

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

CASE NO. 17-cv-23821

ROBERTO ARCEO
and others similarly situated,

Plaintiffs,

v.

MATTRESS FIRM, INC., a Foreign
Profit Corporation, LAS 4 A DELIVERY
CORPORATION, a Florida Profit Corporation,
and ALEXANDER ORTEGA, individually,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

ROBERTO ARCEO (“ARCEO”), by and through undersigned counsel, and on behalf of those similarly situated, brings this action against MATTRESS FIRM, INC. (“MATTRESS FIRM”), LAS 4 A DELIVERY CORPORATION (“4 A”), and ALEXANDER ORTEGA (“ORTEGA”), individually (“ORTEGA,” and together with MATTRESS FIRM, 4 A, and ORTEGA, hereinafter collectively referred to as the “Employers” or “Defendants,” except when referred to individually), and alleges:

JURISDICTIONAL AND VENUE

1. This is an action to recover unpaid overtime wages and liquidated damages under the laws of the United States. This Court has jurisdiction pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (§ 216(b) for jurisdictional placement) (“FLSA”).

2. Plaintiff, ARCEO, is a resident of Miami-Dade County, Florida and is otherwise *sui juris*.

3. Defendant, MATTRESS FIRM, is a Delaware corporation registered in Florida as a foreign for-profit corporation, and conducts business in Miami-Dade County, Florida.

4. Defendant, 4 A is a Florida for-profit corporation that conducts business in Miami-Dade County, Florida.

5. Defendant, ORTEGA, is a resident of Miami-Dade County, Florida, and is otherwise *sui juris*.

6. The claims under the FLSA pursued by Plaintiff may also be pursued by those who opt-in to this case as collective action members pursuant to 29 U.S.C. § 216(b).

7. All of the events, or a substantial part of the events, giving rise to this action, occurred in Miami-Dade County, Florida, within the jurisdiction of the United States District Court for the Southern District of Florida.

8. This Court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1337, and 29 U.S.C. 1367(a), as they arise under the FLSA.

9. At all times material hereto, Plaintiff was an employees of the Defendants within the meaning of the FLSA and Fla. Const. Article X, § 24.

FLSA COVERAGE

10. At all times relevant to this action, Defendant, MATTRESS FIRM, has owned and operated over 30 mattress stores located throughout Miami-Dade County, Florida, as well as a warehouse located at 11401 N.W. 134 Street Medley, Florida 33178 (hereinafter referred to as "the warehouse").

11. MATTRESS FIRM is, and at all times pertinent to this Complaint, was engaged in interstate commerce.

12. At all times pertinent to this Complaint, MATTRESS FIRM operated as an

organization which sells, markets, and/or handles its services, goods, and/or materials to customers from throughout the United States, and also provided its services for goods sold and transported from across state lines.

13. Upon information and belief, MATTRESS FIRM obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the state of Florida, and otherwise regularly engages in interstate commerce.

14. Plaintiff, by virtue of working in interstate commerce for MATTRESS FIRM, otherwise satisfies the FLSA's requirements.

15. Upon information and belief, the annual gross revenue of MATTRESS FIRM was, at all material times hereto, in excess of \$500,000.00 per annum.

16. By reason of the foregoing, MATTRESS FIRM is and was, during all times material hereto, an enterprise engaged in commerce, or in the production of goods for commerce, as defined in §3(r) and 3(s) of the FLSA, 29 U.S.C. § 230(r) and 203(s).

17. At all times relevant to this action, 4 A has owned and operated a mattress delivery company located inside the warehouse.

18. At all times relevant to this Complaint, 4 A operated as an organization which sells, markets, and/or handles its services, goods, and/or materials to customers from throughout the United States, and also provided its services for goods sold and transported from across state lines.

19. Upon information and belief, 4 A obtains and solicits funds from non-Florida sources, accepts funds from non-Florida sources, uses telephonic transmissions going over state lines to do its business, transmits funds outside the state of Florida, and otherwise regularly

engages in interstate commerce.

20. Upon information and belief, 4 A had, either alone or in conjunction with the other Defendants as joint employers of the Plaintiff, annual gross revenues in excess of \$500,000.00 during the time period relevant to this Complaint.

