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.

Hon. Manuel J. Mendez

Index No. 156382/2015

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST PHILIPS ELECTRONICS NORTH AMERICA CORPORATION

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INTRODUCTION

Through job advertisements barring individuals with felonies from applying to work for them, Defendant Philips Electronics North America Corporation ("Philips" or "Defendant") openly violated the New York City Human Rights Law ("NYCHRL"), N.Y.C. Admin. Code § 8-101, *et seq.*), and through the NYCHRL, Article 23-A of the New York State Correction Law ("Correction Law" or "Article 23-A").

Under the NYCHRL and Article 23-A, an employer *must* separately consider *each* of the factors outlined in Section 753 of the Correction Law before denying employment to applicants with criminal records. *See, e.g.*, *Dempsey v. N.Y.C. Dep't of Educ.*, 25 N.Y.3d 291, 299 (2015) ("A failure to take into consideration *each* of [the § 753] factors results in a failure to comply with the Correction Law's mandatory directive[.]" (quoting *Matter of Acosta v. N.Y.C. Dep't of Educ.*, 16 N.Y.3d 309, 316 (2011) (emphasis supplied)). Employers fail to consider these factors when they bar individuals with felony convictions from applying to work for them. Employers cannot simply "presume a direct relationship between one's past conduct and future employment and the potential safety risk that one may pose as a result of past conduct." *Boone v. N.Y.C. Dep't of Educ.*, 53 Misc. 3d 380, 394 (Sup. Ct. N.Y. Cnty. 2016). Such a presumption flouts the law, which was enacted to "encourage" the hiring of individuals with criminal records. N.Y. Correct. Law § 753(1)(a).

Through this motion, Plaintiff NAACP New York State Conference Metropolitan Council of Branches ("Plaintiff" or "NAACP") respectfully requests that the Court issue an order: (1) declaring that Philips has violated the law and that job advertisements that contain felony bars to employment are a per se violation of the NYCHRL and Article 23-A; (2) enjoining Philips from posting future job advertisements that contain felony bars to employment; and (3) setting a briefing schedule for Plaintiff to seek its reasonable fees and costs.

FACTUAL HISTORY

It is undisputed that Philips's first job advertisement, annexed to Plaintiff's Complaint as Exhibit A, for a "Network Integration Engineer – Healthcare" position, states that an applicant: "Must hold a valid driver's license, and have a driving record showing **zero felony** or DUI **convictions**, and less than three moving violations in the previous three years." Doc. No. 53 at 4 (emphasis supplied).

It is undisputed that Philips's second job advertisement, annexed to Plaintiff's Complaint as Exhibit A, for a "Network Engineer – Healthcare" position, states that an applicant must: "Must hold a valid driver's license, and have a driving record showing **zero felony** or DUI **convictions**, and less than three moving violations in the previous three years." Doc. No. 53 at 7 (emphasis supplied).

It is undisputed that Philips's third job advertisement, annexed to Plaintiff's Complaint as Exhibit A, for a "Solution Delivery Consultant" position, states that an applicant must: "Must hold a valid driver's license and have a driving record showing **zero felony convictions** and less than three moving violations in the previous three years." Doc. No. 53 at 4 (emphasis supplied). Doc. No. 53 at 8 (emphasis supplied).

PROCEDURAL HISTORY

On June 25, 2015, Plaintiff filed its class action complaint, pursuant to CPLR 901. Doc. No. 1. Plaintiff alleged that Philips and NTT Data, Inc. ("NTT Data") and other named and unnamed defendant employers, created, posted, and disseminated job postings via online sites, such as Monster Worldwide Inc., ZipRecruiter, Inc., and Indeed, Inc. (collectively, the Joined Defendants). *See id.* ¶ 3. Among other relief, Plaintiff sought declaratory and injunctive relief, and reasonable attorneys' fees and costs. *See id.* at 17. On February 16, 2016, Plaintiff filed its First Amended Class Action Complaint. Doc. No. 52 (the "Complaint" or "Compl.").

