

*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) TINA HAYES	<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 Jan J. Kinzie Lowe Gray Steele & Darko, LLP P.O. Box 44924, Indianapolis, IN 46244-0924 Telephone No 317-236-8020	<input checked="" 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:	<input type="checkbox"/> Check here if this claim 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 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 _____
<input type="checkbox"/> Taxes	<input checked="" type="checkbox"/> Other 29 USC Sec. 2601 et seq	Unpaid compensation for services performed from _____ to _____ (date) (date)
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114 (a)		
2. DATE DEBT WAS INCURRED: 9-1-00		3. IF COURT JUDGMENT, DATE OBTAINED:
4. Total Amount of Claim at Time Case Filed: \$ <u>Unliquidated</u> 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 type="checkbox"/> Check this box if you have an unsecured priority claim. Amount entitled to priority \$ _____ 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 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.		THIS SPACE IS FOR COURT USE ONLY 809 FILED UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS MAR 18 2002 3-18-02 KENNETH S. GARDNER, CLERK MAILROOM - LL
8. SUPPORTING DOCUMENTS: Attach copies of supporting documents, 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.		
Date: 2/21/02	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) <i>Tina Hayes</i>	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

State of Indiana)
)
County of Marion)

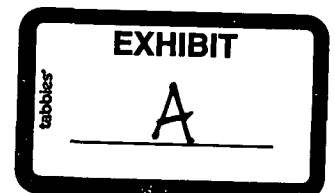
In the Marion Superior Court
Civil Division, Room No. _____

TINA HAYS,)
)
Plaintiff,)
)
v.)
)
K-MART CORPORATION,)
)
Defendant.)

COMPLAINT

Comes now Plaintiff and for her complaint against Defendant asserts as follows:

1. Tina Hays ("Hays") is a resident of Cloverdale, Indiana.
2. K-Mart Corporation ("K-Mart") is an Michigan corporation which owns and operates stores in Marion County, Indiana.
3. Hays was a full-time employee of K-Mart for 18 years until the fall of 2000 or early 2001 when she was unlawfully deprived of her rights under the Family Medical Leave Act, 29 U.S.C. §2601 et seq. ("FMLA").
4. In late August 2000, Hays, working at K-Mart store no. 3251 in Indianapolis, Indiana, asked her new store manager for time off to provide physical and mental care for her mother who was dying of cancer. At the time, Hays' mother was terminally ill and given only weeks to live.
5. Instead of treating Hays' request with compassion and in compliance with the FMLA, the store manager told Hays that her priorities were wrong and that if she wanted a job



she needed to work. Her request was denied and she was provided no information regarding her FMLA rights.

6. Based upon the nature of Hays' request, the store manager was well aware, or should have been well aware, that Hays' request fell firmly within the qualifications for FMLA leave.

7. On September 6, 2000, Hays' mother passed away.

8. Hays, who has a history of physical and psychological illness well known to her store manager, experienced a deep depression upon the loss of her mother, a depression worsened by the fact that Hays was not granted the leave she needed to comfort and care for her mother during her final days.

9. Hays asked her store manager for FMLA-qualifying leave to seek treatment for the depression that made her incapable of work. Once again the store manager summarily dismissed the request, despite receiving a medical report confirming Hays' inability to work because of her depression.

10. Faced with such callous disregard for her legitimate needs and the realizing that she would be discharged for not appearing for work (and not being aware of her FMLA rights), Hays pursued the only course known by her to be available – she filed for disability.

11. Hays claim for disability was denied.

12. Hays complained on a timely basis to K-Mart about her treatment by her store manager and asked for a transfer to another store. Her request was denied, being told that her store manager wasn't that bad and that she would find working at another store worse.

13. Understandably, Hays eventually obtained employment elsewhere, taking a significant cut in pay and benefits.

14. As a consequence of the violations of her rights and her constructive discharge, Hays suffered, among other things, lost wages, emotional distress, and significant medical bills.

15. K-Mart is an "employer" as that term is defined by 29 U.S.C. §2611(4).

16. Hays was an "eligible employee," as that term is defined by 29 U.S.C. §2611(2).

17. Hays mother, and then Hays, had a "serious health condition" as that term is defined by 29 U.S.C. §2611(11).

18. Pursuant to 29 U.S.C. §2615, it is unlawful for an employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this subchapter.

19. The serious health condition of Hays' mother and then Hays made it medically necessary for her to take leaves pursuant to 29 U.S.C. §2612(a).

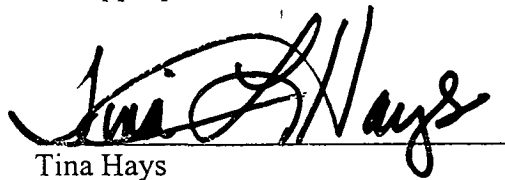
20. K-Mart violated Hays' federal rights under the FMLA in one or more of the following ways:

- a. K-Mart interfered with Hays' exercise of her rights under the FMLA;
- b. K-Mart discriminated against Hays because of her attempt to exercise her rights under the FMLA;
- c. K-Mart restrained Hays' exercise of her rights under the FMLA;
- d. K-Mart constructively discharged Hays because of the exercise of her rights under the FMLA.

WHEREFORE, as a result of K-Mart's violation of Hays' rights under the FMLA, Hays seeks the following relief:

- a. Compensatory damages, including, but not limited to, all wages, salary, employment benefits, and/or other compensation denied or lost by Hays as a result of K-Mart's violation of Hays' rights under the FMLA;
- b. All monetary losses sustained by Hays as a direct result of K-Mart's violation of Hays' rights under the FMLA;
- c. Front Pay;
- d. Damages for lost future earning capacity;
- e. Interest;
- f. Liquidated damages equal to the sum of a, b, c and d above;
- g. Attorney fees and costs;
- h. Appropriate equitable relief;
- i. Other relief as is just and proper.


Wherefore, for the forgoing reasons, Plaintiff respectfully requests a judgment in her favor and for an award of lost wages, reimbursement for medical costs, compensation for physical and emotional injuries, and for all other appropriate relief.



Tina Hays

Respectfully submitted,

LOWE GRAY STEELE & DARKO, LLP



Jan J. Kinzie, Atty. No. 6604-49
Attorney for Tina Hays

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