

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DORIS MENELEE, on behalf of herself and all others similarly situated,	:	CIVIL ACTION
	:	
	:	
Plaintiff	:	
v.	:	
	:	No.
	:	
CHOICEPOINT, INC. and RITE AID CORP.,	:	
	:	
	:	
Defendants	:	<u>JURY TRIAL DEMANDED</u>

CLASS ACTION COMPLAINT

I. Preliminary Statement

1. This is an action by a worker in the retail industry who is seeking monetary and injunctive relief under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 *et seq.* and under Pennsylvania law, against her former employer and against a national database company that is falsely reporting her to potential employers as a thief.

2. Plaintiff Doris Menefee spent a lifetime working in the retail sector. At the age of 59, she was fired from her former employer, Rite Aid, based on an unfounded accusation that she had misused the company’s employee discount program. Besides firing Plaintiff, Rite Aid reported this job termination as a “theft” incident to a proprietary database called “ESTEEM,” a service that is owned and marketed by ChoicePoint, Inc. Rite Aid did so despite the fact that Plaintiff did nothing that could reasonably be classified as theft and despite the fact that Plaintiff was awarded unemployment compensation, something that would not have happened if Rite Aid had proved that she in fact had stolen anything or violated its policies on employee discounts. Plaintiff

learned about the existence of the report when, repeatedly, she was denied employment based on prospective employers' search of the ESTEEM database. After Plaintiff initiated a dispute with ChoicePoint, pursuant to her rights under FCRA, ChoicePoint and Rite Aid failed to reinvestigate the accuracy of the theft report and left the report intact, in reckless disregard of the truth and of Plaintiff's rights and interests.

3. Plaintiff has suffered and continues to suffer substantial economic and emotional harm as a result of the Defendants' deliberate and shocking conduct.

4. In addition to seeking compensatory and punitive damages for the injuries she has incurred, Plaintiff is also seeking to represent a class of similarly situated current, former or future retail workers who have been or who risk being branded as "thieves" by ChoicePoint. She seeks injunctive relief only for the class.

II. Parties

5. Plaintiff Doris Menefee is an adult individual who resides at 3405 N. Judson Street, Philadelphia, PA 19140. She is suing on her own behalf and on behalf of a class of similarly situated individuals who are described below and who will be referred to hereafter as "the Class."

6. Defendant ChoicePoint, Inc. is a Georgia corporation headquartered at 1000 Alderman Drive, Alpharetta, GA 30005. ChoicePoint is a data aggregation company that operates as a private intelligence service to government and industry. It maintains billions of records on individuals and businesses that it sells to its clients.

7. Defendant Rite Aid Corp. is a Delaware corporation headquartered at 30 Hunter Lane, Camp Hill, PA 17011. Rite Aid owns and operates a network of retail pharmacies throughout the United States.

III. Jurisdiction and Venue

8. This Court has jurisdiction over this matter based upon 28 U.S.C. § 1331 in that the dispute involves predominately issues of federal law arising under Section 618 of the Fair Credit Report Act, 15 U.S.C. 1681p. The Court has jurisdiction over Plaintiff's state law claims under 15 U.S.C. § 1367(a).

9. Venue is properly in this District, pursuant to 28 U.S.C. § 1391(b), because a substantial part of the events or omissions giving rise to Plaintiff's claim occurred in this District.

IV. The Class

10. The Class consists of all individuals in the United States who have been, are or could be, in the future, the subject of a consumer report by ChoicePoint, Inc. pertaining to a specific incident of some form of theft or fraud, based solely on their having purportedly admitted involvement in that incident of theft or fraud.

V. Factual Allegations

a. ChoicePoint's "Esteem" Database

11. Among the services marketed by ChoicePoint is an employment screening product named *Esteem*.

12. *Esteem* is a proprietary theft database that subscribing members use to supplement their background investigations of prospective job applicants. It is a contributory database, meaning that subscribing members also provide incident reports to the database regarding employee or customer theft incidents in their stores.

13. The *Esteem* database contains two types of records: criminal records that ChoicePoint compiles from public record searches and "theft records."

