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COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPARTMENT

SUFFOLK, ss.

Civil Action No.

JANE DOE, on behalf of)
herself and all others similarly situated,)
)
Plaintiff)
)
v.)
)
MORGAN STANLEY & CO., LLC,)
)
Defendant)

COMPLAINT AND JURY DEMAND

Introduction

1. This action is brought by a former employment applicant against Morgan Stanley & Co., LLC (“Morgan Stanley”). Plaintiff brings this claim on behalf of herself and all others similarly situated, alleging that Morgan Stanley’s hiring practices violate Massachusetts law. More specifically, Morgan Stanley’s hiring practices violate M.G.L. c. 151B, by requesting applicants to disclose information about protected criminal history information, by keeping records of such information, and by using application forms that request such information. Plaintiff seeks, among other forms of relief for herself and the class, injunctive relief, lost wages and benefits, damages for emotional distress, punitive damages, interest, and attorneys’ fees and costs, all as provided for by law.

Parties

2. Plaintiff is an adult resident of Dorchester, Massachusetts. Plaintiff is Black. Plaintiff is proceeding in this matter using a pseudonym for her real name. She is using a pseudonym in order to protect private information about her criminal record

history and to ensure that others are not deterred when bringing similar actions to protect their rights under Massachusetts law.

3. Defendant Morgan Stanley & Co., LLC is a Delaware limited liability company. Morgan Stanley has an office in Boston, Massachusetts, as well as offices throughout the United States.

Factual Allegations

4. In or around March 2022, Plaintiff applied to work at Morgan Stanley as a Senior Registered Service Associate in Boston. She completed an online application, as well as a questionnaire for a pre-hire review by Morgan Stanley's Compliance Department.

5. On or about May 25, 2022, after the pre-hire review by Morgan Stanley's Compliance Department was completed, she was offered the position, which she accepted.

6. On or about May 26, 2022, Plaintiff received an email from Morgan Stanley, which read in part as follows:

Hello [Jane],

We have received your signed offer letter and you may now begin the onboarding screening process.

As part of the Firm's efforts to mitigate employment risk, all U.S hires are required to clear criminal, regulatory and fingerprint checks before confirming a start date. You must complete all regulatory and criminal background checks before you can start with the Firm. Following successful clearance of the regulatory and criminal checks, we will be in touch with you to request your preferred start date. You may continue the onboarding process while other background information is being verified (employment, education, military history, etc). ...

7. On June 4, 2022, Plaintiff received an email that stated in part, “Our records indicate that, as of today, you have not completed one of the required tasks for your background check. As a reminder, you are required to complete all background check and other required forms before your first day of employment.”

8. On information and belief, Plaintiff submitted all required forms and authorizations.

9. During the background check process, Plaintiff was asked to provide further information about parts of her criminal history, including history protected under Massachusetts law, which includes the following: “(i) an arrest, detention, or disposition regarding any violation of law in which no conviction resulted, or (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred 3 or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within 3 years immediately preceding the date of such application for employment or such request for information, or (iv) a criminal record, or anything related to a criminal record, that has been sealed or expunged pursuant to chapter 276.” M.G.L. c. 151B, § 4(9).

10. For example, on or about July 6, 2022, Plaintiff received an email from Morgan Stanley, which read in part as follows:

Dear [Jane],

In connection with your application for employment, you authorized Morgan Stanley to conduct a background investigation.

Why am I receiving this email?

Your background check returned the below findings. Before we can proceed with the hiring process, you are required to provide the below indicated documents for each incident. The documents should be submitted to Morgan Stanley Onboarding Screening no later than *Wednesday, July 13th, 2022*.

Findings:

[ARREST INFORMATION REDACTED]

Action Required:

You are required to provide the below documentation for each finding:

- 1. A SIGNED Personal Statement regarding each incident (use attached template)**
 - a. Please print the attached template, complete it in full, and return it to us. Please remember to sign and date the statement.
 - b. Please include a detailed narrative of the facts and circumstances of the event, including but not limited to what led to the event and the final outcome.
- 2. Initial Police Report and or Incident Report for each incident (contact the arresting agency/police department and provide the Initial Police Report or Incident Report)**
- 3. Court Documentation for each incident (contact the applicable courthouse and provide the following court documents with an official court stamp or judge/clerk signature):**
 - a. Final disposition
 - b. Indictment
 - c. Any amended charges
 - d. Sentencing information
 - e. Case summary

Should your efforts to obtain documentation be affected by the closures to courthouses and other government offices, please provide the Morgan Stanley Background Screening Team weekly updates regarding the status of your case.

Note: If you are sending documentation that contains either your SSN or DOB, please password protect the document(s) and send to us via email. You may also fax the document(s) to us at 212-507-6903.

Please reply directly to this e-mail with your response.

11. The “incidents” identified in that email included arrests that did not lead to convictions. As a result, Morgan Stanley’s request that Plaintiff provide additional information about those incidents violated M.G.L. c. 151B, § 4(9). At the time she was going through this background check, she was not aware of the provisions of M.G.L. c. 151B, § 4(9). Because she wanted the job at Morgan Stanley, she followed all of Morgan Stanley’s instructions and provided whatever information was requested of her to the best of her ability. On information and belief, Morgan Stanley kept records of her responses.

12. On or about August 12, 2022, Plaintiff received a call from the Morgan Stanley, who told her that her job offer had been rescinded because of her criminal history information.

