

1 Ossai Miazad\*  
Christopher M. McNerney\*  
2 Julio Sharp-Wasserman\*\*  
3 OUTTEN & GOLDEN LLP  
685 Third Avenue, 25th Floor  
4 New York, NY 10017  
Telephone: (212) 245-1000  
5 Facsimile: (646) 509-2060  
E-Mail: omiazad@outtengolden.com  
6 E-Mail: cmcnerney@outtengolden.com  
7 E-Mail: jsharp-wasserman@outtengolden.com

8 Laura Iris Mattes (SBN 310594)  
OUTTEN & GOLDEN LLP  
9 One California Street, 12th Floor  
San Francisco, CA 94111  
10 Telephone: (415) 638-8800  
11 Facsimile: (415) 638-8810  
E-Mail: imattes@outtengolden.com

12 \* admitted *pro hac vice*  
13 \*\* *pro hac vice pending*  
14 *Counsel for Plaintiff and the Proposed Class*

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **COUNTY OF ORANGE**  
**UNLIMITED CIVIL JURISDICTION**

17  
18 R. Kemp, on behalf of himself and all those  
similarly situated,

19 Plaintiffs,

20 v.

21 ACCURATE BACKGROUND, LLC.

22 Defendant.  
23  
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26  
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Case No. 30-2021-01188280-CU-OE-CXC

**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF  
THE INVESTIGATIVE CONSUMER  
REPORTING AGENCIES ACT, THE  
CONSUMER CREDIT REPORTING  
AGENCIES ACT, AND THE UNFAIR  
COMPETITION LAW;**

**DEMAND FOR JURY TRIAL**

1 Plaintiff R. Kemp (“Plaintiff”), on behalf of himself all other others similarly situated, alleges as  
2 follows:

3 **SUMMARY OF CLAIMS**

4 1. This class action arises from Defendant Accurate Background, LLC’s (“Accurate”)  
5 improper and illegal reporting of stale criminal history information on Plaintiff, and many other  
6 California residents, to prospective employers, landlords and others conducting background checks as  
7 part of the screening process.

8 2. California has enacted a robust statutory framework to protect individuals from improper  
9 disclosure of their criminal history information, including the California Investigative Consumer  
10 Reporting Agencies Act (“ICRAA”), Cal. Civ. Code § 1786 *et seq.*, and the California Consumer Credit  
11 Reporting Agencies Act (“CCRAA”), § 1785 *et seq.*, complementary statutes simultaneously enacted in  
12 1975 for the purpose of ensuring “fairness, impartiality, and a respect for the consumer’s right to  
13 privacy,” Cal. Civ. Code §§ 1785.1(c), 1786(b). The ICRAA and the CCRAA provide important  
14 limitations on the information that can be included in “investigative consumer reports” and “consumer  
15 credit reports,” respectively. Cal. Civ. Code §§ 1785.13(a), 1786.18(a).

16 3. Plaintiff alleges that Accurate has violated and continues to violate the ICRAA and the  
17 CCRAA, by making or furnishing in consumer reports criminal history records that antedate the  
18 background check report by more than seven years. Accurate’s conduct also constitutes unfair and  
19 unlawful business practices under California’s Unfair Competition Law (“UCL”), Business and  
20 Professions Code, § 17200, *et seq.*

21 4. Kemp and others like him are at the mercy of credit reporting agencies, such as Accurate,  
22 to fairly and accurately report criminal history information as a prerequisite for employment, housing,  
23 and countless other aspects of the modern economy. Yet, for years, Accurate has furnished criminal  
24 history information to companies that it was not permitted to collect or furnish. This has injured  
25 countless California residents, including Plaintiff, who were then denied employment (or otherwise  
26 injured) as a result of information that Accurate was not entitled to disseminate.

1           5.       Accordingly, Plaintiff brings this case on his own behalf, and that of a proposed class,  
2 against Accurate for violating their rights under the ICRAA, the CCRAA, and the UCL.

