

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

**ERIC DANTE PITT,
For himself and on behalf of all
similarly situated individuals.**

Plaintiffs,

v.

CIVIL ACTION NO.: 3:11cv697

**K-Mart Corporation, a wholly owned subsidiary
of Sears Holdings Corporation**

Defendant.

CLASS COMPLAINT

COMES NOW, the Plaintiff, Eric D. Pitt, on behalf of himself and all similarly situated individuals and alleges the following claims:

INTRODUCTION

1. This action is brought under the Federal Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681, *et seq.* The FCRA imposes on employers that use a consumer's public records background check several important procedural requirements designed to protect consumers like Plaintiff. Plaintiff applied for a position with Defendant, and Defendant used an unauthorized consumer report which it obtained from a credit reporting agency to reject Plaintiff for employment. In doing so, Defendant failed to comply with certain procedural protections and requirements imposed on it by the FCRA.

JURISDICTION/VENUE

2. The Court has jurisdiction under the FCRA, 15 U.S.C. §1681 and 20 U.S.C. §1331.

3. Plaintiff applied for a job with the Defendant, which has at least five outlets in the Richmond area in this District and Division.

4. K-Mart maintains its registered agent in Glen Allen which is also located in this District and Division.

5. Venus is proper in this court under 28 U.S.C. §1391(b).

NAMED PARTIES

6. Eric D. Pitt (hereinafter "Edwards" or "Plaintiff") is a citizen of the Commonwealth of Virginia and a "consumer" as protected and governed by the FCRA.

7. K-Mart Corporation (hereinafter "K-Mart" or "Defendant") is a wholly owned subsidiary of Sears Holdings Corporation.

8. K-Mart ranks among the nation's largest fashion apparel, cosmetics and home furnishings retailers with over 1,200 locations spanning 49 states. It has tens of thousands of employees and a high employee turnover rate.

9. At all times relevant hereto, K-Mart was a "user" of the consumer report of Plaintiff, as governed by the FCRA.

UNNAMED PARTIES

10. Sears Holdings Corporation (hereinafter "SHC") is a publicly traded company and the nation's fourth largest broadline retailer with approximately 4000 full-line and specialty retail stores in the United States and Canada.

11. HireRight (hereinafter "HireRight") supplied the consumer report for Plaintiff to Defendant.

12. HireRight was and is a "consumer reporting agency" as defined in 15 U.S.C. §1681(f).

13. HireRight was and is regularly engaged in the business of assembling, evaluating, and disbursing information concerning consumers for the purpose of furnishing consumer reports, as defined in 15 U.S.C. §1681(d), to third parties.

14. HireRight was and is disbursing such consumer reports to third parties under contract for monetary compensation.

15. Upon information and belief, Defendant also obtained consumer reports purportedly for employment purposes from additional consumer reporting agencies during the FCRA statute of limitations period.

16. Upon information and belief, any additional consumer reporting agencies that supplied consumer reports purportedly for employment purposes to Defendant were regularly engaged in the business of assembling, evaluating and disbursing information concerning consumers for the purpose of furnishing consumer reports as defined in 15 U.S.C. § 1681(d) to third parties.

17. Each individual to whom Defendant provided a written disclosure and from whom Defendant obtained written authorization to obtain a consumer report for employment purposes, and then obtained such a report, is a prospective class member.

18. Those employees and prospective employees who suffered an adverse employment decision based in whole or in part on the reports are included in the prospective sub-class.

FACTS AS TO PITT

19. Pitt applied online for a job with K-Mart on or about July 3, 2011.

20. In connection with the online application process, K-Mart presented Plaintiff with a notice concerning consumer and investigative consumer reports attached as **Exhibit A**.

21. On July 5, 2011 Defendant requested a pre-employment criminal record check from HireRight regarding Plaintiff.

22. A few days later Defendant invited Plaintiff to K-Mart for a personal interview.

23. A few days later Defendant called Plaintiff and offered him a job. In addition, Defendant requested that Plaintiff come to K-Mart to complete various papers in connection with his hiring.

24. During the meeting when he signed the post-offer papers, K-Mart told him that he could not start until K-Mart received the results of his criminal background check.

25. On Wednesday July 27, 2011 Plaintiff received the letter attached as **Exhibit B** from HireRight on behalf of Sears Holdings Corporation and K-Mart.

26. Included with the letter was a so-called Summary of your rights under the Fair Credit Reporting Act which is attached as **Exhibit C**.

