

NOTICE

The preceding page is a copy of the creditor's proof of claim, with the Social Security number redacted for privacy.

Following this notice is the original (non-redacted) proof of claim.

TRUMBULL SERVICES, LLC

*FILE ORIGINAL FOR CHAPTERS 7 and 11, IN DUPLICATE FOR CHAPTER 13, FOR DATE-STAMPED COPY, SEE #9 BELOW

United States Bankruptcy Court		<input type="checkbox"/> CH 7 <input type="checkbox"/> CH 13 <input checked="" type="checkbox"/> CH 11 PLEASE CHECK CHAPTER
Northern District of Illinois, Eastern Division		PROOF OF CLAIM
Name of Debtor KMART CORPORATION	Case Number 02B02474	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S. C. § 503		File Claim Form With: United States Bankruptcy Court P. O. Box A3613 Chicago, Illinois 60690-3612 Creditor # _____ THIS SPACE IS FOR COURT USE ONLY
Name of Creditor (The person or other entity to whom the debtor owes money or property) J I J O V A R G H E S E	<input type="checkbox"/> Check box If you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name and Address Where Notices Should be Sent J I J O V A R G H E S E 7070 CARINA PL ALTALOMA, C. A 91730 Telephone No. 909-466-7949	<input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Account or other number by which creditor identifies debtor: E 199900-J-0488-00-e	Check here if this claim <input type="checkbox"/> amends <input type="checkbox"/> replaces a previously filed claim dated: _____	
1. BASIS FOR CLAIM <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input checked="" type="checkbox"/> Wages, salaries, and compensation (Fill out below) <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death Your social security number 604-44-8650 <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other DISCRIMINATION Unpaid compensation for services performed <input type="checkbox"/> Retiree benefits as defined in 11 U.S. C. § 1114 (a) from 03-20-96 to 6-4-99 (date) (date)		
2. DATE DEBT WAS INCURRED: 05-13-2001		3. IF COURT JUDGMENT, DATE OBTAINED:
4. Total Amount of Claim at Time Case Filed: \$ 75,000 If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim above, if any: \$ _____		6. Unsecured Priority Claim <input checked="" type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ 75,000 Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,300), *earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier-11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan-11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child -11 U.S.C. § 507(a)(7) <input type="checkbox"/> Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8) <input checked="" type="checkbox"/> Other—Specify applicable paragraph of 11 U.S.C. § 507(a) _____ <small>*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. SUPPORTING DOCUMENTS: <i>Attach copies of supporting documents</i> , such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. ANY ATTACHMENT MUST BE 8-1/2" BY 11" 9. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and an additional copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY RECEIVED TRUSTEE SERVICES COMPANY KP021 2002 MAR 18 PM 1:29 BANKRUPTCY 3/18/02
Date: 3-13-02	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any) J I J O V A R G H E S E J I J O V A R G H E S E	

027289

Kmart Corporation®

DISTRIBUTION CENTER PAYROLL

3100 W. BIG BEAVER RD.
TROY, MI 48084-3163

CHECK NO: 027289
CHECK DATE: 06/04/99
PERIOD ENDING: 05/30/99
PERIOD: WEEKLY

VARGHESE, JIJO
7070 CARINA PL.
ALTA LOMA
CA 91730

SSN: 604-44-8650
EXEMPTIONS: FED: 01 STATE: 00
TAX ADJ: FED: STATE:

NUMBER: 0604448650
STATE CODE: PRI: CA SEC:
SDI/UC ALT:

TAX STATUS: SINGLE
LOCAL CODE: LOC1: LOC2: LOC3:
LOCAL ALT:
BASE RATE: 15.9000

IMPORTANT MESSAGE

HOURS AND EARNINGS

DESCRIPTION	CURRENT HOURS/UNITS	EARNINGS
REGULAR	8.00	129.20
VACATION	8.00	129.20
HOLIDAY	8.00	129.20
OTHER	4.00	64.60
VACATION	18.60	300.39
TOTAL H/E		46.60 752.59
PRE-TAX ITEMS		.00

Vacation left ~~72~~ hours.
Paid hours left - ~~87~~ ~~76~~
Vacation - 53.4 → 7875.76
Paid hours - 80 → 1312
2187.76

TAXES AND DEDUCTIONS

DESCRIPTION	CURRENT AMOUNT
SOC SEC	46.66
MEDICARE	10.91
FED INC	121.29
PRI-STATE	34.37
SDI/UC	3.76
TOTAL	216.99
AFTER-TAX DEDUCTIONS	