3                                       **NATURE OF THE ACTION**

4           6.       The ICRAA governs “investigative consumer reporting agencies” that compile, sell, and  
5 furnish investigative consumer reports. The CCRAA governs “consumer credit reporting agencies” that  
6 do the same with respect to consumer credit reports.

7           7.       A particular consumer report can be governed by the ICRAA, the CCRAA, or both,  
8 depending on the nature of the information the report contains. If the consumer report contains  
9 “information on a consumer’s character, general reputation, personal characteristics, or mode of living,”  
10 it is subject to the ICRAA. Cal. Civ. Code § 1786.2(c). If the consumer report contains information  
11 “bearing on a consumer’s credit worthiness, credit standing, or credit capacity,” it is governed by the  
12 CCRAA. Cal. Civ. Code § 1785.3(c). If a consumer report fits both definitions, it is governed by both  
13 statutes. In the same way, an agency may be an “investigative consumer reporting agency,” a  
14 “consumer credit reporting agency,” or both, depending on the nature of the reports it compiles, sells, or  
15 furnishes.

16           8.       The ICRAA and the CCRAA were simultaneously enacted in 1975 for the purpose of  
17 ensuring “fairness, impartiality, and a respect for the consumer’s right to privacy.” Cal. Civ. Code §§  
18 1785.1(c), 1786(b).

19           9.       A consumer report may only be provided to a third party intending to use the report for a  
20 permissible purpose as prescribed by the ICRAA or the CCRAA, as applicable. Cal. Civ. §§1785.11,  
21 1786.12. A permissible purpose under both statutes includes eligibility for employment.

22           10.       Because obsolete data can severely prejudice an individual’s ability to seek gainful  
23 employment, and causes other harms, the ICRAA and the CCRAA prohibit certain categories of  
24 information from being reported in consumer reports. Cal. Civ. Code §§ 1785.13(a), 1786.18(a).

25           11.       Accordingly, the ICRAA and the CCRAA contain identical provisions prohibiting an  
26 agency from “mak[ing] or furnish[ing]” a report that contains “[r]ecords of arrest, indictment,  
27 information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release,  
28

1 or parole, antedate the report by more than seven years.” Cal. Civ. Code §§ 1785.13(a)(6),  
2 1786.18(a)(7).

3 12. Especially relevant here, by the plain meaning of these statutes, this means that the seven  
4 year cutoff is triggered by the “date of” the conviction’s “disposition” or the “date of” the person’s  
5 “release” or the “date of . . . parole” (i.e. the date the person was paroled or went on parole).

6 13. This reading is consistent with guidance from the Federal Trade Commission (“FTC”)  
7 when the Fair Credit Reporting Act (the ICRAA and the CCRAA’s federal analogue) had language  
8 virtually identical to Section 1786.18(a)(7) of the ICRAA and Section 1785.13 of the CCRAA. As  
9 explained by the FTC, “[i]f the consumer is convicted of a crime and sentenced to confinement, the date  
10 of release or *placement on parole controls*” when evaluating “[t]he seven year period” and when it  
11 “runs[.]” Federal Trade Commission, Section 605(a)(4) – Accounts placed for collection or charged to  
12 profit and loss which antedate the report by more than seven years: Computation of Time Period, 55 FR  
13 18818 (F.T.C. May 4, 1990) (emphasis added).

14 14. An investigative consumer reporting agency that fails to comply with any requirement of  
15 the ICRAA is liable for the greater of actual damages sustained by the individual or \$10,000, reasonable  
16 attorney’s fees and costs, and punitive damages for grossly negligent or willful violations. Cal. Civ.  
17 Code §1786.50(a),(b).

