

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF <u>Northern Illinois</u>		<b>PROOF OF CLAIM</b>
Name of Debtor <u>Kmart Corporation</u>		Case Number <u>BK # 02 B 02474</u>
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): <u>Ada Cabrera Colon, Nelson Machado Inserni, and the Conyudal Partnership formed by them</u>		<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 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.
Name and address where notices should be sent: <u>Sarraga &amp; Arroyo Law Offices</u> <u>Metroparque VII, Suite 201</u> <u>Metropark Office Park</u> Telephone number: <u>Guaynabo, P.R. 00948</u>		
Account or other number by which creditor identifies debtor: <u>U.S.D.C. - P.R.</u> <u>Case No. 01-1327 (JAF)</u>		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
<b>1. Basis for Claim</b> <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input checked="" type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____ <div style="margin-top: 10px;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)  <input type="checkbox"/> Wages, salaries, and compensation (fill out below)            Your SS #: _____            Unpaid compensation for services performed from _____ to _____  <div style="text-align: center;">(date) (date)</div> </div>		
<b>2. Date debt was incurred:</b> <u>N/A</u>		<b>3. If court judgment, date obtained:</b> <u>N/A</u>
<b>4. Total Amount of Claim at Time Case Filed:</b> \$ <u>1,850,000.00</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.		
<b>5. Secured Claim.</b> <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, if any: \$ _____		<b>6. Unsecured Priority Claim.</b> <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 \$4,650)* 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 \$2,100* 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 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> 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. <b>9. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY <div style="text-align: center; font-size: large; font-weight: bold;">859 SM</div> <div style="text-align: center;">           RECEIVED            TRUMBULL SERVICES            COMPANY  <b>3-26-02</b>            2002 MAR 26 PM 2:50            BANKRUPTCY         </div>
Date <u>3/21/02</u>	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). <u>Ada F. Colon - Attorney of Records</u>	
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.		

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

ADA CABRERA COLON, NELSON  
MACHADO INSERNI, and the  
LEGAL CONJUGAL PARTNERSHIP  
formed by them

Plaintiff,

vs.

K MART CORPORATION

Defendant

CIVIL NO. 01-

1327 JAF

PERSONAL INJURY  
DAMAGES

COMPLAINT

TO THE HONORABLE COURT:

Come now plaintiffs, **ADA CABRERA COLON, NELSON MACHADO INSERNI** and the **LEGAL CONJUGAL PARTNERSHIP** formed by them, through their undersigned attorneys, and very respectfully state, allege and pray as follows:

**I. JURISDICTION**

1.1 This Honorable Court has jurisdiction over this civil action pursuant to 28 U.S.C.A. sec 1332, where the matter in controversy exceeds the sum value of Seventy Five Thousand Dollars (\$75,000.00), exclusive of interest and costs, and is between citizens of different States.

1.2 The facts set forth in this Complaint are actionable under *Article 1802 et seq. of the Civil Code of Puerto Rico, 31 L.P.R.A. sec. 5141, et seq.*

1.3 Plaintiffs demand trial by jury

## II. PARTIES

2.1 Plaintiff **ADA CABRERA COLON, NELSON MACHADO INSERNI**, and the **LEGAL CONJUGAL PARTNERSHIP** formed by their marriage, are citizens of the Commonwealth of Puerto Rico and have their residence in Juana Díaz, Puerto Rico.

2.2 Defendant, **K-MART CORPORATION** is a corporation organized under the laws of the State of Michigan, and has its principal place of business in the State of Michigan, United States.

2.3 At all time relevant herein, defendant **K-MART CORPORATION** has been authorized to conduct, and has conducted the business of retail of general merchandise in Puerto Rico through a chain of stores, under the name of "*K-MART*".

2.4 At all times relevant herein, Defendant **K-MART CORPORATION** was the owner, administrator and operator of the *K-MART* store (Store No. 3393) and facility located in Juana Díaz, P.R. [hereinafter the "**Store**"], the "situs" and location where plaintiff **ADA CABRERA COLON'S** injury occurred.

2.5 At all times relevant herein, Defendant **K-MART CORPORATION** had and has the duty to take the necessary reasonable measures to protect all patrons, consumers, visitors or any other persons lawfully within the premises and retail facilities of the store against any foreseeable risk or danger of personal injury.

## III. GENERAL ALLEGATIONS OF FACT

3.1 On March 25, 2000, at on or around 8:00 p.m., Plaintiff **ADA CABRERA COLON** visited the Juana Díaz K-MART Store in the company of her husband Nelson Machado Inserni and her two small children as customers and/or business invitees.

