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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

NAACP NEW YORK STATE CONFERENCE
METROPOLITAN COUNCIL OF BRANCHES,

Plaintiff,

v.

PHILIPS ELECTRONICS NORTH AMERICA
CORPORATION, KONINKLIJKE PHILIPS
N.V., NTT DATA, INC., RECALL HOLDINGS
LIMITED, RECALL TOTAL INFORMATION
MANAGEMENT, INC., ADVANCE TECH
PEST CONTROL, DOES 1-100

Defendants, individually
and on behalf of a
Defendant Class,

AND

MONSTER WORLDWIDE, INC.,
ZIPRECRUITER, INC., INDEED, INC.,
Joined Defendants.

Index No. 156382/2015

**FIRST AMENDED CLASS
ACTION COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

“Once you’re labeled a felon, the old forms of discrimination – employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and

exclusion from jury service – are suddenly legal. As a criminal, you have scarcely more rights, and arguably less respect, than a black man living in Alabama at the height of Jim Crow. We have not ended racial caste in America; we have merely redesigned it.”

Michelle Alexander (in the New Jim Crow).

* * *

Plaintiff the NAACP New York State Conference Metropolitan Council of Branches (“Plaintiff” or “NAACP Metropolitan Council”), on behalf of its members, alleges, as follows:

NATURE OF THE ACTION

1. The NAACP Metropolitan Council, comprised of each of the fourteen (14) local Branches of the National Association for the Advancement of Colored People, Inc. (“the national NAACP”) within the City of New York, functions to combat racial discrimination in, among other areas, employment and access to employment opportunities.

2. The national NAACP is the nation’s oldest, largest, and most respected civil rights organization. It is a membership organization with local community “Branches” and broader “State Conferences” located in communities throughout the United States, including New York State. The NAACP Metropolitan Council and each of its fourteen New York City composite Branches advocate and act under the auspices of both the national NAACP and the New York State Conference of NAACP Branches.

3. Defendants Philips Electronics North America Corporation, Koninklijke Philips N.V. (together with Philips Electronics North America Corporation, “Philips”), NTT Data, Inc., Recall Holdings Limited, Recall Total Information Management, Inc. (together with Recall Holdings Limited, “Recall”), Advance Tech Pest Control and Does 1-100 (“Named Defendants”), and members of the defendant class as defined herein (collectively, “Defendants”) create, post and disseminate job openings via online sites such as Monster Worldwide, Inc.

(“Monster”), ZipRecruiter, Inc. (“ZipRecruiter”), and Indeed, Inc. (“Indeed”) (collectively “Joined Defendants”) seeking applicants to apply for the posted jobs.

4. The job postings that the Defendants create, post and disseminate through the Joined Defendants online employment recruiting sites include job postings that explicitly bar applicants with felony convictions from applying for jobs.

5. New York City (“City”) law forbids the denial of employment because of a criminal conviction without the employer first conducting an individualized inquiry into the factors outlined in Article 23-A of the New York State Correction Law (the “Correction Law”).

6. By actively posting and disseminating job openings that ban applicants with felony convictions from applying, Defendants with the assistance of the Joined Defendants violate City law in a systematic and uniform manner.

7. The NAACP Metropolitan Council brings this suit on behalf of its members as well as the African American residents of the City of New York adversely affected by the discriminatory practices of the Defendants which bar them from seeking untold numbers of jobs just because they have a felony conviction, regardless of how much time has passed since the conviction, the nature of the conviction and /or whether the conviction is in any way related to the job that defendants recruit and solicit for online.

8. Plaintiff brings this action under CPLR § 901 against the Named Defendants individually and on behalf as representative of the defendant class of entities that post job openings in NYC on Monster, ZipRecruiter, and Indeed that include a blanket ban based on criminal history to seek a declaration that Defendants’ practice is unlawful and to enjoin Defendants’ illegal practice pursuant to the New York City Human Rights Law, N.Y.C. Admin. Code § 8-101, *et seq.* (“NYCHRL”).

9. Plaintiff joins Monster, ZipRecruiter, and Indeed as parties pursuant to CPLR § 1001 because they are necessary if complete relief is to be accorded and will be affected by a judgment in this action.

STATUTORY BACKGROUND

10. “The public policy of [New York] state [and City], as expressed in [the Correction Law], [is] to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.” N.Y. Corr. Law § 753(1)(a).