SPECIAL INFORMATION

Kmart left to pay JIJO VARGHESE
\$ 2187.76

TOTAL PRE-TAX	TOTAL DED.	TOTAL
.00	.00	752.59
GROSS	PRE-TAX	TAXABLE WAGES - LESS TAXES
752.59	.00	752.59
LESS DED.	EQ. NET PAY	
216.99	535.60	

STATEMENT OF EARNINGS. DETACH AND KEEP FOR YOUR RECORDS

A PAYROLL SERVICE BY CERIDIAN

This item may be cashed at The Bank of New York N.A. National Community Division, and selected branches of The Bank of New York.

VOID AFTER 6 MONTHS

Kmart Corporation®

DISTRIBUTION CENTER PAYROLL

The Bank of New York (Delaware)
Newark, DE 19711

027289

62-35
311

027289
DATE 06/04/99

PAY five hundred thirty-five and 60/100

DOLLARS
\$*****535.60

TO THE ORDER OF

VARGHESE, JIJO
7070 CARINA PL.
ALTA LOMA
CA 91730

THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

027289 031100351 0300976149

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING611 West 8th Street, Suite 2850, Los Angeles, CA 90017
(213) 439-6751

October 24, 2000

Jijo Varghese
7070 Carina Place
Alta Loma, California 91730Re: DFEH v. K Mart Corporation, et al.
E-199900-J-0488-00-e
(Complainant, Varghese)

Dear Mr. Varghese:

This letter is to inform you that your discrimination complaint has been assigned to me for review. As a result of this review, the Department has issued an Accusation on your behalf. The issuance of an Accusation results in a hearing before the Fair Employment and Housing Commission. The dates of the scheduled hearing are subject to change, so please check with me or my office before making any arrangements to attend. You should also know that it is likely settlement discussions will take place. I will keep you informed of these discussions.

You may have received a letter informing you of your right to obtain independent legal counsel and proceed to court. If you have not already received that letter, you should be receiving it shortly. You have one year from the date of that letter or before the administrative hearing commences, whichever occurs first, to elect such court action. If you wish to pursue independent court action, you must inform me as soon as possible so that I may close your administrative case.

The availability of a private court action is particularly important if you are seeking punitive damages and/or unlimited damages for emotional distress. The Fair Employment and Housing Commission has limited authority to award damages for emotional distress combined with administrative fines up to \$150,000.00, and has no authority to award punitive damages. You should consult with an attorney if you have any questions regarding these issues.

1 Employment and Housing Act, California Government Code section
2 12900, et seq.

3 2. Respondent K Mart Corporation, is an employer within the
4 meaning of Government Code sections 12926, subdivision (d) and
5 12940, subdivisions (h)(3)(A) and (i).

6 3. Richard Fernandez, at all times referenced herein was a
7 managing agent for Respondent K Mart Corporation, and therefore,
8 was a person acting as an agent of an employer within the meaning
9 of Government Code section 12926, subdivision (d), and section
10 12940, subdivision (h)(3)(A).

11 4. On October 26, 1999, Complainant filed a verified
12 complaint in writing with the Department, alleging that Respondent
13 committed an unlawful employment practice against him in violation
14 of the Fair Employment and Housing Act within the preceding one (1)
15 year. On or about October 24, 2000, an amended complaint was
16 filed.

17 5. The original and amended Complaints numbered E-199900-J-
18 0488-00-e were properly served on Respondent.

19 **STATEMENT OF VIOLATION**

20 6. Complainant was hired as a Shipper for Respondent on or
21 about March 20, 1996.

22 7. Beginning in or around March 1997, through June 1999,
23 Complainant was subjected to harassment, based on his national
24 origin (Indian) and race (Indian), which was so severe and/or
25 pervasive that it created an intimidating, offensive, and hostile
26 working environment. The conduct which constituted verbal
27 harassment includes, but is not limited to, the following:



1 (d) In or around June 1998, Complainant complained
2 again to his supervisor Richard Fernandez about the ongoing
3 offensive and derogatory comments made by David Sanchez and
4 Gilberto Flores. In or around June 1998, Richard Fernandez again
5 issued a verbal warning to the Shipping Department. Both David
6 Sanchez and Gilberto Flores again temporarily ceased making the
7 offensive and derogatory comments but renewed their offensive
8 verbal assaults against Complainant only a few weeks later.