NTT Data moved to dismiss the Complaint on December 23, 2015. Doc. No. 38. Philips moved to dismiss the Complaint on February 1, 2016. Doc. No. 45. The Court denied NTT Data's and Philips's motions on July 18, 2016. Doc. Nos. 107-08. On August 8, 2016, both defendants answered Plaintiff's Complaint. Doc. No. 117-18.

On May 27, 2016, Plaintiff filed a motion for preliminary approval of a settlement class, on behalf of a defendant class of employers alleged to have violated the NYCHRL and Article 23-A. *See* Doc. No. 81. On October 13, 2016, the Court granted Plaintiff's motion. Doc No. 123. As part of its Order granting preliminary settlement approval, the Court explained that Philips and NTT Data were severed from the Defendant Class for purposes of settlement and that "Plaintiff's litigation against them will not be impacted by this settlement." Doc. No. 154 ¶ 6.

LEGAL STANDARD

"Any party may move for summary judgment in any action, after issue has been joined[.]" CPLR 3212(a). Such a motion "shall be granted if, upon all the papers and proof submitted, the cause of action . . . shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR 3212(b).

"Summary judgment is designed to expedite civil cases by eliminating from the Trial Calendar claims which can properly be resolved as a matter of law." *Andre v. Pomeroy*, 35 N.Y.2d 361, 364 (1974). "[W]hen there is no genuine issue to be resolved at trial, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the Trial Calendar and thus deny to other litigants the right to have their claims promptly adjudicated." *Id.* "Summary judgment 'does not deny the parties a trial; it merely ascertains that there is nothing to try.'" *Suffolk Cnty Dep't of Soc. Servs. v. James M.*, 83 N.Y.2d 178, 182 (N.Y. 1994) (citation omitted). "When properly employed," summary judgment is a "highly useful device for expediting the just disposition of a legal dispute for all parties and conserving

already overburdened judicial resources." *Id.*

ARGUMENT

I. Plaintiff is Entitled to a Grant of Summary Judgment.

A. The Statutory Framework Requires Inquiry As to Each Applicant.

"[A]s a general matter, it is unlawful for a . . . private employer to deny an application for . . . employment on the ground that the applicant was previously convicted of a crime." *Matter of Acosta*, 16 N.Y.3d at 314. "This general prohibition advances the rehabilitation and reintegration goals of the [Correction] Law." *Id.* at 320. At the same time, "barring discrimination against those who have paid their debt to society and facilitating their efforts to obtain gainful employment benefits the community as a whole." *Id.*

The NYCHRL states in pertinent part that:

> It shall be an unlawful discriminatory practice for any employer . . . to deny employment to any person . . . by reason of such person . . . having been convicted of one or more criminal offenses, . . . **when such denial or adverse action is in violation of the provisions of article twenty-three-a of the correction law**.

N.Y.C. Admin. Code § 8-107(10) (emphasis supplied).

In turn, Section 752 of the Correction Law states that:

> 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 . . . when such a finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:
>
> (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual [the "direct relationship" prong]; or
>
> (2) the issuance or continuation of the licensure or the granting of the employment would involve an unreasonable risk to the property or the safety or welfare of specific individuals or the general public [the "unreasonable risk" prong].

N.Y. Corr. Law § 752.

However, *even if* an employer thinks that there is a direct relationship or unreasonable risk between its position and the applicant's criminal history under Section 752, the employer still *must* consider the factors presented in Section 753. Section 753 was enacted:

> [T]o prevent the potential discriminatory practices of employers as against ex-offenders by positing that those employers could not presume a direct relationship between one's past conduct and future employment and the potential safety risk that one may pose as a result of past conduct.

Boone, 50 Misc. 3d, at 394. Thus, "[i]n making a determination pursuant to section seven hundred fifty-two . . . the . . . private employer shall consider":

> (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
>
> (b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.
>
> (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
>
> (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
>
> (e) The age of the person at the time of occurrence of the criminal offense or offenses.
>
> (f) The seriousness of the offense or offenses.
>
> (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
>
> (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

N.Y. Correct. Law § 753(1).

An employer "shall also give consideration to a certificate of relief from disabilities or a certificate of . . . good conduct issued to the applicant[.]" *Id.* § 753(2). Such a "certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein." *Id.*

B. Philips Has Violated the Plain Meaning of the Law.

Philips's job postings prevent consideration of any of the factors outlined in Section 753. This violates the NYCHRL and Article 23-A.

