APL-2019-00218
Bronx County Clerk's Index No. 28254/16E

Court of Appeals

STATE OF NEW YORK

An Individual Described Herein by the Pseudonym "MARGARET DOE",

Plaintiff-Appellant,

—against—

BLOOMBERG L.P.,

Defendant,

—and—

MICHAEL BLOOMBERG,

Defendant-Respondent,

—and—

NICHOLAS FERRIS,

Defendant.

BRIEF FOR *AMICUS CURIAE* PARTNERSHIP FOR NEW YORK CITY IN SUPPORT OF DEFENDANT-RESPONDENT MICHAEL BLOOMBERG

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June 29, 2020

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INTEREST OF AMICUS CURIAE

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. Parts 500.1(f) and 500.23(a), proposed *Amicus Curiae* the Partnership for New York City (the "Partnership") states that it is a not-for-profit corporation organized under the laws of the State of New York and it has the following affiliates and subsidiaries: Coalition for New York's Future, Inc.; FinTech Innovation Lab LLC; Fund for New York's Future, Inc.; New York City Investment Fund Manager, Inc.; New York City Investment Fund, LLC; New York City Partnership Foundation, Inc.; NYCIF Program Holdings, LLC; NY Digital Health, LLC; NY Digital Health II, Inc.; NY Digital Health II, LLC; NYC Seed LLC; and PFNYC Innovate NY Fund LP.

The Partnership is a nonprofit membership organization that comprises more than 300 of New York City's leading businesses. These businesses operate in a wide range of industries, including finance, consulting, healthcare, fashion, media, law, real estate, and entertainment. Together, they employ more than 1.5 million New Yorkers.

The Partnership's mission is to engage the business community, government, labor, and the nonprofit sector in efforts to advance the New York City economy and maintain New York City's position as the center of global commerce, finance, culture, and innovation. Promoting equal employment opportunities and safe and

inclusive workplaces in New York City—including by ensuring that those workplaces are free from sexual harassment—is an important part of the Partnership's mission. The Partnership believes that workplace discrimination and harassment undermine the Partnership's goals, and the Partnership has a long history of advocacy in favor of anti-discrimination protections for New York City workers. For example, it issued a policy statement in support of the New York Gender Expression Non-Discrimination Act. *See* Memorandum in Support, Gender Expression Non-Discrimination Act (GENDA) S.107A.74, https://pfnyc.org/news/new-yorks-businesses-support-the-gender-expression-non-discrimination-act-genda/. The Partnership also has submitted *amicus curiae* briefs in support of marriage equality.

The Partnership thus is well-positioned to inform the Court of the substantial and detrimental effects that the adoption of Plaintiff-Appellant's interpretation of New York City Human Rights Law ("City Human Rights Law") Section 8-107(13)(b)(1) would have on New York City businesses and on New York City's cultural and economic life, more broadly.

SUMMARY OF ARGUMENT

Plaintiff-Appellant Margaret Doe urges this Court to adopt an interpretation of City Human Rights Law Section 8-107(13)(b)(1) that would treat an owner or executive of a New York City corporation as an "employer" within the meaning of that section and, accordingly, permit the owner or executive to be held liable for

discriminatory conduct by a corporate employer's managerial or supervisory employees. As the Appellate Division recognized, this "would have the effect of imposing strict liability on every individual owner or high-ranking executive of any business in New York City . . . for simply holding an ownership stake or a leadership position in a liable corporate employer." R. at 420. Such an interpretation of Section 8-107(13)(b)(1) would not advance the City Human Rights Law's broad, remedial aims of providing recourse to victims and deterring unlawful discrimination in New York City. Instead, it would undermine core principles of corporate law and impose unnecessary costs on New York City businesses that are already struggling to recover from the COVID-19 pandemic, with potentially far-reaching impacts for New York City's economic and cultural life.

First, if adopted, Plaintiff's interpretation would not provide any meaningful benefit to victims of unlawful employment discrimination. It would not make available any meaningful additional remedies, evidence, or other means of recourse to plaintiffs beyond that which is already available under existing law and practice. Nor would it meaningfully incentivize employers to take additional steps to stamp out discrimination or harassment in New York City, which already has among the strongest legal regimes in the county for preventing and remedying discrimination and harassment in employment.