9 (e) In or around February 1999, Complainant complained
10 again to his supervisor Richard Fernandez about the offensive and
11 derogatory comments made by David Sanchez and Gilberto Flores which
12 were continuing to occur on a daily basis. Richard Fernandez took
13 no action in response to this complaint.

14 8. On or about June 1, 1999, Complainant was accused of
15 engaging in inappropriate behavior with a co-worker who made
16 racially insensitive remarks to him. On or about June 1, 1999,
17 Complainant and that co-worker met with their supervisor Richard
18 Fernandez about the alleged incident. The allegations against
19 Complainant could not be substantiated. On or about June 3, 1999,
20 Department Manager, Dale Scott, asked Complainant to sign a Notice
21 of Correction describing the alleged incident. Complainant was
22 then terminated for "insubordination" for failing to immediately
23 sign the Notice of Correction.

24 9. The Department asserts that Respondent's stated basis for
25 terminating Complainant was merely a pretext to terminate
26 Complainant for opposing Respondent's unlawful employment
27 practices. Furthermore, the Department asserts that other

1 (a) Beginning in or around March 1997, through June
2 1999, Complainant's co-worker, David Sanchez regularly and
3 repeatedly made derogatory and degrading comments to Complainant
4 based on his national origin (Indian) and race (Indian) such as:

- 5 (i) "Camel Boy;"
6 (ii) "Monkey Boy;"
7 (iii) "Go back to India;"
8 (iv) "Camel Head;"
9 (v) "Sand Nigger;" and
10 (vi) "Ugly Mother Fucker," or words to that

11 effect.

12 (b) Beginning in or around March 1997, through June
13 1999, Complainant's co-worker, Gilberto Flores regularly and
14 repeatedly made derogatory and degrading comments to Complainant
15 based on his national origin (Indian) and race (Indian) such as:

- 16 (i) "Camel Boy;"
17 (ii) "Monkey;" and
18 (iii) "Ugly Indian," or words to that effect.

19 (c) In or around March 1997, Complainant complained to
20 his supervisor Richard Fernandez about the offensive and derogatory
21 comments made by both David Sanchez and Gilberto Flores. In or
22 around March 1997, in response to Complainant's complaint, Richard
23 Fernandez verbally requested that the Shipping Department's
24 employees stop the name-calling. However, after a brief cessation,
25 both David Sanchez and Gilberto Flores began making the comments
26 again, on a daily basis only a few weeks after the verbal warning
27 from Richard Fernandez.



CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
DECISION OF THE ADMINISTRATIVE LAW JUDGE INLAND OFFICE OF APPEALS

(909) 987-2212

DATE MAILED: **SEP 20 1999**

CASE NO : IN-66104-R

DATE OF REQUEST TO REOPEN:
AUGUST 17, 1999

CLAIMANT : JIJO VARGHESE
APPELLANT 7070 CARINA PL
ALTA LOMA CA 91701-8626

SSA NO.: 604-44-8650
LO#-BYB: 041-06169

DATE AND PLACE OF HEARING:
NONE

EMPLOYER : K-MART DISTRIBUTION CTR
5600 AIRPORT DR
ONTARIO CA 91761

ACCOUNT NO.: 147-4030

PARTIES PRESENT:
NONE

ORDER DENYING APPLICATION TO REOPEN APPEAL

The appellant appeared in a scheduled hearing and presented evidence. The respondent did not appear. A decision was issued unfavorable to the respondent.

The respondent filed an application to vacate the decision. In the request for vacating the decision, the respondent did not specify a reason for failing to attend the hearing. Notice was sent to the respondent requiring this information. No response was received from that notice within ten days.

California Code of Regulations, Title 22, section 5068(b) provides an application to vacate a decision may be denied if the respondent fails to specify reasons for the application within ten days of being notified to provide such an explanation. As the respondent did not respond to the notice requiring the reasons for the application, the application to vacate the decision is denied. The decision previously issued remains in effect.



