

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

JONATHAN SANTIAGO ROSARIO,
individually and on behalf of all others similarly
situated,

Plaintiff,

vs.

STARBUCKS CORPORATION,

Defendant.

NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Jonathan Santiago Rosario, on behalf of himself and all others similarly situated, files this Class Action Complaint against Starbucks Corporation (“Starbucks” or “Defendant”). Plaintiff alleges, based on personal knowledge as to Defendant’s actions and upon information and belief as to all other matters, as follows:

I. NATURE OF THE CASE

1. This is a consumer class action under the Fair Credit Reporting Act, 15 U.S.C. §§ 1681, *et seq.* (“FCRA”), brought on behalf of applicants for employment with Starbucks, an American coffee company and coffeehouse chain. Plaintiff contends that Starbucks systematically violates section 1681b(b)(3) of the FCRA by using consumer reports to take adverse employment actions without, beforehand, providing the person who is the subject of the report sufficient and timely notification and a copy of the report and a summary of rights

1 under the FCRA, leaving the person who is the subject of the report without any meaningful
2 opportunity to correct any errors on the report.

3 2. The FCRA regulates the use of “consumer reports” for employment purposes,
4 commonly called “background reports.” Congress included in the statutory scheme a series of
5 due-process-like protections that impose strict procedural rules on “users of consumer reports,”
6 such as Starbucks. This action involves Starbucks’s systematic violations of several of those
7 important rules.

8 3. Plaintiff was denied employment as a barista at a Starbucks store based upon a
9 standardized background screen conducted by Accurate Background, Inc. (“Accurate
10 Background”) pursuant to an agreement between Accurate Background and Starbucks whereby
11 Accurate Background performs a standardized background screen on all of Starbucks’
12 candidates for hire or promotion. Accurate Background adjudicated Plaintiff as not eligible for
13 the job based upon the purported existence of multiple felony and misdemeanor charges and
14 convictions. These crimes, however, do not belong to or relate to Plaintiff. These crimes are
15 believed to have been committed by Plaintiff’s adoptive brother.

16 4. In violation of the FCRA, Starbucks willfully and negligently failed to comply
17 with the FCRA’s mandatory pre-adverse action notification requirement, and failed to provide
18 a copy of the inaccurate background report it obtained from Accurate Background, *before* the
19 adverse action occurred, as required by 15 U.S.C. § 1681b(b)(3). Every year, individuals who
20 have applied to Starbucks for employment have been similarly aggrieved by the same violation
21 of 15 U.S.C. § 1681b(b)(3).

22 5. Pursuant to 15 U.S.C. §§ 1681n and 1681o, Plaintiff seeks monetary relief for
23 himself and classes of similarly situated employment applicants for whom Starbucks failed to
24 comply with FCRA section 1681b(b)(3)’s pre-adverse action notification requirements.

II. PARTIES

6. Plaintiff Jonathan Santiago Rosario is a “consumer” as protected and governed by the FCRA, and resides in Castle Rock, Colorado.

7. Defendant Starbucks regularly conducts business in the Western District of Washington and has a principal place of business at 2401 Utah Avenue South, Seattle, Washington 98134.

III. JURISDICTION AND VENUE

8. The Court has federal question jurisdiction under the FCRA, 15 U.S.C. § 1681p, and 28 U.S.C. § 1331.

9. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because Starbucks can be found in this District and regularly sells its products and services in this District.

IV. FACTUAL ALLEGATIONS

10. In or about March 2016, Jonathan Santiago Rosario sought employment with Starbucks.

11. Mr. Rosario interviewed for a barista position at a new Starbucks location scheduled to open in or around May or June 2016 in Castle Rock, Colorado and understood that the position for which he was applying was a part time position between 25 and 30 hours per week and paying an hourly rate of approximately \$9.25 with the possibility of receiving benefits after working a certain number of hours.

12. After the interview, on or about March 29, 2016, Starbucks requested Accurate Background to conduct a background check, including a criminal history check, on Mr. Rosario, and to provide the results, including its adjudication, to Starbucks.

13. Between March 29 and April 7, 2016, Starbucks received a background report from Accurate Background concerning Mr. Rosario which listed inaccurate criminal felony and misdemeanor records that are believed to be the result of identity theft and that Mr. Rosario’s adoptive brother is the alleged perpetrator of the identify theft.

1 14. The background report on Mr. Rosario provided by Accurate Background to
2 Starbucks reported Lancaster County, Pennsylvania criminal convictions for robbery (felony),
3 criminal conspiracy engaging – robbery (felony), robbery – inflicted threat immediate body
4 injury (felony), and simple assault (misdemeanor), and York County, Pennsylvania criminal
5 convictions for manufacturing/delivery/possession with intent to manufacture/deliver a
6 controlled substance (felony).

7 15. All the criminal record history reported by Accurate Background to Starbucks
8 was inaccurate. Mr. Rosario is not the perpetrator of these crimes and has never been to
9 Pennsylvania.

