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13 **UNITED STATES DISTRICT COURT**

14 **FOR THE DISTRICT OF NEVADA**

15 CHARLES GARNER, on behalf of himself
16 and all others similarly situated,

17 Plaintiff,

18 vs.

19 ACCURATE BACKGROUND, INC,
20 STARBUCKS CORPORATION and DOES
21 1-50,

22 Defendant(s).

Case No.: 3:17-cv-00014

CLASS ACTION COMPLAINT

- 1) Violation of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.*

JURY TRIAL DEMANDED

23 COMES NOW Plaintiff CHARLES GARNER (“Plaintiff”), on behalf of himself and the
24 class set forth below, alleges the following:

25 All allegations in this Complaint are based upon information and belief except for those
26 allegations that pertain to the Plaintiff named herein and his counsel. Each allegation in this
27 Complaint either has evidentiary support or is likely to have evidentiary support after a
28 reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

- 1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action involves a federal question, which states, “An action to enforce any liability created

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1 under [the FCRA] may be brought in any appropriate United States district court, without
2 regard to the amount in controversy, or in any other court of competent jurisdiction” within the
3 earlier of “2 years after the date of discovery by the plaintiff of the violation that is the basis for
4 such liability” or “5 years after the date on which the violation that is the basis for such liability
5 occurs.” 15 U.S.C. § 1681p.

6 2. Venue is proper in this District because Defendants do business in this judicial
7 district and many of the acts complained of herein occurred in this District.

8 **PRELIMINARY STATEMENT**

9 3. This class action is brought pursuant to the Fair Credit Reporting Act (“FCRA”)
10 against Defendant ACCURATE BACKGROUND, INC. and STARBUCKS CORPORATION
11 (“Defendants”), for the acquisition and use of consumer and/or investigative consumer reports
12 to conduct background and credit checks on Plaintiff and other prospective employees on
13 behalf of Starbucks.

14 4. Defendant provides employee background screening services for Fortune 500
15 companies including Starbucks, Ross Dress For Less, Cheesecake Factory, Sephora, Crate &
16 Barrel, and Health Net among others. See Featured Clients at
17 <http://accuratebackground.com/products/> last visited December 16, 2016. Defendant provides
18 the information in background and credit reports to its clients who make employment related
19 decisions for prospective and current employees based on the information Defendant provides.
20 *Id.*

21 5. Defendants fail to comply with federal mandates for obtaining and using
22 background and credit reports for employment purposes.

23 6. Defendants routinely violated the FCRA’s core protections by procuring
24 background and credit reports on job applicants without providing a “stand alone” disclosure
25 that a background and credit report would be procured. Instead, Defendants willfully included
26 extraneous information such as a “release of liability” in an effort to shield itself from its
27 unlawful acts. See, e.g., *Harris v. Home Depot U.S.A., Inc.*, 2015 WL 4270313, at *1 (N.D.
28 Cal. June 30, 2015) (citing *Letter from William Haynes*, Attorney, Div. of Credit Practices, Fed.

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1 Trade Comm'n, to Richard W. Hauxwell, CEO, Accufax Div. (June 12, 1998)); *see also*
2 *Reardon v. ClosetMaid Corp.*, 2013 WL 6231606, at *9 (W.D. Pa. Dec. 2, 2013) (“[The]
3 inclusion of a release provision in the Authorization Form . . . facially violates section
4 1681b(b)(2)(A)(i).”).

5 7. Under the FCRA, an employer or prospective employer cannot “procure, or
6 cause a consumer report to be procured, for employment purposes with respect to any
7 consumer, unless . . . a clear and conspicuous disclosure has been made in writing to the
8 consumer at any time before the report is procured or caused to be procured, *in a document*
9 *that consists solely of the disclosure*, that a consumer report may be obtained for employment
10 purposes.” 15 U.S.C. § 1681b(b)(2)(A)(i) (emphasis added).

11 8. Defendants have willfully and systematically violated 15 U.S.C. §
12 1681b(b)(2)(A)(i) by procuring consumer reports on Plaintiff and other putative class members
13 for employment purposes, without first making proper disclosures in the format required by the
14 FCRA.

15 9. Based on Defendants’ conduct, Plaintiff asserts FCRA claims on behalf of
16 himself and the class defined below. On behalf of himself and the class, Plaintiff seeks
17 statutory damages, punitive damages, attorneys’ fees, litigation costs, and all other available
18 relief.