11. As articulated in the NYCHRL, “there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on . . . conviction or arrest record.” N.Y.C. Admin. Code § 8-101.

12. Blanket bans on hiring because of a felony conviction undermine and violate the City’s clearly articulated policy.

13. Blanket bans on hiring because of a felony conviction are illegal and decrease employment opportunities for job applicants with felony convictions.

14. Such acts of discrimination “menace the institutions and foundation of a free democratic state.” N.Y.C. Admin. Code § 8-101.

15. The use of these arbitrary pre-employment bans also results in discrimination on the basis of race, ethnicity, color, and national origin because it imports the racial and ethnic disparities in the criminal justice system into the employment application process.

16. For these among other reasons the NYCHRL forbids companies from denying employment, or aiding and abetting the denial of employment, simply because a job applicant has a criminal record. Instead, companies must engage in an individualized evaluation of the

factors outlined in Article 23-A of the Correction Law.

PARTIES

Plaintiff

17. The NAACP Metropolitan Council is a subordinate unit of the national NAACP, a membership-based non-profit association organization under the laws of New York State.

18. NAACP Metropolitan Council currently operates throughout the New York City metropolitan region, and represents the region's fourteen Branches, including the Astoria Branch, the Bronx Branch, the Brooklyn Branch, the Co-Op City Branch, the Corona Branch - E. Elmhurst Branch, the Far Rockaway Branch, the Jamaica Branch, the Mid-Manhattan Branch, the New York Branch, the North East Queens Branch, the NYC Housing Authority Branch, the Parkchester Branch, the Staten Island Branch, and the Williamsbridge Branch.

19. The NAACP's mission is to "ensure the political, educational, social, and economic equality of rights of all persons and to eliminate race based discrimination."

20. NAACP Metropolitan Council and each of its fourteen composite NAACP Branches have a direct and vested interest in working and advocating for and on behalf of all African American citizens and residents of the City of New York and on behalf of all people of color who are residents and/or citizens of the City of New York.

21. At all relevant times, the NAACP Metropolitan Council was and is a "person" within the meaning of the NYCHRL.

Defendants

Philips

22. Defendant Koninklijke Philips N.V. is a foreign corporation headquartered in the Netherlands and doing business in New York.

23. Defendant Philips Electronics North America Corporation is foreign business corporation with a headquarters in Andover, Massachusetts, and licensed to do business in New York with a registered agent at Corporation Service Company, 80 State Street, Albany, New York 12207.

24. Defendant Philips Electronics North America Corporation is a subsidiary of Defendant Koninklijke Philips N.V.

25. Within the relevant statute of limitations, Philips has caused, created, posted and/or disseminated, through online job sites including one or more of the Joined Defendants, job openings in New York City that contain blanket exclusions barring applicants with felony convictions.

26. At all relevant times, Philips was and is a “person” within the meaning of the NYCHRL.

27. At all relevant times, Philips was and is an “employer” within the meaning of the NYCHRL.

28. At all relevant times, Philips was and is a “private employer” within the meaning of the New York Correction Law.

NTT Data, Inc.

29. Defendant NTT Data, Inc. is a foreign corporation headquartered in Boston, Massachusetts, licensed to do business in New York with a registered agent at c/o National Registered Agents, Inc., 111 Eighth Avenue, New York, New York 10011.

30. Within the relevant statute of limitations, NTT Data has caused, created, posted and/or disseminated, through online job sites including one or more of the Joined Defendants, job openings in New York City that contain blanket exclusions barring applicants with felony

convictions.

31. At all relevant times, NTT Data, Inc. was and is a “person” within the meaning of the NYCHRL.

32. At all relevant times, NTT Data, Inc. was and is an “employer” within the meaning of the NYCHRL.

33. At all relevant times, NTT Data, Inc. was and is a “private employer” within the meaning of the New York Correction Law.

Recall

34. Defendant Recall Holdings Limited is a foreign entity headquartered in Australia, with a U.S. headquarters in Atlanta, GA, and doing business in New York.

35. Defendant Recall Total Information Management, Inc. is a foreign business corporation, with a headquarters in Norcross, GA, and licensed to do business in New York with a registered agent at CT Corporation System, 111 Eighth Avenue, New York, NY 10011.