"It is fundamental that a court, in interpreting a statute, should attempt to effectuate the intent of the Legislature[.]" *State v. Patricia II*, 6 N.Y.3d 160, 162 (2006). "The starting point is always to look to the language itself and '[w]here the language of a statute is clear and unambiguous, courts must give effect to its plain meaning[.]'" *Id.* (citation and internal quotes omitted). "[I]t is a well-established rule that resort must be had to the natural signification of the words employed, and if they have a definite meaning, which involves no absurdity or contradiction, there is no room for construction and courts have no right to add to or take away from that meaning[.]" *Reddington v. S.I. Univ. Hosp.*, 11 N.Y.3d 80, 91 (2008). "[W]ords are not to be rejected as superfluous[.]" *Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington*, 97 N.Y.2d 86, 91 (2001).

The language of Article 23-A is "clear and unambiguous." Before taking an adverse action based on a criminal record,[1] an employer "shall" consider the eight factors presented in Section 753(1) and pursuant to Section 753(2) "shall" consider whether the job applicant has a certificate of relief or good conduct and if they do accord them a presumption of rehabilitation. The *natural signification* of "shall" is "required to[.]" SHALL, Black's Law Dictionary (10th ed. 2014) (explaining that "[t]his is the mandatory sense that drafters typically intend and that courts typically uphold" and that "[o]nly" this sense "is acceptable under strict standards of drafting"). Supporting this interpretation, the Court of Appeals has repeatedly held that an employer violates

[1] Section 753 states that in making a determination pursuant to Section 752, an employer must consider the Section 753 factors, and Section 752 states that no application for employment "shall be denied *or acted upon adversely*" because of a criminal offenses. N.Y. Correct. Law §§ 752 (emphasis supplied), 753.

Article 23-A if it does not consider "each" factor presented in Section 753. *E.g. Dempsey*, 25 N.Y.3d at 299 ("A failure to take into consideration *each* of [the § 753] factors results in a failure to comply with the Correction Law's mandatory directive[.]" (quoting *Matter of Acosta*, 16 N.Y.3d at 316) (emphasis supplied)).

Moreover, granting summary judgment effectuates the intent of the legislature. Article 23-A was enacted to ensure that employers have specific evaluation guidelines for whether an applicant's conviction warrants denying them employment. *See Patricia II*, 6 N.Y.3d at 162 (explaining that when interpreting a statute, the Court "should attempt to effectuate the intent of the Legislature"). When approving the bill into law, then Governor Hugh L. Carey explained that the bill was "designed to establish reasonable procedures to prevent the unfair discrimination against former criminal offenders in regard to . . . employment[.]" Statement of Governor Hugh L. Carey, 1976 McKinney's Session Laws of New York, 2458 (attached as Exhibit A). The bill "provide[d] reasonable standards to be applied by . . . private employers when considering applications by former offenders." *Id.* "Under the bill, . . . employment could not be denied an individual on the basis of a previous criminal conviction, unless the criminal conduct of which he was convicted ha[d] a direct bearing upon his ability or fitness to perform one or more of the responsibilities or duties necessarily related to the . . . employment sought, or unless granting the application would pose an unreasonable risk to property or the health or safety of others." *Id.* Governor Carey also noted an important policy consideration attached to the bill—that "[p]roviding a former offender a fair opportunity for a job is a matter of basic human fairness, as well as one of the surest ways to reduce crime." *Id.* at 2459.[2]

[2] Even if the statute was ambiguous (it is not), it should be read to effectuate the goal of increasing (and not decreasing) the employment opportunities of individuals with criminal records. "The public policy of [New York] state [and City], as expressed in [the Correction

Philips's postings impose absolute bars to employment for applicants with felony convictions. Those postings violate the NYCHRL and Article 23-A because they do not permit individual evaluation. A person cannot be individually evaluated if they are barred from applying at the outset..