DONALD G. ROSS
Administrative Law Judge

NOTICE: THE RESPONDENT'S APPLICATION IS ALSO AN APPEAL FROM THIS ORDER AND FROM THE DECISION AND IS BEING SENT TO THE APPEALS BOARD FOR ITS CONSIDERATION.

rm

Shavan Giffen
Divisional Counsel
Employment &
Environmental Law
248 643 1631



Kmart Corporation
Resource Center
3100 West Big Beaver Road
Troy MI 48084-3163
Fax 248 643 2514

William J. Szykula	248 643 3295
Louis Zednik	248 637 6544
Janet H. Delecke	248 643 1846
Joseph G. Sullivan	248 614 1385
Terri L. Renshaw	248 643 5619
Richard L. Kalajian	248 643 1144

November 21, 2000

Mr. Steven C. Owyang, Exect. and
Legal Affairs Secretary
Fair Employment and Housing Commission
455 Golden Gate Avenue, Room 14500
San Francisco, California 94102

SENT VIA FACSIMILE (415) 557-0855 AND U.S. MAIL

RE: Jijo Varghese v. Kmart Corporation (Ontario DC)
Case No. E 199900-J-0488-00-e

Dear Mr. Owyang:

~~Please be advised that the undersigned attorney will be representing Kmart Corporation in this matter.~~ Kindly forward any correspondence regarding this matter to my attention at the address listed above. My direct dial telephone number is (248) 643-5619.

I have enclosed the original and one copy of Respondent's Notice of Transfer of Proceedings to Court to file in this matter:

Sincerely,

A handwritten signature in cursive script that reads "Terri L. Renshaw".

Terri L. Renshaw
Senior Employment Attorney

/tlr

cc: Michael F. Sweeney, Department of Fair Employment and Housing [via facsimile to
(213) 493-6754]
Jijo Varghese
Human Resources Manager, Ontario DC

**BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Accusation of

THE DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING,

Case No. E-1999900-J-0488-00-e

Vs.

KMART CORPORATION,

Respondent.

JIJO VARGHESE,

Complainant.

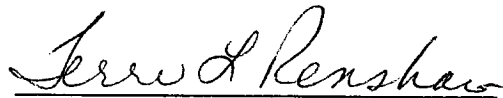
**RESPONDENT'S NOTICE OF TRANSFER
OF PROCEEDINGS TO COURT**

Kmart Corporation is the Respondent in this matter. By and through the undersigned attorney, Respondent Kmart Corporation elects to transfer this proceeding to court in lieu of a hearing before the Fair Employment and Housing Commission, pursuant to Government Code section 12989.

Dated: November 21, 2000

KMART CORPORATION

By:



Terri L. Renshaw
Senior Employment Attorney
3100 W. Big Beaver Road
Troy, Michigan 48084-3163
(248) 463-5619

**BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of the Accusation of

THE DEPARTMENT OF FAIR
EMPLOYMENT AND HOUSING,

Case No. E-1999900-J-0488-00-e

Vs.

KMART CORPORATION,

Respondent.

JJO VARGHESE,

Complainant.

DECLARATON OF SERVICE BY FACSIMILE TRANSMISSION

I, Terri L. Renshaw, hereby declare:

I am over eighteen years of age and am not a party to the within cause. My business address is 3101 W. Big Beaver Road, Troy, Michigan, 48084-3613.

On November 21, 2000, I served a copy of the attached **Respondent's Notice of Transfer of Proceedings to Court** on each of the following:

Steven C. Owyang, Exect. and
Legal Affairs Secretary
Fair Employment and Housing Commission
455 Golden Gate Avenue, Room 14500
San Francisco, California 94102
Facsimile Filing No. (415) 557-0855

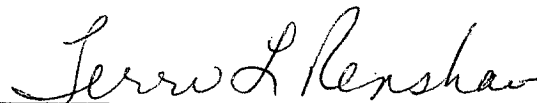
Jijo Varghese
7070 Carina Place
Alta Loma, California 91730

Michael F. Sweeney
Acting Chief Counsel
Department of Fair Employment and Housing
611 West Sixth Street, Suite 2850
Los Angeles, California 90017
Facsimile Filing No. (213) 493-6754

by facsimile transmission to the numbers referenced above and by placing the same in an envelope (or envelopes) addressed (respectively) as noted above. Each said envelope was then on said date sealed and deposited in the United States mail at Oakland County, Michigan, the county in which I am employed, with First Class postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 21st day of November, 2000 at Troy, Michigan.



Terri L. Renshaw

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

1845 S. Business Center Drive, #127, San Bernardino, CA 92408-3426
(909) 383-4373 TDD (800) 700-2320 Fax (909) 383-4746



March 27, 2000

JIGO VARGHESE
7070 Carina Place
Alta Loma, CA 91730

RE: E199900J0488-00-e/0340A07534
VARGHESE/K-MART CORPORATION, DISTRIBUTION CENTER

Dear JIGO VARGHESE:

Your complaint of discrimination (identified above) is on file with our office. According to the Fair Employment and Housing Act, the Department of Fair Employment and Housing (DFEH) must notify you of your right to request a right-to-sue notice which will authorize you to file a private lawsuit in a California Justice, Municipal or Superior Court on your own behalf. This letter is your notification of your right to request that notice.