27. Also included in the letter purportedly from Sears Holdings Management Corporation, Human Resources, was a copy of the criminal background check prepared by USIS, also known as HireRight.

28. According to the criminal background report that was requested on July 5, 2011 and completed on July 20, 2011. Upon receipt of the foregoing documents, Plaintiff telephoned K-Mart.

29. Plaintiff explained that the report included misdemeanor convictions from 2002, which should not have been considered by K-Mart because the application only purported to cover the seven years immediately preceding his application.

30. The K-Mart representative said that once the convictions were "in the system"

there was nothing K-Mart could do about it, and he would not be hired after all.

FACTS COMMON TO ALL CLASS MEMBERS

31. Section 1681b(b)(2)(A) of the FCRA regulates the conduct of persons who obtain a “consumer report” about employees or prospective employees as follows:

Except as provided in subparagraph (B) [in cases of a consumer applying for a position over which the Secretary of Transportation may establish qualifications], *a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless –*

- a. *a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and*
- b. the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

32. The FCRA requires that the disclosure be “in writing”. Absent the E-Sign Act, an electronic disclosure is not one made “in writing”.

33. The only means to “legalize” the electronic signature application of Defendant is through application of the E-Sign Act.

34. The E-Sign Act does not apply to the Defendant’s electronic application, however, because the term “Consumer” in the Act is defined as “an individual who obtains through a transaction, products, or services “which are used primarily for personal, family, or household purposes”.

35. A job applicant does not fit the definition of consumer, and therefore the E-Sign Act does not authorize Defendant’s electronic application.

36. If the E-Sign act applies to and effectively authorizes Defendant’s E-mail

application process, then, nevertheless, the purported disclosure in the electronic application violates the FCRA.

37. More specifically, in the second sentence of paragraph 1, Kmart discloses that SHC may request consumer reports or investigative consumer reports for the additional purpose of “evaluation and response” . . . “in the event that claims or disputes between you and SHC are filed with third parties” . . . “regardless of whether you remain in the employ of SHC at the time such claims or disputes arise.”

38. Translated, if the consumer files a suit or an arbitration against SHC, or vice versa, even after employment has ended, SHC may obtain a consumer report or investigative consumer report.

39. Section 1681a(h) defines “employment purposes” as “for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.” All of that is expressly covered by the first sentence of paragraph 1.

40. The second sentence covers something else (as evidenced by the use of the word “additionally”). Therefore, Kmart has violated the stand alone requirement of § 1681b(b)(2)(A)(i).

41. Nothing in the second sentence of paragraph 1 limits the disputes to which this disclosure applies to employment related disputes.

42. The second sentence disclosure would include a consumer report obtained for the purpose of evaluating and responding to a former employee’s claim of product liability arising in connection with injuries totally unrelated to employment, for example.

43. The disclosure form fails as a § 1681d(a) disclosure because section 1681d(a)(1)

requires that the person procuring the investigative consumer report disclose to the consumer that an investigative consumer report “including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable” may be made. The Kmart disclosure does not include any such listing of the type of information to be included. 37.

44. The Kmart form also fails as a § 1681d(a) disclosure because it fails to include a statement informing the consumer of his right to request the additional “nature and scope” disclosures and the written summary of the consumer FCRA rights.

45. Inasmuch as the Kmart disclosure form does not comply with the requirements of § 1681d(a) relative to investigative consumer reports, the inclusion all language pertaining to investigative consumer reports is pointless clutter.

46. In addition the K-Mart disclosure provides unnecessary, vague, and legally irrelevant information, and as a result it is ambiguous and misleading.

47. As a result of the defective disclosure, Defendant procured a consumer report for Plaintiff and those similarly situated for employment purposes without first obtaining a proper, written authorization to do so.

48. Additionally, § 1681b(b)(3)(A) of the FCRA regulates the conduct of any person who uses a “consumer report” to take an adverse action against any employees or prospective employees as follows:

Except as provided in subparagraph (B) [in cases of a consumer applying for a position over which the Secretary of Transportation may establish qualifications], in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates –

- (i) a copy of the report; and

- (ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the Federal Trade Commission under section 1681g(c)(3) of this title.

49. The purpose of 1681b(b)(3)(A) is to provide a prospective or current employees a sufficient amount of time to review the consumer report, discuss the report with the prospective employee, correct any inaccuracies or omissions and notify the prospective employer of these inaccuracies before an adverse action is taken.

