

ER

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

**SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
C.A. No.**

JONATHAN MCDONOUGH, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

SHAW'S SUPERMARKETS, INC. and
ALBERTSONS COMPANIES, INC.,

Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Jonathan McDonough ("Plaintiff"), by and through his attorneys, makes the following allegations pursuant to the investigation of his counsel and based upon information and belief, except as to allegations specifically pertaining to himself and his counsel, which are based on personal knowledge, against Defendant Shaw's Supermarkets, Inc. and Defendant Albertsons Companies, Inc. (collectively, "Defendants").

NATURE OF THE ACTION

1. Mass. Gen. Laws ch. 149, § 19B(2)(b) requires all applications for employment within the Commonwealth to contain a notice of job applicants' and employees' rights concerning lie detector tests.
2. Despite this abundantly clear mandate, Defendants do not provide such written notice of rights in their Massachusetts job applications.
3. Under Mass. Gen. Laws ch. 149, § 19B(4), persons aggrieved by a violation of Mass. Gen. Laws ch. 149, § 19B(2) have a private right of action for such violations, for injunctive relief and damages, including minimum statutory damages of \$500 per violation.

4. Mass. Gen. Laws ch. 149, § 19B(4) also expressly authorizes class actions, providing that a civil action may be brought by a person “in his own name and on his own behalf, or for himself and, for other [sic] similarly situated.”

5. Thus, pursuant to Mass. Gen. Laws ch. 149, § 19B(4), Plaintiff brings this action, on behalf of himself and those similarly situated, to redress Defendants’ violations of Mass. Gen. Laws ch. 149, § 19B(2)(b).

PARTIES

6. Plaintiff Jonathan McDonough is a citizen of Massachusetts who resides in Abington, Massachusetts. In or around February 2024, while located in Massachusetts, Plaintiff applied to work at a Shaw’s Supermarket in Weymouth, Massachusetts as an overnight stocker. However, in his Shaw’s Massachusetts-based job application, Plaintiff was not provided the notice of his rights concerning lie detector tests that is required by Mass. Gen. Laws ch. 149, § 19B(2)(b).

7. Defendant Shaw’s Supermarkets, Inc. is a Massachusetts corporation with its principal place of business at 750 West Center Street, West Bridgewater, Massachusetts 02379. Defendant Shaw’s Supermarkets, Inc. operates throughout and is one of the largest employers in Massachusetts. Defendant Shaw’s Supermarkets, Inc. targets its job applications at prospective employees whom it knows to reside in Massachusetts.

8. Defendant Albertsons Companies, Inc. is a Delaware corporation with its principal place of business at 250 Parkcenter Boulevard, Boise, Idaho 83706. Defendant Albertsons Companies, Inc. is the parent company of Defendant Shaw’s Supermarkets, Inc.

9. Each of the Defendants acted jointly to perpetrate the acts described herein. At all times relevant to the allegations in this matter, each of these Defendants acted in concert with, with the knowledge and approval of, and/or as the agent of the other Defendant within the course and scope of the agency, regarding the acts and omissions alleged.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this matter pursuant to Mass. Gen. Laws ch. 212, §§ 3 and 4 because this is a civil action where the aggregate claims of all members of the proposed class are in excess of \$50,000, exclusive of interest and costs.

11. The Court has personal jurisdiction over Defendants pursuant to Mass. Gen. Laws ch. 223A § 3(a), (b), and (e) because Defendants regularly transact business in the Commonwealth, Defendants contract to supply services or things in the Commonwealth, and Defendants have an interest in, use, and possess real property in the Commonwealth.

12. Venue is proper in the Business Litigation Session (“BLS”), pursuant to Superior Court Administrative Directive No. 24-1, because this case is complex and is brought as a class action which will require substantial case management.

FACTUAL ALLEGATIONS

13. On December 16, 1985,¹ Massachusetts enacted 1985 Mass. Acts Chapter 587,² introduced as HB 6908³ and codified at Mass. Gen. Laws ch. 149, § 19B.

14. Mass. Gen. Laws ch. 149, § 19B(2)(b) provides:

All applications for employment within the commonwealth shall contain the following notice which shall be in clearly legible print:

“It is unlawful in Massachusetts to require or administer a lie detector test as a condition of employment or continued employment. An employer who violates this law shall be subject to criminal penalties and civil liability.”

¹ See, e.g., 1985 Bill History of the Commonwealth of Massachusetts at p. 3388 (<https://archives.lib.state.ma.us/bitstream/handle/2452/796446/1985-House-03-BillHistory.pdf>).

² <https://archives.lib.state.ma.us/handle/2452/40042>.

³ <http://archives.lib.state.ma.us/handle/2452/602897>.

15. In plain violation of the law, Defendants do not provide such written notice of rights in the applications for Shaw's Massachusetts-based jobs.