3.2 Plaintiff **ADA CABRERA COLON** went to the School Supplies' Department of the *K MART* store while the remaining members of her family went shopping to other departments.

3.3 While plaintiff **ADA CABRERA COLON** was standing at the school supplies' aisle where the notebooks and other supplies are located, looking at some notebooks, an assortment of book bags made of leather and hard plastic with metal wheels on a shelf or rack unit stacked or tiered from above became dislodged and fell downwards. In doing so, they landed on her upper torso striking her head, neck, back, shoulders and arms. As a result of the strong, violent and abrupt impact to her head, plaintiff **ADA CABRERA COLON** became dizzy, disoriented, and light-headed and was caused to fall down and backwards towards the floor, and to sustain multiple injuries and suffer trauma to her body.

3.4 At the top level of this aisle, at an approximate height of over eight (8) feet, there were numerous stacks of such book bags, made of leather and hard plastic and with wheel (size two feet by one 2'x 1.5'). These stacks started upwards from an approximate height of eight feet from the floor and almost reached the height of the acoustic ceiling at the top of the store.

3.5 Plaintiff **ADA CABRERA COLON** believes that about ten or twelve of these bags fell on top of her within fractions of seconds from each other.

3.6 Two female employees who heard the noise caused by the falling bags rushed over to assist Plaintiff **ADA CABRERA COLON** who complained that she was hurting and it was very painful, and these two employees immediately referred Plaintiff **ADA CABRERA COLON** to the Security Manager of the store.

3.7 Plaintiff reported the accident to the *K MART* Security Manager at his office, and an accident report was prepared.

3.8 Plaintiff **ADA CABRERA COLON** was taken to the Emergency Room at *Hospital San Cristóbal*, Cotto Laurel, Ponce, P.R. at about 10:00 p.m. to seek medical attention and treatment for her injury to her head; neck, back, shoulders and arms. On arrival, Plaintiff **ADA CABRERA COLON** was experiencing more sharp pain in her neck and shoulders, a headache, and pain in all of her body.

3.9 The bags that struck Plaintiff **ADA CABRERA COLON** from above fell down due to the careless, improper, negligent and dangerous manner in which they had been stacked or otherwise arranged.

3.10 The injury to Plaintiff **ADA CABRERA COLON** was proximately caused by the fault and/or negligence of the agents and/or employees of Defendant's *K-MART* store who either stacked and/or allowed these bags to be stacked on the top of the aforementioned aisle at such a height and without providing any security measure(s) to prevent them from falling down, creating thereby an unreasonably dangerous condition. It was foreseeable that the unsecured stack of bags could fall down causing injury to any patron and customer who could there be found, such as it happened to Plaintiff, **ADA CABRERA COLON**, in this case.

3.11 Defendant **K-MART CORPORATION** is liable for the above mentioned fault or negligence of its agents and/or employees.

3.12 Moreover, the area where Plaintiff's injury occurred was located under the exclusive supervision, custody, care and control of Defendant **K-MART CORPORATION** and, thus, Plaintiff **ADA CABRERA COLON**'s injury was adequately and proximately caused due to Defendant's failure to comply with its duty to take the reasonable necessary measures to maintain said premises in safe and secure conditions for the use of its customers, patrons and visitors.

3.13 Further, defendant **K MART** had actual knowledge of numerous prior incidents where objects had fallen from top shelves because of the unsafe staking of merchandise inside its stores; whereby defendant **K MART** knew or should have known of the dangerous and hazardous conditions that were being maintained in its store. And because of its failure to take any action to remedy such unsafe conditions, it was foreseeable that injury could and would result to the general public, the store's customers, patrons and invitees, and to plaintiff, **ADA CABRERA COLON**.

3.14 Defendant **K MART** had sole custody and control over how its merchandise were to be marketed, stored, stowed and displayed, and specifically, the book bags which were negligently stacked and maintained in its premises, and defendant **KMART** breached its duty of care towards the general public, the store's customers, patrons and invitees, and towards plaintiff, **ADA CABRERA COLON**.

#### **IV. CAUSES OF ACTION**

##### **FIRST CAUSE OF ACTION**

4.1 All allegations contained in preceding Paragraphs 1 through 3.14, inclusive, of this **Complaint** are incorporated by reference as if fully realleged herein.

4.2 As a direct consequence of the above stated injury, Plaintiff **ADA CABRERA COLON** sustained neck, cervical, lumbar, and neurological injuries, a head trauma, and multiple body trauma.

