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IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL

ERICA PUGH, et al.,	:	AUGUST TERM 2020	<b>DOCKETED</b>
	:		
Plaintiffs,	:	NO. 01768	JUN 28 2024
	:		
v.	:	CLASS ACTION	R. POSTELL COMMERCE PROGRAM
	:		
CHHS HOSPITAL COMPANY, LLC, et al.,	:	Control No. 23080835, 23121127	
	:		
Defendants.	:		

**ORDER**

AND NOW, this 27<sup>th</sup> day of June 2024, upon consideration of plaintiff’s motion for class certification, plaintiff’s motion to strike defendants’ sur-reply, the responses to both motions, and plaintiff’s motion for preliminary approval of a settlement of a portion of this class action,<sup>1</sup> after a hearing in this matter, and in accord with the Findings of Fact, Conclusions of Law, and Opinion issued simultaneously with this order, it is **ORDERED** that:

1. The motion for class certification is **GRANTED**;

2. Pursuant to Rule 1710 of the Pennsylvania Rules of Civil Procedure, the following class is certified with respect to the claims for violation of the Philadelphia Fair Criminal Record Screening Standards Ordinance asserted against defendants CHHS Hospital Company, LLC d/b/a as Chestnut Hill Hospital and CHSPSC, LLC f/k/a Community Health Systems Professional Services Corporation (collectively the “Certification Defendants”) only:

All persons who were asked a question regarding a criminal conviction during the online application process at Chestnut Hill Hospital from March 14, 2016, through September 30, 2017 (the “Class”);

<sup>1</sup> The Court will issue a separate order addressing the motion to approve the class settlement.

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3. Plaintiff Erica Pugh is appointed to serve as Class representative;
4. Attorneys Alan Denenberg of the firm Abramson & Denenberg, P.C., and Jonathan Shub of the firm Shub & Johns, LLC, are appointed to serve as Class counsel and to represent the interests of the named plaintiff and all Class members throughout all future proceedings;
5. The motion to strike the settling defendants' sur-reply is **DISMISSED** as **MOOT**; and
6. Counsel shall appear for a virtual case management conference with respect to the merits-focused portion of this case, as well as the process for providing notice to the class members, on August 20, 2024, at 2:30 p.m. in accord with the notice issued simultaneously with this order.

**BY THE COURT:**

  
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**ABBE F. FLETMAN, J.**

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
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TRIAL DIVISION - CIVIL**

ERICA PUGH, et al.,	:	AUGUST TERM 2020
	:	
Plaintiffs,	:	NO. 01768
	:	
v.	:	CLASS ACTION
	:	
CHHS HOSPITAL COMPANY, LLC,	:	Control No. 23080835, 23121127
et al.,	:	
Defendants.	:	

**FINDINGS OF FACT**

1. Plaintiff Erica Pugh filed this action on August 20, 2020,<sup>1</sup> on her own behalf and on behalf of a proposed class of persons similarly situated, against defendants CHHS Hospital Company, LLC d/b/a as Chestnut Hill Hospital and CHSPSC, LLC f/k/a Community Health Systems Professional Services Corporation (collectively, the “Certification Defendants”)<sup>2</sup> based on the Certification Defendants’ alleged violations of the Philadelphia Fair Criminal Record Screening Standards Ordinance,<sup>3</sup> which plaintiff refers to as the “Ban the Box Law.” *See* Dkt. at September 19, 2021, Ninth Amended Complaint (“Complaint”), ¶ 7.<sup>4</sup>

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<sup>1</sup> Docket (“Dkt”) at August 20, 2020, Complaint.

<sup>2</sup> Ms. Pugh sued several additional defendants who subsequently entered into a settlement agreement with her and the putative class. *See* Dkt. at March 18, 2024, plaintiff’s Motion for Preliminary Approval of Class Action Settlement. The settling defendants are Chestnut Hill Hospital, LLC, Tower Health, Tower Health Medical Group, and Tower Health Medical Group Holding Company, LLC (“Settling Defendants”). The claims against the Settling Defendants are not addressed in these findings of fact and conclusions of law.