No action is required by you unless you decide to request a right-to-sue notice. If you choose to exercise this option you must:

- 1) notify DFEH in writing of your intent; and
- 2) provide your own legal counsel; and
- 3) file your lawsuit within one year from receipt of the right-to-sue notice.

If you do request a right-to-sue, DFEH will discontinue its investigation and close your complaint. If you do not request a right-to-sue, DFEH will continue to process your complaint. A right-to-sue notice will then be issued upon conclusion of our investigation, or one year after your complaint was filed, whichever comes first.

If you do not wish to request a right-to-sue notice, you need not respond to this letter.

Sincerely,

A handwritten signature in cursive script that reads "Essie L. Jackson".

ESSIE L. JACKSON
District Administrator

* * * **EMPLOYMENT** * * *

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # E-199900-J-0488-03-r

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

COMPLAINANT'S NAME (Indicate Mr. or Ms.)

VARGHESE, JIJO (MR.)

ADDRESS

7070 Carina Place

TELEPHONE NUMBER (INCLUDE AREA CODE)

(909) 466-7949

CITY

Alta Loma

STATE

CA

ZIP

91730

COUNTY

San Bernardino

COUNTY CODE

071

**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME C/O K-MART CORPORATION, DISTRIBUTION CENTER

FERNANDEZ, RICHARD, As an Individual

ADDRESS

5600 Airport Drive

TELEPHONE NUMBER (INCLUDE AREA CODE)

(909) 390-4515

CITY

Ontario

STATE

CA

ZIP

91761

COUNTY

San Bernardino

COUNTY CODE

071

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

- RACE SEX DISABILITY RELIGION NATIONAL ORIGIN/ANCESTRY DENIAL OF FAMILY/MEDICAL LEAVE SEXUAL ORIENTATION
- COLOR AGE MARITAL STATUS MEDICAL CONDITION (cancer or genetic characteristics) OTHER (SPECIFY) **RETALIATION**

NO. OF EMPLOYEES/MEMBERS

03000

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) **June 3, 1999**

RESPONDENT CODE

73

THE PARTICULARS ARE:

AMENDED

- I. During the course of my employment as a Shipper, I was harassed due to my national origin by David Sanchez, Forklift Driver, and Gilberto Flores, Shpper. The last incident occurred June 3, 1999. I was terminated on June 4, 1999, I was hired on March 20, 1996.
- II. I was told by Ray Stone, Human Resource Manager, that I was terminated because I did not sign a warning notice.
- III. I believe that I was harassed due to my national origin (India) and also believe I was terminated in retaliation for objecting and reporting the harassment. My belief is based on the following:
 - A. From approximately October 1, 1998 to June 3, 1999, I was harassed due to my national origin by David Sanchez, Forklift Driver, and Gilberto Flores, Shipper. The harassment was verbal in nature (examples on file with Department of Fair Employment and Housing), and occurred daily. The harassment created a hostile working environment.
 - B. Although I reported the harassment to Richard Fernandez, Supervisor, the harassment continued. Therefore, I believe the reason for termination was a pretext to terminate me for objecting and reporting the harassment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 10-24-00

JiJo Varghese

COMPLAINANT'S SIGNATURE

At SAN Bernardino

City

* * * EMPLOYMENT * * *

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # E-199900-J-0488-01

EEOC # _____

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (Indicate Mr. or Ms.)

VARGHESE, JIJO (MR.)

ADDRESS TELEPHONE NUMBER (INCLUDE AREA CODE)
7070 Carina Place **(909) 466-7949**

CITY STATE ZIP COUNTY COUNTY CODE
Alta Loma CA 91730 San Bernardino 071

**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME K-MART CORPORATION, DISTRIBUTION CENTER

FLORES, GILBERTO, As an Individual

ADDRESS TELEPHONE NUMBER (INCLUDE AREA CODE)
5600 Airport Drive **(909) 390-4515**