14. “Theft records” are reports furnished to ChoicePoint by subscribing members where the following requirements are met:
- a. The incident involved theft of merchandise, cash or property of more than \$5;
 - b. The person who committed the theft is, as reported by the member, 16 years of age or older; and
 - c. The member either is prosecuting the theft or provides, with the report, a signed admission statement by the person who committed the theft.
15. In return for a periodic fee paid to ChoicePoint, members have 24-hour access to *Esteem* via the internet, telephone or other media of electronic information transfer.
16. Among the paying members of *Esteem* are the largest retail chains in the United States, including Rite Aid, CVS, Walgreens, Target, Lowe’s, Home Depot, Lord & Taylor, PetSmart, Marshalls and Pathmark.

b. The Incident Involving Plaintiff

17. Plaintiff Menefee is a 60-year old, African American woman who has worked for 35 years in the retail sector. At the time of the job termination underlying this case, she had been employed for 15 years by Rite Aid, most of that time serving as an assistant manager of its North Philadelphia store at 22nd and Allegheny Ave.

18. During her tenure at Rite Aid, Plaintiff was never the subject of any disciplinary action of any kind nor had she ever been accused of any misconduct whatsoever.

19. On February 1, 2007, the employees of the said North Philadelphia store conducted a routine inventory. The next day, a corporate loss prevention associate whom she knew only as “Rich,” asked Plaintiff to accompany him to the back room of the store. Once they were alone in the backroom, “Rich” informed Plaintiff that the inventory had

gone badly, meaning that the store had been suffering unexplained losses. “Rich” began to talk about a variety of loss issues, including employee and outside theft and then he shifted into an interrogation of Plaintiff about her understanding of company policies designed to limit losses.

20. One of the policy areas that he questioned her about was the company’s employee discount program. Under this program, employees and their immediate family members receive cards that enable them to receive a 20-percent discount on their store purchases. In response to Rich’s general questions about this program, Plaintiff explained her knowledge about the program rules and how she and her great-niece, Melody—whom she had raised as her own child—had used their discount card over the course of her 15 years in the store.

21. “Rich” stated to Plaintiff that nieces were not eligible to use the employee discount program and this constituted a violation of company policies regarding the discount card.

22. Plaintiff responded that she never had intended to violate any policy, that Melody was well-known to the store manager and the other employees, that Melody’s use of the card over the course of fifteen years had been done openly with the belief that her being the equivalent of a daughter to Menefee entitled her to use of the discount card, and that no one from Rite Aid had ever raised this issue with her.

23. In fact, the company rules applicable to the use of the card, and that were provided to Plaintiff and all other employees, did not state that an individual in the position of her great niece Melody is ineligible to receive discounts. The policy did not define “immediate family members” as including only biological children of employees.

On the contrary, the policy defines “immediate family members” as including a stepchild and a “co-dependent family member who resides with” the employee.

24. Thus, Plaintiff Menefee reasonably assumed that, because she had helped to raise Melody as her own child, and because Melody lived in Menefee’s home, Melody fit within the policy. She further believed that her interpretation of the qualification rule was confirmed by her co-workers’ awareness that Melody was not her biological child and by the allowance of her use of the family discount card.

25. After telling Plaintiff that her interpretation about the rule was incorrect, “Rich” handed her a notepad and asked her to write a statement about her family’s use of the employee discount card. When she initially refused, he told her that, as an employee of Rite Aid, she had to write something. Plaintiff was confused and frightened by the unexpected accusation and by her isolation in the back room and did not know what to do. “Rich” said that he would help compose a statement.

26. “Rich” told her that, if she acknowledged misusing the discount program, everything would be fine, so she wrote something on the paper about her use of her family’s discount card. She is not sure exactly what she wrote because of her disorientation at the time she wrote it and because “Rich” refused to provide her a copy of the statement.

27. She does remember “Rich” instructing her to write how many discounts she received annually. He coached her to put \$5,000 or \$6,000 on the statement, but she told him that her annual discounts would not amount to more than \$150-200. He instructed her to put \$200 on the statement and she did so.