21. Plaintiff, by virtue of working in interstate commerce for 4 A, otherwise satisfies the FLSA's requirements.

22. At all times relevant to this action, Defendant, ORTEGA, was and still is the owner of 4 A, and acted in the course and scope of his employment as owner of 4 A with regards to Plaintiffs.

23. ORTEGA is an FLSA employer, as defined by 29 U.S.C. § 203(d), as he had operational control over 4 A and was directly involved in decisions affecting employee compensation and hours worked by employees such as Plaintiff.

JOINT EMPLOYMENT

24. At all times relevant to this action, MATTRESS FIRM and 4 A, together with ORTEGA, were joint employers of Plaintiff for purposes of the FLSA under a "vertical" joint employment relationship, in that MATTRESS FIRM:

- (a) controlled the work performed by the Plaintiff including, but not limited to, requiring Plaintiff to provide MATTRESS FIRM clients with a card and bag of candy upon arrival to their homes, requiring MATTRESS FIRM logos on Plaintiff's vehicle, and requiring Plaintiff to wear MATTRESS FIRM uniforms;
- (b) supervised Plaintiff's work by following up with the MATTRESS FIRM clients serviced, to conduct a survey regarding Plaintiff's quality of work and compliance with MATTRESS FIRM procedures;

- (c) had the power to determine pay rates or methods. MATTRESS FIRM in conjunction with additional Defendants required Plaintiff have a “helper” and determined the helper’s pay rate as well as an additional amount deducted from Plaintiff’s wages for the helpers worker’s compensation;
- (d) had the ability to reprimand, suspend, or fire Plaintiff and others similarly situated if they did not comply with MATTRESS FIRM procedures;
- (e) upon information and belief, oversaw the payment of Plaintiff’s wages;
- (f) owned the facilities out of which 4 A operated;
- (g) required Plaintiff to perform work integral to the business, including, but not limited to, delivering mattresses to MATTRESS FIRM customers, delivering mattresses to the various store-fronts and assembling furniture for the display, picking up and returning used mattresses to the warehouse, and processing material within the warehouse such as packing recyclable cardboard and plastic as well as storing used mattresses for subsequent resale by MATTRESS FRIM; and
- (h) provided the necessary equipment and facilities for Plaintiff to perform his job duties.

PLAINTIFF ROBERTO ARCEO’S EMPLOYMENT

35. Plaintiff ARCEO was employed as a delivery driver for MATTRESS FIRM and 4 A from 2014 to 2016.

36. ARCEO was contracted to provide delivery driver services for MATTRESS FIRM through Defendant 4 A.

37. On average, ARCEO worked seven (7) days a week, up to sixteen (16) hours a day, for approximately one hundred twelve (112) hours a week. ARCEO estimates his total

amount of unpaid overtime wages as follows:¹

October 18, 2014 through December 31, 2014, Minimum Wage was \$7.93 Per Hour

72 overtime hours x \$3.96 per hour (half-time) = \$285.12 x 10 weeks = \$2,851.20

January 1, 2015 through December 31, 2015, Minimum Wage was \$8.05 Per Hour

72 overtime hours x \$4.02 per hour (half-time) = \$289.44 x 52 weeks = \$15,050.88

January 1, 2016 through February 28, 2016, Minimum Wage was \$8.05 Per hour

72 overtime hours x \$4.02 per hour (half-time) = \$289.44 x 8 weeks = \$2,315.52

Total Overtime Wages Owed: \$20,217.60 x 2 (liquidated damages) = \$40,434.00

38. ARCEO was paid per delivery, irrespective of hours worked.

GENERAL ALLEGATIONS

39. Plaintiff brings this action on behalf of himself and all other current and former employees of Defendants who are and were similarly situated.

40. Plaintiff and those similarly situated were hired at various times by 4 A as delivery drivers to provide delivery services solely for MATTRESS FIRM.

41. MATTRESS FIRM willfully chose to uniformly misclassify a group of employees titled “delivery drivers,” as independent contractors, by attempting to sub-contract various companies such as Defendant 4 A to deliver MATTRESS FIRM’s products to its customers.

