

<b>United States Bankruptcy Court</b>		<b>PROOF OF CLAIM</b>
Northern District of Illinois		
In re (Name of Debtor) Kmart Corporation		Case Number 02-02474
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.		
Name of Creditor (The person or other entity to whom the debtor owes money or property) James Johnson		<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.  <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.
Name and Address Where Notices Should be Sent c/o Bradley M. Bole, Esq. Rahdert, Steele, Bryan & Bole, P.A. 535 Central Avenue St. Petersburg, FL 33701		
Telephone No. 727/823-4191		
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR: N/A		Check box if this claim <input type="checkbox"/> replaces <input type="checkbox"/> amends a previously filed claim, dated: _____
<b>1. BASIS FOR CLAIM</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Services performed <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) <input type="checkbox"/> Money loaned Your social security number _____ <input type="checkbox"/> Personal injury/wrongful death Unpaid compensation for services performed <input type="checkbox"/> Taxes from _____ (date) to _____ (date) <input checked="" type="checkbox"/> Other (Describe briefly)—Claim for violation of Americans With Disabilities Act		
2. DATE DEBT WAS INCURRED October, 1999		3. IF COURT JUDGMENT, DATE OBTAINED:
<b>4. CLASSIFICATION OF CLAIM.</b> Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.		
<input type="checkbox"/> SECURED CLAIM \$ _____ Attach evidence of perfection of security interest Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe briefly)  Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ _____  <input checked="" type="checkbox"/> UNSECURED NONPRIORITY CLAIM \$ <u>231,120.00</u> A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.  <input type="checkbox"/> UNSECURED PRIORITY CLAIM \$ _____ Specify the priority of the claim.		<input type="checkbox"/> Wages, salaries, or commissions (up to \$4000)* earned not more than 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 \$1,800* 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 of governmental units—11 U.S.C. § 507(a)(8) <input type="checkbox"/> Other—Specify applicable paragraph of 11 U.S.C. § 507(a) _____ *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.
<b>5. TOTAL AMOUNT OF CLAIM AT THE TIME</b> \$ <u>231,120.00</u> (Unsecured) \$ _____ (Secured) \$ _____ (Priority) <span style="float: right; border: 1px solid black; padding: 2px;">\$ <u>231,120.00</u> (Total)</span>		
<input type="checkbox"/> Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.		
<b>6. CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.		THIS SPACE IS FOR COURT USE ONLY  <div style="font-size: 2em; font-family: cursive;">3/11/02</div>  <div style="font-size: 2em; font-family: cursive;">639 80</div>
<b>7. SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>8. TIME-STAMPED COPY:</b> To receive an acknowledgement of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date March 6, 2002	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) <div style="font-family: cursive; font-size: 1.5em;">Bradley M. Bole</div> Bradley M. Bole, attorney for creditor	

**FILED**  
 UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF ILLINOIS  
 MAR 11 2002  
 KENNETH S. GARDNER, CLERK  
 MAILROOM - KC

THIS SPACE IS FOR COURT USE ONLY

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

JAMES JOHNSON

Plaintiff,

v.

K MART CORPORATION,

Defendant.

CIVIL ACTION

FILE NO. 98-2383-CIV-T-25E

JURY TRIAL DEMAND

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**AMENDED COMPLAINT**

NOW COMES, the plaintiff, James Johnson ("Johnson"), sues defendant, K Mart Corporation ("K Mart") and alleges:

**INTRODUCTION**

1. This action involves a disability claim in violation of the Americans with Disabilities Act ("ADA").
2. Plaintiff, Johnson, was a former manager of retail stores owned and operated by defendant, K Mart.
3. As an employee, Johnson was entitled to the benefits of K Mart's long term disability insurance plan.
4. During the course of his employment with K Mart, Johnson was forced to seek medical and psychological attention due to severe depression and emotional distress.
5. In or around October of 1997, Johnson was taken out of work by his physician due to his mental health condition.
6. Johnson, thereafter, applied for and received long term disability benefits under K

Mart's long term disability benefits plan.

7. Johnson brings this Americans with Disabilities Act ("ADA") lawsuit against K Mart because K Mart's long term disability benefits plan provides for a two year limit on the benefits to which Johnson is entitled for his mental health related disability.

8. There is no such two year limit for physical illnesses.

9. K Mart's two year limitation for mental health illnesses is not related to any cost analysis or mental health illness related claims and, thus, constitutes discrimination against Johnson on the basis of a disability in violation of the Americans with Disabilities Act.