<sup>3</sup> Phila. Code § 9-3501 *et seq.*

<sup>4</sup> In her Complaint, Ms. Pugh also asserts claims against both sets of defendants under the Pennsylvania Criminal History Record Information Act, 18 Pa. CONS. STAT. § 9125 *et. seq.* *See* Dkt. at September 19, 2021, Complaint, ¶ 7. Ms. Pugh is not seeking certification of those claims and is “only seeking certification of her claims under the Philadelphia Ban the Box Law in Count

2. The parties agree that the Certification Defendants operated Chestnut Hill Hospital from at least March 14, 2016, through September 30, 2017, when they transferred their interest in the hospital to the Settling Defendants. *See* Dkt. at September 19, 2021, Complaint, ¶¶ 18, 30; Dkt. at January 24, 2022, Settling Defendant’s Answer, ¶ 30 (“effective on or about October 1, 2017, [the Settling Defendants] began to operate [Chestnut Hill] Hospital.”); Dkt. at January 25, 2022, Certification Defendants’ Answer, ¶ 18 (“[P]rior to October 1, 2017, [the Certification Defendants] solely owned, operated, and did business as Chestnut Hill Hospital. . . . After October 1, 2017, [the Certification Defendants] had no role in the ownership, operation, management, or business of Chestnut Hill Hospital.”)

3. Ms. Pugh alleges, and the Certification Defendants do not dispute, that she submitted an employment application to the Certification Defendants on or about August 20, 2017. *See* Dkt. at September 19, 2021, Complaint, ¶ 32; Dkt. at September 1, 2023, Certification Defendants’ Memorandum of Law in Opposition to Motion for Class Certification (“Opposition”), p. 4.

4. The Certification Defendants asked all applicants the following question on their employment applications for all positions at the hospital until September 30, 2017: “Are you registered, or ordered to be registered on the National Sex Offender Public Website or other governmental sex offender/predator registry?” Dkt. at September 1, 2023, Certification Defendants’ Opposition, p. 6.

5. Thousands of people submitted to the Certification Defendants their employment applications containing the alleged improper question. Ms. Pugh claims that there are more than

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I of the Ninth Amended Complaint.” Dkt. at August 3, 2023, plaintiff’s Memorandum of Law in Support of Motion for Class Certification (“Motion”), p. 2, nt. 2.

23,000 class members who applied for employment with the Certification Defendants between March 14, 2016, and September 30, 2017. *See* Dkt. at August 3, 2023, plaintiff’s Motion, p. 4 (“The criminal history question posed to Plaintiff was not unique or isolated. This identical question was similarly asked of approximately 23,401 other class members during the . . . part of the Class Period” applicable to the Certification Defendants.) The Certification Defendants admit there are at least 4,940 class members, although they argue that the class period should begin on June 13, 2017, rather than March 14, 2016. *See* Dkt. at September 1, 2023, Certification Defendants’ Opposition, p. 5.

6. The private right of action provisions of the Ban the Box Law became effective on March 14, 2016. *See* Phila. Code § 9-3508, Note 1200.

#### **CONCLUSIONS OF LAW**

1. The numerosity requirement is met because there are thousands of employment applicants who fall within the definition of the class.

2. There appear to be questions of law and fact common to all class members

3. The named plaintiff’s claims appear to be typical of the claims of the other class members.

4. Named plaintiff and her counsel are capable of adequately representing the class.

5. This class action appears to be the fairest and most efficient method for adjudicating the class members’ claims against the Certification Defendants, as well as the Certification Defendants’ defenses to those claims.

6. Because the private right of action provisions of the Ban the Box Law became effective on March 14, 2016, the class definition includes only those persons who applied for employment with Certification Defendants after that date.

7. The following class is certified with respect to plaintiff's claim that Certification Defendants violated the Ban the Box Law:

All persons who were asked a question regarding a criminal conviction during the online application process at Chestnut Hill Hospital from March 14, 2016, through September 30, 2017 (the "Class").

### OPINION

A court may certify a case as a class action only if the following requirements are met:

- (1) the class is so numerous that joinder of all members is impracticable;
- (2) there are questions of law or fact common to the class;
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (4) the representative parties will fairly and adequately assert and protect the interests of the class under the criteria set forth in [Pa. R. Civ. P.] 1709; and
- (5) a class action provides a fair and efficient method for adjudication of the controversy under the criteria set forth in [Pa. R. Civ. P.] 1708.