19 **PARTIES**

20 10. Plaintiff CHARLES GARNER (“Gardner”) is a natural person who has resided
21 in the Reno/Sparks area since 1997 for about ten years, lived in Las Vegas for approximately
22 one year and has been living in Sparks since about 2008, and is a “consumer” within the
23 meaning of 15 U.S.C. § 1681a(c).

24 11. Defendant ACCURATE BACKGROUND, INC. (“Accurate”) is a privately held
25 company with a principal place of business at 7515 Irvine Center Drive, Irvine, California,
26 92618, and is a “person” within the meaning of 15 U.S.C. § 1681a(b).

27 12. Defendant STARBUCKS CORPORATION (“Starbucks”) is a publicly traded
28 company, incorporated under the laws of the state of Washington, headquartered in Seattle,

1 Washington. Starbucks sells coffee-based beverages, teas, merchandise, and food at 13,000+
2 locations in the United States. Starbucks is a “person” within the meaning of 15 U.S.C. §
3 1681a(b).

4 13. Collectively, ACCURATE BACKGROUND, INC. and STARBUCKS
5 CORPORATION are referred to herein as “Defendant” or “Defendants.”

6 14. The identity of DOES 1-50 is unknown at this time and this Complaint will be
7 amended at such time when the identities are known to Plaintiff. Plaintiff is informed and
8 believes that each Defendant sued herein as DOE is responsible in some manner for the acts,
9 omissions, or representations alleged herein and any reference to “Defendant,” shall mean
10 “Defendants and each of them.”

11 **FACTUAL ALLEGATIONS**

12 15. On or about October 1, 2016 Plaintiff posted his resume on Monster.com.

13 16. October 25, 2016, Plaintiff was contacted by a Starbucks Coffee Company
14 (“Starbucks”) recruiter indicating that Starbucks would like to schedule a phone interview for a
15 Maintenance Technician position at the Minden, Nevada roasting plant. *See* Exhibit A, attached
16 hereto, email thread dated October 25, 2016, Subject: Starbucks Opportunity, hereinafter
17 “10/24/16 email.”

18 17. October 27, 2016, Plaintiff received an invitation for phone interview from
19 Jason Hall, a recruiter for Starbucks (“Recruiter Hall”). *See* Exhibit B, attached hereto, email
20 thread dated October 28, 2016, Subject: Re: Starbucks Interview Confirmation, hereinafter,
21 “10/28/16 email.”

22 18. Plaintiff participated in two phone interviews with Recruiter Hall. The first
23 interview was an informational interview that lasted approximately 10 minutes where Recruiter
24 Hall gathered general background information and told Plaintiff that there were two open
25 positions, (1) a maintenance technician and (2) a maintenance mechanic.

26 19. October 28, 2016, Recruiter Hall sent Plaintiff an email requesting a follow up
27 interview with the Maintenance Manager. *See* Exhibit C, attached hereto, email thread dated
28 November 1, 2016, Subject: Starbucks Opportunity, hereinafter “11/1/2016 email.” The

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1 interview was ultimately set for Nov. 2, 2016. *Id.* This second interview took place
2 approximately one week later and took approximately 45 minutes. This interview was an actual
3 job interview where Recruiter Hall went over Plaintiff’s job qualifications, education, training,
4 his feelings about Starbucks, and whether or not he would be a good fit for the job maintenance
5 technician.

6 20. November 4, 2016, Recruiter Hall invited Plaintiff for a third interview and tour
7 of the Minden roasting plant. *See* Exhibit D, attached hereto, email thread dated November 4,
8 2016 Subject: Re: Starbucks Interview Confirmation, hereinafter “11/4/2016 email.” In this
9 email, Recruiter Hall instructed Plaintiff to review a set of attached documents, print them out,
10 sign them, and bring them with Plaintiff to the third interview at the plant. *Id.*

11 21. The documents included in the 11/4/2016 email were: (1) the Minden Roasting
12 Plant Rules, (2) Disclaimer for injuries that may happen while at the Roasting Plant, (3) Site
13 Safety Procedures, and (4) Directions to the Minden Roasting Plant. Plaintiff did as instructed,
14 printed out, reviewed, signed the documents, and brought them with him to the roasting plant
15 interview. Plaintiff gave the completed signed documents to the security officer (name
16 unknown) seated at the front desk of the Minden Roasting Plant upon arrival for the third
17 interview.