Second, without advancing the broad remedial aims of the City Human Rights Law, Plaintiff's interpretation would unreasonably trample basic tenets of corporate law which are foundational to our economic system. Corporations are legally separate from both their owners and agents. Thus, as the Appellate Division recognized, corporate owners and executives cannot be held personally liable for the corporation's legal obligations solely by virtue of their ownership interest or job titles. This legal distinction between a corporation and its shareholders and executives is an essential component of modern economic life. An interpretation of the law that disregards this fundamental distinction is *per se* unreasonable.

Third, Plaintiff's interpretation would impose significant and unnecessary costs on New York City businesses, threatening their ability to compete with businesses in other jurisdictions for top executive talent and outside investment. These additional costs also would compound the significant challenges that many of those businesses, particularly small businesses, face as a result of the COVID-19 pandemic.

Plaintiff's proposed interpretation of Section 8-107(13)(b)(1) cannot be justified even under the City Human Rights Law's uniquely broad and remedial goals, and this Court should reject it.

ARGUMENT

I. Plaintiff's Interpretation Would Not Meaningfully Advance the City Human Rights Law's Remedial Aims.

The Partnership recognizes the broad scope and remedial aims of the City Human Rights Law. The New York City Council has been clear that the City Human Rights Law must be "construed liberally for the accomplishment of [its] uniquely broad and remedial purposes." N.Y.C. Admin. Code § 8-130(a) (2020). Thus, where "reasonably possible," courts are to construe the City Human Rights Law "broadly in favor of discrimination plaintiffs," *Albunio v. City of New York*, 16 N.Y.3d 472, 477–78 (2011), and to further the City Council's goal of creating "the strongest law enforcement deterrent" to discrimination, *Williams v. New York City Hous. Auth.*, 61 A.D.3d 62, 68 (1st Dep't 2009).

Plaintiff's interpretation of Section 8-107(13)(b)(1), however, would not meaningfully advance either of these aims. *First*, it would not provide meaningful additional recourse for victims that is not already available through existing law and practice. *Second*, it would not create stronger incentives to prevent sexual harassment or other forms of unlawful discrimination in New York City work-places.

1. It Would Not Provide Meaningful Additional Recourse for Victims of Unlawful Discrimination or Harassment.

Naming an owner or executive in addition to the corporate employer and individual perpetrator would not provide additional means of redress or other benefits to victims of unlawful employment discrimination in New York City.

As an initial matter, the City Human Rights Law already provides a cause of action against both the perpetrator of the unlawful discrimination and the corporate employer. *See* City Human Rights Law §§ 8-107(1), (6) and (13). If a corporate owner or executive was personally involved in the challenged conduct, the victim already can bring claims against that person as a perpetrator of unlawful discrimination under Section 8-107(1), for aiding and abetting unlawful discrimination under Section 8-107(6), or for retaliation under Section 8-107(7).

Naming an owner or executive as a defendant simply because they hold an ownership stake or high-level position in a corporate employer generally would not increase the amount of recoverable damages available to successful plaintiffs. That is because damages for employment discrimination claims (including back pay, front pay, and compensatory damages for emotional distress) are not measured by the number or identity of defendants. *See* N.Y.C. Admin. Code §§ 8-120(a)(2), 8-120(a)(8).

It also would not, in most cases, provide the victim with additional financial recourse. Officers and executives typically are indemnified by the corporation for

liability and litigation costs arising from lawsuits against them in their corporate capacities. *See* Bus. Corp. L. § 722(a). By definition, liability not premised on any culpable conduct of the officer will fall within the scope of the indemnification right and not within any carve-out for culpable conduct. *See generally id.* Thus, holding owners or executives personally liable solely by virtue of their ownership interest or job title generally would not create a source of compensation that is not already available through the corporate employer.

In the event that the corporate employer is unable to meet its financial obligations to a plaintiff because the corporation's owner has abused the corporate form to shield assets, the law already provides a remedy. A victim may pursue damages from the corporate owner based on the law on veil-piercing. That body of law is well-developed and should not be circumvented, as discussed further in Section II below.

Nor would Plaintiff's interpretation help a discrimination plaintiff develop her case through discovery. Corporate owners or executives sued solely in their corporate capacities would not be able to testify or provide any other evidence concerning the specifics of the challenged conduct. To the extent that a plaintiff reasonably believes that the corporate executive's testimony or documents could establish facts supporting her allegations of a hostile work environment, that evidence generally could be obtained through discovery of the corporate employer.

See N.Y. C.P.L.R. §§ 3101(a)(1), 3106(a). For nonemployee owners, a plaintiff could obtain discovery by means of a nonparty subpoena. *See id.* §§ 3101(a)(4), 3106(b).