36. Defendant Recall Total Information Management, Inc. is a subsidiary of Defendant Recall Holdings Limited.

37. Within the relevant statute of limitations, Recall has caused, created, posted and/or disseminated, through online job sites including one or more of the Joined Defendants, job openings in New York City that contain blanket exclusions barring applicants with felony convictions.

38. At all relevant times, Recall was and is a “person” within the meaning of the NYCHRL.

39. At all relevant times, Recall was and is an “employer” within the meaning of the NYCHRL.

40. At all relevant times, Recall was and is a “private employer” within the meaning of the New York Correction Law.

Advance Tech Pest Control, Corp.

41. Defendant Advance Tech Pest Control, Corp. is a New York corporation headquartered at 88-07 69th Avenue, Forest Hills, New York 11375.

42. Within the relevant statute of limitations, Advance Tech Pest Control, Corp. has caused, created, posted and/or disseminated, through online job sites including one or more of the Joined Defendants, job openings in New York City that contain blanket exclusions barring applicants with felony convictions.

43. At all relevant times, Advance Tech Pest Control, Corp. was and is a “person” within the meaning of the NYCHRL.

44. At all relevant times, Advance Tech Pest Control, Corp. was and is an “employer” within the meaning of the NYCHRL.

45. At all relevant times, Advance Tech Pest Control, Corp. was and is a “private employer” within the meaning of the New York Correction Law.

Does 1-100

46. Defendant Does 1-100 are currently unidentified entities that have caused, created, posted and/or disseminated, through online job sites including one or more of the Joined Defendants, job openings in New York City that contain blanket exclusions barring applicants with felony convictions.

Joined Defendants

Monster

47. Monster is a foreign business corporation with a corporate headquarters located in

New York, New York.

48. Monster is a company that sells job placement services to employers and solicits, posts and disseminates employer job openings.

49. At all relevant times, Monster solicited, posted and disseminated ads from members of the Defendant Class that contain blanket felony bans and continues to do so.

50. Monster is a necessary party because any injunctive relief the Court may grant against the Defendants will affect Monster's business as it may: (1) require Monster to preserve and produce records or other information with regard to the Defendant class which is exclusively in its possession; and (2) prohibit the Defendants from utilizing Monster's services without changing their postings to conform with the Correction Law.

ZipRecruiter

51. ZipRecruiter is a foreign business corporation with a corporate headquarters located in Santa Monica, California.

52. ZipRecruiter is a company that sells job placement services to employers and solicits, posts and disseminates employer job openings.

53. At all relevant times, ZipRecruiter solicited, posted and disseminated ads from members of the Defendant Class that contain felony bans and continues to do so.

54. ZipRecruiter is a necessary party because any injunctive relief the Court may grant against the Defendants will affect ZipRecruiter's business as it may: (1) require ZipRecruiter to preserve and produce records or other information with regard to the Defendant class which is exclusively in its possession; and (2) prohibit the Defendants from utilizing ZipRecruiter's services without changing their postings to conform with the Correction Law.

Indeed

55. Indeed is a foreign business corporation with a corporate headquarters located in Austin, Texas, and offices in New York, New York.

56. Indeed is a company that sells job placement services to employers and solicits, posts and disseminates employer job openings.

57. At all relevant times, Indeed solicited, posted and disseminated ads from members of the Defendant Class that contained felony bans and continues to do so.

58. Indeed is a necessary party because any injunctive relief the Court may grant against the Defendants will affect Indeed's business as it may: (1) require Indeed to preserve and produce records or other information with regard to the Defendant class which is exclusively in its possession; and (2) prohibit the Defendants from utilizing Indeed's services without changing their postings to conform with the Correction Law.

JURISDICTION AND VENUE

59. This Court has jurisdiction over the claim alleged in this First Amended Complaint for Declaratory and Injunctive Relief ("FAC") pursuant to New York Civil Practice Law and Rule § 301.

60. This Court has personal jurisdiction over Defendants under New York Civil Practice Law and Rule § 302, because, among other things, Defendants regularly transact or transacted business in the State of New York, and have committed acts within the State that have caused injury to persons and/or property within the State.

61. At all times relevant and material to this action, Defendants have posted and disseminated New York City job openings via Joined Defendants' online sites.

62. Venue is proper in this County pursuant to New York Civil Practice Law and

Rule § 503 because the NAACP Metropolitan Council resides in New York County, many NAACP Branches are located in New York County, and many of the NAACP's constituents affected by Defendants' legal violations reside in New York County.

