

OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF NEW YORK  
CIVIL RIGHTS BUREAU

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IN THE MATTER OF THE INVESTIGATION OF  
ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF  
THE STATE OF NEW YORK,

AOD No. 14-192

OF

PARTY CITY CORPORATION

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**ASSURANCE OF DISCONTINUANCE**

In September 2013, the Office of the Attorney General of the State of New York (“OAG”) began to investigate, pursuant to New York State Executive Law § 63(12), the extent to which Party City Corporation (“Party City”) unlawfully denied employment opportunities to individuals based on the criminal record of those individuals. Specifically, the OAG investigated whether Party City (a) excluded any individual with a history of convictions from certain employment opportunities, and (b) assessed information provided by applicants about their criminal record history without first considering a number of factors required by New York Correction Law §§ 752-53 (“Correction Law”), in violation of New York Executive Law §§ 296(15) and (16) (“Human Rights Law”).

This Assurance of Discontinuance (“Assurance”) contains the OAG’s findings in connection with its investigation of Party City and the relief agreed to by the OAG and Party City (“the Parties”).

## PART ONE: DEFINITIONS

1. As used throughout this Assurance, the terms set forth below shall have the following meanings.
  - a. “Assurance” means this Assurance of Discontinuance.
  - b. “Effective Date” means the date this Assurance is executed by the Parties hereto.
  - c. “Applicant” means any person seeking to apply, applying or considered for employment, retention, promotion or other employment opportunities, by Party City within the State of New York.
  - d. “Employee,” for purposes of this Assurance only, means any person performing work for and compensated by Party City within the State of New York.
  - e. “Managerial Employees” means Party City's Employees exercising managerial or supervisory authority, making hiring or retention decisions, or disseminating hiring or retention information or policies with respect to New York State Applicants and Employees.
  - f. “Crime” means a felony or misdemeanor but not violations, infractions or youthful offender adjudications.
  - g. “Criminal Record History” means all information relating to arrests and dispositions thereof.
  - h. “Criminal Background Check” means an inquiry by a consumer reporting agency into an Applicant’s or Employee’s Criminal Record History.

- i. "EEO Officer" means an Employee(s) of Party City, whose duties include responsibility for overseeing Party City's compliance with New York State and local anti-discrimination laws pertaining to the evaluation of Applicants' and Employees' Criminal Record Histories and implementation of this Assurance.
- j. "Employment Documents" means all documents used and maintained by Party City with respect to Applicants within the State of New York, including: (1) supervisory and/or hiring policies and procedures; (2) personnel files; (3) documents containing information upon which employment decisions are made with respect to Applicants and Employees; and (4) employment application forms.
- k. "Party City" means Party City Corporation and all of its owners, officers, directors, managers, representatives, subsidiaries, affiliates, Employees and all other individuals and agents who act on its behalf.
- l. Terms of construction:
  - i. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
  - ii. "All" means "any and all" and "any" means "any and all."
  - iii. "Concerning" means relating to, referring to, describing, evidencing, regarding, reflecting, or constituting.
  - iv. "Day" refers to a calendar day, not a business day.
  - v. "Including" means without limitation.

- vi. The singular of any word includes the plural; the plural of any word includes the singular.

## PART TWO: FINDINGS

2. Party City is a large retailer that employs over 6400 individuals at 49 stores located across New York State.
3. In September 2013, the OAG received information alleging that Party City discriminates against Applicants in the State of New York on the basis of Criminal Record History by deeming ineligible or automatically disqualifying Applicants with a felony conviction from consideration for employment, retention or other employment opportunities. This information included statements from a Party City Human Resources Manager made during a 2013 job fair in New York City attended by hundreds of job-seekers. Specifically, the representative stated that Party City would not hire anyone with a felony conviction.
4. The OAG investigation also revealed that, in October 2013, an Assistant Manager with authority over hiring decisions at a Party City store in New York City stated that Party City does not promote individuals with Criminal Record Histories to full-time or management positions. Specifically, the Assistant Manager stated that an Applicant with a felony conviction on her record “couldn’t grow with the company if [she] had a conviction on her record.”
5. In response to the information received, the OAG conducted an investigation by interviewing witnesses; reviewing documents, including those produced by Party City pursuant to subpoena, concerning pertinent policies, procedures and practices of

Party City; and analyzing hiring and other relevant data regarding Party City's job application process and hiring practices in the State of New York.