2. It Would Not Create Additional Incentives to Deter Misconduct Within an Organization.

Plaintiff's interpretation also would not advance the City Human Rights Law's aim of creating a strong deterrent. If an executive or owner could face personal liability regardless of her personal participation in the challenged conduct, then there are no steps she could take to avoid such liability, and thus she would have no incentive to alter her behavior. Instead, she likely would rely on the corporate employer to maintain strong safeguards to prevent discrimination from occurring in the first place. The City Human Rights Law already incentivizes a uniquely strong regime of compliance and oversight by corporate employers in New York to prevent unlawful discrimination in three key respects.

First, the City Human Rights Law applies to more employers and imposes more rigorous requirements on those employers than does federal law and the law of many states. The City Human Rights Law provides a cause of action for gender-based harassment against all New York City employers, regardless of the number of employees, and for other forms of discrimination against employers with four or more employees. *See* N.Y.C. Admin. Code § 8-102. Federal employment discrimination laws and the laws of many states, by contrast, apply only to

employers with 15 or more employees. *See* 42 U.S.C. §2000e (2020); *see e.g.*, Ariz. Rev. Stat. § 41-1461(6)(a) (2020); Fla. Stat. § 760.01(7) (2020), 775 Ill. Comp. Stat. 5/2-101(B)(1)(a) (2020); La. Stat. § 23:302(2) (2019); 2019 Nev. Stat. 613.310(2); N.C. Gen. Stat. § 143-422.2(a) (2020); Utah Code § 34A-5-102(1)(i)(i) (2020).

The City Human Rights Law also mandates that all New York City businesses conduct sexual harassment trainings for all employees on an annual basis. *See* N.Y.C. Admin. Code § 8-107(30). This requirement is significantly more stringent than that found in other progressive jurisdictions like California, which only requires such trainings every two years. 2 Cal. Code Regs. § 11024(b)(1)(B) (2020). Many states—including populous states like Florida, Pennsylvania, New Jersey, Ohio, and Texas—do not have any such training requirements.

Second, the City Human Rights Law provides extensive procedural protections to victims by reducing barriers to bringing claims for discrimination in the workplace. In New York City, a victim has three years to file a complaint under the City Human Rights Law, and she is not required first to file her claim with an administrative agency before filing a civil suit. *See* N.Y.C. Admin. Code §§ 8-109(e), 8-502(d). By contrast, under federal law, a victim must first file a claim with the Equal Opportunity Employment Commission ("EEOC") before she can bring suit, *see* 42 U.S.C § 2000e-5(f)(1), and she will have 300 days (or fewer, in

some states) to file suit once the EEOC issues a right to sue letter, *see id.* § 2000e-5(e)(1). In addition, outside of New York, only seven other states' statutes of limitations for sexual harassment claims equal or exceed the City Human Rights Law's three-year limitations period, and none permit a victim to file suit without first exhausting administrative remedies. *See* Cal. Gov't. Code § 12960(e) (2020); Md. Code State Gov't. § 20-1013(a)(3)(ii) (2020); Or. Rev. Stat. § 659A.875(1)(b) (2020) ; 12 Vt. Stat. § 511 (2020); *Adler v. Fred Lind Manor*, 153 Wash.2d 331, 355 (2004) (explaining that Washington courts apply a three-year statute of limitations to state-law employment discrimination claims).

Third, with regard to the substantive law that applies to employment discrimination claims, the City Human Rights Law makes it easier for victims to establish employer liability. Although under federal law and the law of many states, a plaintiff must establish "severe or pervasive" harassment, the City Human Rights Law requires only that the plaintiff establish that she has been "treated less well" than other employees because of her sex. *See Williams.*, 61 A.D.3d at 78; *see also id.* at 80 n. 30 (noting that even a single comment "made in circumstances where that comment would, for example, signal views about the role of women in the workplace" may be actionable). The City Human Rights Law also rejects the *Ellerth-Faragher* defense, which is available under federal law and shields employers from liability for discrimination by a supervising employee if (*i*) the em-

ployer exercised reasonable care to prevent and correct the discrimination promptly and (*ii*) the defendant-employee unreasonably failed to take advantage of the employer's preventative or corrective measures. *Zakrzewska v. New Sch.*, 14 N.Y.3d 469, 479–80 (2010).