18 15. A consumer who suffers damages as a result of a violation of the CCRAA may recover  
19 actual damages, attorney’s fees and costs, and punitive damages for willful violations of not less than  
20 \$100 and not more than \$5,000 for each violation. Cal. Civ. Code § 1785.31(a). The CCRAA also  
21 provides for injunctive relief for “any consumer aggrieved by a violation or a threatened violation” of  
22 the CCRAA, regardless of whether the consumer seeks other remedies. Cal. Civ. Code § 1785.31(b).

23 **JURISDICTION AND VENUE**

24 16. The Court has general jurisdiction over Plaintiff’s claims under the ICRAA, the CCRAA,  
25 and the UCL.

1 17. The Court has personal jurisdiction over this matter because Accurate is a citizen of  
2 California, conducts substantial business activity in this state, and engaged in the unlawful acts  
3 described herein in this state.

4 18. Venue is proper in this county under California Code of Civil Procedure § 395.5 because  
5 Accurate maintains its principal place of business in this county.

6 **THE PARTIES**

7 19. Accurate is a California limited liability company with its headquarters and primary place  
8 of business in Irvine, California. As a California investigative consumer reporting agency and consumer  
9 credit reporting agency, it is regulated by California law, including the ICRAA and the CCRAA.

10 20. Plaintiff Kemp is a resident of Sacramento County, California.

11 **FACTUAL BACKGROUND**

12 21. In March 2020, Plaintiff Kemp applied for and was offered a position with Amazon.com,  
13 Inc. (“Amazon”) in Sacramento, California. As a part of that process, Amazon requested that Accurate  
14 furnish a background check report for Plaintiff.

15 22. On approximately April 20, 2020, Accurate furnished a consumer report regarding  
16 Plaintiff Kemp to Amazon. Included in the report was information regarding a 2011 conviction, which  
17 antedated the background check by more than seven years. This report qualified as both an investigative  
18 consumer report and a consumer credit report, because criminal history information bears on both  
19 character and creditworthiness.

20 23. Accurate took these actions pursuant to a policy and practice of including records of  
21 criminal history that antedate the date of the background check by more than seven years in violation of  
22 the ICRAA, California Civil Code § 1786.18(a)(7), and the CCRAA, California Civil Code §  
23 1785.13(a). Specifically, Accurate furnished a report that contained Plaintiff Kemp’s 2011 conviction  
24 although the date of the disposition, the date of his release from incarceration, and the date he was  
25 placed on parole antedated the date of the report by more than seven years.

26 24. As reflected in Accurate’s records, Plaintiff was released from prison and placed on  
27 parole for the criminal case at issue on December 29, 2011.

1           25.     As reflected in Accurate’s records, Plaintiff’s parole related to the criminal case at issue  
2 ended on December 28, 2014.

3           26.     Due to Accurate’s unlawful reporting of the 2011 conviction to Amazon, Amazon  
4 withdrew its offer of employment to Plaintiff.

5           27.     As a direct result of Accurate’s conduct, Plaintiff suffered emotional distress and  
6 economic damages, including income loss, injury to reputation, mental distress, embarrassment, and  
7 time invested in attempting to rectify this wrong.

8           28.     Due to Plaintiff’s continued job search and Accurate’s role as a provider of investigative  
9 consumer reports and consumer credit reports to numerous employers, Plaintiff’s harm is ongoing, and  
10 Plaintiff is likely to experience future violations as a result of Accurate’s conduct.

11                                   **CLASS ACTION ALLEGATIONS**

12           29.     Plaintiff brings the First and Second Claims for Relief pursuant to C.C.P. § 382 on behalf  
13 of the following Class: All California residents who, within applicable statutes of limitations, were the  
14 subject of an investigative consumer report or consumer credit report by Accurate that contained  
15 information regarding criminal history that antedated the date of the report by more than seven years.

16           30.     Numerosity – Upon information and belief, there are more than 100 members of the  
17 Class. Although the precise number of such employees is unknown, the facts on which the calculation  
18 of that number depends are presently within Accurate’s sole control.