28. At no point during the ordeal in the backroom did “Rich” inform Plaintiff that the written statement he coached her to write would be published in a nationwide database as an “admission” of theft, thereby harming her ability to get future work in her field. Had he so informed her, she would not have written anything, since, to this day she knows she did nothing wrong.

29. For fifteen years, Plaintiff thought she had been using her discount card correctly. The Rite Aid policy specifically authorizes “immediate family members” to use the card, and it defines “immediate family member” as including a “co-dependent family member who resides with the associate.” Since her great-niece was, in her mind, a “co-dependent family member” who resided with her during her fifteen-year tenure at Rite Aid, and since her great-niece had been openly using the card at the store for years with the permission of store personnel, Plaintiff had no reason to believe she was violating the policy.

30. After Menefee signed the statement, “Rich” told her to “take a deep breath” and that “everything would be all right.” He told her she could go back to work, and she did.

31. Several days later, on or about February 5, 2007, after she had completed her shift, Ms. Menefee was instructed by her store supervisor to go to another Philadelphia store to meet with the district supervisor. As instructed, Plaintiff traveled to that store where she met with Gary Sanders, the district supervisor.

32. At this meeting, Sanders asked her about her February 1 interrogation by “Rich”, about her written statement and about her use of the employee discount card. She repeated what she had told “Rich” and what her understanding had been about the

“immediate family member” policy. Sanders informed her that a great-niece could not be “a co-dependent family member” and he suspended her. Plaintiff asked Sanders for a copy of the written statement, and he, like “Rich”, refused to give her a copy.

33. On February 9, 2007, as a result of a further instruction by her store supervisor, Plaintiff attended a meeting at a different Philadelphia Rite Aid store. When she arrived, both “Rich” and Sanders were there, as was Jim Irver, a human resources representative. At that meeting she was informed that she was being terminated for misuse of the employee discount program. Her request for reconsideration and for a copy of the written statement were both refused.

34. After her termination, Plaintiff applied for unemployment compensation (UC) benefits.

35. Under Pennsylvania law, an employer that has separated a UC claimant is given notice of the claim and an opportunity to provide evidence that it fired the worker for conduct that reaches the level of “willful misconduct.” Proof of theft or of violation of an employer policy meets the willful misconduct standard. If the employer proves “willful misconduct,” UC benefits are denied. If it does not, UC benefits are awarded, and the employer’s experience-rated insurance premiums will increase. The employer can appeal an adverse initial determination, leading to an administrative hearing at which it will have another opportunity to prove “willful misconduct” by the fired employee.

36. Rite Aid did not produce evidence that Ms. Menefee had committed any “willful misconduct” under the law, or, if it did, the Unemployment Compensation agency determined that such evidence lacked credibility or probative value. As a result, she was granted UC benefits. Rite Aid did not appeal the decision granting UC benefits.

c. **Plaintiff's Discovery of an *Esteem* Report against Her and Her Efforts to Have the Report Corrected**

37. Plaintiff began a job search soon after her termination from Rite Aid and she submitted numerous job applications, mostly with other retail enterprises. She was surprised, given her long and exemplary job history in the industry, that she could not find work.

38. During June, 2007, she learned the reason why she had not been able to find work. In response to a job application she had submitted to CVS, Plaintiff received two letters from CVS, informing her that, in considering her job application, it had relied on a report from Defendant ChoicePoint's *Esteem* program. The first letter, dated June 13, 2007 (a copy of which is attached hereto as Exhibit 1) stated, *inter alia*, that CVS had obtained a "consumer report" from ChoicePoint Workplace Solutions and that the report "may adversely effect your employment status at CVS." It provided a copy of the ChoicePoint report and an address and telephone number for ChoicePoint where, the letter stated, Plaintiff could direct any dispute she had regarding "the accuracy or completeness of the report."

39. Attached as Exhibit 2 is a copy of the ChoicePoint *Esteem* report that was enclosed with the June 13 letter. It reports the occurrence of an "*Esteem* incident" involving Plaintiff, on January 30, 2007, at Rite Aid store # 3225. The incident was described as "Cash register fraud" of \$200 and as being evidenced by a "Verified admission statement."