50. Defendant provided Plaintiff with a copy of his criminal background report and a summary of his FCRA rights, but the FCRA rights summary was the 1997 form prescribed by the FTC, not the 2005 form. A copy of the 2005 form is attached as **Exhibit D**.

51. The 2005 form, which Defendant failed to send to Plaintiff and similarly situated applicants, is different from the 1997 form in many material respects. The 2005 form includes the following rights not included in the 1997 form used by Defendant:

- a. A Spanish header referring people to a website where the rights are provided in Spanish.
- b. The right to dispute incomplete or inaccurate information, whereas the old form only addresses inaccurate information.
- c. The right to ask for a credit score, usually at your own expense, which right is not included in the old form.
- d. The contact information at the end of the form, including addresses and telephone numbers, is substantially incorrect and out of date. For example, for CRAs the number given for the FTC is incorrect. For the Federal Reserve the address is wrong, the telephone number is wrong, and the telephone number is not a toll-free number, whereas the number on the current form is a toll-free number. For credit unions the telephone number is wrong.

52. The Defendant had six years to convert to the proper form, but it failed to do so.

Defendant Acted Willfully

53. Defendant knew or should have known about its legal obligations under the FCRA.

These obligations are well established in the plain language of the FCRA and in the promulgations of the Federal Trade Commission.

54. Defendant obtained or had available substantial written materials which apprised it of its duties under the FCRA. Any reasonable employer knows about or can easily discover these mandates.

55. The statutory language and mandates restricting and governing Defendants' business with respect to the FCRA have been in effect for decades.

56. Defendant conduct was at least reckless in failing to make an appropriate and effective effort to ascertain the FCRA provisions governing its hiring and firing process.

57. Despite knowing of these legal obligations, Defendant acted consciously in breaching its known duties and depriving Plaintiff and other members of the class of their rights under the FCRA.

58. As a result of these FCRA violations, Defendant is liable to Plaintiff and to each FCRA Class Member, for statutory damages from \$100.00 to \$1,000.00 pursuant to 15 U.S.C. §1681n(a)(1)(A), plus punitive damages pursuant to 15 U.S.C. §1681n(a)(2), and for attorneys fees and costs pursuant to §1681n and §1681o.

59. Plaintiff and FCRA Class Members are entitled to equitable relief against Defendants requiring its compliance with the FCRA in all future instances and enjoining their future violations of the FCRA.

CLASS ACTION ALLEGATIONS

60. **The FCRA Class.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action for himself and on behalf of a class (the "Class") initially defined as follows:

All employees or prospective employees of Defendants residing in the United States (including all territories and other political subdivisions of the United States) to whom Defendants provided a copy of the disclosure attached as Exhibit A or some reasonably similar variation thereof, with the result that they were the subject of a consumer report which was used by Defendant to make an employment decision during the FCRA statute of limitations period, 15 U.S.C. §1681p, next preceding the filing of this action and during its pendency.

61. **The FCRA Sub-Classes.** Plaintiff also alleges the following FCRA Sub-Classes, of which Plaintiff is a member:

All employees or prospective employees of Defendants residing in the United States (including all territories and other political subdivisions of the United States) who were the subject of a consumer report which was used by Defendants to make an employment decision during the FCRA statute of limitations period, 15 U.S.C. §1681p, next preceding the filing of this action and during its pendency, against whom Defendants took an adverse action based in whole or in part on information contained in the consumer report before providing a description in writing of the rights of the consumer under the FCRA, as required by the FCRA, 15 U.S.C. §1681b(b)(3)(A)(ii);

62. **Numerosity. FED. R. CIV. P. 23(a)(1).** The Class members are so numerous that joinder of all is impractical. The names and addresses of the Class members are identifiable through documents maintained by the Defendant, and the Class members may be notified of the pendency of this action by published and/or mailed notice.