6. The investigation revealed that Party City did not have any policies or procedures specifying which Managerial Employees had access to the Criminal History Records of Applicants, or how Managerial Employees evaluate those Criminal History Records. As a result, store-level Managerial Employees responsible for hiring part-time store associates had wide discretion in how they handled Applicants' Criminal History Records. Furthermore, Party City did not have any training for Managerial Employees on how to evaluate Criminal Record Histories in accordance with New York State law.
7. The OAG investigation revealed that store-level Managerial Employees often disqualified Applicants in New York without considering the nature and gravity of the conviction and its bearing, if any, on specific responsibilities of the job sought; the time that elapsed since the conviction; the age of the Applicant at the time when the offense was committed; or evidence of rehabilitation, as required by N.Y. Exec. Law § 296 (15) and Correction Law §§ 752-53.
8. The OAG also found that Party City automatically disqualified Applicants for retention or promotion as full-time associates or management if the Applicants' Criminal Background Check revealed a Criminal Record History. Such automatic disqualifications are a facial violation of N.Y. Exec. Law § 296(15).
9. Pursuant to the OAG's subpoena, Party City produced records of 440 applications for positions across stores in New York during a period from December 2011 to December 2013 in which Applicants either disclosed a Criminal Record History or

refused to answer any questions about the existence of a Criminal Record History. Of those 440 applications, only four individuals with felony convictions were hired as part-time associates. The OAG investigation also revealed that before receiving the OAG subpoena, Party City had not retained a single individual with a Criminal Record History as a full-time or management-level Employee.

10. Further, the investigation revealed that Party City deterred potential Applicants with Criminal Record Histories from applying by disseminating information about its hiring policies indicating that all Applicants with felony convictions would be barred from employment.
11. Finally, the investigation revealed that all Applicants must fill out the online application for employment to be considered for a position with Party City. The current version of the online application seeks Criminal Record Histories from all Applicants.

### **PART THREE: PROSPECTIVE RELIEF**

WHEREAS, New York Executive Law §§ 296(15) and Correction Law §§ 752-53 require, *inter alia*, that employers, when evaluating an Applicant's Criminal Record History, (1) refrain from considering non-pending arrests that were terminated in favor of the individual and/or resulted in a sealed conviction, youthful offender adjudication, or most violations and infractions; and (2) consider a number of factors before Disqualifying an Applicant based upon a criminal conviction, including but not limited to the nature and gravity of the conviction and its bearing, if any, on specific responsibilities of the job sought, the time that elapsed since the conviction, the age of the Applicant when the offense was committed, and any evidence of rehabilitation;

WHEREAS, the OAG's investigation included reviewing documents, including those produced by Party City pursuant to subpoena, concerning pertinent policies, procedures and practices of Party City; interviewing witnesses and complainants; and analyzing employment, retention and other relevant data regarding Party City's job application process and other employment and retention related practices;

WHEREAS, Party City neither admits nor denies the OAG's findings set forth in Paragraphs 2 – 11;

WHEREAS, Party City desires to obviate the need for further investigation or litigation, and it is expressly understood that, this Assurance is entered into solely for the purposes of avoiding further investigation and litigation; and

WHEREAS, the Parties believe that the obligations imposed by this Assurance are reasonable;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between Party City and the OAG, as follows:

**PART FOUR: COMPLIANCE WITH THE LAW**

12. Party City agrees to comply fully with the obligations, terms, and conditions of New York Executive Law §§ 296 (15) and New York Correction Law §§ 752-53 in the State of New York. Specifically, Party City will:
  - a. evaluate and consider the factors set forth in Correction Law § 753 before deeming ineligible or disqualifying an Applicant or Employee;
  - b. accept an Applicant's or Employee's Certificate of Relief from Disabilities or of Good Conduct ("Certificate") as a rebuttable presumption of rehabilitation;

- c. refrain from inquiring about or acting adversely upon any arrests or criminal accusations that cannot be considered for employment purposes pursuant to N.Y. Exec. Law § 296 (15); and
- d. ensure that if information is provided to Applicants, Employees and the public generally regarding the impact of Criminal Record History on one's eligibility for employment or ability to seek employment for Party City job positions in New York State, such information will accurately reflect Party City's obligations under law.

#### **PART FIVE: POLICIES AND PROCEDURES**

13. Party City agrees to develop a policy ("New Policy") to be used within its New York operations within sixty (60) days of the Effective Date which prohibits unlawful discrimination based upon an Applicant's or Employee's Criminal Record History. The New Policy shall include:

- a. a statement that Party City does not discriminate against persons based on an arrest that did not lead to a conviction of a crime and does not have a *per se* bar against employing persons who have been convicted of a crime;
- b. identification of the Managerial Employees who are responsible for inquiring and evaluating information about an individual's Criminal Record History;
- c. the sequence of actions and decisions taken with respect to review of the Criminal Record History of Applicants and Employees; and
- d. the information and sources of information that may be obtained and considered at each step of the application, offer, and hiring process; and

guidelines to ensure that such information is considered and used in a lawful manner.

14. Once approved, Party City shall adhere to the New Policy in New York State and shall incorporate it into employee handbooks and human resource manuals for Managerial Employees in New York State. Party City shall not make material changes to the New Policy during the duration of this Assurance without prior written approval by the OAG.
15. Party City agrees within sixty (60) days of the Effective Date to revise its job application to eliminate any question(s) about Applicants' Criminal Record Histories.
16. Party City agrees that if an inquiry into an Applicants' Criminal Record History or a Criminal Background Check reveals a pending arrest or a conviction for a crime that disqualifies the Applicant or Employee for the specific position sought or held by such person, Party City, and not a third party consumer reporting agency, shall send the Applicant or Employee an adverse action letter that shall include:
  - a. the specific reported arrest(s) and conviction(s) and the date of the arrest(s) and conviction(s);
  - b. a toll-free telephone number, email and address to dispute the accuracy of the information contained within the report;
  - c. a listing of all factors in New York Correction Law § 753 that employers must consider before Disqualifying an Applicant or Employee based on their Criminal Record History, noting that the submission of a Certificate creates a rebuttable presumption of rehabilitation in regard to the offense or offenses specified therein; and

- d. a statement that Party City considered these factors in evaluating whether to Disqualify the Applicant or Employee.
17. For its stores located in New York State, Party City agrees to make a written record of all evaluations performed pursuant to Paragraph 16 and document the analysis conducted of each Applicant or Employee, including the reason underlying the final determination and information sufficient to determine whether and to what extent each of the enumerated factors under Correction Law § 753 were considered, including the bearing of the pending arrest or criminal conviction on the responsibilities of the relevant job position. Upon request of the disqualified Applicants and Employees, Party City shall inform disqualified Applicants and Employees, if any, of the reasons for the disqualification.
18. Party City agrees within fourteen (14) days of the Effective Date to designate an Employee(s) as an Equal Employment Opportunity Officer (“EEO Officer”), who will bear responsibility for overseeing Party City’s compliance with its New Policy and with New York State and local anti-discrimination laws pertaining to Criminal Background Checks, the evaluation of Criminal Record Histories, and implementation of this Assurance. The EEO Officer will also bear responsibility for the policies, procedures, and practices set forth in this Assurance, including but not limited to developing or revising Party City’s employment policies, training employees regarding the New Policy, and investigating and resolving complaints.