40. On June 18, 2007, Plaintiff received a second letter from CVS, this one confirming that the decision of CVS not to hire Plaintiff was "based in whole or in part"

on the information contained in the ChoicePoint report. A copy of this letter is attached as Exhibit 3.

41. As a result of receiving these letters and discovering the existence of a widely circulated report that was communicating false and damaging information about the Rite Aid “incident” and that was preventing her from obtaining employment, Plaintiff sought advice from Community Legal Services (“CLS”), the publicly funded civil legal aid organization that serves low income residents of Philadelphia.

42. On June 29, 2007, CLS wrote to Defendant ChoicePoint, disputing the accuracy of the *Esteem* report for Plaintiff, including a detailed description of the facts surrounding the Rite Aid employee discount policy and of Rite Aid’s false characterization of the incident. A copy of this letter (referred to hereafter as Plaintiff’s “dispute letter”) is attached as Exhibit 4. Among other things, the letter requested a reinvestigation of the accuracy of the ChoicePoint report and its deletion from the *Esteem* database.

43. On information and belief, ChoicePoint forwarded a copy of the dispute letter to Rite Aid.

44. On information and belief, Rite Aid communicated back to ChoicePoint in some *pro forma* way that the original report was accurate. On information and belief, Rite Aid conducted no further investigation of the incident and provided no further evidence to ChoicePoint, but rather, simply confirmed the accuracy of the report.

45. On information and belief, ChoicePoint passively received that communication from Rite Aid and then, on July 17 2007, sent a letter to Plaintiff, a copy of which is attached as Exhibit 5. This letter states as follows:

You recently disputed information contained in a background report produced by ChoicePoint for employment purposes. We have completed our reinvestigation of the disputed information and have verified that the information was originally reported accurately.

46. Plaintiff believes and therefore avers that this letter from ChoicePoint was a form letter that ChoicePoint routinely sends to consumers who dispute the accuracy or completeness of an *Esteem* report and that ChoicePoint did not, in fact, engage in any genuine reinvestigation and review of the facts underlying its report. She further believes and avers that, to this day, this same false report about her is still being maintained by ChoicePoint and being made available to retail employers throughout the United States.

d. The Continuing Harm Suffered by Plaintiff

47. Plaintiff has worked hard to develop a reputation as a diligent, responsible and reliable employee. Given her long experience, and consistently positive performance with several retail employees, she is very employable, but for the impact of the Rite Aid/ChoicePoint report.

48. Plaintiff has applied for many retail and customer service jobs, primarily over the internet. She has also conducted an intense job search on the Commonwealth of Pennsylvania “Career Link” program and through the City of Philadelphia’s “55 Plus” job search program for senior workers. Among the companies with which she filed job applications were several known members of the *Esteem* program, including Home Depot, Walgreens, Target and Lowe’s. Despite her vast experience, she was not called for an interview by any employer until after Labor Day, 2007.

49. In September, 2007, K-Mart agreed to hire Plaintiff. She was able to use her detailed dispute letter (Exhibit 4) to persuade a sympathetic human resources

representative that the *Esteem* report was false; however, he would only hire her for a part-time position, in which she remains to this date.

50. At the time she was unfairly terminated by Rite Aid, Plaintiff was earning \$27,000/year, plus receiving medical and pension benefits. At K-Mart she is earning \$7/hr. and works 20 hours or less per week. She has no medical benefits so must purchase a private health care policy that costs her \$239/mo. and that does not even cover some of the essential prescriptions she needs to prevent bone atrophy from her degenerative joint disease.

51. Plaintiff was emotionally shaken by the events of February 2007 and the false accusation of retail theft. She suffered intense and ongoing humiliation and embarrassment as a result of this defamation and from the financial stress she has had to endure as a result of being denied the opportunity to earn a living.

52. As a result of this prolonged ordeal, Plaintiff has suffered disorientation, anxiety, loss of sleep, depression and other emotional injuries.

53. Plaintiff's substantial financial injury will continue accumulating into the future unless remedied. These economic damages include the loss of a significant portion of her monthly income—having had to live on unemployment compensation and part-time wages instead of her full-time earnings at Rite Aid—and her additional healthcare-related costs.