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In sum, under Plaintiff's interpretation, corporate owners or executives could be held personally liable under Section 8-107(13)(b)(1) for a discriminatory comment made three years earlier by a corporate employee whose conduct they neither encouraged, condoned, nor approved. Corporate owners and executives would not evade liability for that misconduct even if they ensured that the corporation adhered to every applicable requirement under the New York City Human Rights Law, including by implementing yearly trainings and providing robust internal procedures for preventing, investigating, and remedying discrimination within the organization. Such potentially limitless, strict liability would not incentivize beneficial behavior by corporate owners and executives, and it would not provide additional recourse to victims of discrimination. There is no reasonable interpretation of the City Human Rights Law that would require such an outcome.

The only real "benefit" to future plaintiffs that would be advanced by the challenged interpretation is the potential to embarrass or beleaguer high-profile persons (even in the absence of any basis to allege any individual culpability of

such persons or to identify any steps that such persons could have taken to prevent the conduct at issue) and to extract settlement value from such potential to embarrass or beleaguer. But that is not a "benefit" that should be countenanced even given the New York City Human Rights Law's "uniquely broad and remedial purposes." N.Y.C. Admin. Code § 8-130(a).

II. Plaintiff's Interpretation Would Undermine Foundational Tenets of Corporate Law.

Plaintiff's interpretation also is not a "reasonably possible" construction of Section 8-107(13)(b)(1) because it would require this Court to disregard blackletter corporate law, with potentially far-reaching consequences for the New York City economy. *See Albunio*, 16 N.Y.3d at 478. Specifically, Plaintiff's reading treats a corporate owner or executive as interchangeable with the corporate employer for purposes of establishing liability for misconduct by an employee. This proposition is squarely at odds with the legal distinction between a corporate entity and its owners and agents, a foundational principle of corporate law on which our economy depends.

A. Plaintiff's Interpretation Is Contrary to Blackletter Corporate Law Establishing a Legal Distinction between a Corporation and Its Owners and Agents.

This Court has recognized for more than a century that "the essential purpose behind corporations . . . is to give them a separate legal existence from the natural persons who own them and from other legal entities." *Matter of Franklin*

St. Realty Corp. v. NYC Envtl. Control Bd., 34 N.Y.3d 600, 604 (2019); *accord Rapid Transit Subway Const. Co. v. City of New York*, 259 N.Y. 472, 487 (1932) ("A corporation is a creature of the law, endowed with a personality separate and distinct from the personality of those who own its stock and elect its directors."). The corporation "absorbs and takes the place of the individuals who own its stock." *Halsted v. Globe Indem. Co.*, 258 N.Y. 176, 179 (1932). For that reason, "owners are normally not liable for the debts of the corporation." *Morris v. New York State Dep't of Taxation & Fin.*, 82 N.Y.2d 135, 140 (1993). Indeed, "[a] principal attribute of, and in many cases the major reason for, the corporate form of business association is the elimination of personal shareholder liability." *We're Assocs. Co. v. Cohen, Stracher & Bloom, P.C.*, 65 N.Y.2d 148, 151 (1985).

As the Appellate Division recognized, the principle of limited liability may be disregarded only in very narrow circumstances. R. at 420. To pierce the corporate veil and hold an owner liable for the corporation's wrongdoing, a plaintiff must establish not only that the owner completely dominated the corporation but also that she abused the corporate form to commit a wrong against the plaintiff. *Id.* (citing *Morris*, 82 N.Y.2d at 142). Plaintiff asks this Court to do away with this requirement by permitting an owner to be held liable solely by virtue of his ownership interest. But this Court has previously warned against that possibility, explaining that "[a]llowing a court—through joint and several liability—to in effect

pierce the corporate veils, without the proper inquiry and proof according to established guidelines, undermines bedrock principles of corporate law." *Matter of Seagroatt Floral Co., Inc.*, 78 N.Y.2d 439, 450 (1991).

Just as a corporation is legally distinct from its owners, so too is it separate from its executives. *See* 1 Fletcher Cyc. Corp. § 25 ("The corporation and its directors and officers are similarly not the same personality."). Corporate executives cannot be held personally liable for the corporation's acts solely by virtue of their position. Instead, they must have personally participated in the alleged wrongdoing. *See* R. at 419–20; *accord Lloyd v. Moore*, 115 A.D.3d 1309, 1310 (4th Dep't 2014) (corporate officer "cannot be held individually liable to plaintiff" where he "did not personally participate in malfeasance or misfeasance constituting an affirmative tortious act"); *Bernstein v. Starrett City*, 303 A.D.2d 530, 532 (2d Dep't 2003) ("[A] corporate officer may not be held liable for the negligence of the corporation merely because of his or her official relationship to it."); 3A Fletcher Cyc. Corp. §1137 (2019) (A corporate officer "is not personally liable for torts of the corporation . . . merely by virtue of holding corporate office, but can only incur personal liability by participating in the wrongful activity.").