4.3 Due to the head trauma, Plaintiff suffered and has been suffering from continuous headaches, vertigo, numbness and dizzy spells, and due to the trauma received throughout her body she has been suffering from intense neck, shoulder, and back pains and a feeling of numbness and shock which have further resulted in severe loss of sleep and an impairment in her mobility

4.4 Plaintiff **ADA CABRERA COLON** is entitled to receive as just and fair compensation for all the physical pains, injuries and disabilities mentioned hereinabove, a reasonable money amount of no less than **ONE MILLION DOLLARS (\$1,000,000.00)**.

#### **SECOND CAUSE OF ACTION**

4.5 All allegations contained in preceding paragraphs 1 through 3.14, inclusive, of this **Complaint** are incorporated by reference as if fully realleged herein.

4.6 As a direct consequence of these physical pains, injuries and disabilities, Plaintiff **ADA CABRERA COLON** has suffered, is suffering and will continue to suffer in the future irritability, anxiety, depression, disorientation, confusion, emotional distress, numbness, dizziness spells and other related symptoms which have and will require treatment and which have also permanently and partially disabled her in her general physiological functions.

4.7 As a direct consequence of these physical and emotional pains, injuries and disabilities, Plaintiff **ADA CABRERA COLON** has suffered, is suffering and will continue to suffer in the future severe mental, moral and emotional pain, strong and frequent neck and back pains, neurological deficit and impairment, and will be required to undergo future care and attention. all of which has seriously impaired the quality of her life and the natural enjoyment of her work. marriage, family relations, and all other personal affairs all to her damage in the sum of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00)**.

#### **THIRD CAUSE OF ACTION**

4.8 All allegations contained in preceding paragraphs 1 through 3.14, inclusive, of this **Complaint** are incorporated by reference as if fully realleged herein.

4.9 As a direct result of the physical and mental damages sustained by Plaintiff **ADA CABRERA COLON**, her husband **NELSON MACHADO INSERNI** has suffered, is suffering and will continue to suffer in the future the loss of consortium and services that his wife used to provide him, as well as severe mental, moral and emotional pain and suffering, anguish and distress.

4.10 Plaintiff **NELSON MACHADO INSERNI** is entitled to receive as just and fair compensation for all these losses, mental and emotional damages a reasonable amount of no less than **TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00)**.

#### **FOURTH CAUSE OF ACTION**

4.11 All allegations contained in preceding paragraphs 1 through 3.14, inclusive, of this **Complaint** are incorporated by reference as if fully realleged herein.

4.12 Due to the physical and emotional damages and disabilities sustained by Plaintiff **ADA CABRERA COLON**, she has been and will be unable to perform work and she has incurred in the past and will continue to incur in expenses in the future in order to receive medical treatment and other related expenses, as a result of which the **LEGAL CONJUGAL PARTNERSHIP** formed by **ADA CABRERA COLON** and **NELSON MACHADO INSERNI** has sustained a loss for the value of such work, loss of income and services and has sustained a loss for the past and future cost of such medical treatment.

4.13 Therefore, the **LEGAL CONJUGAL PARTNERSHIP** formed by **ADA CABRERA COLON** and **NELSON MACHADO INSERNI** is entitled to receive as just and fair compensation for all those past and future expenses, loss of past and future income, and loss of value



of her work which are reasonably estimated in the amount of no less than **ONE HUNDRED THOUSAND DOLLARS (\$100,000.00)**.

#### **FIFTH CAUSE OF ACTION**

4.16 All allegations contained in preceding paragraphs 1 through 3.14, inclusive, of this **Complaint** are incorporated by reference as if fully realleged herein .

4.17 If Defendant **K MART** denies responsibility for the facts alleged in this **Complaint**, and for Plaintiffs' injuries and damages due to the Defendant's obstinate and temerarious denial. Plaintiffs are also entitled to be awarded prejudgment and post-judgment interest to be computed from the amount finally awarded to them, in addition to a reasonable amount for attorney's fees.

WHEREFORE it is respectfully requested from this Honorable Court that judgment be entered in favor of Plaintiffs **ADA CABRERA COLON** and **NELSON MACHADO INSERNI** and the **LEGAL CONJUGAL PARTNERSHIP** formed by their marriage against defendant **K MART CORPORATION**:

- (a) granting Plaintiffs the requested sums of this Complaint;
- (b) granting Plaintiffs any other relief that they may be entitled as a matter of law; and.
- (c) awarding Plaintiffs prejudgment and post-judgment interest, all litigation costs, and a reasonable amount for attorney's fees.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this <sup>21<sup>st</sup></sup> day of March, 2001.

JOSE F. SARRAGA, ESQ.  
USDC-PR NO. 118913  
JORGE L. ARROYO ALEJANDRO, ESQ.  
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A handwritten signature in cursive script, appearing to read "Jose F. Sarraga", written over a horizontal line.

c/c: Cabrera v. Mota complaint