VI. Class Action Allegations

54. The class consists of all individuals in the United States who have been, are or could be, in the future, the subject of a consumer report by ChoicePoint, Inc.

pertaining to a specific incident of some form of theft or fraud, based solely on their having purportedly admitted involvement in that incident of theft or fraud.

55. The class is so numerous that joinder of all members is impracticable. ChoicePoint's website reports that *Esteem* contains reports furnished by 75,000 retail locations across the United States.

56. Plaintiff is an adequate representative of the class and her claims are typical of those of the class. There are no issues or defenses unique to Plaintiff, and she has no conflicts with members of the class. Counsel for the Plaintiff are experienced in the prosecution of complex class action litigation and have appeared as counsel and as lead counsel in nationwide class actions in courts across the United States. They and Plaintiff will fairly and adequately protect the interests of the class.

57. There are questions of law and fact that are common to the class including the following:

- a. Whether ChoicePoint is following reasonable procedures to assure maximum possible accuracy of the information it maintains in its databases within the meaning of 15 U.S.C. § 1681e(b), including,
 - (i) whether ChoicePoint allows subscribers to define for themselves what constitutes an unprosecuted "theft" or "fraud" without itself imposing any uniform standards or criteria for what should or should not be listed as a "theft" or "fraud" incident,
 - (ii) whether ChoicePoint conducts any independent review of supposed "admission statements,"
 - (iii) whether ChoicePoint requires subscribers, before asking consumers to sign an admission statement, to inform them about *Esteem* and that the admission statement will be published to future potential employers,

- (iv) whether admission statements like the one involved in Plaintiff’s case are reliable sources of accurate information, given the reasonably likely possibility that they could be the product of employer coercion or deception, and whether such statements should accurately be treated as admissions without providing for the possibility of employee retraction,
 - (v) whether ChoicePoint requires subscribers to delete or edit reports in light of subsequent relevant events, such as an Unemployment Compensation determination that no “misconduct” occurred,
 - (vi) whether ChoicePoint engages in relevant training and follow-up with its subscribers to ensure that they are properly using the *Esteem* program and
 - (vii) the consequences of such conduct or omissions on ChoicePoint’s compliance with its statutory duties and
- b. Whether, upon receiving a notice that a consumer is disputing the accuracy or completeness of the information ChoicePoint is disseminating about the consumer, ChoicePoint conducts reasonable reinvestigations in compliance with 15 U.S.C. § 1681i(a)(1)(A), including
- (i) whether it actually reviews and analyzes material submitted by disputing consumers, and makes an independent determination as to the accuracy or completeness of the report,
 - (ii) whether it ever considers the existence of a dispute as undercutting the propriety or accuracy of reporting the incident as “admitted” and
 - (iii) whether it ever provides to subscribers, as part of its reinvestigation, any feedback—both negative and positive—for the purpose of improving future reporting into the *Esteem* system.

58. Regarding the procedures it employs, ChoicePoint has acted or is refusing to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

VII. Causes of Action

COUNT I

(Against ChoicePoint)

Violation of § 607 of FCRA, 15 U.S.C. §1681e(b)

59. Plaintiff realleges and incorporates by this reference all preceding allegations.
60. Plaintiff is a “consumer,” as defined by FCRA, 15 U.S.C. § 1681a(c).
61. Defendant ChoicePoint is a “consumer reporting agency,” as defined by FCRA, 15 U.S.C. § 1681a(f).
62. ChoicePoint’s *Esteem* report concerning Plaintiff’s February 2007 termination by Rite Aid is a “consumer report” within the meaning of 15 U.S.C. § 1681a(d).
63. As described above, the said consumer report contained inaccurate information.
64. In violation of 15 U.S.C. § 1681e(b), ChoicePoint failed to follow reasonable procedures to assure the maximum possible accuracy of the information about Plaintiff when it prepared the said consumer report. Among other things,
- a. Defendant imposes no uniform standards or criteria for what constitutes a “theft” or “fraud” or “signed admission statement,” instead leaving it to the whim and discretion of *Esteem* members to define these terms for themselves;
 - b. Defendant does not review the supposed “admission statements,” essentially publishing any report that is labeled by the furnisher as a theft or fraud incident, rather than making any independent judgment by itself;
 - c. Defendant allows subscribers to hide from their employees any information regarding the *Esteem* system before asking them to “admit” to wrongdoing and to hide their intent to treat the statement as a written admission of theft or fraud that will be reported nationally;