B. The Legal Distinction between a Corporation and Its Owners and Agents Is Essential to Our Economy.

The legal distinction between a corporation and its officers and owners "is a matter of sound public policy." *Joan Hansen & Co. v. Everlast World's Boxing*

Headquarters Corp., 296 A.D.2d 103, 109 (1st Dep't 2002). Limiting liability for corporate owners "provide[s] a vehicle to assemble human and financial capital [and is] essential to our economy." 1 Corporate Governance: Law and Practice § 1.01 (2019). Indeed, economic systems to limit personal liability have existed since antiquity. *See* Robert W. Hillman, *Limited Liability in Historical Perspective*, 54 Wash. & Lee L. Rev. 613, 616–24 (1997) (discussing limited liability mechanisms under Roman, Byzantine, Early Islamic, and Medieval Italian law); Samuel Williston, *History of the Law of Business Corporations before 1800*, 2 Harv. L. Rev. 105, 109 (1888). Limited liability is now a "nearly universal feature of the corporate form" across the developed world. Reinier Kraakman, et al., The Anatomy of Corporate Law: A Comparative and Functional Approach 9 (2d. ed. 2017).

Likewise, ensuring that corporate executives can be held personally liable only for their own wrongful conduct, not that of the corporation or another corporate employee, helps ensure that qualified individuals are willing to serve in high-level positions. To treat executives as a legal equivalent of the corporation for purposes of establishing liability "would be dangerous doctrine, and would subject corporate officers . . . continually to liability on corporate [obligations] and go far toward undermining the limitation of liability which is one of the principal objects

of corporations." *Joan Hansen*, 296 A.D.2d at 109 (quoting *Matter of Brookside Mills*, 276 A.D. 357, 367 (1st Dep't 1950)).

These principles make up the foundation of our economy. Some scholars have argued that, without limited liability, publicly traded corporations and organized public securities markets could not exist. *See* Frank H. Easterbrook and Daniel R. Fischel, *Limited Liability and the Corporation*, 52 U. Chi. L. Rev. 89, 90-92 (1985) (describing these arguments). In addition, by reducing the risk to the individual shareholder of delegating management responsibilities to others, limited liability makes effective corporate governance possible. *See id.* at 93–97. By disrupting these settled expectations regarding corporate separateness, Plaintiff's interpretation risks undermining these systems and, in turn, jeopardizing New York City's role as a global financial center.

III. Plaintiff's Interpretation Would Have Far-Reaching Costs for New York City Businesses.

A. It Would Diminish New York City Businesses' Ability to Attract Top Executive Talent and Investment.

Plaintiff's interpretation would dramatically expand corporate executives' and owners' risk of personal liability (even in the absence of any allegation of culpable conduct or identification of any steps that they could have taken to prevent the harm at issue). This would discourage their involvement in businesses

based in New York City, potentially accelerating the movement of jobs from New York City to states with fewer regulations.

An interpretation making executives of New York City businesses strictly liable for any sexual harassment or other discrimination occurring in their companies would deter qualified individuals from serving as senior executives in New York City. This would disadvantage New York City businesses in the competition with other cities for attracting top executive talent. With regard to corporate owners, Plaintiff's interpretation would deter investment in New York City businesses and could deprive New York City of investment dollars. These effects could be compounded many times over if Plaintiff's interpretation were applied not only to individual owners but also to owners which are entities, such as corporate parent companies, private equity funds, or other institutional investors, which provide the outside investment on which many New York City businesses depend for their existence.

These are not remote possibilities. Many firms have left New York City in recent years for jurisdictions perceived to be more business-friendly.[1] Others have

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[1] *See* Jack Kelly, *New Yorkers Are Leaving the City in Droves: Here's Why They're Moving and Where They're Going*, Forbes (Sept. 5, 2019), https://www.forbes.com/sites/jackkelly/2019/09/05/new-yorkers-are-leaving-the-city-in-droves-heres-why-theyre-moving-and-where-theyre-going/#2aa98eaf41ac (describing this trend); Joshua Paladino, *70 Financial Firms Flee NYC for Palm*

(continued)

moved a significant portion of their operations outside of the New York City area, relocating thousands of jobs.[2] This shift includes executive-level positions. In a June 2020 survey conducted by Heidrick and Struggles for the Partnership, 24% of companies with a significant presence in New York City reported that their companies plan to shift executive-level positions out of the New York City area. Heidrick and Struggles, *Presentation to The Partnership for New York City*, 7 (June 5, 2020) (Addendum ("AA") 3).