42. MATTRESS FIRM is in the business of selling mattresses and those mattresses are only available for delivery, thus the delivery drivers are an integral part of MATTRESS FIRM’s business.

43. MATTRESS FIRM customarily and regularly dictated who 4 A hired, and

¹ At this time ARCEO has limited time and payroll records. Accordingly, he estimates his damages as a matter of just and reasonable inference, and reserves the right to amend his estimation. The amount of damages will fluctuate once Defendants provide complete time and payroll records. *See Anderson v. Clemens Pottery Co.*, 328 U.S. 680, 687-88 (1946).

required a six month hold of employees from being hired from one delivery company to another.

44. Plaintiffs were required to fill out an application with MATTRESS FIRM in order to be employed by 4 A.

45. MATTRESS FIRM customarily and regularly required Plaintiff, and those similarly situated, to provide MATTRESS FIRM's customers with candy and a card upon making a delivery. If Plaintiff did not comply, MATTRESS FIRM had the power to discipline, suspend, or terminate the Plaintiff and similarly situated delivery drivers.

46. MATTRESS FIRM required that all delivery drivers have MATTRESS FIRM logos on their trucks.

47. Plaintiff and others similarly situated were only allowed to deliver for MATTRESS FIRM.

48. Upon information and belief, 4 A conducted all of its business inside the warehouse.

49. 4 A required delivery drivers, including Plaintiff, to work double shifts, as per MATTRESS FIRM's requirements.

50. Upon information and belief, 4 A's only 'client' during the relevant time period was MATTRESS FIRM.

51. MATTRESS FIRM regularly and customarily required all the delivery drivers to bring the used mattresses from customers' homes to the warehouse every evening in order for MATTRESS FIRM to resell the mattresses.

52. Plaintiff was required to process these mattresses within the warehouse and properly store them for subsequent resale by MATTRESS FIRM.

53. Plaintiff had to process recycled materials such as cardboard and plastic for

subsequent resale by MATTRESS FIRM.

54. Plaintiff was not compensated for any of the jobs listed in paragraphs 54 through 56 above.

55. The reselling of the mattresses was for the sole benefit of MATTRESS FIRM, and Plaintiff, and those similarly situated, did not receive any additional compensation for this service.

56. MATTRESS FIRM required Plaintiff, and those similarly situated, to deliver mattresses to the various store-fronts and assemble furniture for the display, this was for the sole benefit of MATTRESS FIRM and Plaintiff was not compensated for this service.

57. MATTRESS FIRM required Plaintiff and those similarly situated to attend daily meetings at MATTRESS FIRM's warehouse with MATTRESS FIRM's warehouse manager.

58. Plaintiff was not compensated for the time spent at these obligatory meetings.

59. MATTRESS FIRM created a payment structure of hiring delivery companies, such as 4 A, in order to evade the requirements imposed by the FLSA.

60. At all times relevant to this action, Plaintiff, and those similarly situated to them, were in non-exempt positions and were entitled to overtime compensation under the FLSA for each hour worked over forty (40) each workweek.

61. Plaintiff and those similarly situated, worked in excess of forty (40) hours in one or more work weeks during the relevant time period.

62. The complete records of the compensation actually paid to Plaintiff, if any, and the specific records of hours Plaintiff worked, are currently in the possession, custody, and control of Defendants.

63. Upon information and belief, Defendants failed to keep and maintain all required

records of hours worked by, and wages paid to, their employees, including Plaintiff and those similarly situated, per the record-keeping requirements of the FLSA.

64. All conditions precedent to the filing of this action have been satisfied, waived, or otherwise excused.

65. Plaintiff has hired the undersigned law firm to represent him in this case and is entitled to recover reasonable attorneys' fees.

COUNT I
FLSA OVERTIME VIOLATION
AGAINST MATTRESS FIRM, INC.

69. Plaintiff re-alleges and re-incorporates the allegations contained in paragraphs 1 through 65.

70. ARCEO worked in excess of forty (40) hours per week during the periods stated in paragraphs 35 through 38.

71. ARCEO was not paid overtime wages at a rate of time-and-one-half as required by the FLSA for each hour worked over forty (40) in a workweek.