18 22. November 7, 2016, Plaintiff attended the third interview with which was
19 actually a panel interview with the Maintenance Manager (Jonathan Springer) and three
20 maintenance technicians at the Minden, Nevada roasting plant. At the close of that interview,
21 the Maintenance Manager indicated that it had gone well and that someone from Starbucks
22 would be contacting Plaintiff.

23 23. November 8, 2016, Recruiter Hall contacted Plaintiff and indicated that
24 Starbucks had liked what they had heard and seen at the interview and that the job of
25 Maintenance Technician was Plaintiff’s if he wanted it. Plaintiff said that he did want the job.
26 Recruiter Hall quoted him a rate of \$21.76 for the first six months of employment with a raise
27 to \$22.76 after six months, immediate medical and dental benefits, immediate 401K
28 contributions, and the immediate availability of two weeks paid vacation.

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24. November 8, 2016, Plaintiff received an email from the Starbucks Talent Acquisition Team indicating that Plaintiff must complete and pass a background check. See Exhibit E, attached hereto, email thread dated November 8, 2016, Subject: Starbucks Authorization and Disclosure Request: Action Required, hereinafter “11/8/16 email.” The email indicated a Starbucks’ organizational contact would contact Plaintiff “once the background check and drug screen process was complete.” *Id.*

25. November 9, 2016, Recruiter Hall sent the background check to Plaintiff. See Exhibit F, attached hereto, email thread dated November 18, 2016, Subject: Starbucks Coffee Drug Screen Step, hereinafter “11/18/16 Hall email.” The Accurate Background, Inc. Personal Identification Information form that included the “Authorization For Release Of Information” was attached and a blank copy of which is attached as Exhibit G, hereinafter, “Accurate Authorization.”

26. Defendants provided Plaintiff with a 2-page document, the last page at paragraph 4, consisted of and authorization to conduct a background report **and** a release of liability from obtaining the background report:

4.

I hereby **release from liability and promise to hold harmless** under Any and all Causes of legal action, the State of Nevada, its officer(s), agent(s) and/or employee(s) who conducted my criminal history records search and provided information to the requestor for any statement(s), omission(s), or infringement(s) upon **my current legal rights**. I further **release and promise to hold harmless** and covenant not to sue any person, firms, institutions or agencies providing such information to the State of Nevada on the basis of their disclosures. I have signed this release voluntarily of my own free will.

27. Based on the requirement that Plaintiff “release from liability and promise to hold harmless” and “covenant not to sue any persons, firms, institutions or agencies” providing background information to Defendants, contained in paragraph 4 of Exhibit G, Plaintiff marked out the language waiving his “current legal rights,” initialed and dated the strike, but completed the remaining portions of the Authorization. See Exhibit H, attached hereto, completed

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1 Accurate Background, Inc. Personal Identification Information/Authorization For Release Of
2 Information, hereinafter “Completed/Strike Authorization.”

3 28. November 10, 2016, Plaintiff was contacted by Defendants indicating that
4 Defendants were conducting the screening on behalf of Starbucks. *See* Exhibit I, attached
5 hereto, email thread dated November 10, 2016, Subject: Re: Special Release Needed –
6 Starbucks Coffee Company – Garner, Charles – Search ID: 61123633, hereinafter “11/10/16
7 email.”

8 29. Plaintiff replied to Defendants’ 11/10/2016 email that he was “more than happy
9 to sign documents needed to allow [Defendant] to perform a background check, [but that he]
10 would not sign anything that asks [him] to waive [his] rights.” *See* Exhibit F.

11 30. Also on November 10, 2016, Plaintiff provided a urine sample to Concentra
12 medical Centers and upon information and belief he passed the drug screening. *See* Exhibit J,
13 attached hereto, Concentra Medical Centers eScreen Drug test PrePlacement receipt,
14 hereinafter “Drug Screening Receipt” dated November 10, 2016.

15 31. December 2, 2016, Starbucks replied to Plaintiff’s inquiry regarding the waiver
16 and stated, “Unfortunately, the background check cannot move forward until the complete the
17 (sic) NV Release form (attached) [Exhibit G] without crossing any items out or changing any
18 of the words.” *See* Exhibit K, attached hereto, email thread dated December 2, 2016, Subject:
19 Action Needed: Nevada Release Form, hereinafter “12/2/2016 email.”