Plaintiff's interpretation risks accelerating these trends by exposing corporate owners and executives to potentially limitless personal liability, and, as discussed further below, by increasing the costs of doing business in New York City.

Beach County Florida in Three Years, Liberty Headlines (Aug. 7, 2019), https://www.libertyheadlines.com/financial-firms-flee-nyc-florida/ (reporting that 70 financial firms moved from New York City to Palm Beach, Florida in the three years preceding 2019); Evelyn Cheng, *An old Wall Street money manager with $500 billion is moving to Nashville from Manhattan to save money*, CNBC (May 2, 2018), https://www.cnbc.com/2018/05/02/alliancebernstein-is-moving-to-nashville-from-manhattan-to-save-money.html (reporting that an asset manager was moving its headquarters from New York City to Nashville, Tennessee, relocating over 1,000 jobs).

[2] *See* Michelle F. Davis, *JPMorgan Weighs Shifting Thousands of Jobs Out of New York Area*, Bloomberg News (Oct. 28, 2019), https://www.bloomberg.com/news/articles/2019-10-28/jpmorgan-weighs-shifting-thousands-of-jobs-out-of-new-york-area (discussing actions by several banks to move jobs from New York City to jurisdictions such as Texas and Florida).

B. It Would Unnecessarily Increase the High Cost of Doing Business in New York, Particularly for Small Businesses.

Plaintiff's interpretation also would impose extensive, unnecessary costs on New York City businesses. Small businesses are least able to afford these costs and thus are most likely to suffer adverse consequences if Plaintiff's interpretation were adopted.

A legal regime in which any corporate executive or owner could be held strictly liable for misconduct by an employee could create a host of new costs for New York City businesses. *First*, businesses likely would be required to pay significantly higher premiums for directors' and officers' insurance to provide coverage for their executives. *Second*, businesses might need to purchase additional insurance coverage to indemnify investors who are sued as corporate owners under Section 8-107(13)(b). *Third*, they could be required to pay increased executive compensation to recruit and retain executives who are facing a risk of incurring personal liability merely by serving in a high-level position. *Fourth*, in addition to these expenses, businesses could suffer lost productivity if executives named as defendants in sexual harassment suits solely by virtue of their job titles must devote working hours to the litigation and their own defenses rather than carrying out their responsibilities.

These additional, unnecessary costs would be particularly damaging to small businesses, which already struggle to meet the high costs of doing business in New

York City. New York City is one of the most highly regulated and expensive places for businesses in the country. According to a report by Small Business First, an inter-agency initiative led by the New York City Mayor's Office of Operations and the Department of Small Business Services, small businesses consistently cite New York's City's complex regulatory regime as a primary impediment to their ability to open, operate, and grow in New York City. *See* Small Business First, *Small Business First Report*, 10 (2015), https://www1.nyc.gov/assets/smallbizfirst/downloads/pdf/small-business-first-report.pdf. Indeed, as of 2015, New York City had over 6,000 rules and regulations and around 250 business-related licenses and permits. *Id.* In addition, an analysis conducted by McKinsey for the Partnership found that the costs of starting a business in New York City are 1.5 times greater than the national average, and overhead expenses, such as renting office space and electricity costs, are twice the national average. Partnership for New York City, *NYC Jobs Blueprint*, 29–30 (2013), https://pfnyc.org/wp-content/uploads/2017/02/NYC-Jobs-Blueprint-Partnership-for-New-York-City-2013.pdf.

Many small businesses struggle to survive in this challenging environment. According to a 2016 study, 47% of small businesses in New York State faced financial challenges and 75% were not growing. Empire State Development Corporation, *Annual Report on the State of Small Business* 3 (2018),

https://esd.ny.gov/sites/default/files/2018-ESD_Annual_Report_SmallBiz.pdf. The added costs associated with Plaintiff's interpretation of Section 8-107(13)(b) would only exacerbate these challenges for New York City's small businesses.

C. It Would Compound the Challenges Many New York City Businesses Face as a Result of the COVID-19 Pandemic.

Finally, imposing additional and unnecessary costs on New York City businesses would worsen the significant challenges that many of those businesses are grappling with in the wake of the COVID-19 pandemic, threatening the City's ability to rebuild its economic and cultural life.