63. **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 Class. These questions predominate over the questions affecting only individual members. These common legal and factual questions include, among other things:

- a. Whether the E-Sign Act applies to and authorizes the Defendant's application process under the FCRA.
- b. Whether the Defendant violated §1681b(b)(2)(A) by failing to make a

- "clear and conspicuous" disclosure;
- c. Whether Defendant violated §1681b(b)(2)(A) by failing to make a "clear and conspicuous" disclosure in a document that consists solely of the disclosure;
 - d. Whether Defendant obtained a written authorization to procure or cause to be procured consumer reports for employment purposes 681b(b)(2)(A)(ii);
 - e. Whether the FCRA Rights Summary provided by Defendant to Plaintiff and similarly situated individuals is complete and legally effective.
 - f. Whether Defendant knowingly or intentionally acted in conscious disregard of the rights of the consumers;

64. **Typicality. FED. R. CIV. P. 23(a)(3).** Plaintiff's claims are typical of the claims of each Class member. Plaintiff for class certification purposes seeks only statutory and punitive damages. Plaintiff would only seek individual or actual damages if class certification is denied. In addition, Plaintiff is entitled to relief under the same causes of action as the other members of the Class.

65. **Adequacy.** Plaintiff is an adequate representative of the Class because his interests coincide with, and are not antagonistic to, the interests of the members of the Class he seeks to represent, he has retained counsel competent and experienced in such litigation, and he intends to prosecute this action vigorously. FED. R. CIV. P. 23(a)(4). Plaintiff and his Counsel will fairly and adequately protect the interests of members of the Class.

66. **Superiority.** Questions of law and fact common to the Class members predominate over questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy. FED. R. CIV. P.

23(b)(3). The statutory and punitive damages sought by each member are such that individual prosecution would prove burdensome and expensive given the complex and extensive litigation necessitated by Defendant's conduct. It would be virtually impossible for the members of the Class individually to redress effectively the wrongs done to them. Even if the members of the Class themselves could afford such individual litigation, it would be an unnecessary burden on the courts. Furthermore, individualized litigation presents a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and to the court system presented by the complex legal and factual issues raised by Defendant's conduct. By contrast, the class action device will result in substantial benefits to the litigants and the Court by allowing the Court to resolve numerous individual claims based upon a single set of proof in just one case.

67. **Injunctive Relief Appropriate for the Class.** Class certification is appropriate because Defendant has acted on grounds generally applicable to the Class, making appropriate equitable injunctive relief with respect to Plaintiff and the Class members. FED. R. CIV. P. 23(b)(2).

COUNT ONE: VIOLATION OF THE FCRA §1681b(b)(2)(A)(i)

68. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

69. Defendant willfully violated the FCRA, 15 U.S.C. §1681b(b)(2)(A)(i), because it failed to provide a clear and conspicuous written disclosure in a document that consists solely of the disclosure to applicants and employees that a consumer report may be obtained for employment purposes.

70. Plaintiff seeks statutory damages for himself and all others similarly situated for this violation pursuant to 15 U.S.C. § 1681n(a)(1)(A).

71. Plaintiff seeks punitive damages and equitable relief for this violation pursuant to 15 U.S.C. § 1681n(a)(2).

72. In the alternative to the Plaintiff's allegations that these violations were willful, he alleges that the violations were negligent and seeks issue certification of that issue and appropriate remedy, if any, under 15 U.S.C. §1681o.

COUNT TWO: VIOLATION OF THE FCRA §1681b(b)(2)(A)(i)

73. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

74. Defendant willfully violated the FCRA, 15 U.S.C. §1681b(b)(2)(A)(ii), because it failed to obtain a valid authorization in writing to procure a consumer report for employment purposes from Plaintiff and those similarly situated applicants and employees.

75. Plaintiff seeks statutory damages for himself and all others similarly situated for this violation pursuant to 15 U.S.C. § 1681n(a)(1)(A).

76. Plaintiff seeks punitive damages and equitable relief for this violation pursuant to 15 U.S.C. § 1681n(a)(2).

77. In the alternative to the Plaintiff's allegations that these violations were willful, he alleges that the violations were negligent and seeks issue certification of that issue and appropriate remedy, if any, under 15 U.S.C. §1681o.

COUNT THREE: VIOLATION OF THE FCRA § 1681b(b)(3)(A)(ii)

78. Plaintiff restates each of the allegations in the preceding paragraphs as if set forth at length herein.

79. Defendant willfully violated the FCRA, 15 U.S.C. §1681b(b)(3)(A)(ii), because it failed to provide Plaintiff and all other similarly situated applicants and employees an accurate and

current summary of rights required by this section of the FCRA before taking an adverse action that was based in whole or in part on the consumer report.

80. Plaintiff seeks statutory damages for himself and all others similarly situated for this violation pursuant to 15 U.S.C. § 1681n(a)(1)(A).