Section 753 requires that an employer evaluate specific information about an applicant. For example:

- Factor (c) requires, in conjunction with factor (b), an evaluation of the individual's criminal offense(s) and how those offenses bear on "fitness or ability to perform one or more [of the position's] duties or responsibilities";
- Factor (d) requires that the employer look at the time since the offense occurred;
- Factor (e) requires that the employer look to the age of the person when the offense occurred;
- Factor (f) requires that the employer evaluate the seriousness of the offense; and
- Factor (g) requires that the employer also look to any information of rehabilitation or good conduct proffered by the person or on his behalf.

N.Y. Correct. Law § 753(1). Beyond these factors, an employer also must consider any certificates of relief or good conduct, and apply a presumption of rehabilitation to applicants with those certificates regarding offenses that the employer might otherwise think disqualifies the applicant for work. In sharp contrast to the statute's requirements, Philips' job postings do not permit the consideration of any of these factors, or consideration of certificates of relief and good conduct.

Law], [is] to encourage the licensure and employment of persons previously convicted of one or more criminal offenses." N.Y. Correct. Law § 753(1)(a). In turn, the NYCHRL states that "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. Such acts of discrimination "menace the institutions and foundation of a free democratic state." *Id.*

C. Article 23-A's Defenses to Liability Do Not Permit Employers to Impose Absolute Barriers to Employment.

Article 23-A provides two situations where an employer may legally deny employment because of a criminal record without violating the law. Neither situation permits an employer to impose an absolute barrier to employment, and Philips otherwise does not fall within either situation.

First, an employer may deny employment because of a criminal record if it can affirmatively show either that: (1) there was a "direct relationship" between the person's criminal offenses and the job or (2) granting employment would involve "unreasonable risk[.]" N.Y. Correct. Law § 752(1)-(2). However, before deciding there is a "direct relationship" or "unreasonable risk" under Section 752, the employer must first consider the Section 753 factors. *See, e.g.*, *Dempsey*, 25 N.Y.3d at 298 ("The Correction Law sets out eight factors that a public agency or private employer must consider when deciding whether one of the section 752 exceptions applies[.]").[3] Thus, for the purposes of summary judgment it is irrelevant whether Philips will claim a Section 752 exception, or even whether one applies. Philips has violated the law because it did not first consider the Section 753 factors.

Boone v. New York City Department of Education provides a recent example of this analysis. 53 Misc. 3d 380. In *Boone*, the court reiterated that even if an employer attempts to avail itself of one of the two Section 752 defenses, it still *must* consider the Section 753 factors.

[3] *See also Belgrave v. City of New York*, 137 A.D.3d 439,439 (1st Dep't 2016), *leave to appeal denied*, 27 N.Y.3d 909 (2016) ("Article 23–A broadly provides that employers, whether public or private, are prohibited from unfairly discriminating against persons previously convicted of one or more criminal offenses, *unless after consideration of certain enumerated statutory factors*, the employer determines that there is direct relationship between the offense(s) and the duties or responsibilities inherent in the license or employment sought or held by the individual, or such employment or license poses an unreasonable risk to the public, etc.") (emphasis supplied)).

Id. at 389-90. As *Boone* explained, "notwithstanding" any purported "direct relationship," an employer "must still analyze the eight factors[.]" *Id.* "An [employer] cannot simply presume an unreasonable risk exists;" it must evaluate the factors. *Id.* at 390. Each must be considered "carefully" and an employer "cannot ignore evidence favorable to the applicant[.]" *Id.* at 391 (citation omitted).

Second, an employer may deny employment when there is a "[m]andatory forfeiture, disability or bar to employment [that] is imposed by law[.]" N.Y. Correct. Law § 751. But before making that determination, an employer must first consider whether the conviction was "removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct." *Id.* Thus, even if a law imposes a bar to individuals with certain felonies working certain jobs, the employer cannot screen out those individuals at the outset—through, in this case, a job posting. The employer must first consider whether the applicant's conviction has been removed through pardon or certificate.

Nonetheless, Philips cannot make any plausible showing that it falls into this narrow exception and that its Network Integration Engineer, Network Engineer, and Solution Delivery Consultant positions necessitate *by law* that it deny employment to individuals with felony convictions.