13. On information and belief, Morgan Stanley’s rescission of Plaintiff’s job offer was based, in part, on information that Plaintiff was forced to disclose but that is protected under M.G.L. c. 151B.

14. Plaintiff called and asked Morgan Stanley if there were any other positions at the company for which she would be eligible. She was told that Morgan Stanley did not hire anyone with any criminal record as a matter of company policy.

15. As set forth above, Morgan Stanley used application forms that requested protected criminal history information, kept records of such protected information, and requested applicants to disclose information about such protected information, all in violation of Massachusetts law.

16. It is well documented that communities of color, including Black communities, are arrested and convicted at rates significantly higher than the white population. For example, as noted in the U.S. Equal Employment Opportunity Commission's *Enforcement Guidance on the Consideration of Arrest and Conviction Records In Employment Decisions Under Title VII of the Civil Rights Act of 1964* (Apr. 25, 2012) ("*Guidance*"),

Arrest and incarceration rates are particularly high for African American and Hispanic men. African Americans and Hispanics are arrested at a rate that is 2 to 3 times their proportion of the general population. Assuming that current incarceration rates remain unchanged, about 1 in 17 White men are expected to serve time in prison during their lifetime; by contrast, this rate climbs to 1 in 6 for Hispanic men; and to 1 in 3 for African American men. *Guidance* § II and nn. 10-14.

To put those numbers differently, for every 100 White men, about 6 are expected to serve time in prison, but for every 100 Black men, about 33 are expected to serve time in prison. As a result, Black men are over five times more likely to serve time.

17. As the *Guidance* further notes, it is not just convictions that disproportionately affect Black people, but arrests as well.

Nationally, African Americans and Hispanics are arrested in numbers disproportionate to their representation in the general population. In 2010, 28% of all arrests were of African Americans, even though African Americans only comprised approximately 14% of the general population. In 2008, Hispanics were arrested for federal drug charges at a rate of approximately three times their proportion of the general population. Moreover, African Americans and Hispanics were more likely than Whites to be arrested, convicted, or sentenced for drug offenses even though their rate of drug use is similar to the rate of drug use for Whites. *Id.* § V.A.2. and nn. 65-68.

18. To the extent Morgan Stanley relies on rules issued by the Financial Industry Regulatory Authority ("*FINRA*") to justify its actions, *FINRA* Rule 3110 plainly states that "firms must ensure that such background investigations are conducted in

accordance with all applicable laws, rules and regulations, including federal and state requirements, and that all necessary approvals, consents and authorizations have been obtained.” FINRA Rule 3110, available at <https://www.finra.org/rules-guidance/notices/15-05>.

19. Plaintiff filed a timely charge of discrimination at the Massachusetts Commission Against Discrimination more than 90 days before filing this action.

Allegations as to Class

20. Plaintiff seeks to certify a class that includes all individuals who applied for employment in Massachusetts at Morgan Stanley during the relevant limitations period and who were subjected to unlawful inquiries or actions regarding protected criminal history information.

21. On information and belief, given the size of Morgan Stanley, there are more than 40 individuals in the proposed classes.

22. Given that the hiring practices described above were followed by Morgan Stanley on a company-wide and consistent basis, there are questions of fact and law common to all members of each class.

23. On information and belief, Plaintiff has suffered harm from the unlawful practices alleged herein, and her claims are typical of the claims of individuals in the proposed classes.

24. Plaintiff and her counsel will fairly and adequately represent the interests of the class. Plaintiff has no known conflicts of interest with other class members. The attorneys representing Plaintiff have litigated and successfully resolved numerous class action cases involving employment claims.

25. The questions of law or fact common to the members of the class predominate over any questions affecting only individual members.

26. A class action is superior to other available methods for the fair and efficient adjudication of these claims. Among other things, individual adjudications would result in a highly inefficient duplication of discovery, briefing of legal issues, and court proceedings.

Count I
Criminal History Discrimination in Violation of M.G.L. c. 151B

27. Plaintiff incorporates the above paragraphs.

28. Morgan Stanley violated M.G.L. c. 151B, § 4(9) by (a) requesting applicants to provide information about protected criminal history, (b) making or keeping records of such information, and (c) using a form of application which requested such information. As a result of those violations, Plaintiff and class members suffered harm.

29. Morgan Stanley is liable for damages for all lost wages and benefits, damages for emotional distress, punitive damages, and damages for all other losses to which Plaintiff and members of the class are entitled, as well as interest and attorneys' fees and costs.

WHEREFORE, Plaintiff requests that this Court enter the following relief:

1. Certification of a class that include all individuals who applied for employment in Massachusetts at Morgan Stanley during the relevant limitations period and who were subjected to unlawful inquiries or actions regarding protected criminal history information, or such other classes or sub-classes as the Court deems appropriate, pursuant to Mass. R. Civ. P. 23;
2. An injunction enjoining Morgan Stanley from making unlawful inquiries about the protected criminal history information of employment applicants, from keeping records of such information, or from using

application forms requesting such information, or such other terms as the Court deems appropriate;

3. An award of all damages recoverable under Massachusetts law;
4. Attorneys' fees, costs, and interest; and
5. Any other relief to which Plaintiff and members of the class may be entitled.

PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL CLAIMS SO TRIABLE

JANE DOE, on behalf of herself and all others similarly situated,

By her attorneys,

/s/ Stephen S. Churchill
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Dated: December 14, 2023

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Morgan Stanley Unlawfully Requests Job Applicants' Protected Criminal History Information, Class Action Alleges](#)