10 16. Sometime between March 29, 2016 and April 7, 2016, Starbucks removed
11 Plaintiff from hiring consideration based upon the Accurate Background consumer report,
12 which adjudicated Mr. Rosario as being not eligible for employment with Starbucks.

13 17. Starbucks adopted Accurate Background’s adjudication as its own without any
14 further process being provided to Mr. Rosario and took adverse action against Plaintiff based
15 upon that adjudication.

16 18. On or about April 20, 2016, Starbucks sent a letter to Mr. Rosario by regular
17 mail, which Plaintiff did not receive until several days later.

18 19. The April 20, 2016 letter stated, *inter alia*,

19 Unfortunately at this time your background check does not meet our
20 requirements. However, at Starbucks we aim to evaluate each person and their
21 unique circumstances on a case by case basis. You may appeal this decision by
22 contacting us ... and Starbucks will provide you with documentation to
23 complete. If your appeal is successful, we will reverse the results and reinstitute
24 your offer of employment.

25 20. By the time the April 20, 2016 letter was received by Mr. Rosario, he was
26 already denied the job at the Starbucks store based upon the consumer report that Starbucks had
27 obtained from Accurate Background.

 21. The negative adjudication of Plaintiff’s application occurred prior to Plaintiff
being notified in writing of that fact and prior to Plaintiff being provided with a copy of the

1 report or any meaningful opportunity to dispute it. In doing so, Defendant failed to comply
2 with the FCRA's pre-adverse action notification requirements.

3 22. As a direct result of Defendant's unlawful adoption and use of the Accurate
4 Background consumer report and Accurate Background's adjudication of Mr. Rosario's
5 employment application, Mr. Rosario lost the job at Starbucks.

6 23. Mr. Rosario disputed the inaccurate criminal information in his background
7 report in or about May 2016 very soon after he learned that his job application was denied. Mr.
8 Rosario followed Accurate Background's dispute procedures and the background report was
9 corrected on May 19, 2016.

10 24. Accurate Background's representative Sidney Christiansen confirmed by email
11 to Mr. Rosario on May 19, 2016 that a corrected copy of his background report was re-sent to
12 Starbucks.

13 25. Despite numerous follow-up phone calls to Starbucks on May 24, 2016, June 1,
14 2016, June 2, 2016 and June 4, 2016, Mr. Rosario was not able to resuscitate the job
15 opportunity that he had already lost due to the adjudication and Starbucks never "reversed" its
16 adverse action that it had already taken against Plaintiff.

17 **V. CLASS ACTION ALLEGATIONS**

18 26. Plaintiff brings this action pursuant to the Federal Rules of Civil Procedure 23(a)
19 and 23(b)(3) on behalf of the following Classes:

- 20 (a) All applicants for employment with Starbucks or any subsidiary thereof
21 residing in the United States (including all Territories and other political
22 subdivisions of the United States) who were the subject of a consumer
23 report that was used by Starbucks and/or its subsidiaries to take an
24 adverse employment action regarding such applicant for employment,
25 within five years prior to the filing of this action and extending through
26 the resolution of this case, and for whom Starbucks and/or its
27 subsidiaries failed to provide the applicant a copy of his or her consumer
report or a copy of the FCRA summary of rights at least five business
days before taking the adverse employment action.

(b) All applicants for employment with Starbucks or any subsidiary thereof residing in the United States (including all Territories or other political subdivisions of the United States) who were the subject of a consumer report that was used by Starbucks and/or its subsidiaries for employment purposes, within five years prior to the filing of this action and extending through the resolution of this case, and to whom Starbucks sent or caused to be sent a letter substantially similar in form to the May 20, 2016 letter sent to Plaintiff.

27. Plaintiff reserves the right to amend the definition of the Classes based on discovery or legal developments.

28. **Numerosity. FED. R. CIV. P. 23(a)(1).** The Class members are so numerous that joinder of all is impractical. Upon information and belief, Defendant procures and uses hundreds if not thousands of consumer reports on applicants for employment each year, and those persons' names and addresses are identifiable through documents maintained by Defendant.

29. **Existence and Predominance of Common Questions of Law and Fact. FED. R. CIV. P. 23(a)(2).** Common questions of law and fact exist as to all members of the Classes, and predominate over the questions affecting only individual members. The common legal and factual questions include, among others:

(a) Whether Defendant failed to provide each applicant for employment a copy of their consumer report at least five business days before Defendant took adverse action based upon the consumer report;

(b) Whether Defendant failed to provide each applicant for employment a copy of their written notice of FCRA rights at least five business days before Defendant took adverse action based upon the consumer report;

(c) Whether Defendant acted willfully or negligently in disregard of the rights of employment applicants in its failure to permit its employees and automated systems to send employment applicants their full consumer report and a written statement of their FCRA rights at least five business days before taking adverse action based on the consumer report.

1 34. Plaintiff is a “consumer,” as defined by the FCRA, 15 U.S.C. § 1681a(c).