#### **PART SIX: TRAINING**

19. Party City agrees to develop and submit, within sixty (60) days of the OAG approval of the New Policy, to the OAG for its comment and approval, which shall not be

unreasonably denied, a training program to instruct Managerial Employees in New York State on the requirements of the New Policy and applicable law. The training shall:

- a. review Party City's New Policy;
  - b. provide an explanation of Party City's policy and practices with respect to the recruitment, hiring and retention of persons in New York State with a Criminal Record History;
  - c. instruct that only personnel responsible for evaluating Criminal Record Histories in New York State and for ensuring compliance with this Assurance shall have access to the results of Criminal Background Checks for Applicants and Employees or shall inquire about Applicants' or Employees' Criminal Record Histories; and
  - d. provide a protocol for responding to and addressing Applicants' and prospective applicants' inquiries regarding Criminal Record History in the context of the job application process in New York State.
20. Party City agrees to require that all Managerial Employees in New York State, complete this training within sixty (60) days of OAG approval, and thereafter within sixty (60) days of assuming covered responsibilities. Subsequent training will be conducted not less than once every two years for all such Employees.
21. Party City agrees to require that all Managerial Employees who attend the required training program pursuant to Paragraphs 19 and 20 sign an Acknowledgement Form in the form of Exhibit A. Party City agrees to maintain all acknowledgement forms

required under this Assurance for a period no less than three (3) years from the Effective Date.

**PART SEVEN: PUBLIC NOTICE**

22. With regard to job opportunities in New York State, Party City agrees that all written or electronically-disseminated materials regarding eligibility for employment opportunities in New York State, including job applications or postings, will comply with N.Y. Exec. Law § 296 (15) and Correction Law §§ 752-53.

**PART EIGHT: OUTREACH**

23. Party City agrees to make good faith efforts to solicit Applicants from organizations that specialize in rehabilitating and developing the work skills of ex-offenders in New York State. Specifically, Party City shall attempt to recruit Applicants from five (5) such organizations that have the capability of attaining full-time or management positions with the company. Once every six (6) months after the Effective Date, the EEO Officer shall provide to the OAG a summary statement ("Outreach Summary") that shall include the names of organizations contacted, the number of applications received, and the number of applicants ultimately hired.

**PART NINE: RECONSIDERATION OF APPLICANTS**

24. Within sixty (60) days of OAG approval of the training program pursuant to Paragraph 19, Party City will reconsider the pool of known Applicants who disclosed a Criminal Record History in applications to the New York stores over the last two years. Two Managerial Employees who have received the Training pursuant to Paragraphs 19-21, will review the applications and using information in the Applicant's file make reasonable efforts to contact any Applicants who appear qualified to schedule interviews, without regard

to the Criminal Record History of the Applicant. Party City will subsequently extend offers of employment to any Applicants from this pool who meet its hiring requirements including but not limited to satisfactory interview performance, availability and an open position and whose Criminal Record Histories are not considered to be disqualifying, after evaluating them in compliance with the law and with the New Policy.

25. Within fourteen (14) days of the completion of the initial review of this application pool, Party City will certify to the OAG that the applications were reviewed, and the Managerial Employees who conducted the review will sign an affidavit stating that they reviewed the applications in accordance with the requirements of this Assurance and applied the New Policy.

26. Within thirty (30) days of the completion of the initial review of this application pool, Party City will advise the OAG whether it hired any of these Applicants and if any such Applicant was disqualified based on Criminal Record History provide written records of the evaluations of the Applicants' Criminal Record Histories pursuant to Paragraph 17 of this Assurance.

#### **PART TEN: RECORD KEEPING**

27. Party City agrees to create and maintain the following records for the duration of this Assurance:

- a. All Employment Documents;
- b. All policies required to be submitted to the OAG under this Assurance;
- c. Records sufficient to show if and how Party City rejects or disqualifies Applicants and Employees in New York State because of Criminal Record

History, including all completed applications and evaluations of Applicants and Employees in New York State rejected or disqualified in whole or in part because of Criminal Record History, which shall (i) identify the Applicant or Employee; (ii) state the reason(s) for disqualification of the Applicant or Employee; and (iii) state any consideration of the factors listed in Correction Law §§ 752-53, or reliance upon Correction Law § 751;

- d. Records sufficient to identify all complaints related to the evaluation of Criminal Record Histories made in New York State and their investigation and resolution by Party City, including any written summary of each complaint and any investigation, findings, dispositions and recommendations thereof (excluding any attorney-work product or material subject to attorney-client privilege); and
- e. All notices, training materials and executed acknowledgment forms required to be posted, conducted and/or executed pursuant to the Assurance.

#### **PART ELEVEN: REPORTING AND MONITORING**

- 28. Within one hundred and fifty (150) days of the Effective Date and every six months thereafter for the duration of this Assurance, Party City shall prepare and submit a report to the OAG, which shall include the following with respect to its Applicants and Employees in New York State for the period covered by the submission:

- a. Applicants who did not receive offers of employment because of Criminal Record History and the specific reason for the disqualification including any documentation required in Paragraph 17 of this Assurance;
  - b. Copies of all written complaints or oral complaints and any supporting documentation received during the previous six months concerning a job position in New York State or concerning an Applicant or Employee in New York State alleging discrimination on the basis of Criminal Record History, including (1) the date the complaint was received and the manner in which it was received; (2) the identification of and contact information for the complainant at issue; (3) Party City's case file of the complaint (excluding any attorney-work product or material subject to attorney-client privilege); and (4) any remedial action taken as a result of any investigation of the complaint. The information requested in Paragraph 28(b)(1) and (2) should be provided to the OAG within 14 days of receipt of a complaint;
  - c. Copies of the acknowledgment form attached hereto as Exhibit A required to be signed pursuant to Paragraph 21 of this Assurance;
  - d. Copies of the Outreach Summaries required pursuant to Paragraph 23 of this Assurance.
  - e. Copies of the sworn affidavits drafted pursuant to Paragraph 25.
29. Upon fourteen (14) days written notice to Party City, the OAG shall have access to any documents Party City is required to maintain under the terms of this Assurance, and any documents that are otherwise required to be provided by law. This

Assurance does not in any way impair or affect the right of the OAG to obtain documents from Party City pursuant to subpoena.

**PART TWELVE: MONETARY RELIEF**

30. Party City shall pay the sum of \$95,000 to the State of New York for penalties and the costs of this investigation. Payment will be made within ten (10) days of the Effective Date and in the form of a certified bank check made out to the New York State Department of Law and forwarded to the Office of the Attorney General, Civil Rights Bureau, 120 Broadway, New York, New York, 10271, Attention: Sandra Pullman.

**PART THIRTEEN: SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS**

31. The OAG has agreed to the terms of this Assurance based on, among other things, the representations that Party City and its counsel made to the OAG and the OAG's own findings from the factual investigation as set forth in Findings outlined in Paragraphs 2 - 11 above. To the extent that any material representations are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.
32. This Assurance shall expire three (3) years after the Effective Date, except that the OAG may, in its sole discretion, extend the Assurance term upon a good-faith determination that Party City has not complied with this Assurance, which non-compliance the OAG shall discuss and attempt to resolve with Party City in good faith before making such determination.

33. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Party City in agreeing to this Assurance.
34. Upon execution by the Parties to this Assurance, the OAG shall discontinue the instant investigation except as otherwise related to the enforcement of the terms of this Assurance.
35. This Assurance binds Party City and its principals, directors, beneficial owners, officers, shareholders, successors, assigns, "d/b/a" companies, subsidiaries, affiliates, and any other business entities whom any such individuals may hereafter form or control.
36. Party City represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Party City agrees not to take any action or make any statement denying, directly or indirectly, the propriety of this Assurance or expressing the view that this Assurance is without factual basis. Nothing in this Paragraph affects Party City's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission of liability by Party City.
37. This Assurance may not be amended except by an instrument in writing signed on behalf of all the Parties to this Assurance.
38. This Assurance shall be binding on and inure to the benefit of the Parties to this Assurance and their respective successors and assigns, provided that no party, other

than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

39. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.
40. To the extent not already provided under this Assurance, Party City agrees to, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.
41. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

OAG

Sandra Pullman  
Office of the Attorney General  
Civil Rights Bureau  
120 Broadway  
New York, New York 10271  
(212) 416-8250  
(212) 416-8074 (fax)  
Sandra.pullman@ag.ny.gov (email)

Party City

Joseph J. Zepf, Esq.  
80 Grasslands Road  
Elmsford, NY 10523

With a copy to:

Campolo Middleton & McCormick, LLP  
4175 Veterans Memorial Highway, Suite 400  
Ronkonkoma, NY 11779  
ATTN: Joseph N. Campolo, Esq.

Any changes in the person to whom communications should be specifically directed shall be made in advance of the change.

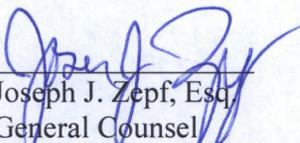
42. Acceptance of this Assurance by the OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Party City shall make no representation to the contrary.
43. Pursuant to New York State Executive Law § 63(15), evidence of a violation of this Assurance shall constitute prima facie proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.
44. If a court of competent jurisdiction determines that Party City has breached this Assurance, Party City shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.
45. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to New York State Executive Law § 63(15), in lieu of commencing a statutory proceeding. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.
46. Nothing contained herein shall be construed so as to deprive any person of any private right under the law.

IN WITNESS THEREOF, this Assurance is executed by the parties hereto on September \_\_\_,  
2014.

Dated: New York, New York

~~August~~ 5, 2014  
~~Sept.~~

By:

  
Joseph J. Zepf, Esq.  
General Counsel  
Party City Corporation

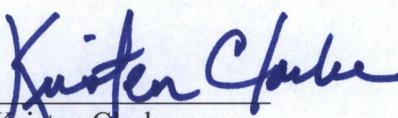
CONSENTED TO:

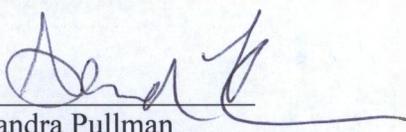
Dated: New York, New York

~~August~~ 16, 2014  
~~Sept.~~

By:

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York

  
Kristen Clarke  
Bureau Chief

  
Sandra Pullman  
Assistant Attorney General

Ajay Saini  
Assistant Attorney General  
Office of the New York State Attorney  
General  
120 Broadway  
New York, New York 10271  
Tel. (212) 416-8250  
Fax (212) 416-8074

EXHIBIT A

ACKNOWLEDGMENT FORM

Party City Corporation

On \_\_\_\_\_, 20\_\_, I attended a training seminar with respect to my responsibilities under New York Executive Law §§ 296(15) and (16) and Correction Law §§ 752-53. I was also instructed as to the Equal Employment Opportunity policy of Party City Corporation, which prohibits discrimination on the basis of criminal record history. I have received copies of and have read Party City's equal employment opportunity policy. I understand my legal responsibilities and will comply with those responsibilities.

I have been informed by my employer that I will not be retaliated against by my employer for providing information to any law enforcement agency (including the New York State Office of the Attorney General, Civil Rights Bureau, 120 Broadway, 23rd Floor, New York, NY 10271, telephone: (212) 416-8250, email: Civil.Rights@ag.ny.gov, or official regarding my employer's compliance with the above laws.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_