81. Plaintiff seeks punitive damages and equitable relief for this violation pursuant to 15 U.S.C. § 1681n(a)(2).

82. In the alternative to the Plaintiff's allegations that these violations were willful, he alleges that the violations were negligent and seeks issue certification of that issue and appropriate remedy, if any, under 15 U.S.C. §1681o.

83. Every paragraph in this Complaint is hereby incorporated into every other paragraph.

WHEREFORE, Plaintiff and the Class Members pray for relief as follows:

1. an Order certifying the proposed FCRA class herein under Federal Rule 23 and appointing Plaintiff and his undersigned counsel of record to represent same;
2. the creation of a common fund available to provide notice of and remedy Defendant's FCRA violations;
3. statutory and punitive damages;
4. injunctive relief as pled;
5. attorney's fees, expenses and costs;
6. pre-judgment and post-judgment interest as provided by law; and
7. such other relief the Court does deem just, equitable and proper.

TRIAL BY JURY IS DEMANDED.

ERIC DANTE PITT,
For himself and on behalf of all similarly situated
individuals.

By: *Christopher Colt North*
Of Counsel
October 14, 2011

Christopher Colt North
VSB #16955
Attorney for Plaintiff
The Consumer & Employee Rights Law Firm, P.C.
751-A Thimble Shoals Boulevard
Newport News, Virginia 23606
Phone: (757) 873-1010
Fax: (757) 873-8375
Email: cnorthlaw@aol.com




JOBLINE

Notice Concerning Consumer and Investigative Consumer Reports

BACK — **NEXT**

This form, which you should read carefully, has been provided to you because Sears Holdings Corporation may request consumer reports or investigative consumer reports in connection with your application for employment, or at any time during the course of your employment with SHC, if any, for purposes of evaluating your suitability for employment, promotion, reassignment or retention as an associate. Additionally, in the event that claims or disputes between you and SHC are filed with any third parties, SHC may request consumer reports or investigative consumer reports for purposes of evaluation and response, regardless of whether you remain in the employ of SHC at the time such claims or disputes arise.



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Terms and Conditions

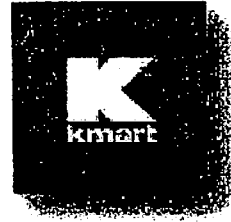
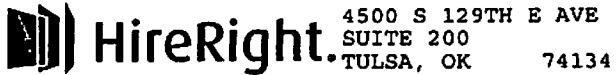
The types of reports that may be requested from consumer reporting agencies under this policy include, but are not limited to, credit reports, criminal records checks, court records checks, driving records, and/or summaries of educational and employment records and histories. The information contained in these reports may be obtained by a consumer reporting agency from sources such as public records, proprietary databases or through personal interviews with your co-workers, neighbors, friends, associates, current or former employers, or other personal acquaintances.

If offered a position, would you be willing to allow Sears Holdings Corporation to do a retail theft and/or criminal background check?

ACCEPT

DECLINE

EXHIBIT
A



July 25, 2011

ERIC D PITT

████████████████████
NEWPORT NEWS VA 23608

Dear ERIC:

As you will recall, you authorized the Sears Holdings Corporation company to which you applied to conduct a background check in connection with your application of employment. The enclosed consumer report contains information that we will use in making an employment decision about you. Enclosed also is a summary of your rights provided under the Fair Credit Reporting Act. If you applied in ME, NJ, or WA, a state-specific summary of rights is also enclosed.

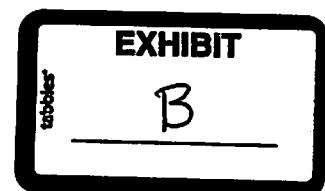
The enclosed report was furnished by:

HireRight (formerly USIS)
Consumer Department
P.O. Box 33181
Tulsa, OK 74153
Phone: (877) 858-4165

As set forth in the enclosed summary of rights, you may dispute inaccurate or incomplete information by contacting HireRight as prescribed in the summary. Furthermore, facts supporting your dispute with the report or exculpatory information must be shared with a background check evaluator at 1-888-88Sears no later than five (5) business days from the date of this letter.