16. On its website, at <https://www.shaws.com/careers.html>, Defendant Shaw's Supermarkets, Inc. encourages job seekers to "[a]pply now" to "[j]oin [the Shaw's t]alent [c]ommunity[.]" Defendants also advertise the opportunity to "find [Shaw's] jobs" and "[j]oin [the Shaw's t]alent [c]ommunity" on Defendant Albertsons Companies, Inc.'s website, at https://eofd.fa.us6.oraclecloud.com/hcmUI/CandidateExperience/en/sites/CX_1001/pages/3. Upon clicking the "[a]pply now" and "[j]oin now[]" links on these pages, job seekers are directed to a job search page on the website of Defendant Albertsons Companies, Inc., located at https://eofd.fa.us6.oraclecloud.com/hcmUI/CandidateExperience/en/sites/CX_1001/requisitions?mode=location. There, job seekers can find Shaw's job openings, information, and applications.

17. Searches for the terms "lie detector" and/or "condition of employment" on Defendants' websites – [shaws.com](https://www.shaws.com) and eofd.fa.us6.oraclecloud.com – yield no results.

18. Indeed, Plaintiff's counsel surveyed numerous job applications that Defendants have made publicly available via eofd.fa.us6.oraclecloud.com. **None** of Defendants' job applications viewed by Plaintiff's counsel complied with Mass. Gen. Laws ch. 149, § 19B(2)(b). *See* Ex. 1-3.⁴

19. Plaintiff and Class members were aggrieved because they were bona-fide applicants for jobs with Defendants, and Defendants deprived them of their statutorily guaranteed right to the notice provided for by Mass. Gen. Laws ch. 149, § 19B(2)(b).

⁴ Ex. 1 pertains to job ID 538589 (available at https://eofd.fa.us6.oraclecloud.com/hcmUI/CandidateExperience/en/sites/CX_1001/job/538589); Ex. 2 pertains to job ID 538553 (available at https://eofd.fa.us6.oraclecloud.com/hcmUI/CandidateExperience/en/sites/CX_1001/job/538553); and Ex. 3 pertains to job ID 536828 (available at https://eofd.fa.us6.oraclecloud.com/hcmUI/CandidateExperience/en/sites/CX_1001/job/536828).

CLASS REPRESENTATION ALLEGATIONS

20. Plaintiff seeks to represent a class defined as

All persons who applied for a Massachusetts-based position of employment with Defendants (the “Class”).

21. Members of the Class are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class number in the thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants.

22. Common questions of law and fact exist as to all Class members and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to, whether Defendants’ conduct as alleged herein violates Massachusetts law, including the provisions of Mass. Gen. Laws ch. 149, § 19B(2)(b); whether Plaintiff and Class members are entitled to damages and if so, in what amount; and whether Plaintiff and the other members of the Class are entitled to equitable relief, including but not limited to injunctive or declaratory relief.

23. The claims of the named Plaintiff are typical of the claims of the Class in that the named Plaintiff applied for Massachusetts-based employment with Defendants. In his application for employment with Defendants, Plaintiff – like the rest of the Class – was not furnished the notice of rights that is required by Mass. Gen. Laws ch. 149, § 19B(2)(b).

24. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class members he seeks to represent, he has retained competent counsel experienced in prosecuting class actions, and he intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and his counsel.

25. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
Declaratory and Injunctive Relief

26. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

27. Absent injunctive relief, Defendants may continue to violate the law and infringe upon the rights of Massachusetts job applicants.

28. Plaintiff asks this court to declare Defendants' conduct unlawful and enjoin Defendants from using and disseminating job application materials that do not comply with Mass. Gen. Laws ch. 149, § 19B(2)(b).

COUNT II
Violation of M.G.L.A. 149, § 19B(2)(b)

29. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

30. Massachusetts law explicitly requires that companies soliciting applications for employment include the following language on all Massachusetts job applications: “It is unlawful in Massachusetts to require or administer a lie detector test as a condition of employment or continued employment. An employer who violates this law shall be subject to criminal penalties and civil liability.” Mass. Gen. Laws ch. 149, § 19B(2)(b).

31. Defendants do not include this statutorily-required language in their Shaw’s Massachusetts job applications, including the job applications filled out by Plaintiff and Class members.

32. Pursuant to Mass. Gen. Laws ch. 149, § 19B(4), Plaintiff and Class members seek statutory damages of not less than five hundred dollars per violation and reasonable attorney’s fees and costs as a result of Defendants’ violations of Mass. Gen. Laws ch. 149, 19B(2)(b).

RELIEF DEMANDED

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- a. For an order certifying the Class, naming Plaintiff as representative of the Class, and naming Plaintiff’s attorneys as Class Counsel to represent the Class;
- b. For an order declaring that Defendants’ conduct violates the statute referenced herein;
- c. For an order finding in favor of Plaintiff and the Class, on all counts asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;

- g. For an order enjoining Defendants from continuing the illegal practices detailed herein and compelling Defendants to undertake a corrective advertising campaign; and
- h. For an order awarding Plaintiff and the Class their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: November 18, 2024

Respectfully submitted,

BIRNBAUM & GODKIN, LLP

/s/ David S. Godkin

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**Pro hac vice application forthcoming*

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