

4. Plaintiff and the Class Members have suffered concrete injuries because they did not receive the information to which they were entitled under the FCRA.

Jurisdiction and Venue

5. This Court has jurisdiction over Plaintiff's and Class Members' FCRA claims pursuant to 15 U.S.C. §§ 1681n & 1681p and 28 U.S.C. § 1331 (federal claims).

6. Venue in this District is proper under 28 U.S.C. § 1391 since both Defendants are residents of the State.

Parties

7. Defendants Mattress Firm Holding Corp. and Mattress Firm, Inc. are Delaware corporations maintaining their principal place of business in Houston, Texas. Their registered agent is The Corporation Trust Company, 1209 Orange Street, Wilmington, DE 19801.

8. During times relevant, Defendants have owned and operated stores around the country, including stores in Delaware.

9. Plaintiff Jose Cordada lives in Orem, Utah. He was employed by Mattress Firm from approximately August 18, 2016 to January 20, 2017 as a Manager in Training and Manager on Duty at its stores in Orem, Provo, and Salt Lake City.

General Allegations

Statutory Background - FCRA

10. The FCRA was enacted to establish procedures for meeting the needs of commerce for consumer reports and other information in a manner that is fair and equitable to individuals with regards to confidentiality, accuracy, relevancy, and utilization of information. 15 U.S.C. § 1681(b).

11. Congress defined "consumer reports" to expressly include background reports obtained for employment purposes. 15 U.S.C. § 1681a(d)(1)(B).

12. Through its provisions, the FCRA requires employers to disclose to individuals that consumer reports may be obtained for employment purposes before procuring them. 15 U.S.C. § 1681(b)(2)(A)(i).

13. Specifically, the FCRA makes it unlawful for employers to procure consumer reports for employment purposes “unless ... a clear and conspicuous disclosure has been made in writing to [individuals] before doing so *in a document that consists solely of the disclosure* ...” 15 U.S.C. § 1681b(b)(2)(A)(1). This is often referred to as the “stand-alone disclosure requirement.”

14. This requirement gives notice to individuals that consumer reports may be prepared and allows them to exercise their substantive rights under the FCRA. *See, e.g.*, 15 U.S.C. § 1681c(a) (limiting temporal scope of information that can be reported); § 1681e(b) (mandating procedures for consumer reporting agencies (“CRAs”) to ensure “maximum possible accuracy” in reports); § 1681k (requiring CRAs to either provide notice to individuals that information is being reported or have “strict procedures” to ensure that the information is “complete and up to date”); § 1681i (requiring CRAs to investigate any disputed information); § 1681g (requiring that CRAs provide a complete copy of files to individuals).

15. Without this notice, the ability of individuals to protect their rights, including protecting their privacy and/or correcting errors, is significantly impaired. This is a concrete harm that goes to the core of the interests Congress sought to protect.

Mattress Firm’s Disclosure Form

16. During times relevant, Mattress Firm has routinely procured consumer reports on applicants and employees.

17. Mattress Firm informs applicants that they will be required to pass a background check as a condition of employment.

18. Mattress Firm provides its applicants and employees with online documents to complete, including a form titled “Disclosure Regarding Background Investigation” (“Disclosure Form”).

19. This is not a stand-alone disclosure and does not comply with the requirements of § 1681b(b)(2)(A)(1).

20. It contains numerous items of extraneous information beyond the disclosure that a consumer report may be obtained for employment purposes, including:

- a. A statement that applicants or employees may be the subject of consumer or investigative consumer reports, which may include information about their character, general reputation, personal characteristics, and/or mode of living, and which can involve personal interviews with sources such as neighbors, friends, or associates;
- b. A statement that reports may contain information regarding applicants’ or employees’ credit history, criminal history, social security verification, driving records, and education or employment history;
- c. A vague and ambiguous statement that reports may contain information regarding other background checks;
- d. A statement that applicants or employees have the right to request, within an undefined “reasonable” time, whether consumer reports have been run about them, disclosure of the nature and scope of any investigate consumer report, and copies of their reports;
- e. A vague and ambiguous advisory statement that the nature and scope of the most common form of investigative consumer report is an employment history or verification;