D. Facial Statutory Violations Are Especially Amenable to Summary Judgment.

Straightforward statutory violations are especially ripe to resolve without discovery. *See, e.g.*, *Kosoglyadov v. 3130 Brighton Seventh, LLC*, 54 A.D.3d 822, 823 (2d Dep't 2008) (affirming trial court's granting of summary judgment to plaintiffs, when plaintiffs moved for summary judgment on the claim of an alleged violation of a tax abatement law's anti-discrimination provision, explaining that the defendants refusal to accept payment through a

federal housing program was a facial violation of the law's anti-discrimination provision). Thus, in *National Organization for Women v. State Division of Human Rights*, the Court of Appeals found the defendants liable for discriminatory separate male and female employment columns in the classified section when the only evidence at issue was the text of the allegedly discriminatory newspaper. 34 N.Y.2d 416, 417 (N.Y. 1974).

The Court of Appeals also explained that "to designate separate want ad column listings as 'Help Wanted—Male' and/or 'Help Wanted—Female' reinforce[d] the very discriminatory practices which the Federal and State antidiscrimination laws were meant to eliminate." *Id.* at 421-22. This concern applies with equal force to the actions of Defendant. The relevant provisions of Article 23-A and the NYCHRL were designed to *increase* the hireability of persons with criminal records and decrease facial barriers to employment. Defendant's actions frustrate the purposes of those laws.

E. Philips Admits That It Violated the Law.

As further support for this motion, in its motion to dismiss reply brief Philips admits that its postings violate the law, stating that: (1) "no . . . statutory interpretation by the Court is necessary to determine whether no-felony job advertisements violate the [NYCHRL]—such advertisements are *expressly proscribed* by the statute[,]" Doc. No. 70 ("Philips MTD Reply") at 3; and (2) "the [NYCHRL] expressly prohibits the posting of job listings that indicate any limitation on hiring based on criminal convictions," Philips MTD Reply at 8. Although Philips's brief references a section of the statute (the Fair Chance Act) that was not enacted until after Plaintiff brought suit, its admission establishes Philips's *own* view that it violated the law. When even the defendant admits that it violated the law, resolving the question of liability now, before discovery, plainly serves the interests of justice. *See, e.g.*, *Suffolk Cnty Dep't of Soc. Servs.*, 83

N.Y.2d at 182 (summary judgment is a "highly useful device for expediting the just disposition of a legal dispute for all parties and conserving already overburdened judicial resources").

II. The Court Should Declare that Defendant's Job Advertisements Violate the NYCHRL and Article 23-A.

Plaintiff requests that the Court declare that the Philips job advertisements attached to Plaintiff's Complaint violate the NYCHRL and Article 23-A. *See* CPLR 3001 (The Supreme Court is empowered to "render a declaratory judgment having the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy whether or not further relief is or could be claimed."); *see also, e.g.*, *Loch Sheldrake Beach & Tennis Inc. v. Akulich*, 141 A.D.3d 809, 813 (3rd Dep't 2016) ("plaintiff's cross motion for summary judgment with respect to its cause of action for a declaratory judgment and the issuance of a permanent injunction should have been granted"); *Cleary v. Auto. Ins. Co. of Hartford*, 141 A.D.3d 501, 502 (2nd Dep't 2016) (explaining that "motion which was, in effect, for summary judgment declaring that the plaintiffs are not entitled to coverage for certain losses under homeowners' insurance policies it issued, the defendant Automobile Insurance Company of Hartford, Connecticut (hereinafter AICHC), established its prima facie entitlement to judgment as a matter of law by demonstrating that the claimed losses fell within the mold exclusion clause in the subject policies"); *City of New York v. Patrolmen's Benevolent Ass'n of City of New York, Inc.*, 169 Misc.2d 566, 572 (Sup. Ct. N.Y. Cnty. 1996), judgment entered No. 4008361996, 1996 WL 35025237 (Sup. Ct. N.Y. Cnty. Apr. 15, 1996), *aff'd*, 231 A.D.2d 422 (1st Dep't 1996), *aff'd*, 89 N.Y.2d 380 (1996).