20 32. Plaintiff has steadfastly refused to sign the background check authorization form
21 that contained an unlawful waiver and release of liability. As a result, Plaintiff has suffered
22 significant harm. Plaintiff was never placed on the schedule as a Maintenance Technician at
23 the Minden, Nevada Starbucks roasting plant as promised. He has ultimately been denied
24 employment at Starbucks as a result of Defendants’ defective background authorization and
25 their unlawful request that he waive all his rights associated with the procurement of a
26 background report on Plaintiff. To add insult to injury, Plaintiff stopped looking for work upon
27 Starbucks’ representation that he had the job at his third interview on November 8, 2016. As a
28 result of Defendants’ defective background check, Plaintiff has suffered economic loss in the

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1 form of loss wages of \$21.76 per hour, 40 hours per week for the period of one week from
2 Plaintiff's completion of the required forms and drug screening, or November 17, 2016 to the
3 present.

4 33. December 15, 2016, Recruiter Hall left a voice mail for Plaintiff asking Plaintiff
5 if he was still opposed to signing the authorization. Plaintiff is not willing to sign Defendants'
6 defective authorization but is still interested in the job.

7 34. Putative class members have also been damaged as a result of Defendants'
8 unlawful disclosure in 2 ways. First, in the event that putative class members were as well-
9 informed as Plaintiff and refused to sign a form releasing their legal rights, those putative class
10 members have been unlawfully denied employment. Second, in the event that putative class
11 members signed the unlawful authorization, those putative class members have been forced to
12 alter their legal recourse and remedies against Defendants.

13 35. At no time did Defendants provide Plaintiff with a document consisting solely of
14 a legal disclosure that they would be conducting a background report.

15 36. Upon information and belief, Defendants require all prospective employees to
16 submit to the same background investigative report that (1) violates § 1681(b)(2)(A) of the
17 FCRA because it includes an exculpatory clause.

18 **CLASS ACTION ALLEGATIONS**

19 37. Plaintiff asserts his claim on behalf of the following Class of individuals:

20 **All person who were presented with an authorization for release of**
21 **information that contains a waiver and release of liability clause by**
22 **Defendants in order to gain employment at any time within 5 years prior to**
23 **the filing of the Complaint up to and including judgment.**

24 38. **Numerosity:** The class is so numerous that joinder of all class members is
25 impracticable. Defendants regularly uses its disclosure to procure background reports on
26 current employees and job applicants. Hundreds if not thousands of the job applicants who
27 must sign an authorization for release of information that contains a waiver and release of
28 liability clause to gain employment satisfy the class definition.

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39. **Typicality:** Plaintiffs’ claims are typical of the members of the class. Defendants typically use an identical disclosure to procure background reports on prospective and existing employees. The FCRA violations suffered by Plaintiff is typical of those suffered by other class members, and Defendants treated Plaintiff consistent with other class members in accordance with its standard practices.

40. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the class and has retained counsel experienced in complex class action litigation.

41. **Commonality:** Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class, including but not limited to:

- (a) Whether Defendants procured background reports on prospective and existing employees;
- (b) Whether Defendants violated the FCRA by procuring such background reports without a FCRA-compliant disclosure;
- (c) Whether Defendants’ FCRA violations were willful;
- (d) The proper measure of statutory damages; and
- (e) The proper measure of punitive damages.

42. **Predominance/Superiority:** Class certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions of law and fact common to the class predominate over any questions affecting only individual members of the class, and because a class action is superior to other available methods for the fair and efficient adjudication of this litigation. Defendants’ conduct described in this Complaint stems from common and uniform policies and practices, resulting in common violations of the FCRA. Class certification will also preclude the need for unduly duplicative litigation that might result in inconsistent judgments concerning Defendants’ practices. Moreover, management of this action as a class action will not present any likely difficulties. In the interests of justice and judicial efficiency, it would be desirable to concentrate the litigation of all class members’ claims in a single forum.

1 43. Plaintiff intends to send notice to all members of the class to the extent required
2 by Fed. R. Civ. P. 23. The names and addresses of the class members are available from
3 Defendants' records.

4 **FIRST CAUSE OF ACTION**

5 **Procuring Consumer Reports without First Making Proper Disclosures**

6 **15 U.S.C. § 1681b(b)(2)(A)(i)**

7 (On Behalf of Plaintiff and the Class Against Defendants)

8 44. Plaintiff realleges and incorporates by this reference all the paragraphs above in
9 this Complaint as though fully set forth herein.

10 45. Defendants procured consumer reports, as defined by the FCRA, on Plaintiff
11 and all class members. These reports were procured for employment purposes without first
12 providing Plaintiff or any class member a clear and conspicuous disclosure made in writing, in
13 a document consisting solely of the disclosure, that a consumer report may be obtained for
14 employment purposes in violation of 15 U.S.C. § 1681b(b)(2)(A)(i).