- f. A statement that searches will be conducted by Asurint;
- g. Asurint's address;
- h. Asurint's telephone number;
- i. Asurint's website;
- j. A broad statement that the disclosure is "all-encompassing" allowing Mattress Firm to obtain from any outside organization all manner of consumer reports throughout the course of employment to the extent permitted by law;
- k. An instruction to sign and click the "accept" button;
- l. Instructions if using a mouse;
- m. Instructions if using a laptop; and
- n. Instructions if using a mobile device.

21. The FCRA allows only a single exception to the requirement that employers provide applicants and employees with a document consisting solely of the disclosure that a consumer report will be procured for employment purposes. Specifically, the statute states that the disclosure may include a written authorization for the employer to procure a report.

22. The extraneous information listed in paragraph 20 in Mattress Firm's Disclosure Form is neither a disclosure that a consumer report may be obtained for employment purposes nor an authorization for the procurement of such a report. Rather, this information renders the disclosures required under the FCRA not "clear and conspicuous" and not in a document consisting "solely" of the disclosures.

Plaintiff's Application to Work at Mattress Firm

23. In or around August 2016, Plaintiff applied to work at Mattress Firm.

24. On or about August 18, 2016, Plaintiff received an email requesting that he complete an online information request that consisted of a number of documents, included the Disclosure Form.

25. Plaintiff electronically signed the documents contained in the online information request, including the Disclosure Form, but did not fully understand scope of the background check Defendants were conducting or his rights under the FCRA.

26. Shortly thereafter, Mattress Firm procured a consumer report on Plaintiff.

27. Plaintiff was then hired by Mattress Firm.

28. Mattress Firm's Disclosure Form violates the FCRA's stand-alone disclosure requirement because it contains extraneous information, as explained above.

29. Plaintiff suffered several concrete injuries due to Mattress Firm's improper Disclosure Form and failure to comply with the FCRA's stand-alone disclosure requirement, including, but not limited to:

- a. Plaintiff was deprived of his statutory right to a stand-alone disclosure and thereby lost his full statutory protection against unintended disclosure of confidential information;
- b. Plaintiff lose his statutory right to identify the full scope of requested information on a stand-alone disclosure form and make a fully-informed choice about whether to authorize the disclosure or decline and seek different employment that would not expose certain confidential information;
- c. Plaintiff faced risks to future and/or continuing employment prospects with Mattress Firm and others based on personal information obtained, unknowingly, that could result in termination or prevent future promotions;

- d. Plaintiff lost his right to receive a Disclosure Form with clear, understandable terms that prevent the release of false or inaccurate information due to vague and confusing requests for background information; and
- e. Plaintiff suffered violations of his privacy rights due to the content of Mattress Firm's Disclosure Form. Specifically, Mattress Firm's Disclosure Form uses vague terms, confusing phrases, and formatting methods that prevented an adequate understanding of the authorization request and thereby violated Plaintiff's rights by exposing his personal information without his full and knowing consent.

Mattress' Firms Policy and Practice

30. The text of the FCRA is clear. Mattress Firm is required to provide a disclosure in a document consisting solely of the disclosure (and authorization, if applicable) before procuring consumer reports. Mattress Firm fails to follow the law.

31. The disclosures Mattress Firm provide are not compliant with the FCRA's plain and unambiguous language because they include extraneous information.

32. The FTC has expressly warned employers that when using background checks to make employment decisions, including information from credit reports and criminal records, they must comply with the FCRA, including the stand-alone disclosure requirement.