Pa. R. Civ. P. 1702. "[T]he trial court [should] decide whether certification is proper based on the parties' allegations in the complaint and answer, on depositions or admissions supporting these allegations, and any testimony offered at the class certification hearing. The court may review the substantive elements of the case only to envision the form that a trial on those issues would take." *Samuel-Bassett v. Kia Motors Am., Inc.*, 34 A.3d 1, 15–16 (Pa. 2011). At this early stage in these proceedings, Ms. Pugh has sufficiently satisfied the criteria for certifying this action as a class action.

The arguments against certification raised by the Certification Defendants are predominantly merit-based and cannot be resolved now as part of the certification process. Plaintiff is "not required to prove [defendants'] liability at the certification stage and the trial court [is] prohibited from factoring the perceived adequacy of the underlying merits of the class's claims

into the certification decision.” *Samuel-Bassett*, 34 A.3d at 22. *See also* Pa. R. Civ. P. 1707, Explanatory Comment – 1977 (“The [certification] hearing is confined to a consideration of the class action allegations and is not concerned with the merits of the controversy or with attacks on the other averments of the complaint. Its only purpose is to decide whether the action shall continue as a class action or as an action with individual parties only. In a sense, it is designed to decide who shall be the parties to the action and nothing more. Viewed in this manner, it is clear that the merits of the action and the right of the plaintiff to recover are to be excluded from consideration.”) “An order under this rule may be conditional and, before a decision on the merits, may be revoked, altered or amended by the court on its own motion or on the motion of any party.” Pa. R. Civ. P. 1710(d).

**I. The Numerosity Requirement Is Satisfied.**

“The class representative need not plead or prove the number of class members so long as she is able to define the class with some precision and affords the court with sufficient indicia that more members exist than it would be practicable to join.” *Janicik v. Prudential Insurance Co. of America*, 451 A.2d 451, 456 (Pa. Super. 1982). “Whether the number [of potential class members] is so large as to make joinder impracticable is dependent not upon an arbitrary limit, but rather upon the circumstances surrounding each case.” *Id.*

In this case, the class model serves as the fairest and most efficient way to adjudicate the claims of the more than 23,000 people who applied for employment with the Certification Defendants during the class period requested by plaintiff. Even if a significant number of these class members are ultimately excluded by the statute of limitations, the Certification Defendants admit that at least 4,940 class members would remain. *See* Dkt. at September 1, 2023, Certification Defendants’ Opposition, p. 5. The joinder of so many individual class members as plaintiffs would

clearly be impracticable, and it is obviously more efficient to hear the class members' claims together rather than in multiple, separate actions.

## **II. There are Questions of Law and Fact Common to the Class.**

“[A] common issue of fact or law will generally exist if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the class opponent. The common question of fact requirement means precisely that the facts must be substantially the same so that proof as to one claimant would be proof as to all.” *Sommers v. UPMC*, 185 A.3d 1065, 1076 (Pa. Super. 2018). Plaintiff is “not required to prove that the claims of all class members [a]re identical; the existence of distinguishing individual facts is not fatal to certification.” *Samuel-Bassett*, 34 A.3d at 23.

It is alleged that Certification Defendants engaged in the same course of conduct by requiring each of the thousands of class members to fill out the same standard form employment application demanding information regarding their sex offender registration. To the extent that the Certification Defendants violated the Ban the Box Law in doing so, proof as to one class member would be proof as to all.

The Certification Defendants' defenses raise many additional questions of law and fact common to the class. The Certification Defendants claim that the Pennsylvania Child Protective Services Law (“Child Protective Services Law”), 23 PA. CONS. STAT § 6344 (Westlaw through Act 13 of the 2024), entitles them to ask the sex offender question in their employment application if the employee would have direct contact with children. *See* Dkt. at September 1, 2023, Certification Defendants' Opposition, pp. 3, 24-25. The Child Protective Services Law defense raises questions of law and fact that may be decided, at an appropriate later stage in these proceedings, either with respect to all applications or certain types of jobs where the employee



may have direct contact with children. *See* Pa. R. Civ. P. 1710(c)(2) (“When appropriate, in certifying, refusing to certify or revoking a certification of a class action the court may order that . . . a class be divided into subclasses and each subclass treated as a class for purposes of certifying, refusing to certify or revoking a certification[.]”) If the Court determines later in the merits-focused portion of these proceedings that the Child Protective Services Law defense eliminates the claims of some sub-class of the certified class, the class definition may be modified to exclude those sub-class members. *See* Pa. R. Civ. P. 1710(d) (“An order under this rule may be conditional and, before a decision on the merits, may be revoked, altered or amended by the court on its own motion or on the motion of any party.”)