19           31.     Ascertainability – The identity of Class members is ascertainable through Accurate’s  
20 business records.

21           32.     Commonality and Predominance – Common questions of law and fact exist as to the  
22 Class and predominate over any questions solely affecting individual members of the Class, including  
23 but not limited to:

- 24                 a.     Whether Accurate improperly included records of criminal history that antedate  
25 the date of the background check by more than seven years;
- 26                 b.     Whether Accurate’s conduct, as alleged herein, violated the ICRAA;
- 27                 c.     Whether Accurate’s conduct, as alleged herein, violated the CCRAA;

1 d. Whether Accurate's conduct, as alleged herein, constituted an unfair business act  
2 or practice in violation of the UCL;

3 e. Whether declaratory and/or injunctive relief is warranted; and

4 f. The nature and extent of the classwide injury and the appropriate measure of  
5 damages for the Class.

6 33. Typicality – Plaintiff's claims are typical of the claims of the Class he seeks to represent.  
7 Plaintiff's claims arise from the same practice and course of conduct that give rise to the Class's claims.  
8 Plaintiff and the Class sustained similar injuries arising out of Accurate's violation of the law. There is  
9 no apparent conflict of interest between Plaintiff and the Class.

10 34. Adequacy – Plaintiff will fairly and adequately represent and protect the interests of the  
11 Class. Plaintiff's counsel are experienced in employment class actions and criminal history class  
12 actions, and will fairly and adequately protect the interests of the Class.

13 35. Plaintiff's counsel will adequately represent the interests of Plaintiff and the Class.

14 36. Plaintiff seeks class certification for the purposes of obtaining damages for the Class.  
15 Class certification is appropriate because the class is sufficiently numerous, common questions of fact  
16 and law predominate over any questions affecting only individual Class Members, the Plaintiff is  
17 adequate and typical of the Class, and because a class action is superior to other available methods for  
18 the fair and efficient adjudication of this litigation since joinder of all members is impracticable. The  
19 Class Members have been damaged and are entitled to recovery of damages and/or statutory penalties.  
20 Damages are capable of measurement on a classwide basis.

21 37. In the alternative, Plaintiff seeks class certification for purposes of liability, followed by  
22 individual damages hearings.

23 38. Plaintiff also seeks class certification for the purposes of obtaining injunctive and  
24 declaratory relief for the Class because Accurate has acted on grounds generally applicable to the Class,  
25 making appropriate declaratory, equitable, and injunctive relief with respect to Plaintiff and the Class as  
26 a whole. Accurate has a policy and practice of including records of criminal history that antedate the  
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1 date of the background check by more than seven years in violation of California law. The Class  
2 Members are entitled to declaratory, equitable, and injunctive relief to end Accurate's unlawful policies.

3 **CLAIMS FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF**

5 **Violation of the ICRAA (California Civil Code § 1786 *et seq.*)**

6 **Brought of Plaintiff by the Class**

7 39. Plaintiff, on behalf of himself and the Class, reallege and incorporate all previous  
8 paragraphs as if they were set forth again herein.

9 40. Accurate is, and at all times herein mentioned was, an investigative consumer reporting  
10 agency engaged in the practice of making, assembling and evaluating information on consumers for the  
11 purpose of furnishing investigative consumer reports to third parties.

12 41. Upon information and belief, Accurate made and furnished investigative consumer  
13 reports pertaining to Plaintiff and the Class.

14 42. Accurate's reports about Plaintiff and the Class contain records of criminal history that  
15 antedated the report by over seven years.

16 43. Plaintiff and the Class were harmed and suffered damages as a direct legal, proximate,  
17 and foreseeable result of Defendant's conduct.

18 44. Defendant's violations were grossly negligent and/or willful because Defendant was  
19 aware of its obligations under the ICRAA, including through the plain meaning of the statute and  
20 regulatory guidance, but nonetheless consciously elected to disregard its obligations.