Sincerely,

HUMAN RESOURCES

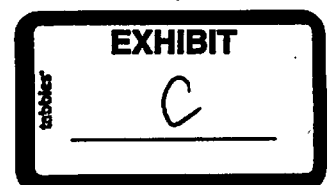


A Summary of Your Rights
Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) is designed to promote accuracy, fairness, and privacy of information in the files of every "consumer reporting agency" (CRA). Most CRAs are credit bureaus that gather and sell information about you -- such as if you pay your bills on time or have filed bankruptcy -- to creditors, employers, landlords, and other businesses. You can find the complete text of the FCRA, 15 U.S.C. 1681-1681u, at the Federal Trade Commission's web site (<http://www.ftc.gov>). The FCRA gives you specific rights as outlined below. You may have additional rights under state law. You may contact a state or local consumer protection agency or a state attorney general to learn those rights.

- * You must be told if information in your file has been used against you. Anyone who uses information from a CRA to take action against you -- such as denying an application for credit, insurance, or employment -- must tell you, and give you the name, address, and phone number of the CRA that provided the consumer report.
- * You can find out what is in your file. At your request, a CRA must give you the information in your file, and a list of everyone who has requested it recently. There is no charge for the report if a person has taken action against you because of information supplied by the CRA, if you request the report within 60 days of receiving notice of the action. You also are entitled to one free report every twelve months upon request if you certify that (1) you are unemployed and plan to seek employment within 60 days, (2) you are on welfare, or (3) your report is inaccurate due to fraud. Otherwise, a CRA may charge you up to eight dollars.
- * You can dispute inaccurate information with the CRA. If you tell a CRA that your file contains inaccurate information, the CRA must investigate the items (usually within 30 days) by presenting to its information source all relevant evidence you submit, unless your dispute is frivolous. The source must review your evidence and report its findings to the CRA. (The source also must advise national CRAs -- to which it has provided the data -- of any error.) The CRA must give you a written report of the investigation, and a copy of your report if the investigation results in any change. If the CRA's investigation does not resolve the dispute, you may add a brief statement to your file. The CRA must normally include a summary of your statement in future reports. If an item is deleted or a dispute statement is filed, you may ask that anyone who has recently received your report be notified of the change.
- * Inaccurate information must be corrected or deleted. A CRA must remove or correct inaccurate or unverified information from its files, usually within 30 days after you dispute it. However, the CRA is not required to remove accurate data from your file unless it is outdated (as described below) or cannot be verified. If your dispute results in any change to your report, the CRA cannot reinsert into your file a disputed item unless the information source verifies its accuracy and completeness. In addition, the CRA must give you a written notice telling you it has reinserted the item. The notice must include the name, address and phone number of the information source.
- * You can dispute inaccurate items with the source of the information. If you tell anyone -- such as a creditor who reports to a CRA -- that you dispute an item, they may not then report the information to a CRA without including a notice of your dispute. In addition, once you've notified the source of the error in writing, it may not continue to report the information if it is, in fact, an error.
- * Outdated information may not be reported. In most cases, a CRA may not report negative information that is more than seven years old; ten years for bankruptcies.

Access to your file is limited. A CRA may provide information about you only to people with a need recognized by the FCRA -- usually to consider an application with a creditor, insurer, employer, landlord, or other business.



* Your consent is required for reports that are provided to employers, or reports that contain medical information. A CRA may not give out information about you to your employer, or prospective employer, without your written consent. A CRA may not report medical information about you to creditors, insurers, or employers without your permission.

* You may choose to exclude your name from CRA lists for unsolicited credit and insurance offers. Creditors and insurers may use file information as the basis for sending you unsolicited offers of credit or insurance. Such offers must include a toll-free phone number for you to call if you want your name and address removed from future lists. If you call, you must be kept off the lists for two years. If you request, complete, and return the CRA form provided for this purpose, you must be taken off the lists indefinitely.

* You may seek damages from violators. If a CRA, a user or (in some cases) a provider of CRA data, violates the FCRA, you may sue them in state or federal court.

The FCRA gives several different federal agencies authority to enforce the FCRA:

FOR QUESTIONS OR CONCERNS REGARDING:

PLEASE CONTACT:

CRA's, creditors and others not listed below

Federal Trade Commission
Consumer Response Center - FCRA
Washington, DC 20580
202-326-3761

National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)

Office of the Comptroller of the Currency
Compliance Management, Mail Stop 6-6
Washington, DC 20219
800-613-6743

Federal Reserve System member banks, except national banks, and federal branches/agencies of foreign banks)

Federal Reserve Board
Division of Consumer & Community Affairs
Washington, DC 20551
202-452-3693

Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)

Office of Thrift Supervision
Consumer Programs
Washington, DC 20552
800-842-6929

Federal credit unions (words "Federal Credit Union" appear in institution's name)