The Certification Defendants also raise a condition precedent or statute of limitations defense against those class members whose employment applications were submitted before June 13, 2017. Ms. Pugh claims to have filed an administrative complaint with the Pennsylvania Commission on Human Relations on April 9, 2018, on behalf of herself and the class. *See* Dkt. at September 19, 2021, Complaint, ¶ 9; Dkt. at September 1, 2023, Certification Defendants’ Opposition, p. 35. The private right of action under the Ban the Box Law is contingent upon the claimant filing such an administrative action within 300 days of the violation, *i.e.*, from the date the employment application containing the allegedly improper question was submitted. *See* Phila. Code § 9-3506(3). Based on that time limitation, Certification Defendants argue that people who filed their employment applications more than 300 days before Ms. Pugh’s administrative complaint should not be included in the class definition. *See* Dkt. at September 1, 2023, Certification Defendants’ Opposition, pp. 34-39. Ms. Pugh argues that the continuing violations doctrine invalidates this defense. *See* Dkt. at September 25, 2023, Plaintiff’s Reply, pp 21-29. If the Court determines at a later, appropriate stage in this case that this defense applies to any class

members, the class definition may be modified to exclude them. *See* Pa. R. Civ. P. 1710(d) (“An order under this rule may be conditional and, before a decision on the merits, may be revoked, altered or amended by the court on its own motion or on the motion of any party.”)

The Certification Defendants assert that Ms. Pugh and the other class members suffered no injury or actual damages from the sex offender question and, as a result, they lack standing to bring Ban the Box Law claims against the Certification Defendants. *See* Dkt. at September 1, 2023, Certification Defendants’ Opposition, pp. 3, 9, 12-24. Ms. Pugh, however, is not seeking actual damages on behalf of the class; instead, she is seeking only punitive, rather than compensatory, damages from the Certification Defendants. *See* Dkt. at August 3, 2023, Motion, p. 17 (“Damages are not individualized as Plaintiff will be asking the jury to award punitive damages.”); Dkt. at September 25, 2023, Plaintiff’s Reply, p. 2 (Plaintiff “is not moving to certify a class for compensatory damages, but rather is requesting the Court certify a class for a narrow and straightforward issue: whether the [Certification] Defendants recklessly violated the Ban the Box Law thus entitling Ms. Pugh and the Class to punitive damages.”)

Ms. Pugh argues that the Ban the Box Law permits her and the class members to obtain punitive damages without first showing that they suffered compensatory damages. *See* Dkt. at September 25, 2023, Plaintiff’s Reply Memorandum in Support of Motion for Class Certification, p. 3 (“Defendants misread the requirements necessary to prove a statutory violation of the Ban the Box Law and misapprehend the strict liability nature of the Ordinance. There is nothing that requires Ms. Pugh, or any Class member, to prove they suffered a pecuniary injury in order to satisfy Pennsylvania law’s “aggrieved” requirement and, thus, establish statutory standing.”) The issue of what punitive damages, if any, to award Ms. Pugh and the other class members in the

absence of injury and compensatory damages does not appear to be an individual inquiry and may be resolved later on a class-wide basis.

### **III. Plaintiff's Claims are Typical of the Claims of the Class.**

The purpose of the typicality requirement “is to ensure that the class representative’s overall position on the common issues is sufficiently aligned with that of the absent class members to ensure that her pursuit of her own interests will advance those of the proposed class members.”