21 **SECOND CLAIM FOR RELIEF**

22 **Violation of the CCRAA (California Civil Code § 1785 *et seq.*)**

23 **Brought of Plaintiff by the Class**

24 45. Plaintiff, on behalf of himself and the Class, reallege and incorporate all previous  
25 paragraphs as if they were set forth again herein.

26 46. Accurate is, and at all times herein mentioned was, a consumer credit reporting agency  
27 engaged in the practice of making, assembling and evaluating information on consumers for the purpose  
28 of furnishing consumer credit reports to third parties.



1 47. Upon information and belief, Accurate made and furnished consumer credit reports  
2 pertaining to Plaintiff and the Class.

3 48. Accurate's reports about Plaintiff and the Class contain records of criminal history that  
4 antedated the report by over seven years.

5 49. Plaintiff and the Class were harmed and suffered damages as a direct legal, proximate,  
6 and foreseeable result of Defendant's conduct, and seek all available legal and equitable remedies.

7 50. Defendant's violations were willful because Defendant was aware of its obligations under  
8 the CCRAA, including through the plain meaning of the statute and regulatory guidance, but nonetheless  
9 consciously elected to disregard its obligations.

10 **THIRD CLAIM FOR RELIEF**

11 **Violation of the UCL (Business and Professions Code, § 17200, et seq.)**

12 **Brought by Plaintiff and the Class**

13 51. Plaintiff, on behalf of himself and the Class, reallege and incorporate all previous  
14 paragraphs as if they were set forth again herein.

15 52. Accurate engaged and continues to engage in unfair business practices by practicing,  
16 employing and utilizing the unlawful practices described above by including records of criminal history  
17 that antedate the date of the background check by more than seven years. This constitutes an unlawful  
18 and unfair business practice within the meaning of Business & Professions Code § 17200, et seq.

19 53. As a result of Accurate's conduct, Plaintiff and the Class have been harmed as described  
20 in the allegations set forth above.

21 54. The actions described above, constitute false, unfair, fraudulent and/or deceptive business  
22 practices within the meaning of Business & Professions Code § 17200, et seq.

23 55. Accurate has been unjustly enriched by the policies and practices described herein, and  
24 those policies and practices conferred an unfair business advantage on Accurate over other businesses  
25 providing similar services which routinely comply with the requirements of California law.

26 56. Plaintiff and the Class members seek all available legal and equitable remedies, including  
27 injunctive and/or declaratory relief.  
28

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, on behalf of himself and the Class, prays for the following relief:

- A. Certification of the proposed Class;
- B. Designation of Plaintiff as the Representative of the proposed Class;
- C. Appointment of Outten & Golden LLP as Class counsel;
- D. An award of actual and/or statutory damages to be paid by Defendant according to proof;
- E. An award of nominal and/or exemplary damages;
- F. An award of punitive damages;
- G. A declaratory judgment that the practices complained of herein are unlawful;
- H. An injunction against Defendant and its officers, agents, successors, employees, representatives, and any and all persons acting in concert with it, as provided by law, from engaging in the unlawful practices, policies, and patterns set forth herein;
- I. Such other injunctive and/or declaratory relief as necessary to correct and eradicate the effects of Accurate's past and present unlawful practices;
- J. Pre-judgment and post-judgment interest, as provided by law;
- K. Attorneys' fees pursuant to California Civil Code § 1786.5, California Civil Code § 1021.5, and all other bases for fees under California law;
- L. Costs of suit, including expert fees and costs;
- M. Reasonable incentive payment for Plaintiff; and
- N. Such other and further legal and equitable relief as the Court deems just and proper.

1 Dated: July 6, 2021  
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Respectfully submitted,

By:



Christopher M. McNerney

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Telephone: (415) 638-8800  
Facsimile: (415) 638-8810  
E-Mail: imattes@outtengolden.com

*Counsel for Plaintiff and the Proposed Class*