

**Harris v City of New York**

2025 NY Slip Op 33484(U)

September 16, 2025

Supreme Court, New York County

Docket Number: Index No. 156195/2024

Judge: Hasa A. Kingo

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. HASA A. KINGO PART 05M**

*Justice*

-----X

ANGELA HARRIS

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

**INDEX NO.** 156195/2024

**MOTION DATE** N/A

**MOTION SEQ. NO.** 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

were read on this motion to ORDER MAINTAIN CLASS ACTION.

Plaintiff Angela Harris (“Plaintiff”) moves, pursuant to CPLR §§ 901 and 902, for an order: (1) certifying a class of “[a]ll persons since November 26, 2023 who applied to be New York City Probation Officers who were subjected to Defendant’s weight policy or practice” (the “Class”); (2) designating Harris as class representative; (3) appointing William Grey as class counsel; (4) approving the proposed class notice; (5) compelling Defendant to produce a list of all class members, including identifying information; and (6) directing distribution of class notice at Defendant’s expense. Plaintiff also seeks, under CPLR § 3124, to compel Defendant’s production of discovery concerning the putative class.

Defendant opposes, contending the class definition is overbroad, Plaintiff fails to satisfy the statutory prerequisites for class certification, and the discovery sought is premature, overbroad, and would implicate the medical privacy of nonparties.

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff alleges that she applied for a probation officer position with the City of New York and was subjected to an unlawful weight-related employment practice during her medical evaluation. Specifically, she contends she was placed on “medical review” and directed to return after losing weight, pursuant to a pre-printed form (PD 407-123). She alleges this directive constitutes weight discrimination under the New York City Human Rights Law (“NYCHRL”), which, since November 26, 2023, prohibits discrimination based on weight.

On May 26, 2025, Plaintiff filed the instant motion for class certification and to compel discovery.

Defendant filed opposition on July 30, 2025, asserting that no formal discovery demands were made, that no policy or practice exists, and that Plaintiff cannot establish the statutory prerequisites for class treatment.

Plaintiff filed a reply on August 6, 2025, arguing that Defendant is attempting to re-litigate its prior motion to dismiss, and that Defendant's refusal to produce information concerning similarly situated applicants effectively precludes Plaintiff from demonstrating numerosity without court intervention.

### ARGUMENTS

Plaintiff advances that the proposed class satisfies each of the five statutory prerequisites enumerated in CPLR § 901(a). On the question of numerosity, Plaintiff maintains that while the precise number of affected applicants is not presently known, this is only because Defendant has steadfastly refused to provide discovery that would reveal the scope of the class. Plaintiff asserts that Defendant's exclusive possession of the relevant records should not serve as a shield against certification, and that it is reasonable to infer that a municipal agency of this size, hiring for a position as common as probation officer, has overseen dozens if not hundreds of applications since the weight discrimination prohibition took effect in November 2023.

Turning to commonality and typicality, Plaintiff argues that a single common nucleus of fact and law unites the class: whether Defendant applied a policy or practice requiring applicants to lose weight as a condition of employment, in violation of the NYCHRL. The use of the PD 407-123 form, which Plaintiff claims bears the instruction that an applicant "must return to be reweighed after losing \_\_ lbs.," is presented as evidence of a standardized practice imposed upon multiple applicants. Harris contends her claim is typical of those of other applicants, all of whom would have been subjected to the same allegedly discriminatory condition.

As to adequacy, Plaintiff contends she is well positioned to represent the interests of absent class members because she personally endured the alleged discriminatory directive, understood its import, sought counsel, and initiated this litigation on behalf of herself and others. Plaintiff further argues that her counsel, though without prior class action experience, brings to the case fifteen years of service at the Corporation Counsel's Office, including seven years in the Labor and Employment Division, which equips him with substantial knowledge of the applicable law and procedures.

Finally, Plaintiff insists that a class action is the superior method of adjudication. She argues that requiring each applicant to bring an individual action would result in duplicative litigation, inconsistent rulings, and unnecessary burdens on the courts and litigants alike. According to Plaintiff, class treatment offers efficiency and fairness, ensuring that all individuals subjected to the same unlawful practice may obtain redress in one unified proceeding. Plaintiff dismisses Defendant's concerns regarding HIPAA and privacy as overblown, noting that records could be redacted and disclosure made subject to protective orders.

Defendant takes the opposite view, characterizing Plaintiff's motion as premature, overbroad, and unsupported by evidence. Defendant first attacks the proposed class definition, contending that it improperly encompasses both successful and unsuccessful applicants alike,

regardless of whether they suffered any injury. By sweeping so broadly, the class, in Defendant's view, risks including individuals who were hired without incident and who therefore have no cause of action.

Defendant next disputes Plaintiff's assertion of a common policy. It contends that Plaintiff has pointed only to her individual experience, and that the form she references does not contain any pre-printed language mandating weight loss. Rather, any reference to weight is said to have been typed into a generic "other" field on an individualized basis. Defendant insists that this undercuts Plaintiff's claim of a uniform policy and demonstrates instead that applicants are assessed individually, based on a variety of medical factors.