National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314
703-518-6360

State-chartered banks that are not members of the Federal Reserve System

Federal Deposit Insurance Corporation
Division of Compliance & Consumer Affairs
Washington, DC 20429
800-934-FDIC

Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission

Department of Transportation
Office of Financial Management
Washington, DC 20590
202-366-1306

Activities subject to the Packers and Stockyards Act, 1921

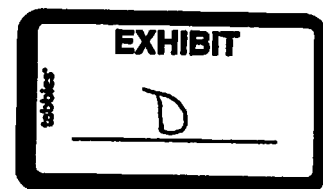
Department of Agriculture
Office of Deputy Administrator - GIPSA
Washington, DC 20250
202-720-7051

Para informacion en espanol, visite www.ftc.gov/credit o escribe a la FTC Consumer Response Center, Room 130-A 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.ftc.gov/credit or write to: Consumer Response Center, Room 130-A, Federal Trade Commission, 600 Pennsylvania Ave. N.W., Washington, D.C. 20580.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identify theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.



- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
- **You may limit "prescreened" offers of credit and insurance you get based on information in your credit report.** Unsolicited "prescreened" offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.ftc.gov/credit.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. Federal enforcers are:

TYPE OF BUSINESS:	CONTACT:
Consumer reporting agencies, creditors and others not listed below	Federal Trade Commission: Consumer Response Center - FCRA Washington, DC 20580 1-877-382-4357
National banks, federal branches/agencies of foreign banks (word "National" or initials "N.A." appear in or after bank's name)	Office of the Comptroller of the Currency Compliance Management, Mail Stop 6-6 Washington, DC 20219 800-613-6743
Federal Reserve System member banks (except national banks, and federal branches/agencies of foreign banks)	Federal Reserve Consumer Help (FRCH) P O Box 1200 Minneapolis, MN 55480 Telephone: 888-851-1920 Website Address: www.federalreserveconsumerhelp.gov Email Address: ConsumerHelp@FederalReserve.gov
Savings associations and federally chartered savings banks (word "Federal" or initials "F.S.B." appear in federal institution's name)	Office of Thrift Supervision Consumer Complaints Washington, DC 20552 800-842-6929
Federal credit unions (words "Federal Credit Union" appear in institution's name)	National Credit Union Administration 1775 Duke Street Alexandria, VA 22314 703-519-4600
State-chartered banks that are not members of the Federal Reserve System	Federal Deposit Insurance Corporation Consumer Response Center, 2345 Grand Avenue, Suite 100 Kansas City, Missouri 64108-2638 1-877-275-3342
Air, surface, or rail common carriers regulated by former Civil Aeronautics Board or Interstate Commerce Commission	Department of Transportation, Office of Financial Management Washington, DC 20590 202-366-1306
Activities subject to the Packers and Stockyards Act, 1921	Department of Agriculture

CIVIL COVER SHEET

This 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 THE REVERSE OF THE FORM.)

3:11cv625
Gibney (LR)

I. (a) PLAINTIFFS

Eric Dante Pitt, for himself and on behalf of all similarly situated individuals

DEFENDANTS

K-Mart Corporation, a wholly owned subsidiary of Sears Holdings Corporation

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

RECEIVED
OCT 17 2011
CLERK, U.S. DISTRICT COURT
RICHMOND, VA

(b) County of Residence of First Listed Plaintiff **Newport News**

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Christopher Colt North, The Consumer & Employee Rights Law Firm, P.C., 751-A Thimble Shoals Blvd., Newport News, VA 23606

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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 | <input type="checkbox"/> 1 | PTF DEF | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | PTF DEF | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY	FEDERAL TAX SUITS
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION		
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions		

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 (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

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

FCRA 15 U.S.C. § 1681, et seq
Violation of Fair Credit Reporting Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE **Gibney**

DOCKET NUMBER **3:09cv625**

DATE **10/14/11**

SIGNATURE OF ATTORNEY OF RECORD

Christopher Colt North

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Court Name: UNITED STATES DISTRICT COURT
Division: 3
Receipt Number: 34683814659
Cashier ID: lbreedn
Transaction Date: 10/17/2011
Payer Name: CONSUMER AND EMPLOYEE RIGHTS

CIVIL FILING FEE
For: CONSUMER AND EMPLOYEE RIGHTS
Amount: \$350.00

CHECK
Check/Money Order Num: 2157
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

#3:11-CV-697