III. The Court Should Enjoin Defendant From Future Violations of the Law.

Plaintiff also requests that the Court permanently enjoin Defendant from future violation of the NYCHRL and Article 23-A through job postings that bar individuals with felonies from

applying. The elements of a permanent injunction are well established. The moving party must show: (1) irreparable harm absent the injunction; (2) other remedies are inadequate; and (3) a balancing of the equities favors it. *See Meadow Lane Equities Corp. v. Hill*, No. 439-07/a, 2008 WL 4278018 (Sup. Ct. Nassau Cnty. Sept. 3, 2008), *aff'd* 63 A.D.3d 701 (2d Dep't 2009); 67A N.Y. Jur. 2d Injunctions § 45. Here, each of those elements is easily met.

First, members of the NAACP have been irreparably harmed by being denied job opportunities. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 89 & n.15 (1981) (denial of job opportunities can constitute "serious or irreparable harm"); *N.A.A.C.P., Inc. v. Town of E. Haven*, 70 F.3d 219, 224 (2d Cir. 1995) (interpreting *Carson* as standing for principle that denial of job opportunities can make "serious or irreparable harm"). If the Court does not enjoin Defendant's practice, there is nothing stopping it from repeating the unlawful conduct at issue and creating further job postings in violation of the NYCHRL and Article 23-A. *See Rosenthal v. Helfer*, 136 Misc.2d 9, 11 (N.Y. Civ. Ct. 1987) (injunction appropriate where deprivation of heat violation was capable of repetition).[4]

Second, the purpose of this lawsuit was to seek a declaration declaring Defendant's actions illegal, and an injunction enjoining Defendant's future violation of the law. *See* Doc. No. 52 ("Compl.") ¶¶ 7-8. No other remedies are adequate. Damages were never sought and thus monetary relief is insufficient. *Cf. Doe v. Dinkins*, 192 A.D.2d 270, 276 (1st Dep't 1993) ("The plaintiffs seek to have the municipal defendants comply with their statutory and constitutional

[4] To the extent Defendant argues it has removed job advertisements in question and/or ceased the illegal conduct, that is not a defense. "[E]ven if the specific cause of the violation was remedied . . . [the illegal act is still] capable of repetition[.]" *Id.* at 11-12. This potential for repetition makes this case "an appropriate one for the issuance of a mandatory injunction[.]" *Id.* at 12.

obligations. Any inconvenience caused by compliance is outweighed by the harm which would be suffered otherwise.").

Third, if the Court grants summary judgment, the balance of equities clearly favors Plaintiff. Defendant will have been found to have violated the law. It cannot in good conscience argue that the equities should favor it so that it can continue violating the law. The policy of New York is to "encourage" the hiring of individuals with criminal records (N.Y. Correct. Law § 753(1)(a)), and the public also has a great interest in ensuring that New York's laws are complied with—which further tips the balance of the equities in Plaintiff's favor. *See Seitzman v. Hudson River Assocs.*, 126 A.D.2d 211, 214-15 (1st Dep't 1987) (reversing trial court and holding that "when the court balances the equities in deciding upon injunctive relief, it must consider the 'enormous public interests involved'" and finding those interests favored injunctive relief when the defendant's actions ran contrary to public policy).

IV. The Court Should Award Plaintiff's Reasonable Fees and Costs.

If the Court grants summary judgment, there can be no dispute that Plaintiff is the prevailing party and entitled to reasonable attorneys' fees and costs. *See* NYCHRL § 8-502(g) (explaining that the "prevailing party" may be awarded "reasonable attorney's fees, expert fees and other costs"). Accordingly, Plaintiff respectfully requests that the Court set a briefing schedule for Plaintiff's application for reasonable fees and costs.

CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court enter judgment: (1) declaring that Defendant Philips has violated the law and that job advertisements that contain felony bars to employment are a per se violation of the NYCHRL and Article 23-A; (2) enjoining Philips from posting future job advertisements that contain felony bars to employment; and (3) setting a briefing schedule for Plaintiff to seek its reasonable fees and costs.

Dated: May 26, 2017
New York, New York

Respectfully submitted,

By: /s/ Ossai Miazad

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**Pro hac vice motion forthcoming*

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