2 35. The Accurate Background report ordered by Defendant is a “consumer report”
3 within the meaning of 15 U.S.C. § 1681a(d).

4 36. The FCRA provides that any person “using a consumer report for employment
5 purposes” who intends to take any “adverse action based in whole or in part on the report,”
6 must provide the consumer with a copy of the report *and* a written description of the
7 consumer’s rights under the FCRA, as prescribed by the Federal Trade Commission, before
8 taking such adverse action. 15 U.S.C. § 1681b(b)(3)(A).

9 37. For purposes of this requirement, an “adverse action” includes “any . . . decision
10 . . . that adversely affects any current or prospective employee.” 15 U.S.C. §
11 1681a(k)(1)(B)(ii).

12 38. Defendant Starbucks is a “person” and regularly uses background reports for
13 employment purposes. 15 U.S.C. § 1681a(b).

14 39. The FCRA requires Defendant, as a user of consumer reports for employment
15 purposes, before taking adverse action based in whole or in part on the report, to provide to the
16 consumer to whom the report relates, a copy of the report and a written description of the
17 consumer’s rights under the FCRA. 15 U.S.C. §§ 1681b(b)(3)(A)(i) and (ii).

18 40. Defendant willfully and negligently violated section 1681b(b)(3) of the FCRA
19 by failing to provide Plaintiff and the members of the Classes the following before using such
20 reports: (a) the required Pre-Adverse Action Notice; (b) a copy of the consumer report; and, (c)
21 a written description of the consumer’s rights under the FCRA.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff and the Classes pray for relief as follows:

24 A. An order certifying the case as a class action on behalf of the proposed Classes
25 under Federal Rule of Civil Procedure 23 and appointing Plaintiff and the undersigned counsel
26 of record to represent same;

- 1 B. An award of actual, statutory and punitive damages for Plaintiff and the Classes;
- 2 C. An award of pre-judgment and post-judgment interest as provided by law;
- 3 D. An award of attorneys' fees and costs; and,
- 4 E. Such other relief as the Court deems just and proper.

TRIAL BY JURY

6 Plaintiff hereby requests a trial by jury on those causes of action where a trial by jury is
7 allowed by law.

8 RESPECTFULLY SUBMITTED AND DATED this 21st day of December, 2016.

9 TERRELL MARSHALL LAW GROUP PLLC

10 By: /s/ Beth E. Terrell, WSBA #26759

11 Beth E. Terrell, WSBA #26759
 12 Email: bterrell@terrellmarshall.com
 13 Erika L. Nusser, WSBA #40854
 14 Email: enusser@terrellmarshall.com
 15 936 North 34th Street, Suite 300
 16 Seattle, Washington 98103-8869
 17 Telephone: (206) 816-6603
 18 Facsimile: (206) 319-5450

19 James A. Francis*
 20 Email: jfrancis@consumerlawfirm.com
 21 John Soumilas*
 22 Email: jsoumilas@consumerlawfirm.com
 23 Lauren KW Brennan*
 24 Email: lbrennan@consumerlawfirm.com
 25 FRANCIS & MAILMAN, P.C.
 26 Land Title Building, Suite 1902
 27 100 South Broad Street
 Philadelphia, PA 19110
 Telephone: (215) 735-8600
 Facsimile: (215) 940-8000
 *Pro hac vice applications forthcoming

Attorneys for Plaintiffs

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

JONATHAN SANTIAGO ROSARIO

Plaintiff(s)

v.

STARBUCKS CORPORATION

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) STARBUCKS CORPORATION
c/o Registered Agent
Corporation Service Company
300 Deschutes Way SW, Suite 304
Tumwater, WA 98501

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

SEE ATTACHED

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Jonathan Santiago Rosario v. Starbucks Corporation

ATTACHMENT TO SUMMONS IN A CIVIL ACTION

Attorneys for Plaintiff:

Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com
Erika L. Nusser, WSBA #40854
Email: enusser@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

James A. Francis
Email: jfrancis@consumerlawfirm.com
John Soumilas
Email: jsoumilas@consumerlawfirm.com
Lauren KW Brennan
Email: lbrennan@consumerlawfirm.com
FRANCIS & MAILMAN, P.C.
Land Title Building, Suite 1902
100 South Broad Street
Philadelphia, PA 19110
Telephone: (215) 735-8600
Facsimile: (215) 940-8000

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JONATHAN SANTIAGO ROSARIO

(b) County of Residence of First Listed Plaintiff Douglas County, Colorado (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Beth E. Terrell, WSBA #26759 Terrell Marshall Law Group PLLC, 936 N. 34th Street, Suite 300 Seattle, WA 98103, 206-816-6603, bterrell@terrellmarshall.com

DEFENDANTS

STARBUCKS CORPORATION

County of Residence of First Listed Defendant King (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 1681

Brief description of cause: Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

12/21/2016

SIGNATURE OF ATTORNEY OF RECORD

/s/ Beth E. Terrell, WSBA #26759

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Starbucks Hit with Class Action Over Consumer Reports](#)