- d. Defendant allows subscribers to generate “admission statements” in inherently coercive or deceptive settings and provides no means for employees to retract a so-called “admission statement;”
- e. Defendant does not require subscribers to include with their report any exculpatory or contradictory material, like for example, a finding that there was no misconduct in an award of Unemployment Compensation, nor does it require subscribers to supplement earlier submitted reports with such exculpatory material;
- f. Defendant engages in little or no relevant training or follow-up communications with its subscribers for the purpose of reinforcing with its subscribers the substantial risks to retail workers caused by reporting inaccurate information or of providing feedback or consequences regarding improper uses of the *Esteem* system.

65. Because of these unreasonable procedures, Plaintiff and class members are induced into making uninformed decisions regarding the creation and signing of so-called “admission statements,” based on coercive and/or deceptive communications from their employers and, as a result, inaccurate or incomplete information about alleged theft or fraud incidents are included in consumer reports made by ChoicePoint.

66. Under 15 U.S.C. § 1681o, Plaintiff is entitled to actual damages for the economic and emotional harm she has suffered as a result of Defendants’ negligent noncompliance with 15 U.S.C. § 1681e(b), plus attorney’s fees.

Under this Court’s inherent equitable powers, Plaintiff and the Class are also entitled to injunctive relief, ordering Plaintiff’s and class members’ reports removed from the *Esteem* database, and enjoining Defendant to adopt new policies and procedures directed towards correcting the inadequate compliance procedures specified above.

COUNT II
(Against Both Defendants)
Violations of §§ 611 and 623 of FCRA, 15 U.S.C. §§ 1681i and 1681s-2

67. Plaintiff realleges and incorporates by this reference all preceding allegations.

68. Upon receipt of Plaintiff's dispute letter, ChoicePoint was obligated to "conduct a reasonable investigation to determine whether the disputed information [was] inaccurate" and, further, to "record the current status of the disputed information or delete the information." 15 U.S.C. § 1681i(a)(1)(A).

69. In conducting this required "reinvestigation," as FCRA calls it, ChoicePoint bore "grave responsibilities" to ensure the accuracy of its report, and was required to do "something more than merely parroting information received" from Rite Aid. *Cushman v. Trans Union Corp.*, 115 F.3d 220, 225 (3d Cir. 1997). At a minimum, this reinvestigation was supposed to include the immediate transmittal of Plaintiff's dispute letter and supporting documents to Rite Aid, the weighing of Plaintiff's information and any additional information provided by Rite Aid, and a prompt determination—within 30 days of Plaintiff's dispute—to delete or modify the inaccurate report. *See* 15 U.S.C. § 1681i(a)(2)-(5).

70. Plaintiff believes and therefore avers that ChoicePoint does not conduct genuine, independent reinvestigations which, in her case, would have included a review of the definitions of eligible "immediate family members" in Rite Aid's employee discount policy, or whether reasonable interpretations of such a policy could be the sole basis of an *Esteem* report—but rather, accepted without review, the continuing,

unfounded assertion by Rite Aid that Plaintiff had admitted to “cash register fraud” of \$200.

71. Plaintiff believes and therefore avers that ChoicePoint does not consider whether, in circumstances such as hers, it is reasonable, after receipt of such a dispute, to continue to report the incident as involving an “admission.”

72. In violating its reinvestigation obligations under FCRA, ChoicePoint has acted and is continuing to act negligently, willfully, knowingly, deliberately and in reckless disregard of the truth and of the rights and interests of Plaintiff and members of the class.