CITY STATE ZIP COUNTY COUNTY CODE
Ontario CA 91761 San Bernardino 071

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

- | | | | | | |
|--------------------------------|------------------------------|---|--|--|---|
| <input type="checkbox"/> RACE | <input type="checkbox"/> SEX | <input type="checkbox"/> DISABILITY | <input type="checkbox"/> RELIGION | <input checked="" type="checkbox"/> NATIONAL ORIGIN/ANCESTRY | <input type="checkbox"/> DENIAL OF FAMILY/MEDICAL LEAVE |
| <input type="checkbox"/> COLOR | <input type="checkbox"/> AGE | <input type="checkbox"/> MARITAL STATUS | <input type="checkbox"/> MEDICAL CONDITION | <input type="checkbox"/> OTHER (SPECIFY) | |

NO. OF EMPLOYEES/MEMBERS **03000** DATE MOST RECENT OR CONTINUING DISCRIMINATION **June 3, 1999** RESPONDENT CODE **073**
TOOK PLACE (month, day, and year)

THE PARTICULARS ARE:

During the course of my employment as a Shipper, I was racially harassed by David Sanchez and Gilberto Flores, Shippers. The last incident occurred June 3, 1999. I was hired March 20, 1996.

I believe that I was racially harassed, which is discrimination on the basis of my national origin (India). My belief is based on the following:

- A. From approximately October 1, 1998 to June 3, 1999, I was racially harassed by David Sanchez and Gilberto Flores, Shippers. The harassment was verbal in nature (examples on file with Department of Fair Employment and Housing) and occurred daily. The harassment created a hostile working environment.
- B. Although I reported the harassment to Richard Fernandez, Supervisor, the harassment continued.

OCT 26 1999

Typed And Mailed For Signature On October 19, 1999

I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 10-21-1999

JiJO Varghese
COMPLAINANT'S SIGNATURE

At ALTA LOMA
City

DFEH-300-01 (06/97) SB:CO:drj
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DATE FILED: **October 26, 1999**

STATE OF CALIFORNIA

* * * EMPLOYMENT * * *

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # E-199900-J-0488-00-e

EEOC # 340-A0-7534

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

VARGHESE, JIJO (MR.)

ADDRESS

7070 Carina Place

TELEPHONE NUMBER (INCLUDE AREA CODE)

(909) 466-7949

CITY

Alta Loma

STATE

CA

ZIP

91730

COUNTY

San Bernardino

COUNTY CODE

071

**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME

K-MART CORPORATION, DISTRIBUTION CENTER

ADDRESS

5600 Airport Drive

TELEPHONE NUMBER (INCLUDE AREA CODE)

(909) 390-4515

CITY

Ontario

STATE

CA

ZIP

91761

COUNTY

San Bernardino

COUNTY CODE

071

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

- RACE SEX DISABILITY RELIGION NATIONAL ORIGIN/ANCESTRY DENIAL OF FAMILY/MEDICAL LEAVE
 COLOR AGE MARITAL STATUS MEDICAL CONDITION OTHER (SPECIFY)

NO. OF EMPLOYEES/MEMBERS

03000

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) **June 3, 1999**

RESPONDENT CODE

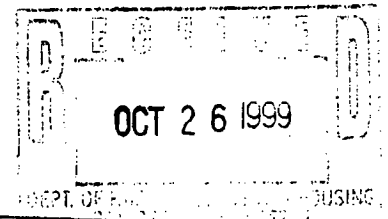
073

THE PARTICULARS ARE:

During the course of my employment as a Shipper, I was racially harassed by David Sanchez and Gilberto Flores, Shippers. The last incident occurred June 3, 1999. I was hired March 20, 1996.

I believe that I was racially harassed, which is discrimination on the basis of my national origin (India). My belief is based on the following:

- A. From approximately October 1, 1998 to June 3, 1999, I was racially harassed by David Sanchez and Gilberto Flores, Shippers. The harassment was verbal in nature (examples on file with Department of Fair Employment and Housing) and occurred daily. The harassment created a hostile working environment.
- B. Although I reported the harassment to Richard Fernandez, Supervisor, the harassment continued.



Typed And Mailed For Signature On October 19, 1999

I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 10-21-1999

At ALTA LOMA

City

JiJo Varghese
COMPLAINANT'S SIGNATURE

DFEH-300-01 (06/97) SB:CO:drj
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DATE FILED October 26, 1999

STATE OF CALIFORNIA

* * * EMPLOYMENT * * *

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # E-199900-J-0488-02

~~EEOC #~~

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

VARGHESE, JIJO (MR.)