On the statutory criteria, Defendant argues that Plaintiff cannot establish numerosity because she has not identified a single other applicant who was subjected to the alleged practice. The mere possibility that other applicants exist is insufficient; speculation cannot serve as a substitute for evidence. On commonality and typicality, Defendant contends that applicants are evaluated for disparate medical reasons, ranging from weight concerns to orthopedic or cardiovascular conditions. Harris herself, Defendant notes, was placed on medical review not only for her weight but also for a hand condition. Thus, the proposed class lacks common questions of law and fact, and Harris's claim is not typical of the putative class.

Defendant also challenges adequacy, noting that Harris was never disqualified from employment, thereby diminishing her stake in the outcome and rendering her an inadequate champion of absent class members. Further, Defendant emphasizes that Plaintiff's counsel has no history of litigating class actions, arguing that adequacy requires not merely competence in substantive law but also experience in managing the complexities of representative litigation

Finally, on superiority, Defendant argues that a class action would be unmanageable and inefficient. Because each applicant's medical review turned on individualized factors, determining class membership would require mini-trials on the merits of each case. Such a process would frustrate the very efficiencies class actions are intended to provide. Defendant further asserts that Plaintiff's discovery requests—which include names, social security numbers, addresses, and complete medical forms of applicants—are premature, procedurally improper, and fraught with HIPAA concerns. According to Defendant, even redacted production would risk disclosure of sensitive health information of nonparties. At most, Defendant maintains, Plaintiff would be entitled to know the aggregate number of applicants subject to reweighing directives, but not their identities.

## DISCUSSION

The class action mechanism in New York, codified at CPLR §§ 901 and 902, is a potent procedural device that allows numerous individuals with common claims to pursue collective relief. Yet it is not without limits. As the Court of Appeals has explained, while the statute is to be liberally construed, the proponent of class certification bears the burden of establishing the criteria necessary for certification (*Borden v. 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382, 399 [2014]).

CPLR § 901(a) sets forth five threshold prerequisites: numerosity, commonality, typicality, adequacy, and superiority. Only if all five are satisfied may the court then proceed to weigh additional considerations under CPLR § 902, including manageability, fairness, and the existence of alternative remedies. Importantly, class actions are not automatic; they remain the exception, not the rule, particularly where individualized inquiries would predominate over collective issues (*Geiger v. Am. Tobacco Co.*, 181 Misc. 2d 875, 886 [Sup. Ct. Queens Co. 1999]).

This motion presents the court with a difficult balance between the liberal spirit of New York's class action statute and the equally important requirement that class certification not be granted on conjecture or speculation. Class actions, when properly circumscribed, serve as a vital mechanism to vindicate rights that might otherwise go unredressed, to conserve judicial resources, and to ensure uniformity of adjudication. But they are not a talisman to be invoked without proof. As the Court of Appeals has reminded, class certification is not a matter of right but of discretion, to be exercised in light of the facts and circumstances of each case (*Borden*, 24 NY3d at 399, *supra*).

On the record before it, the court concludes that Plaintiff has not made the evidentiary showing required to warrant certification of a class under CPLR §§ 901 and 902. Numerosity, commonality, and typicality have not been established with competent proof, and adequacy and superiority remain in doubt. To grant certification now, on speculation alone, would be inconsistent with New York's settled class action jurisprudence.

At the same time, the court is cognizant that critical information necessary to test Plaintiff's application resides solely within the possession of Defendant. It would therefore be inequitable to foreclose Plaintiff's ability to seek certification where the very discovery that could illuminate the existence or absence of a certifiable class has not yet been produced. The better course is to deny the motion at this juncture, but to permit Plaintiff an opportunity to renew once a more developed record is before the court.

At oral argument held before this court on September 16, 2025, the parties consented to the court's approach of deferring a final determination on class certification until Defendant has produced the disclosures directed herein, thereby affording Plaintiff access to information necessary to support any renewed application for certification.


Accordingly, it is hereby

ORDERED that Plaintiff's motion for class certification is denied, with leave to renew upon a proper evidentiary showing following targeted discovery; and it is further

ORDERED that, on consent of the parties, Defendant City of New York shall, within ninety (90) days of the date of this decision and order (no later than December 15 2025), produce to Plaintiff, with all names and personal identifiers redacted, copies of all PD 407-123 forms issued to applicants for the position of Probation Officer since November 26, 2023, as well as any accompanying forms or supplemental application materials referencing an applicant's weight; and it is further

ORDERED that the parties shall appear for a further conference before this court on December 16, 2025, at 2:15 P.M., at which time the parties will address whether the record, as supplemented by discovery, supports renewal of Plaintiff's application for class certification.

This constitutes the decision and order of the court.



20250916274912HRKINGO507063E89248D69ACBCE688A753186

HASA A. KINGO, J.S.C.

9/16/2025

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE