

UNITED STATES DISTRICT COURT

[DISTRICT]

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)

GEORGE MANDALA and CHARLES )

BARNETT, individually and on behalf of )

all others similarly situated, )

)

Plaintiffs, ) Case No. [XX-CV-XXXX]

)

v. )

)

NTT DATA, INC., )

)

Defendant. )

\_\_\_\_\_)

**DEFENDANT NTT DATA, INC.'S MOTION TO DISMISS**

**PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)**

**I. INTRODUCTION**

Defendant NTT Data, Inc. ("NTT Data") respectfully moves this Court to dismiss Plaintiffs George Mandala and Charles Barnett's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiffs allege that NTT Data's facially neutral policy of conducting criminal background checks and declining to hire applicants with felony convictions has an unlawful disparate impact on African-American applicants in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*

Plaintiffs' disparate impact claim fails as a matter of law because the Complaint is devoid of any employer-specific statistical evidence showing that NTT Data's policy actually causes a disparate impact on African-American applicants. Instead, Plaintiffs rely entirely on generalized national statistics regarding felony conviction rates—precisely the type of conclusory, non-employer-specific allegations that the Supreme Court held insufficient in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Because Plaintiffs have failed to plead facts that plausibly establish the essential causation element of a disparate impact claim, dismissal is warranted.

## **II. FACTUAL BACKGROUND**

Plaintiffs George Mandala and Charles Barnett are African-American males who each applied for employment with NTT Data, a multinational information technology and business services company. (Compl. ¶¶ 1-2.) Both Plaintiffs received conditional offers of employment, contingent upon completion of standard pre-employment screening, including criminal background checks. (Compl. ¶¶ 5-6.)

As part of its standard hiring process, NTT Data conducts criminal background investigations on prospective employees and maintains a policy under which applicants with

certain criminal histories—including felony convictions—may be deemed ineligible for employment. (Compl. ¶¶ 7-8.) This policy is facially neutral with respect to race and applies uniformly to all applicants regardless of demographic characteristics. (Compl. ¶¶ 15-16.)

Background checks revealed that each Plaintiff had a prior felony conviction. (Compl. ¶ 10.) NTT Data rescinded the conditional offers based on those felony convictions. (Compl. ¶¶ 11-12.) Plaintiffs do not allege that NTT Data adopted or applied the policy with any discriminatory intent. (Compl. ¶ 21.)

Plaintiffs now bring this putative class action alleging that NTT Data's criminal-history policy has a disparate impact on African-American applicants. In support of this claim, Plaintiffs rely *exclusively* on "publicly available national statistics showing that African-Americans are convicted of felonies at higher rates than other racial groups." (Compl. ¶¶ 17-19.)

*Critically, the Complaint contains no allegations whatsoever regarding:*

- The racial composition of NTT Data's applicant pool;
- The racial demographics of individuals actually disqualified under the policy;
- Any statistical data specific to NTT Data's hiring practices; or
- Data concerning the qualifications of applicants with criminal records relative to job requirements.

(Compl. ¶ 20.) These glaring omissions are fatal to Plaintiffs' claim.

### **III. LEGAL STANDARD**

To survive a motion to dismiss under Rule 12(b)(6), a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). A claim has facial plausibility "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The plausibility standard "asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (quoting *Twombly*, 550 U.S. at 557). Courts must identify and disregard allegations that "are no more than conclusions" because such allegations "are not entitled to the assumption of truth." *Id.* at 679.

#### **IV. ARGUMENT**

##### **A. Disparate Impact Claims Require Employer-Specific Statistical Evidence of Causation**

Title VII prohibits employment practices that "cause[] a disparate impact on the basis of race." 42 U.S.C. § 2000e-2(k)(1)(A)(i). To establish a prima facie case of disparate impact, a plaintiff must: (1) identify a specific employment practice; (2) demonstrate that the practice causes a disparate impact on a protected group; and (3) establish a causal nexus between the challenged practice and the statistical disparity. *See Ricci v. DeStefano*, 557 U.S. 557, 578 (2009); *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994 (1988).

The causation requirement is critical. A plaintiff must demonstrate that *the specific employer's application of the challenged practice* results in a statistically significant disparity.

*Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 657 (1989) (holding that "the proper comparison" is "between the racial composition of the [relevant positions] and the racial composition of the qualified . . . population in the relevant labor market"), *superseded by statute on other grounds*, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1074.

"[A] Title VII plaintiff does not make out a case of disparate impact simply by showing that, 'at the bottom line,' there is racial imbalance in the work force." *Id.* at 657. Rather, the plaintiff must offer statistical evidence demonstrating that the challenged practice *actually caused* the disparity in the *defendant's* hiring outcomes. *See also Hazelwood Sch. Dist. v. United States*, 433 U.S. 299, 308 (1977) ("proper comparison" requires comparison to "the relevant labor market").

## **B. National Population Statistics Cannot Establish Disparate Impact at a Specific Employer**

Plaintiffs' sole basis for their disparate impact claim is the allegation that "African-Americans are convicted of felonies at higher rates than other racial groups" nationally. (Compl. ¶ 18.) But generalized national statistics—without any connection to NTT Data's actual applicant pool or hiring outcomes—are legally insufficient to state a disparate impact claim.