33. Courts around the nation, including courts in the Third Circuit, have held that: (a) a plaintiff alleging violations of the FCRA's stand-alone disclosure requirement has standing, (b) obtaining a consumer report based upon a disclosure form containing extraneous information violates the FCRA's stand-alone disclosure requirement, and (c) such violations are "willful."

34. Mattress Firm knew that it had an obligation to provide stand-alone disclosures and obtain written authorizations before procuring consumer reports.

35. In fact, the FCRA requires that, prior to procuring consumer reports, employers must certify to consumer reporting agencies that they will comply with the FCRA's stand-alone disclosure and authorization requirements. *See* 15 U.S.C. § 1681b(b)(1).

36. Mattress Firm did not procure Plaintiff's report in connection with any investigation of suspected misconduct relating to employment, or compliance with federal, state, or local laws and regulations, the rules of a self-regulatory organization, or any preexisting written policies.

37. By systematically inserting extraneous information into Plaintiff's and Class Members' disclosures, Mattress Firm willfully violated § 1681b(b)(2)(A).

38. Mattress Firm's company-wide practices create a risk of real, material harm because its Disclosure Form is full of vague terms, confusing phrases, and distracting formatting that prevent an adequate understanding of the authorization request and, as a result, violate job applicants' privacy rights by exposing personal information without the applicants' full and knowing consent.

39. The risk of material harm for Plaintiff and Class Members is demonstrable because multiple former employees have complained about the company's failure to identify or explain the disclosure request, which resulted in adverse employment actions and unauthorized disclosure of employees' personal information.

40. Plaintiffs and Class Members suffered several concrete injuries due to Mattress Firm's improper Disclosure Form and failure to provide a statutorily required disclosure and comply with the FCRA's stand-alone disclosure requirement.

- a. Plaintiff and Class Members were deprived of their statutory right to a stand-alone disclosure and thereby lost their full statutory protection against unintended disclosure of confidential information.

- b. Plaintiff and Class Members lost their statutory right to identify the full scope of requested information on a stand-alone disclosure form and make a fully informed choice about whether to authorize the disclosure or decline and seek different employment that would not expose certain confidential information.
- c. Plaintiff and Class Members faced risks to future or continuing employment prospects with Mattress Firm based on personal information obtained, unknowingly, that could result in termination or prevent future promotions.
- d. Plaintiff and Class Members lost their right to receive a Disclosure Form with clear, understandable terms that prevent the release of false or inaccurate information due to vague or confusing requests for background information on a Form.

Class Action Allegations

41. Plaintiff brings this case as a class action under Fed. R. Civ. P. 23, on behalf of himself and as the Class Representative of the following persons: All individuals on whom Mattress Firm obtained a consumer report for employment purposes in the 2 years predating the filing of this Complaint and continuing through the date an unlawful disclosure form is utilized.

42. The FCRA claims, if certified for class-wide treatment, are brought on behalf of all similarly situated persons who do not opt-out of the Class.

43. The claims satisfy the numerosity, commonality, typicality, adequacy, predominance and superiority requirements of a class action under Fed. R. Civ. P. 23.

44. The Class satisfies the numerosity standard as it consists of thousands of persons who are geographically dispersed and, therefore, joinder of all Class Members in a single action is impracticable.

45. Questions of fact and law common to the Class predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Mattress Firm's actions include, without limitation:

- a. Whether Mattress Firm's Disclosure Form violates the FCRA;
- b. Whether Mattress Firm violated the FCRA by obtaining applicants and employees' credit reports based on the Disclosure Form; and
- c. Whether such conduct was willful.

46. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness, and equity to other available methods for the fair and efficient adjudication of the FCRA claim.

47. Plaintiff's claims are typical of those of the Class in that:

- a. Plaintiff and the Class executed the same Disclosure Form;
- b. Mattress Firm obtained the credit reports of Plaintiff and the Class based on the same Disclosure Form; and
- c. The same facts relevant to determining willfulness underlie the claims of Plaintiff and the Class, such as the language of the FCRA, federal court decisions, FTC decisions and guidance, and Mattress Firm's access to legal advice.