63. Contemporaneously with the filing of this FAC, Plaintiff has mailed a copy of the FAC to the New York City Commission of Human Rights and the Office of the Corporation Counsel of the City of New York, thereby satisfying the notice requirements of Section 8-502 of the New York City Administrative Code.

CLASS FACTUAL ALLEGATIONS

64. Defendants cause, create, post and/or disseminate job postings which explicitly bar applicants from applying for jobs if they possess any felony convictions. *See* Exhibits A-D.

65. These ads appear on online employment websites operated by the Joined Defendants.

66. Employers such as those in the Defendant class have to register and in some cases pay a fee to post job ads on the Joined Defendant's websites in order to reach potential applicants.

67. Through these and other actions, the Defendants denied and continue to deny employment to job applicants because of their felony convictions, without undertaking the individualized inquiry required by New York City law.

68. Defendants' actions violate the NYCHRL and the longstanding policy of the City and State of New York to increase the employment of individuals convicted of crimes and who have lawfully returned to the general population.

69. Plaintiff has reasonable grounds to believe that Defendants will continue to solicit applicants for employment opportunities by posting the discriminatory ads on the Joined

Defendant's sites in violation of NYCHRL.

CLASS ACTION ALLEGATIONS

70. Plaintiff brings its claim as a class action under CPLR § 901(a) against the Named Defendants and the Defendant class consisting of all companies that are “private employers” within the meaning of the Correction Law and have posted ads on Monster, ZipRecruiter, and/or Indeed for jobs to be performed at least in part in New York City that include a blanket ban based on a felony conviction from June 25, 2012, to the date of final judgment in this matter, for any position, except and excluding ads for those positions where a mandatory bar to employment, based on any type of prior criminal conviction, is imposed by federal statute, New York Statute, or other provision of law.

71. Excluded from the Defendant class are Defendant's legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Class.

72. The parties to the Class (the “Defendant Class Members”) identified above are so numerous that joinder of all members is impracticable.

73. Upon information and belief, the size of the Defendant class is at least 100 entities.

74. Defendants have acted or have refused to act on grounds generally applicable to the Plaintiff, thereby making appropriate an order against the Defendant class as a whole for final injunctive relief or corresponding declaratory relief.

75. Common questions of law and fact exist as to the Defendant class and predominate over any questions affecting only individual members of the Defendant class, and include, but are not limited to, the following:

- a. Whether Defendants have violated and/or continue to violate the NYCHRL by posting job ads with blanket bans based on felony convictions;
- b. Whether Defendants have violated and/or continue to violate the NYCHRL by refusing to consider applicants with felony convictions; and
- c. Whether Defendants have violated and/or continue to violate the NYCHRL by rejecting applicants with felony convictions prior to applying the factors laid out in the Correction Law

76. The claim of Plaintiff is typical across the Defendant class because each Defendant engaged in the identical practice of including an explicit ban on hiring applicants with felony convictions in its job ads.

77. Upon information and belief, the named Defendants will fairly and adequately represent and protect the interests of the defendant class among other reasons because the interests of the named defendants to defend against the Plaintiff's claims are identical to the interests of the members of the defendant class.

78. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, since joinder of all defendants is impracticable. Defendants have harmed and continue to harm Plaintiff's constituency based on common and uniform job postings banning applicants with felony convictions in violation of the NYCHRL. Although the relative damages suffered by individuals is not de minimis, such damages are small compared to the expense and burden of individual prosecution of this litigation. In addition, class litigation is superior because it will prevent unduly duplicative litigation that might result in inconsistent judgments.

79. There will be no difficulty in the management of this action as a class action. Moreover, judicial economy will be served by the maintenance of this lawsuit as a class action, in that it is likely to avoid the burden which would be otherwise placed upon the judicial system by the filing of thousands of similar suits by individual harmed persons. There are no obstacles to effective and efficient management of this lawsuit as a class action.

INJURIES TO THE NAACP'S MEMBERS

80. The discriminatory actions discussed in this FAC have harmed NAACP Metropolitan Council members.

81. The NAACP is a national membership organization with members throughout the United States including in the City of New York and New York County.