72. MATTRESS FIRM intentionally violated the FLSA, or showed reckless disregard for the FLSA, by failing to pay Plaintiff his overtime wages despite having knowledge of his schedule.

73. At all times material hereto, MATTRESS FIRM failed to comply with the FLSA in that Plaintiff performed services and worked in excess of the maximum hours provided by the FLSA, but no provision was made by Defendants to properly pay Plaintiff at a rate of time and one-half for all hours worked in excess of forty (40) per workweek as provided in the FLSA

74. MATTRESS FIRM operated as Plaintiff's joint employer.

75. MATTRESS FIRM failed to keep adequate time records.

76. MATTRESS FIRM remains owing the Plaintiff overtime wages since the commencement of Plaintiff's employment with MATTRESS FIRM as set forth above.

77. As a direct and proximate result of MATTRESS FIRM's willful disregard of the FLSA, Plaintiff is entitled to liquidated damages pursuant to the FLSA.

78. No valid reason exists for the denial of paying overtime wages.

79. Plaintiff has retained the undersigned law firm to represent him in this case and is entitled to recover reasonable attorneys' fees.

WHEREFORE, Plaintiff requests compensatory and liquidated damages and reasonable attorneys' fees and costs from the Defendant, MATTRESS FIRM, together with 4 A, and ORTEGA, jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for overtime owing from Plaintiff's entire employment period with the Employers, or as much as allowed by the Fair Labor Standards Act, whichever is greater, along with court costs. In the event that the Plaintiff does not recover liquidated damages, then the Plaintiff will seek an award of prejudgment interest for the unpaid overtime, and any and all other relief which this Court deems reasonable under the circumstances.

COUNT II
FLSA OVERTIME VIOLATION
AGAINST LAS 4 A DELIVERY SERVICES, INC.

80. Plaintiff re-alleges and re-incorporates the allegations contained in paragraphs 1 through 65.

81. ARCEO worked in excess of forty (40) hours per week during the periods stated in paragraphs 35 through 38.

82. ARCEO was not paid overtime wages at a rate of time-and-one-half as required by the FLSA for each hour worked over forty (40) in a workweek.

83. 4 A intentionally violated the FLSA, or showed reckless disregard for the FLSA, by failing to pay Plaintiff his overtime wages despite having knowledge of their schedule.

84. At all times material hereto, 4 A failed to comply with the FLSA, in that Plaintiff performed services and worked in excess of the maximum hours provided by the FLSA, but no provision was made by Defendants to properly pay Plaintiff at a rate of time and one-half for all hours worked in excess of forty (40) per workweek as provided in the FLSA.

85. 4 A operated as Plaintiff's joint employer.

86. 4 A failed to keep adequate time records.

87. 4 A remains owing the Plaintiff these overtime wages since the commencement of Plaintiff's employment with 4 A as set forth above.

88. As a direct and proximate result of Defendants' willful disregard of the FLSA, Plaintiff is entitled to liquidated damages pursuant to the FLSA.

89. No valid reason exists for the denial of paying overtime wages.

90. Plaintiff has retained the undersigned law firm to represent him in this case and is entitled to recover reasonable attorneys' fees.

WHEREFORE, Plaintiff requests compensatory and liquidated damages and reasonable attorneys' fees and costs from the Defendant, MATTRESS FIRM, together with 4 A and ORTEGA jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for overtime owing from Plaintiff's entire employment period with the Employers, or as much as allowed by the Fair Labor Standards Act, whichever is greater, along with court costs. In the event that the Plaintiff does not recover liquidated damages, then the Plaintiff will seek an award of prejudgment interest for the unpaid overtime, and any and all other relief which this Court deems reasonable under the circumstances.

COUNT III
FLSA OVERTIME VIOLATION
AGAINST ALEXANDER ORTEGA

91. Plaintiff re-alleges and re-incorporates the allegations contained in paragraphs 1 through 68.

92. ARCEO worked in excess of forty (40) hours per week during the periods stated in paragraphs 35 through 38.

93. ARCEO was not paid overtime wages at a rate of time-and-one-half as required by the FLSA for each hour worked over forty (40) in a workweek.