Courts have consistently rejected the use of general population or national statistics as a substitute for employer-specific evidence. *See, e.g., Smith v. City of Jackson*, 351 F.3d 183, 196 (5th Cir. 2003) (disparate impact analysis requires "evidence of the actual racial composition" of the affected workforce), *aff'd on other grounds*, 544 U.S. 228 (2005); *Anderson v. Westinghouse Savannah River Co.*, 406 F.3d 248, 265 (4th Cir. 2005) (plaintiff must present "statistical evidence that demonstrates the existence of a disparity" at the specific employer).

The reason is self-evident: national conviction rates tell us nothing about the racial composition of NTT Data's applicant pool, the proportion of applicants with felony convictions, or whether the policy actually produces racially disparate outcomes *at NTT Data*. The policy might have no disparate impact whatsoever if, for example, NTT Data's applicant pool has different demographic characteristics than the general population, or if the rate of felony convictions among NTT Data's African-American and non-African-American applicants is comparable.

As the Supreme Court explained in *Iqbal*, a complaint fails when its "well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct." 556 U.S. at 679. Plaintiffs' reliance on national statistics—with zero allegations about NTT Data's actual hiring data—pleads only a theoretical *possibility* of disparate impact, not a *plausible* claim that NTT Data's policy actually causes one.

### **C. Plaintiffs' Theory Would Make Every Criminal Background Check Policy Presumptively Unlawful**

The logical extension of Plaintiffs' theory is that *any* employer who conducts criminal background checks is subject to suit for disparate impact discrimination—regardless of the actual effects of the policy on that employer's workforce—simply because national conviction rates differ by race. This cannot be the law.

Congress codified the disparate impact framework in the Civil Rights Act of 1991 with the understanding that plaintiffs bear the burden of demonstrating that a specific practice causes a specific disparity. 42 U.S.C. § 2000e-2(k)(1)(A)(i). Permitting claims to proceed based solely on generalized national statistics would effectively create a *per se* rule that facially neutral

criminal background check policies violate Title VII—a dramatic expansion of liability with no basis in the statute or precedent.

*See El v. Se. Pa. Transp. Auth.*, 479 F.3d 232, 245 (3d Cir. 2007) (requiring plaintiff challenging criminal background check policy to present statistical evidence specific to employer's applicant pool); *EEOC v. Carolina Freight Carriers Corp.*, 723 F. Supp. 734, 753 (S.D. Fla. 1989) (rejecting disparate impact claim where plaintiff "failed to provide any statistical evidence demonstrating that [employer's] policy . . . has had an adverse impact on blacks").

#### **D. The Complaint's Admissions Undermine Any Inference of Discriminatory Effect**

The Complaint itself alleges that NTT Data's policy "is facially neutral with respect to race" and "applies uniformly to all applicants regardless of demographic characteristics." (Compl. ¶¶ 15-16.) Plaintiffs further concede that they "do not allege that NTT Data adopted the policy with discriminatory intent." (Compl. ¶ 21.)

These admissions confirm that there is nothing inherently discriminatory about NTT Data's policy. The only alleged connection to race is a chain of speculation: (1) national conviction rates differ by race, (2) therefore NTT Data's applicant pool probably has race-correlated conviction rate differences, (3) therefore the policy probably has a disparate impact at NTT Data. This is precisely the type of speculative, conclusory reasoning that *Iqbal* and *Twombly* prohibit.

#### **E. Plaintiffs Cannot Avoid Dismissal by Invoking Discovery**

Plaintiffs may argue that employer-specific data should be developed through discovery. But the Supreme Court squarely rejected this approach in *Twombly*, warning that "[t]he threat of discovery expense" makes it essential "to require some factual allegations" before subjecting defendants to "the costs of discovery." 550 U.S. at 559.

The *Iqbal/Twombly* pleading standard exists precisely to prevent plaintiffs from using conclusory allegations as a ticket to "take up the time of a number of other people" through "sprawling, costly, and hugely time-consuming" discovery. *Iqbal*, 556 U.S. at 685. A plaintiff who has no factual basis for believing that a particular employer's policy causes a disparate impact cannot file a lawsuit and then fish for supporting evidence.

## **V. CONCLUSION**

Plaintiffs' Complaint fails to allege any facts plausibly establishing that NTT Data's facially neutral criminal background check policy causes a disparate impact on African-American applicants. Reliance on generalized national conviction statistics—without any allegation regarding the racial composition of NTT Data's applicant pool, the demographics of disqualified applicants, or any statistical evidence specific to NTT Data—is insufficient as a matter of law.

For the foregoing reasons, Defendant NTT Data, Inc. respectfully requests that this Court grant this Motion and dismiss Plaintiffs' Complaint with prejudice.

Dated: \_\_\_\_\_

Respectfully submitted,

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[ATTORNEY NAME]

[BAR NUMBER]

[FIRM NAME]

[ADDRESS]

[PHONE]

[EMAIL]

*Counsel for Defendant NTT Data, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the date indicated above, a true and correct copy of the foregoing DEFENDANT NTT DATA, INC.'S MOTION TO DISMISS was served upon all counsel of record via the Court's CM/ECF electronic filing system.

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[ATTORNEY NAME]