82. The hundreds of thousands of persons of color who are citizens and residents of the City and for whom NAACP Metropolitan Council advocates have felony convictions disproportionate to their numbers in the overall population, and the racial statistics of persons presently in the criminal justice system indicate this pattern will continue in the immediate future.¹

83. As of 2013, the New York State prison population was approximately 53,550. Although Blacks make up only approximately 16% of the total New York population, according to the U.S. Census Bureau they make up approximately 53% of the incarcerated population. In New York City alone, in 2012 there were approximately 12,287 inmates in city jails, and 57% of them were Black. Of the individuals incarcerated in New York State, approximately 46% were committed from New York City.

¹ In this country, African-Americans and Hispanics are more likely to have a criminal conviction, including a felony conviction, than Whites. *See, e.g., Kimani Paul-Emile, Beyond Title VII: Rethinking Race, Ex-Offender Status, and Employment Discrimination in the Information Age*, 100 Va. L. Rev. 893, 910-13 (Sept. 2014).

84. As of January 1, 2014, 56% of all people in custody were sentenced as first-time felony offenders. At the same time, each year thousands of persons are released from New York State prisons, and need jobs in order to survive. For example, in 2013 approximately 23,832 persons were released from New York State prisons.

85. This means that job postings that discriminate on the basis of felonies also discriminate on the basis of race and ethnicity.

86. Because of felony convictions, NAACP Metropolitan Council members, as well as others with felony convictions, are barred from the jobs Defendants posted and continue to post on the respective websites of the Joined Defendants.

87. The felony exclusions in the job ads caused, created, posted and/or disseminated by the Defendants therefore have a drastically negative impact on NAACP's members and those in the City for which Plaintiff and its constituent Branches advocate.

88. Furthermore, it is futile for anyone with a felony conviction, including NAACP Metropolitan Council members with felony convictions, to apply for the jobs Defendants have posted that explicitly bar applicants with such convictions from applying.

89. Many of these individuals lack the funds necessary to bring a lawsuit to vindicate their rights, and would not be able to find a lawyer to represent them individually although they have standing. The NAACP Metropolitan Council is thus bringing this lawsuit to protect their rights.

90. The interests the NAACP Metropolitan Council seeks to protect are central to the organization's purpose.

91. Specifically, the NAACP Metropolitan Council is dedicated to promoting economic equality and eliminating race-based discrimination.

92. Blanket bans on employment for job applicants with criminal records decrease the economic opportunity of those job applicants who have such records, which decreases economic equality.

93. Because the NAACP Metropolitan Council is only invoking the Court's equitable power to seek injunctive relief, neither the claims asserted nor the relief requested require the participation of the NAACP's individual members in the lawsuit.

94. Defendants' unlawful and ongoing conduct causes harm now and will continue to do so unless this Court enjoins Defendants' illegal practices.

CAUSE OF ACTION

Discriminatory Denial of Employment because of Criminal Convictions (New York City Human Rights Law, N.Y.C. Admin. Code. § 8-101 *et seq.*)

95. Plaintiff incorporates the preceding paragraphs as alleged above.

96. The NYCHRL prohibits "any person" from "deny[ing] any license or permit or employment to any person by reason of his or her having been convicted of one or more criminal offenses . . . when such denial is in violation of the provisions of article twenty-three-a of the correction law." N.Y.C. Admin. Code § 8-107(10).

97. Under Article 23-A of the Correction Law, no application for employment "shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses," N.Y. Corr. Law § 752, without consideration of the eight factors set forth in the Correction Law, N.Y. Corr. Law § 753(1), and any certificate of relief from civil disabilities or certificate of good conduct issued to the applicant, N.Y. Corr. Law § 753(2).

98. By posting, distributing and soliciting for job openings that exclude all individuals with felony convictions from applying, Defendants denied and deny employment to job

applicants with felony convictions, violating the NYCHRL.

99. Accordingly, Defendants' practice of posting, disseminating and soliciting for job openings that explicitly bar any and all applicants with felony convictions must be declared illegal and enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- (a) Certification of a Defendant Class;
- (b) An order that the Joined Defendants produce to Plaintiff a computer-readable data file containing the names, last known mailing addresses, last known telephone numbers, and last known email addresses for members of the Defendant Class;
- (c) A declaration enjoining Defendants' illegal practices;
- (d) An order forbidding Defendants from engaging in further unlawful conduct;
- (e) Costs incurred herein, including reasonable attorneys' fees to the extent allowable by law; and
- (f) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

Dated: New York, New York
February 16, 2016

Respectfully submitted,

By: 

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