94. ORTEGA was Plaintiff's FLSA employer.

95. Defendant ORTEGA intentionally violated the FLSA, or showed reckless disregard for the FLSA, by failing to pay Plaintiff his overtime wages despite having knowledge of his schedule.

96. At all times material hereto, ORTEGA failed to comply with the FLSA, in that Plaintiff performed services and worked in excess of the maximum hours provided by the FLSA but no provision was made by Defendants to properly pay Plaintiff at a rate of time and one-half for all hours worked in excess of forty (40) per workweek as provided in the FLSA.

97. ORTEGA failed to keep adequate time records.

98. ORTEGA remains owing the Plaintiff these overtime wages since the commencement of Plaintiffs' employment with ORTEGA as set forth above.

99. As a direct and proximate result of Defendants' willful disregard of the FLSA, Plaintiff is entitled to liquidated damages pursuant to the FLSA.

100. No valid reason exists for the denial of paying overtime wages.

101. Plaintiff has retained the undersigned law firm to represent him in this case and is

entitled to recover reasonable attorneys' fees.

WHEREFORE, Plaintiff requests compensatory and liquidated damages and reasonable attorneys' fees and costs from the Defendant, MATTRESS FIRM, together with 4 A, and ORTEGA, jointly and severally, pursuant to the Fair Labor Standards Act as cited above, to be proven at the time of trial for overtime owing from Plaintiff's entire employment period with the Employers, or as much as allowed by the Fair Labor Standards Act, whichever is greater, along with court costs. In the event that the Plaintiff does not recover liquidated damages, then the Plaintiff will seek an award of prejudgment interest for the unpaid overtime, and any and all other relief which this Court deems reasonable under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury of all issues so triable.

October 18, 2017

Respectfully submitted,

BERENS, FERNANDEZ & ASSOCIATES, P.A.

Attorneys for Plaintiffs
2100 Ponce de Leon Blvd., PH-2
Coral Gables, Florida 33134
TEL. 305-329-2990

s/Andres F. Fernandez

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JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS ROBERTO ARCEO

DEFENDANTS MATTRESS FIRM, INC., a Foreign Profit Corporation, LAS 4 A DELIVERY CORPORATION, a Florida Profit Corporation and

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

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

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

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number) Andres F. Fernandez, Esq. Berens, Fernandez & Associates, P.A.

(d) Check County Where Action Arose: MIAMI-DADE MONROE BROWARD PALM BEACH MARTIN ST. LUCIE INDIAN RIVER OKEECHOBEE HIGHLANDS

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
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

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

- CONTRACT
110 Insurance
120 Marine
130 Miller Act
140 Negotiable Instrument
150 Recovery of Overpayment & Enforcement of Judgment
151 Medicare Act
152 Recovery of Defaulted Student Loans (Excl. Veterans)
153 Recovery of Overpayment of Veteran's Benefits
160 Stockholders' Suits
190 Other Contract
195 Contract Product Liability
196 Franchise
PERSONAL INJURY
310 Airplane
315 Airplane Product Liability
320 Assault, Libel & Slander
330 Federal Employers' Liability
340 Marine
345 Marine Product Liability
350 Motor Vehicle
355 Motor Vehicle Product Liability
360 Other Personal Injury
362 Personal Injury - Med. Malpractice
CIVIL RIGHTS
440 Other Civil Rights
441 Voting
442 Employment
443 Housing/Accommodations
445 Amer. w/Disabilities - Employment
446 Amer. w/Disabilities - Other
448 Education
PERSONAL INJURY
365 Personal Injury - Product Liability
367 Health Care/Pharmaceutical Personal Injury Product Liability
368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
370 Other Fraud
371 Truth in Lending
380 Other Personal Property Damage
385 Property Damage Product Liability
PRISONER PETITIONS
Habeas Corpus:
463 Alien Detainee
510 Motions to Vacate Sentence
Other:
530 General
535 Death Penalty
540 Mandamus & Other
550 Civil Rights
555 Prison Condition
560 Civil Detainee - Conditions of Confinement