*Samuel-Bassett*, 34 A.3d 1 at 30-1. As the Pennsylvania Supreme Court has explained:

Typicality exists if the class representative’s claims arise out of the same course of conduct and involve the same legal theories as those of other members of the putative class. The requirement ensures that the legal theories of the representative and the class do not conflict, and that the interests of the absentee class members will be fairly represented. But, typicality does not require that the claims of the representative and the class be identical, and the requirement may be met despite the existence of factual distinctions between the claims of the named plaintiff and the claims of the proposed class.

*Id.*

In this case, Ms. Pugh claims to have filled out one of the Certification Defendants’ employment applications in which they requested information regarding her sex offender status. *See* Dkt. at September 19, 2021, Complaint, ¶ 32 (“On or about August 20, 2017, Plaintiff completed an online application for employment as a phlebotomist at Chestnut Hill Hospital,”); Dkt. at September 1, 2023, Certification Defendants’ Opposition, pp. 4-5 (“CHHS included th[e sex offender] question on all applications for all positions at the Hospital until September 30, 2017, when it sold the Hospital to the Tower Defendants.”) Certification Defendants claim they were justified in asking her that question under the Child Protective Services Law, and they claim the named plaintiff suffered no injury and no actual damages. *See* Dkt. at September 1, 2023,

Certification Defendants' Opposition, pp. 26-31. As such, her claims, and the defenses to them, appear to be aligned, and do not conflict, with those of the other class members, so she satisfies the typicality requirement.

**IV. Plaintiff and Class Counsel Will Fairly and Adequately Assert and Protect the Interests of the Class.**

To determine whether the named plaintiff and her counsel should be appointed to represent the class, the court should consider:

- 1) whether the attorney for the representative parties will adequately represent the interests of the class;
- 2) whether the representative parties have a conflict of interest in the maintenance of the class action; and
- 3) whether the representative parties have or can acquire adequate financial resources to assure that the interests of the class will not be harmed.

Pa. R. Civ. P. 1709.

In this case, there is no dispute that class counsel are experienced lawyers who will adequately represent the interests of the class and that their firms have adequate financial resources to pursue these claims on behalf of the class. Nor is there any evidence that Ms. Pugh has an actual conflict of interest with the other class members. Instead, Certification Defendants argue that her position with respect to their defenses of injury, damage, and standing may be different than that of other class members. *See* Dkt. at September 1, 2023, Certification Defendants' Opposition, pp 31-33. Those differences, if any, cannot be determined now and must wait until more discovery is taken on the merits of the class members' and the named plaintiff's claims. Therefore, the Court approves the named plaintiff as representative of the class, until such time, if ever, that her interests are shown to conflict with those of other class members, and the Court approves plaintiff's counsel as counsel for the class.

**V. A Class Action is a Fair and Efficient Method by Which to Try This Case.**

In determining whether a class action is a fair and efficient method of adjudicating the controversy, the court should consider:

- 1) whether common questions of law or fact predominate over any question affecting only individual members;
- 2) the size of the class and the difficulties likely to be encountered in the management of the action as a class action;
- 3) whether the prosecution of separate actions by or against individual members of the class would create a risk of
  - i) inconsistent or varying adjudications with respect to individual members of the class which would confront the party opposing the class with incompatible standards of conduct;

\* \* \*

- 6) whether in view of the complexities of the issues or the expenses of litigation the separate claims of individual class members are insufficient in amount to support separate actions[.]

Pa. R. Civ. P. 1708(a)(1)-(6).

At this stage in this case, the common questions as to the Certification Defendants' liability for violating the Ban the Box Law and their defenses predominate over any individual questions, which remain to be developed further during merits discovery. Individual actions by the class members on the issues identified by Certification Defendants would be prohibitively expensive for each person to maintain considering his or her likely monetary recovery. Such separate, individual actions also run the risk of inconsistent results at the trial court level, necessitating multiple, costly appeals. Managing this class of thousands with their common claims and defenses does not present insurmountable difficulties for the Court or the parties. A class action, therefore, appears at this juncture to be a fair and efficient way to resolve such claims and defenses.

**CONCLUSION**

For all the foregoing reasons, plaintiff's Motion for Class Certification is granted, and the parties shall move forward with the merits portion of this action.

**Dated: June 27, 2024**

**BY THE COURT:**

  
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**ABBE F. FLETMAN, J.**