ADDRESS

7070 Carina Place

TELEPHONE NUMBER (INCLUDE AREA CODE)

(909) 466-7949

CITY

Alta Loma

STATE

CA

ZIP

91730

COUNTY

San Bernardino

COUNTY CODE

071

**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE,
OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME **K-MART CORPORATION, DISTRIBUTION CENTER**

SANCHEZ, DAVID, As an Individual

ADDRESS

5600 Airport Drive

TELEPHONE NUMBER (INCLUDE AREA CODE)

(909) 390-4515

CITY

Ontario

STATE

CA

ZIP

91761

COUNTY

San Bernardino

COUNTY CODE

071

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX(ES))

- RACE
- SEX
- DISABILITY
- RELIGION
- NATIONAL ORIGIN/ANCESTRY
- DENIAL OF FAMILY/MEDICAL LEAVE
- COLOR
- AGE
- MARITAL STATUS
- MEDICAL CONDITION
- OTHER (SPECIFY)

NO. OF EMPLOYEES/MEMBERS

03000

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) **June 3, 1999**

RESPONDENT CODE

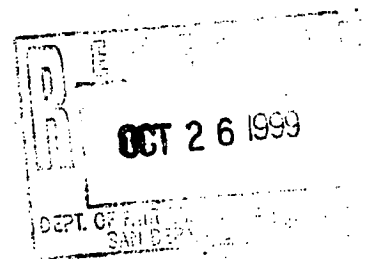
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Dated 10-21-1999

JiJo Varghese

COMPLAINANT'S SIGNATURE

At ALTA LOMA

City

Direct any correspondence to:

LABOR COMMISSIONER, STATE OF CALIFORNIA
Department of Industrial Relations
Division of Labor Standards Enforcement
464 W. 4TH ST., RM. 348
SAN BERNARDINO, CA 92401



PLAINTIFF: JIJO VARGHESE
7070 CARINA
ALTA LOMA, CA 91730

**FAILURE TO APPEAR
MAY RESULT IN THE
DISMISSAL OF YOUR CLAIM**

DEFENDANT: K-MART DISTRIBUTION CENTER
5600 AIRPORT DRIVE
ONTARIO, CA 91764

State Case Number
09-00323-1/SC

NOTICE OF CLAIM AND CONFERENCE - PLAINTIFF

ALL PARTIES in the above matter ARE TO APPEAR for a conference to be held in the Office of the State Labor Commissioner as follows:

PLACE: 464 West 4th Street, Room 348, San Bernardino, CA

DATE: Wednesday, September 8, 1999 TIME: 11:00 AM

The purpose of this conference is to discuss the validity and to settle the claim filed with this Division by the Plaintiff shown above alleging non-payment of:

WAGES EARNED FOR THE PERIOD OF 3-96 TO 6-99, BEING 76 HOURS VACATION (P.T.O) AT \$15.90 PER HOUR.

AMOUNT CLAIMED DUE \$1,208.40

and also alleging additional wages accrued pursuant to Labor Code Section 203 as a penalty at the rate of \$ _____ per day until paid, but not to exceed thirty days.

In addition, you may be subject to penalties due to the State of California, pursuant to Labor Code Section 210.

To the Defendant:

Please bring any supporting material you have, including books, payroll records, time records or other documents that may have bearing on this matter.

Prior to the conference, you may submit to this office a written reply regarding this claim. However, you should still attend the conference.

If this matter is not settled at the conference, a hearing may be scheduled. Any wages awarded as a result of a hearing pursuant to Labor Code Section 98(a) will accrue interest from the date they are found due until they are paid (Labor Code Section [98.1(c)]).

If this claim is not settled, it will be resolved as provided by Section 98 (a) of the Labor Code.

DATED: August 17, 1999

S. Caldwell

S. CALDWELL

Deputy Labor Commissioner

909-383-4110

L.C. 98

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD
DECISION OF THE ADMINISTRATIVE LAW JUDGE INLAND OFFICE OF APPEALS

(909) 987-2212

DATE MAILED: JUL 28 1999

CASE NO : IN - 63742

DATE APPEAL FILED:
JUNE 29, 1999

CLAIMANT : JIJO VARGHESE
APPELLANT 7070 CARINA PL
ALTA LOMA CA 91701-8626

SSA NO.: 604-44-8650
LO#-BYB: 041-06069

DATE AND PLACE OF HEARING:
JULY 27, 1999
RANCHO CUCAMONGA, CALIFORNIA

EMPLOYER : K-MART DISTRIBUTION CTR
5600 AIRPORT DR
ONTARIO CA 91761

ACCOUNT NO.: 147-4030

PARTIES PRESENT:
CLAIMANT

REV

STATEMENT OF FACTS

The claimant appealed from a Department Notice of Determination and Ruling which disqualified him for his benefits under Code Section 1256, and relieved the employer's reserve account of benefit charges, on the ground that the claimant was discharged for reasons tantamount to misconduct under the Code.