73. For Rite Aid’s part, in the individual case involving Plaintiff, it was obligated by FCRA, upon receipt of the dispute from ChoicePoint, to conduct a reinvestigation of the accuracy of its original report, including consideration of its decision not to submit evidence to the Unemployment Compensation agency that Plaintiff had done anything that could be characterized as “willful misconduct” (or, if it did submit evidence, the fact that the Unemployment Compensation agency had discounted that evidence and found against the company), and it was further obligated to delete or modify its report within the 30-day period ChoicePoint had to respond to Plaintiff. 15 U.S.C. § 1681s-2(b).

74. Like ChoicePoint, Rite Aid negligently, knowingly, willfully and deliberately violated these legal obligations, in reckless disregard of the truth and of the rights and interests of Plaintiff.

75. Under 15 U.S.C. §§ 1681o and 1681n, Plaintiff is entitled to actual damages, punitive damages, and attorney’s fees from both Defendants.

76. Under this Court's inherent equitable powers, Plaintiff and the Class are also entitled to injunctive relief, ordering Plaintiff's and class members' reports removed from the *Esteem* database, and enjoining ChoicePoint to adopt new policies and procedures regarding the reinvestigation of a disputed consumer report.

COUNT III
(Against Both Defendants)
Defamation

77. Plaintiff realleges and incorporates by this reference all preceding allegations.

78. Sometime after February 1, 2007, Defendant Rite Aid published to Defendant ChoicePoint a defamatory communication concerning Plaintiff, more specifically, a report that Plaintiff had admitted to "cash register fraud" of \$200.00.

79. This communication was made with malice or willful intent to injure Plaintiff. Rite Aid knew that Plaintiff had not admitted to any such theft, but, in reckless disregard for the truth and for Plaintiff's rights and interests, induced her, through deception, to "admit" to the theft in a manner that left her in the dark as to what was happening. By publishing this false, inaccurate and defamatory information into the *Esteem* system, it specifically intended to prevent Plaintiff from obtaining future employment, in reckless disregard for the truth of the communication or for the rights or interests of Plaintiff.

80. This communication was received by ChoicePoint with an understanding of its defamatory meaning and of its application to Plaintiff.

81. Defendant ChoicePoint did in fact republish the defamatory report, repeatedly, to its other *Esteem* subscribers, including but not limited to the communication to CVS.

82. Defendant ChoicePoint acted knowingly and deliberately and with reckless disregard for the truth of the communication or for the rights or interests of Plaintiff, and with a specific, willful intent to injure Plaintiff, to wit, an expectation that the communications would result in the recipients of the communications rejecting Plaintiff's application for employment. In fact, ChoicePoint widely advertises and represents the information it owns and controls under the *Esteem* trademark as including, principally, incidents of retail thefts that were not reported to criminal authorities. According to ChoicePoint, "when there is no public record of the theft, the individual is free to pursue employment opportunities without fear that the next company will ever learn of the theft in his or background. With Esteem from ChoicePoint, those individuals can no longer hide from theft-related incidents in their past."

83. To the extent the FCRA regime creates a conditionally privileged context within which employers can report genuine incidents of theft or fraud to ChoicePoint and ChoicePoint can, subject to the safeguards on the accuracy of the reported information that FCRA imposes, publish that information to *Esteem* subscribers, any such privilege was abused by the wanton, deliberate and reckless conduct of the Defendants in this case.

84. As a result of this defamatory communication, and the constant republication that has continued to occur through ChoicePoint's nationwide database, Plaintiff has been branded a thief in the eyes of almost every potential employer in her field.

85. As stated above, Plaintiff has suffered special harm, to her livelihood, her reputation and her emotional well-being as a result of Defendants' malicious or willful conduct.

VIII. Prayer for Relief

WHEREFORE, Plaintiff requests this Honorable Court provide him the following relief:

1. Certification of a class, pursuant to Fed. R. Civ. P. 23(b)(2);
2. A declaration that Defendants violated the Fair Credit Reporting Act, and an appropriate injunction enjoining any further violations of the Act;
3. For Plaintiff, individually, actual damages, including pecuniary damages from lost wages and health benefits and nonpecuniary damages for humiliation, loss of reputation, embarrassment, mental anguish, and emotional distress, as well as punitive damages;
4. Attorney's fees and costs; and
5. All other relief that the Court deems just and proper.

Dated: February 26, 2008

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