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Appear on Signature Page*

TAHEERA S. HEARD
6733 North 17th Street
Philadelphia, PA 19126

Plaintiff,

v.

GENESIS HEALTHCARE, LLC
101 East State Street
Kennett Square, PA 19348

and

**GENESIS ADMINISTRATIVE SERVICES
LLC**
101 East State Street
Kennett Square, PA 19348

Defendants.

CHESTER COUNTY
COURT OF COMMON PLEAS
TRIAL DIVISION

_____ Term, 2015

No: _____

COMPLAINT

CIVIL ACTION

Plaintiff, by her undersigned counsel, brings this action against Defendants pursuant to Pennsylvania's Criminal History Record Information Act ("CHRIA"), 18 Pa. C.S. §§ 9101 *et seq.* In support of her claims, Plaintiff states the following:

INTRODUCTION

1. Because criminal history records are readily available through public and private databases, employers commonly conduct criminal background checks of job applicants. A report that is anything but blank can severely undermine an individual's employment possibilities for her entire life. A criminal history results in collateral consequences that expand an individual's punishment beyond that originally contemplated by the criminal justice system.
2. For that reason, Pennsylvania law, pursuant to CHRIA, provides important substantive and procedural protections to job applicants with criminal records. Unfortunately, many employers do not comply with CHRIA.
3. CHRIA applies to all Pennsylvania employers that are deciding whether or not to hire an employment applicant based in whole or in part on the basis of the applicant's criminal history record information. This includes applicants who have been conditionally hired and are being considered for permanent employment.
4. CHRIA provides that felony and misdemeanor convictions may be considered by the employer only to the extent to which they relate to the applicant's suitability for employment in the position for which she has applied.
5. CHRIA forbids employers from considering arrests or charges that did not result in convictions, including withdrawn charges, when making hiring decisions.
6. CHRIA requires that when an employer denies a job application in whole or in part on the basis of criminal history record information, the employer must notify the applicant in writing of such basis for its decision.
7. Plaintiff, Taheera Heard, has experienced the damage to her reputation and to her ability to earn an income that CHRIA was designed to prevent. In June 2015, Defendants, Genesis Healthcare, LLC and Genesis Administrative Services LLC, refused to employ Ms. Heard

based solely on criminal history record information reports that showed convictions unrelated to the job for which she had applied, as well as charges that never led to a conviction.

PARTIES

8. Plaintiff, Taheera Heard, is a thirty-eight-year-old African-American woman who resides in Philadelphia, Philadelphia County, Pennsylvania. She received a Bachelor of Science degree in 2006 and has worked since 2006 as a financial systems analyst and information systems/information technology auditor. She is currently employed.
9. Defendant Genesis Healthcare, LLC, also known as Genesis Healthcare, Inc., is one of the nation's largest skilled nursing and rehabilitation therapy providers. It is headquartered in Kennett Square, Chester County, Pennsylvania. Genesis Healthcare, LLC denied employment to Ms. Heard on the basis of information that is part of her criminal history record information file.
10. On information and belief, Defendant Genesis Administrative Services LLC is a subsidiary of Genesis Healthcare, LLC, and is also headquartered in Kennett Square, Chester County, Pennsylvania. On information and belief, Genesis Administrative Services LLC or its predecessor denied employment to Ms. Heard on the basis of information that is part of her criminal history record information file.
11. This complaint collectively refers to the two Defendants as "Genesis."

JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to 42 Pa. C.S. § 931(a).
13. Venue is proper pursuant to Pa. R. Civ. P. 2179(a) because a transaction or occurrence giving rise to Plaintiff's cause of action took place in Chester County, Defendants regularly conduct business in Chester County, and Defendants' principal place of business is located in Chester County.