### **JURISDICTION AND VENUE**

10. The plaintiff brings this action to redress violations of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. This court has subject matter jurisdictions over the plaintiff's federal law claims pursuant to 28 U.S.C. § 1331.

11. At the time of the discriminatory conduct complained of herein, the plaintiff in this lawsuit was employed by K Mart in Tampa, Florida. The events which give rise to this lawsuit occurred in Tampa.

12. K Mart "resides" in this District of this United States District Court within the meaning of 28 U.S.C. § 1391(c).

13. Venue is therefore proper in this District of this United States District Court under 28 U.S.C. § 1391(b).

### **THE PARTIES**

14. Defendant, K Mart Corporation, is a Michigan Corporation whose principal place of business is Troy, Michigan.

15. K Mart is registered and authorized to conduct business in the State of Florida and maintains its principal office of operations for Florida in Jacksonville, Florida. K Mart may be served in accordance with Rule 4 of the Federal Rules of Civil Procedure.

16. Plaintiff, James Johnson, is a citizen of the United States and a resident of Florida. Johnson's date of birth is 01/02/43.

17. Johnson began his employment with K Mart in 09/01/67.

18. Johnson submits himself to the jurisdiction and venue of this court.

**COMPLIANCE WITH ADMINISTRATIVE PROCEDURES**

19. The plaintiff incorporates by reference all the preceding paragraphs of this Complaint.

20. Plaintiff, James Johnson, filed a charge of discrimination (Charge No. 151981169) with the Equal Employment Opportunity Commission ("EEOC") within 180 days of the adverse actions of which he complains in this case. By letter dated 08/31/98, Johnson received a Notice of Right to Sue from the EEOC and files this Complaint to assert claims under the Americans with Disabilities Act within ninety (90) days of receipt of the Right to Sue letter from the EEOC.

**FACTUAL ALLEGATIONS**

21. The plaintiff incorporates by reference all the preceding paragraphs of this Complaint.

22. Johnson was employed as a Store Manager at K Mart's store 4245 in Tampa, Florida.

23. In or about February of 1997, Johnson was demoted from the Tampa store which

was a high volume (\$13 million store) to Store 7196 in St. Petersburg, Florida which was a lower volume store (\$7 million).

24. On October 27, 1997, approximately 10 months after his demotion to the St. Petersburg, Florida store, Johnson's physician took him out of work.

25. Johnson's physician took him out of work due to a mental health condition.

26. Johnson has never been able to return to work.

27. Johnson has applied for and received long term disabilities benefits under K Mart's long term disability benefits plan. However, under the terms of that policy, benefits expire after two years.

28. Johnson brings this Americans with Disabilities Act lawsuit against K Mart because K Mart's long term disability benefits plan provides for a two year limit on the benefits to which Johnson is entitled for his mental health related disability.

29. There is no such two year limit for physical illnesses under K Mart's long term disability benefits plan.

30. K Mart's two year limitation for mental health illnesses is not related to any cost analysis of mental health illness related claims, and, thus, constitutes discrimination against Johnson on the basis of a disability in violation of the Americans with Disabilities Act.

### **DISABILITY DISCRIMINATION**

#### **(COUNT I)**

31. The plaintiff incorporates by reference all the preceding paragraphs of this Complaint.

32. K Mart has violated the Americans with Disabilities Act by limiting its long term

disability benefits to a period of two years to this beneficiaries who suffer from mental health disabilities. K Mart's two year benefit limitation is not related to, or the product of, any cost analysis for mental health disability claims.

33. K Mart does not impose any such time limitation with respect to long term disability benefit claims which are based upon physical illnesses.

34. K Mart's above described actions constitute discrimination against plaintiff Johnson on the basis of disability and constitute violations of the Americans with Disabilities Act of 1990.

#### **DEMAND FOR RELIEF**

**WHEREFORE**, plaintiff, Johnson demands relief from the court as follows:

35. The court declare that the defendant's above-described actions violated the plaintiff's rights secured under the Americans with Disabilities Act.

36. The court permanently enjoin the defendant from engaging in any employment policy or practice that discriminates against individuals on the basis of disability; that the court order the defendant to continue the long term disability and until such time as he is able to return to work or until the age of 65.

37. The court award compensatory and punitive damages be awarded to the plaintiff against the defendant, including damages for lost long term disability benefits, pain and suffering, and emotional distress.

38. The plaintiff recover prejudgment interest on any award of back disability benefits.


39. The court award the plaintiff his attorneys' fees and costs; and the plaintiff be

awarded sch other relief that the court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, Johnson, demands a trial by jury on all issues so triable.

Respectfully submitted,

  
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