New York City businesses, both large and small, are facing increased costs of complying with public health and safety measures while dealing with dramatic declines in economic activity as a result of the COVID-19 pandemic. A recent survey of Partnership members found that 84% of large companies are experiencing negative short-term economic impacts due to COVID-19, and 22% anticipate that this impact will be persistent. Partnership for New York City, *Path Forward Survey Results*, 2 (2020) (AA 5). Of small businesses in the New York metropolitan area, 88% reported experiencing large or moderate negative economic impacts from COVID-19, and 43% expect that it will take more than six months to return to a normal level of operations relative to one year ago. U.S. Census Bureau, *Small Business Pulse Survey*, June 18, 2020, https://portal.census.gov/pulse/data/#data.

Many businesses, particularly small businesses, may not reopen at all. A survey of small businesses in Brooklyn found that one-third are at risk of closing permanently. Brooklyn Chamber of Commerce, *2 Rounds of Stimulus Survey* (May 11, 2020), https://www.brooklynchamber.com/wp-content/uploads/2020/05/Govt-Assistance-Survey_Final-Summary-May-11.pdf. Businesses in the restaurant and hospitality industries are expected to be particularly hard hit. In a survey of restaurants, bars, nightclubs, and event spaces by the New York City Hospitality Alliance, only 43% of respondents expected that their business will fully reopen once social distancing restrictions are fully lifted. New York City Hospitality Alliance, *COVID-19 Business Survey*, 6 (May 14, 2020), https://thenycalliance.org/assets/documents/informationitems/lgbw3.pdf. These small businesses are the backbone of New York City's communities and cultural life, which has for decades helped New York City to attract top professional talent and investment.

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The far-reaching costs that Plaintiff's proposed interpretation would impose on New York City businesses would not advance even the "uniquely broad and remedial purposes" of the City Human Rights Law, N.Y.C. Admin. Code § 8-130(a), for the reasons described in Section I above, and is premised on a construction of Section 8-107(13)(b)(1) that is not "reasonably possible," *Albunio*, 16

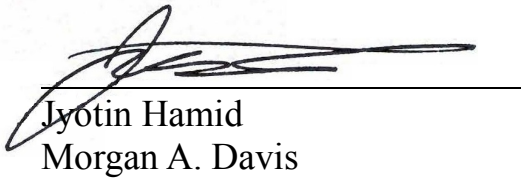
N.Y.3d at 478, for the reasons described in Section II above. New York City's businesses and economy, therefore, should not be forced to incur these costs.

CONCLUSION

For the foregoing reasons, the Partnership respectfully urges this Court to affirm the Appellate Division's decision reversing the Supreme Court's denial of Defendant-Respondent Michael Bloomberg's motion to dismiss.

Dated: June 29, 2020

Respectfully submitted,



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COURT OF APPEALS
STATE OF NEW YORK

"MARGARET DOE,"	:	
Plaintiff-Appellant,	:	New York County Clerk's Index No. 28254/2016E
- against -	:	APL-2019-00218
MICHAEL BLOOMBERG,	:	**CERTIFICATE OF COMPLIANCE PURSUANT TO 22 N.Y.C.R.R. Parts 500.13(c); 500.23(a)**
Defendant-Respondent.	:	

The undersigned attorney hereby certifies, pursuant to 22 NYCRR 500.13(c) and 500.23(a), as follows:

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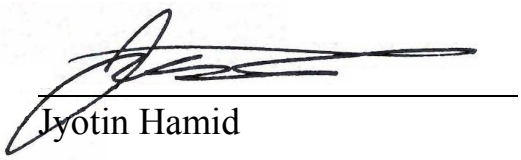
Dated: June 29, 2020
New York, New York



Jyotin Hamid

COURT OF APPEALS
STATE OF NEW YORK

"MARGARET DOE," *Plaintiff-Appellant*, - against - MICHAEL BLOOMBERG, *Defendant-Respondent*.	New York County Clerk's Index No. 28254/2016E APL-2019-00218 **CERTIFICATE OF COMPLIANCE PURSUANT TO 22 N.Y.C.R.R. Part 500.23(a)(4)**

The undersigned attorney hereby certifies, pursuant to 22 NYCRR Part 500.23(a)(4), as follows:

(a) No party's counsel contributed content to the foregoing brief or participated in the preparation of the brief in any other manner;

(b) No party or party's counsel contributed money that was intended to fund the preparation or submission of the brief;

(c) no person or entity contributed money that was intended to fund the preparation or submission of the brief.