48. A class action is the appropriate method for the fair and efficient adjudication of the claims. Mattress Firm has acted or refused to act on grounds generally applicable to the Class.

49. Plaintiff is an adequate representative of the Class because he is a Class Member and his interests do not conflict with the interest of the members of the Class he seeks to represent.

50. The interests of the members of the Class will be fairly and adequately protected by Plaintiff and his counsel, who have extensive experience prosecuting complex employment and class action litigation.

51. Maintenance of this action as a class action is superior to other available methods for fairly and efficiently adjudicating the controversy as members of the Class have little interest in individually controlling the prosecution of separate class actions, no other litigation is pending over the same controversy, it is desirable to concentrate the litigation in this Court due to the relatively small recoveries per member of the Class, and there are no material difficulties impairing the management of a class action.

52. It would be impracticable and undesirable for each member of the Class to bring a separate action. In addition, the maintenance of separate actions would place a substantial and unnecessary burden on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class Members.

Count 1: Violation of the FCRA - Unlawful Procurement and Use of Consumer Reports

53. Plaintiff reasserts and re-alleges the allegations set forth above.

54. The FCRA requires that disclosure regarding procurement of consumer reports for employment purposes be contained in a separate “stand alone” document. 15 U.S.C. § 1681b(b)(2)(A)(i).

55. Mattress Firm obtained the consumer reports of Plaintiff and the Class based on its standard Disclosure Form, which contains numerous items of extraneous information beyond a mere disclosure of procurement of consumer reports for employment purposes.

56. Mattress Firm’s conduct was willful as it knew that its Disclosure Form should not address other matters not strictly required by the FCRA, as reflected by:

- a. The clear language of the FCRA itself;
- b. Court decisions interpreting the FCRA;
- c. FTC interpretations of the FCRA; and
- d. Mattress Firm's available access to legal advice.

57. Plaintiff and the Class are entitled to statutory damages of not less than \$100.00 and not more than \$1,000.00 per violation. 15 U.S.C. § 1681n(a)(1)(A).

58. Because Mattress Firm's conduct was willful, Plaintiff and the Class are also entitled to punitive damages. 15 U.S.C. § 1681n(a)(2).

59. Plaintiff and the Class are entitled to recover their costs of this action together with reasonable attorney's fees. 15 U.S.C. § 1681n(a)(3).

60. Plaintiff and the FCRA Class are also entitled to recover pre- and post-judgment interest as provided by applicable law.

WHEREFORE, Plaintiff and the Class demand judgment against Mattress Firm and request: (1) statutory damages as provided by the FCRA; (2) punitive damages as provided by the FCRA; (3) attorneys' fees and costs as allowed by the FCRA; (4) pre-judgment and post-judgment interest as provided by law; and (5) such other relief as the Court deems fair and equitable.

Demand for Jury Trial

Plaintiff and the class demand a trial by jury.

Respectfully submitted,

**LAW OFFICE OF
DANIEL C. HERR LLC**

Dated: May 15, 2017

/s/Daniel C. Herr
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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

Jose Cordada, individually and on behalf of similarly situated persons

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Daniel C. Herr, Esq. Law Office of Daniel C. Herr LLC, 1225 North King Street; Ste 1000, Wilmington, DE 19801; 302-483-7060

DEFENDANTS

Mattress Firm Holding Corp. and Mattress Firm, Inc.

County of Residence of First Listed Defendant New Castle, DE

(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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Fair Credit Reporting Act. Brief description of cause: Inadequate/Improper Disclosures pursuant to the 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 5/15/17 SIGNATURE OF ATTORNEY OF RECORD /s/ Daniel C. Herr, Esquire, DE Bar 5497

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- 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: [Lawsuit: Mattress Firm Unlawfully Obtains Consumer Information](#)