FACTS

14. Ms. Heard has been charged with crimes on three occasions. First, in 1998, Ms. Heard was charged with a misdemeanor arising out of the overpayment of welfare benefits to her. A conviction and fine were entered in the record.
15. Second, in 1999, Ms. Heard was charged with endangerment. These charges were withdrawn and did not result in any conviction.
16. Third, in 2010, Ms. Heard was charged with three offenses after her ex-fiancé, a Philadelphia Police Department officer, accused her of harassing him, because she repeatedly sought for him to repay money that he had borrowed from her. She pleaded guilty to the least serious charge, a third-degree misdemeanor, and was sentenced to 12 months of non-reporting probation, which she completed without incident. The other two charges were withdrawn.
17. In or about February 2013, Ms. Heard began working at TD Bank, N.A., as a Senior Auditor. TD Bank was aware of Ms. Heard's criminal history record information described in ¶¶ 14-16 *supra* but did not consider it a bar to her employment for the position as a Senior Auditor.
18. In the spring of 2015, Genesis approached Ms. Heard through a recruiter to invite her to apply for a job. Ms. Heard then applied for employment with Genesis.
19. In May 2015, Genesis, through Kevin Souder, a Genesis employee who works as a corporate recruiter, made an offer to Ms. Heard for a position at its Kennett Square administrative offices as a Senior IT Auditor.
20. Ms. Heard accepted Genesis's offer on or about May 20, 2015.
21. By email dated May 20, 2015, Mr. Souder wrote to Ms. Heard: "Congratulations on your acceptance of the Sr. IT Auditor position with Genesis HealthCare! Please note that this offer is still contingent on the successful completion of background checks and a drug screen." This email further stated: "Your start date is set for 6/8/15."

22. On or about May 22, 2015, Ms. Heard completed a Genesis “Attestation of Good Moral Character” form and provided it to Genesis. On this form, she disclosed the two convictions described in ¶¶ 14, 16 *supra*. Also on May 22, 2015, she signed and returned a “Consumer Authorization” form stating that General Information Services, Inc. (“GIS”) could conduct a criminal background check on behalf of Genesis.
23. After being informed of the two convictions described in ¶¶ 14, 16 *supra*, Mr. Souder advised Ms. Heard that her record would not interfere with her hiring. In reliance on this, in late May Ms. Heard tendered her resignation from TD Bank, N.A. Her resignation from TD Bank, N.A., was effective after two weeks, in early June.
24. On or about May 28, 2015, at Genesis’s request, Ms. Heard electronically provided Genesis with a letter accepting Genesis’s job offer.
25. On or about May 28, 2015, Ms. Heard completed and returned a Genesis parking garage application that Genesis had sent to her.
26. In late May or early June, 2015, Genesis informed Ms. Heard that it would postpone her start date from June 8, 2015 because Genesis had not completed her background check. Genesis revised her start date to June 15, 2015, but later postponed this start date as well.
27. On June 3, 2015, the individual who was to be Ms. Heard’s supervisor, Montgomery McKee, scheduled an overview of Genesis’s IT Department for Ms. Heard and other members of her group at Genesis, to be conducted on June 23, 2015.
28. On or about June 8, 2015, Ms. Heard took and passed a drug screen for Genesis.
29. Throughout June and July, 2015, Ms. Heard continued to request a finalized start date, but Genesis never gave her final confirmation of any start date.

30. GIS sent Ms. Heard a consumer report dated July 17, 2015. The report contained numerous errors, including twice listing the single conviction described in ¶ 14 *supra*, and listing as a guilty plea a charge that was in fact withdrawn, as described in ¶ 16 *supra*. The report included the statement “Does Not Meet Hiring Criteria,” next to the image of a warning flag.
31. By a “Disclosure/Dispute Process Request Form” dated July 20, 2015, Ms. Heard notified GIS of errors in the report.
32. GIS sent Ms. Heard a revised consumer report dated July 22, 2015. This report listed the two convictions described in ¶¶ 14, 16 *supra*. In place of the statement “Does Not Meet Hiring Criteria,” it said “Requires HR Review,” next to the image of a warning flag.
33. Ms. Heard’s two convictions, whether considered in isolation or together, are not related to her suitability for employment in the position at Genesis for which she applied.
34. The revised GIS consumer report contained not only criminal history record information but also other information, such as information about Ms. Heard’s TD Bank position and salary, and a list of previous addresses going back to Ms. Heard’s teen years.
35. Neither Genesis nor GIS provided any notice, written or otherwise, to Ms. Heard that she would not be offered permanent employment until November 2, 2015. This was nearly a month after Ms. Heard’s counsel notified Genesis’s counsel of a potential claim.
36. On that date, Ms. Heard received a letter from GIS dated October 28, 2015 (the “GIS Letter”). The GIS Letter stated: “Based on information contained in a recently obtained consumer report on you, Genesis Healthcare has elected not to extend you an offer of employment or continue your employment.”
37. The GIS Letter is marked “Page 1 of 2,” and bears the notation “Enc.:

38. On information and belief, Genesis willfully decided not to extend a final offer of employment to Ms. Heard solely on the basis of criminal history record information in the GIS reports.
39. Genesis has never provided written notice to Ms. Heard that its decision not to hire her was based in whole or in part on criminal history record information. The only written notice Ms. Heard has received that she would not be hired was the GIS Letter, which came from GIS, did not specify that the decision was based in whole or in part on criminal history record information, and arrived only months after the fact, once Genesis was under threat of litigation.
40. Genesis's actions and omissions are contrary to Pennsylvania law and injured Ms. Heard.

COUNT I

Violation of the Criminal History Record Information Act, 18 Pa. C.S. § 9125(a)

41. Plaintiff hereby incorporates and adopts each and every allegation set forth in Paragraphs 1 through 40 above.
42. Ms. Heard applied for employment at Genesis.
43. Genesis willfully decided not to hire Ms. Heard based on information that was part of her criminal history record information file.
44. Ms. Heard's convictions did not relate to her suitability for employment in the position at Genesis for which she applied.
45. Withdrawn charges against Ms. Heard were not convictions and cannot, in whole or in part, legally form the basis for an employer's decision not to hire her.
46. The actions of Genesis injured Ms. Heard.

47. CHRIA's § 9125(a) permits employers who are in receipt of information which is a part of an applicant's criminal history record information to use such information for the purpose of deciding whether to hire the applicant only in accordance with Section 9125 of CHRIA.
48. Accordingly, Genesis willfully violated 18 Pa. C.S. § 9125(a).

COUNT II

Violation of the Criminal History Record Information Act, 18 Pa. C.S. § 9125(b)

49. Plaintiff hereby incorporates and adopts each and every allegation set forth in Paragraphs 1 through 48 above.
50. Ms. Heard applied for employment at Genesis.
51. Genesis willfully decided not to hire Ms. Heard based on information that was part of her criminal history record information file.
52. Ms. Heard's convictions did not relate to her suitability for employment in the position at Genesis for which she applied.
53. Withdrawn charges against Ms. Heard were not convictions and cannot, in whole or in part, legally form the basis for an employer's decision not to hire her.
54. The actions of Genesis injured Ms. Heard.
55. CHRIA's § 9125(b) prohibits consideration of information on charges not resulting in conviction in hiring decisions, and permits consideration of felony and misdemeanor convictions only to the extent to which they relate to the applicant's suitability for employment in the position for which she has applied.
56. Accordingly, Genesis willfully violated 18 Pa. C.S. § 9125(b).

COUNT III

Violation of the Criminal History Record Information Act, 18 Pa. C.S. § 9125(c)

57. Plaintiff hereby incorporates and adopts each and every allegation set forth in Paragraphs 1 through 56 above.
58. Genesis has never notified Ms. Heard in writing that its decision not to hire her was based in whole or in part on criminal history record information.
59. CHRIA's § 9125(c) mandates that Genesis provide such written notice.
60. This inaction by Genesis injured Ms. Heard.
61. Accordingly, Genesis willfully violated 18 Pa. C.S. § 9125(c).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in her favor and against Defendants, and:

- a. Award injunctive relief, pursuant to 18 Pa. C.S. § 9183(a), compelling Defendants to discontinue their practices of violating 18 Pa. C.S. § 9125 in their hiring processes and providing a system to monitor compliance;
- b. Award Plaintiff actual and real damages not less than \$100 for each of these violations, pursuant to 18 Pa. C.S. § 9183(b)(2);
- c. Award Plaintiff exemplary and punitive damages not less than \$1,000 and not more than \$10,000 for each of these violations, pursuant to 18 Pa. C.S. § 9183(b)(2);
- d. Award Plaintiff her reasonable costs of litigation and attorneys' fees, pursuant to 18 Pa. C.S. § 9183(b)(2); and
- e. Award Plaintiff such other and further relief that this Honorable Court deems just and appropriate.

Dated: _____

Respectfully submitted,

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