM does publicly share numerous statistics relating to diversity in its workforce. IBM releases statistics concerning the percentage of women who are senior managers, corporate executives, employees earning promotions to the manager level and beyond, top 10% of earners, profit-and-loss

executives, leaders of billion-dollar divisions, direct reports to the CEO, and board of directors members. *See, e.g.*, Working Mother, The National Associate for Female Executives (NAFE) Top Companies for Executive Women (Feb. 28, 2017) <https://www.workingmother.com/2017-nafe-top-companies-for-executive-women>. *See also* Catalyst, *IBM—Leading the Cognitive Era Powered by the Global Advancement of Women* (Jan. 18, 2018) <http://www.catalyst.org/knowledge/ibm-leading-cognitive-era-powered-global-advancement-women> (“Women’s representation has increased between 2012 and 2016. During this timeframe, IBM increased its global representation of technical women from 22% to 25%, and also grew its global women manager and executive population from 25% to 26%. Additionally, women make up 29% of IBM’s Board of Directors.”).

26. IBM also shares statistics on how many women participate in career counseling, management/leadership training, and mentoring. *See* Working Mother, 2017 Working Mother 100 Best Companies <https://www.workingmother.com/best-companies-ibm>.

#### **IBM’s Publication and Touting of its Diversity Initiatives**

27. IBM has also publicly released on a current basis significant information about its initiatives to increase diverse representation in its workforce. In fact, companies that do not release information about their diversity initiatives would be at a competitive disadvantage for recruiting diverse candidates. Moreover, it is common for companies in the technology sector to share information about their diversity initiatives, as the goal is to engage in best practices. Thus, the technology sector is working collectively to improve its diversity.

28. IBM publicly promotes its commitment to diversity and the steps that it takes to improve diversity not only at IBM, but within the technology sector. Indeed, IBM’s CEO, Ginni Rometty, publicly promotes IBM’s commitment to global diversity. For example, Ms. Rometty

has shared that IBM created its Corporate Service Corps to get IBMers to become global citizens and drive inclusion. Ms. Rometty in fact has offered to make details about this IBM program available stating, “[i]t’s an easily replicable program. I’d offer anybody interested in it, we’d be happy to share it with you as a way to both give back and get your people skilled.” Transcript: IBM’s Ginny Rometty on Leadership (Oct. 2, 2012), <http://fortune.com/2012/10/02/transcript-ibms-ginni-rometty-on-leadership/>).

29. A few other representative examples of IBM publicly promoting its diversity efforts include the following:

- a. As part of IBM’s commitment to advancing women in the workplace, the company invests in programs like Building Relationships and Influence for Women—designed for high-potential women leaders, with experiential and action-centered learning to help participants develop skills in building, developing and maintaining business relationships and influence. Additionally, IBM offers Creating Your Leadership Journey for mid-level career women. The content for both of these courses is based on the three common themes: (1) Be visible; (2) Plan your career; and (3) Integrate work and life. *See* IBM 2016 Corporate Responsibility Report (June 2017), <https://www.ibm.com/ibm/responsibility/2016/the-ibmer/employee-inclusion/index.html>.
- b. IBM’s Business Resource Groups (BRGs) bring together groups of diverse IBM professionals with the goal of enhancing the success of IBM’s business objectives by helping members succeed in the workplace. BRGs align their programs and initiatives with at least one of four IBM business and talent initiatives: recruitment

and hiring, talent development, employee retention, and market development. IBM has more than 275 BRG chapters registered in 51 countries supporting 14 constituencies or focus areas. *See* IBM 2016 Corporate Responsibility Report (June 2017), <https://www.ibm.com/ibm/responsibility/2016/the-ibmer/employee-inclusion/index.html>.

- c. IBM uses a training module and a recruitment guide to help recruiters understand how to provide reasonable accommodations effectively when recruiting people with disabilities. *See* IBM 2016 Corporate Responsibility Report (June 2017), <https://www.ibm.com/ibm/responsibility/2016/the-ibmer/employee-inclusion/index.html>.
- d. IBM developed new manager training titled “Making managers disability-confident.” <https://www.ibm.com/ibm/responsibility/2016/the-ibmer/employee-inclusion/index.html>.

30. During my time as IBM’s Chief Diversity Officer, I personally was encouraged to publicly share IBM’s many initiatives and best practices in the diversity space. Public dissemination of the steps IBM has taken to improve diversity fits squarely with IBM’s goal of corporate responsibility and being a leading company of the world. For example:

- a. I detailed IBM’s heavy investments in creating a diverse tech talent pipeline by partnering with organizations that reach future workers as young as middle school. Allison DeNisco Rayome, *Is diversity in tech truly possible?* 3 executives share their success stories, TechRepublic (Sept. 6, 2017), <https://www.techrepublic.com/article/is-diversity-in-tech-truly-possible-3->

[executives-share-their-success-stories/](#) (“Programs such as IBM Excite Camp, P-TECH, and partnerships with Girls Who Code and 15 historically black colleges and universities are helping over time to fill talent gaps and enhance diversity.”); see Lindsay-Rae McIntyre, *Developing the Future of Science, Technology, Engineering, and Mathematics – A Piece of the IBM Story*, IBM Jobs Blog (Feb. 27, 2017), <https://blog.ibm.jobs/2017/02/27/developing-the-future-of-science-technology-engineering-and-mathematics-a-piece-of-the-ibm-story/> (“We created EXITE and IGNITE (Exploring Interests in Technology and Engineering and Igniting Interest in Technology and Engineering) to focus on STEM for underrepresented boys and girls. We partner with organizations that have the ability to influence students to pursue careers in the STEM fields.”).

- b. As recently as last year in an interview with Forbes magazine, I spoke about how IBM works to address the decline in the number of women studying computer science by investing in the pipeline “by supporting EXITE camps, summer camps and schools for girls to learn and be inspired to pursue math and science.” Georgene Huang, *What We Learn About Diversity From ‘Hidden Figures’ And IBM’s Chief Diversity Officer*, Forbes (Jan. 9, 2017) <https://www.forbes.com/sites/georgenehuang/2017/01/09/what-we-learn-about-diversity-from-hidden-figures-and-ibms-chief-diversity-officer/#2fa4d838788c>.
- c. Just three months ago, I publicly shared that IBM invests half a billion dollars globally every year on professional development for employees and that IBM’s female professionals have taken advantage of these resources. I also disclosed specifics about IBM’s partnerships with organizations like Working Mother,

Anita Borg Institute, Society of Women Engineers and Girls Who Code, which are intended to evolve the conversation and opportunities. All of these public disclosures were made with senior management approval. Lindsay-Rae McIntyre, *Minding the Tech Gap for Women*, IBM THINK Blog (Oct. 4, 2017), <https://www.ibm.com/blogs/think/2017/10/blockchain-ibm/>.

- d. I have also described IBM's commitment to the LGBT+ community by pointing out that IBM joined American Express, Google, and 11 other global companies in September 2015 to launch the first business-led coalition that supports LGBT+ inclusion around the world. Lindsay-Rae McIntyre, IBM THINK Blog (June 23, 2016), <https://www.ibm.com/blogs/think/2016/06/standing-together/>.
- e. I have publicly disclosed that "a super-important piece of [IBM's] transformation" is preparing more women for executive roles in new business areas and that IBM introduced its Elevate program to target middle managers in sales, consulting, and technical jobs in artificial intelligence and cloud computing. Joann S. Lublin, *Getting Women Out of the Middle-Management Trap*, Wall Street Journal (Oct. 10, 2017) <https://www.wsj.com/articles/getting-women-out-of-the-middle-management-trap-1507608361>.

31. IBM's position in this case that it keeps information about its diversity efforts confidential is also belied by the fact that it partners with other businesses, even those in the technology sector, to promote diversity. DeNisco Rayome, *Is diversity in tech truly possible? 3 executives share their success stories* (an article where I explained that companies "don't have to go it alone—there are heaps of opportunities to collaborate and learn from the wisdom of others.").

32. For example, in direct response to the technical skills crisis, IBM designed P-TECH, innovative public high schools where students graduate with a no-cost associate degree in applied science, engineering, computers, or other competitive STEM disciplines, along with the skills they need to continue their studies or step easily into high-growth, “new collar” jobs. P-TECH has grown to nearly 70 schools across three continents—with more than 300 business partners following IBM’s program design, including Microsoft and SAP. *See* Issie Lapowski, *IBM’s School Could Fix Education – And Tech’s Diversity Gap*, *Wired* (Aug. 24, 2015), <https://www.wired.com/2015/08/p-tech/>. IBM also publishes an extensive guide on the schools online that explains everything from how to distribute funding for the school to how to plan the curriculum year by year. *See* PTECH 9-14 Model, <http://www.ptech.org/> (last visited Jan. 29, 2018).

33. IBM is also partnering with other organizations, including those in the technology sector, in its efforts to address the lack of gender diversity in tech. For example, IBM launched a Tech Re-Entry program, an adult-style internship designed to help women who have temporarily left their jobs to ease back into the workplace, which originated from the STEM Re-Entry Task Force, a partnership between The Society of Women Engineers, iRelaunch, and seven founding member companies (IBM, Intel, General Motors, Booz Allen Hamilton, Cummins, Caterpillar, and Johnson Controls). *See* STEM Re-Entry Task Force, <https://reentry.swe.org/> (last visited Jan. 29, 2018).

**Microsoft and I Have Committed to Address Any Legitimate Concerns IBM Could Have by Restricting My Duties at Microsoft**

34. Once this dispute arose, Microsoft advised IBM that it would institute a set of protocols for my position at Microsoft to add an extra layer of assurance to IBM that my hiring

by Microsoft would in no way competitively disadvantage IBM. As of today, these protocols, with which I will comply, consist of the following, which will run through January 15, 2019:

- a. I will have no role in succession planning at Microsoft.
- b. I will not be involved in broad recruitment at Microsoft for individuals other than those in my diversity organization; in fact, Microsoft has a separate in-house recruiting function.
- c. I will have no responsibility for EEO compliance and reporting.
- d. I will adhere to my employee non-solicit obligations.
- e. I will adhere to my confidentiality obligations.
- f. I will provide periodic compliance certifications regarding these restrictions.

35. IBM trusted me for over 20 years; there is no need for IBM not to trust me simply because I found an opportunity in my chosen profession much closer to my extended family. This move will provide me much needed support for me, my husband and my three young children.

36. Since I am the primary breadwinner for my family, if I am prevented from engaging in the role of being a diversity professional, my family will suffer significant hardship due to the loss of my income and the advancement of my career will be seriously impacted.

37. In sum, I believe IBM has no valid concerns regarding my serving as Chief Diversity Officer for Microsoft.

I declare under penalty of perjury that the foregoing is true and correct.



Lindsay-Rae McIntyre

Executed on February 11, 2018