The claimant worked as a shipping and receiving clerk in a distribution center for approximately three years. He was separated from his employment on June 2, 1999 under the following circumstances. *for not good reason.*

The claimant was accused of using abusive language to a coworker, who reported an incident to management indicating that she had a witness. However, when the witness was questioned by management the witness indicated that the claimant was not heard to have said anything abusive to the complaining party. Nevertheless, several

days later, the claimant was called in by his supervisor and it was demanded of him that he sign a warning notice.

The claimant's English is very poor, yet the claimant understood the company policy to be that two warning notices would lead to his termination. He tried to explain to the supervisor that the witness had stated that he had not been heard to have said anything bad. The claimant did not understand why he had to sign a warning notice when he had, essentially, been cleared of wrongdoing. The claimant was not trying to be insubordinate but only trying to protect his rights. *bring justice forward*

REASONS FOR DECISION

An individual is disqualified for benefits if he or she has been discharged for misconduct connected with his or her most recent work. (Unemployment Insurance Code, section 1256.)

The employer's reserve account may be relieved of benefit charges if the claimant was discharged for misconduct. (Unemployment Insurance Code, sections 1030 and 1032.)

Citing Maywood Glass Co. v. Stewart (1959) 170 Cal.App.2d 719, the Appeals Board in Precedent Decision P-B-3 defined "misconduct connected with the work" as a substantial breach by the claimant of an important duty or obligation owed the employer, wilful or wanton in character, and tending to injure the employer.

On the other hand, mere inefficiency, unsatisfactory conduct, poor performance as the result of inability or incapacity, isolated instances of ordinary negligence or inadvertence, or good faith errors in judgment or discretion are not misconduct.

The employer has the burden of proving misconduct. (Prescod v. California Unemployment Insurance Appeals Board (1976) 57 Cal.App.3d 29.)

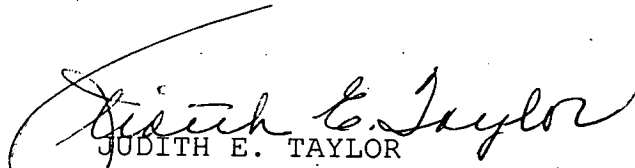
An employee shall substantially comply with all the directions of his or her employer concerning the service on which he or she is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee. (Labor Code, section 2856.)

An employee's deliberate disobedience of a lawful and reasonable instruction of the employer, related to the employer's business, is misconduct. (Precedent Decision P-B-190.)

The claimant had no desire to harm the employer in any way. However, his understanding of the company policy was that he could be terminated after two warnings. The claimant could not understand why he was required to sign a warning when the witness had cleared him of any wrongdoing. The employer, even though duly notified of the hearing, for whatever reason did not appear to give credible sworn testimony to refute the credible sworn testimony of the claimant. Therefore, the claimant must be given the benefit of the doubt and found not disqualified under Code Section 1256. This is based on the fact that the employer has failed to establish that the claimant had a willful disregard for the employer's interests. The Department Notice of Determination and Ruling must therefore be reversed.

DECISION

The Department Notice of Determination and Ruling is reversed. The claimant is found qualified for benefits under Code Section 1256 and benefits are payable provided the claimant is otherwise eligible. The employer's reserve account is liable for benefit charges.


JUDITH E. TAYLOR
Administrative Law Judge

THIS DECISION IS FINAL UNLESS APPEALED WITHIN 20 CALENDAR DAYS FROM THE DATE OF MAILING. FOR APPEAL OR REOPENING RIGHTS, SEE ATTACHED NOTICE.

sb

INSTRUCTIONS FOR FILING PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to the general rules

DEFINITIONS

DEBTOR

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

CREDITOR

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

PROOF OF CLAIM

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

SECURED CLAIM

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

UNSECURED CLAIM

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

UNSECURED PRIORITY CLAIM

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Eastern District of Virginia), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges

in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured (See DEFINITIONS, above).

6. Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available you must attach an explanation of why they are not available.

h Discrimination