Dated: June 29, 2020
New York, New York

Jyotin Hamid

ADDENDUM

CONTENTS OF ADDENDUM

June 5, 2020

HEIDRICK & STRUGGLES

Presentation to The Partnership for New York City

AA 1

New York City's Recovery and Reinvention Plan

Executive Talent Attraction and Retention

As part of New York City's recovery and reinvention plan, eidrick & Struggles is working with the Partnership for New York City to evaluate the impact of COV D-19 on New York Metro Area executive talent attraction and retention. Over the past two weeks, eidrick & Struggles conducted two surveys to capture and evaluate data regarding the current talent landscape.

AA 2

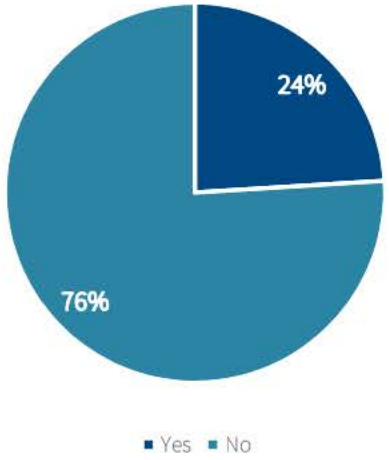
The first survey was circulated **internally within Heidrick & Struggles to professionals who are in regular contact with the New York City senior talent market** and received *43 responses*.

The second survey was circulated **externally to CHROs/Heads of Talent at enterprises with a significant New York City presence** within the eidrick & Struggles network and received *24 responses*.

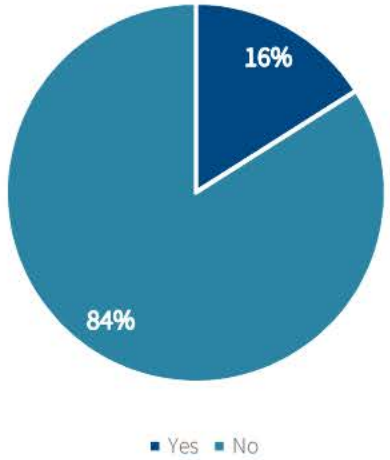
Q3: Are organizations considering shifting executive-level positions out of the New York Metro area? (This could include a relocation of divisions, regional office, etc.)

Organizations are not currently planning to shift executive-level position out of New York Metro Area. Those who are considering the shift often mentioned WFH flexibility.

External Survey



Internal Survey



AA 3

PARTNERSHIP
for New York City

Newmark
Knight Frank

Path Forward

Survey Results

AA 4

Overall Survey Results

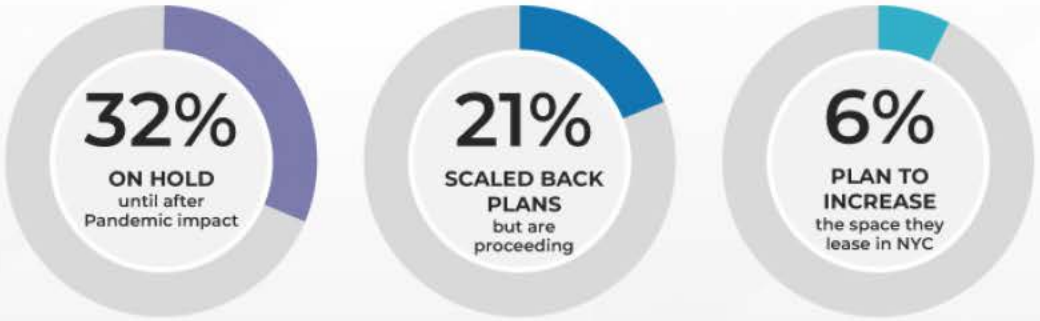
Topline findings based on 122 responses, gathered through June 1, 2020 | **Real Estate & Economic Impact**

Real Estate

Nearly one third (31%) of companies plan to change the amount of space they currently occupy in New York City.

Pre COVID-19 RE Plans

Of the nearly half (47%) of companies that had plans **to build or lease new space pre-COVID-19 in NYC**, only 35% are proceeding as originally planned.



Economic

Most companies say COVID-19 is having either a significant negative economic impact (49%) or a marginal negative impact (35%) on their company in the short-term

MEDIUM TERM

24% say COVID-19's economic impact is significantly negative, while 45% say it will have a marginal negative impact.

LONG TERM

4% of companies say the pandemic's economic impact will be significantly negative, while 18% anticipate a marginal negative impact.

14% of companies expect COVID-19 will have a positive impact on their company over the long-term.

AA 5

PARTNERSHIP for New York City

Newmark Knight Frank