15 46. The foregoing violations were willful. Defendants acted in deliberate or reckless
16 disregard of its obligations and the rights of Plaintiff and other class members under 15 U.S.C.
17 § 1681b(b)(2)(A)(i). Defendants' willful conduct is reflected by, *inter alia*, the following:

- 18 (a) The FCRA was enacted in 1970; Defendants have had over 40 years to
- 19 become compliant;
- 20 (b) Defendants' conduct is inconsistent with the FTC's longstanding regulatory
- 21 guidance, judicial interpretation, and the plain language of the statute;
- 22 (c) Defendants knew or had reason to know that its conduct violated the FCRA;
- 23 (e) Defendants repeatedly and routinely uses the disclosure it used with Plaintiff
- 24 to procure consumer reports;
- 25 (f) Defendants' inclusion of a liability release clearly implies awareness by
- 26 Defendants that it could be held liable for improperly procuring a consumer
- 27 report;

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1 (g) Despite the pellucid statutory text and there being a depth of guidance,
2 Defendants’ systematically procured consumer reports without first disclosing in
3 writing to the consumer *in a document that consists solely of the disclosure*, that
4 a consumer report may be obtained for employment purposes; and

5 (h) By adopting such a policy, Defendants voluntarily ran a risk of violating the
6 law substantially greater than the risk associated with a reading that was merely
7 careless.

8 47. As a result of the facts alleged above, Plaintiff and the class are entitled to
9 statutory damages of not less than \$100 and not more than \$1,000 for each and every one of
10 these violations, pursuant to 15 U.S.C. § 1681n(a)(1)(A).

11 48. As a result of the facts alleged above, Plaintiff and the class are entitled to such
12 amount of punitive damages as the Court may allow pursuant to 15 U.S.C. § 1681n(a)(2).

13 49. As a result of the facts alleged above, Plaintiff, individually is entitled to
14 compensatory damages from November 17, 2017 up to hire date or upon judgement, whichever
15 date comes first in the amount of \$21.76 per hour for a 40-hour workweek, or \$870.40 per
16 week.

17 50. As a result of the facts alleged above, Plaintiff and the class are further entitled
18 to recover their costs and attorneys’ fees, pursuant to 15 U.S.C. § 1681n(a)(3).

19 **DEMAND FOR JURY TRIAL**

20 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff and the class
21 demand a trial by jury.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself and the class, prays for relief as follows:

- 24 1. Determining that this action may proceed as a class action under Rule 23(b)(3) of
25 the Federal Rules of Civil Procedure;
26 2. Designating Plaintiff as Class Representative and designating Plaintiff’s Counsel as
27 counsel for the class;
28 3. Issuing proper notice to the class at Defendants’ expense;

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4. Declaring that Defendants committed multiple, separate violations of the FCRA;
5. Declaring that Defendants acted willfully, in deliberate or reckless disregard of Plaintiff's and class members' rights and Defendants' obligations under the FCRA;
6. Awarding compensatory damages according to proof for Plaintiff;
7. Awarding statutory and punitive damages as provided by the FCRA;
8. Awarding reasonable attorneys' fees and costs as provided by the FCRA; and
9. Granting other and further relief, in law or equity, as this Court may deem appropriate and just.

DATED: January 9, 2017

THIERMAN BUCK LLP

/s/ Leah L. Jones

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Exhibit List

- A. Email Thread Dated October 25, 2016, Subject: Starbucks Opportunity
- B. Email Thread Dated October 28, 2016, Subject: Re: Starbucks Interview Confirmation
- C. Email Thread Dated November 1, 2016, Subject: Starbucks Opportunity
- D. Email Thread Dated November 4, 2016 Subject: Re: Starbucks Interview Confirmation
- E. Email Thread Dated November 8, 2016, Subject: Starbucks Authorization and Disclosure Request: Action Required
- F. Email Thread Dated November 18, 2016, Subject: Starbucks Coffee Drug Screen Step
- G. Authorization For Release Of Information
- H. Completed Accurate Background, Inc. Personal Identification Information/Authorization For Release Of Information
- I. Email Thread Dated November 10, 2016, Subject: Re: Special Release Needed – Starbucks Coffee Company – Garner, Charles – Search ID: 61123633
- J. Concentra Medical Centers eScreen Drug Test PrePlacement receipt
- K. Email Thread Dated December 2, 2016, Subject: Action Needed: Nevada Release Form