- FORFEITURE/PENALTY
625 Drug Related Seizure of Property 21 USC 881
690 Other
LABOR
710 Fair Labor Standards Act
720 Labor/Mgmt. Relations
740 Railway Labor Act
751 Family and Medical Leave Act
790 Other Labor Litigation
791 Empl. Ret. Inc. Security Act
BANKRUPTCY
422 Appeal 28 USC 158
423 Withdrawal 28 USC 157
PROPERTY RIGHTS
820 Copyrights
830 Patent
835 Patent - Abbreviated New Drug Application
840 Trademark
SOCIAL SECURITY
861 HIA (1395ff)
862 Black Lung (923)
863 DIWC/DIWW (405(g))
864 SSID Title XVI
865 RSI (405(g))
FEDERAL TAX SUITS
870 Taxes (U.S. Plaintiff or Defendant)
871 IRS-Third Party 26 USC 7609
OTHER STATUTES
375 False Claims Act
376 Qui Tam (31 USC 3729 (a))
400 State Reapportionment
410 Antitrust
430 Banks and Banking
450 Commerce
460 Deportation
470 Racketeer Influenced and Corrupt Organizations
480 Consumer Credit
490 Cable/Sat TV
850 Securities/Commodities/Exchange
890 Other Statutory Actions
891 Agricultural Acts
893 Environmental Matters
895 Freedom of Information Act
896 Arbitration
899 Administrative Procedure Act/Review or Appeal of Agency Decision
950 Constitutionality of State Statutes

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

- 1 Original Proceeding
2 Removed from State Court
3 Re-filed (See VI below)
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation Transfer
7 Appeal to District Judge from Magistrate Judgment
8 Multidistrict Litigation - Direct File
9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case YES NO b) Related Cases YES NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE: October 18, 2017 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY RECEIPT # AMOUNT IFP JUDGE MAG JUDGE

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida

ROBERTO ARCEO)
and others similarly situated,)

Plaintiff(s))

v.)

Civil Action No.

MATTRESS FIRM, INC., a Foreign Profit Corporation,)
LAS 4 A DELIVERY CORPORATION, a Florida Profit)
Corporation, and ALEXANDER ORTEGA, individually,)

Defendant(s))

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* ALEXANDER ORTEGA
4271 NW 192 ST
Opalocka, Florida 33055

A lawsuit has been filed against you.

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

Andres F. Fernandez, Esq.
Berens, Fernandez & Associates, P.A.
2100 Ponce de Leon Blvd, PH 2
Coral Gables, Florida 33134
305-329-2990

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

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ROBERTO ARCEO
and others similarly situated,

Plaintiff(s)

v.

Civil Action No.

MATTRESS FIRM, INC., a Foreign Profit Corporation,
LAS 4 A DELIVERY CORPORATION, a Florida Profit
Corporation, and ALEXANDER ORTEGA, individually,

Defendant(s)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) LAS 4 A DELIVERY CORPORATION
c/o Registered Agent - Ana B. Prado Valiente
7940 West 34 LN # 101
Hialeah Gardens, Florida 33018

A lawsuit has been filed against you.

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

Andres F. Fernandez, Esq.
Berens, Fernandez & Associates, P.A.
2100 Ponce de Leon Blvd, PH 2
Coral Gables, Florida 33134
305-329-2990

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

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



ROBERTO ARCEO
and others similarly situated,

Plaintiff(s)

v.

MATTRESS FIRM, INC., a Foreign Profit Corporation,
LAS 4 A DELIVERY CORPORATION, a Florida Profit
Corporation, and ALEXANDER ORTEGA, individually,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) MATTRESS FIRM, INC.
c/o Registered Agent - C T Corporation System
1200 South Oine Island Road
Plantation, Florida 33324

A lawsuit has been filed against you.

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

Andres F. Fernandez, Esq.
Berens, Fernandez & Associates, P.A.
2100 Ponce de Leon Blvd, PH 2
Coral Gables, Florida 33134
305-329-2990

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

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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

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

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

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

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

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

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

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

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Lawsuit Against Mattress Firm Seeks to Put 'Unlawful' Pay Practices to Rest](#)
