

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF ILLINOIS **PROOF OF CLAIM**

Name of Debtor **K-MART CORP.** 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) **MARIA DE LOURDES SEPULVEDA MONTALVO**

Name and address where notices should be sent
FREDDIE PEREZ GONZALEZ, ESQ.
P.O. BOX 193729
SAN JUAN, PR 00919-3729
 Telephone number: **(787) 751-4334**

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.

Check box if you have never received any notices from the bankruptcy court in this case

Check box if the address differs from the address on the envelope sent to you by the court

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:
01-1961 (JAG) DISTRICT COURT OF PUERTO RICO

Check here if this claim replaces a previously filed claim, dated: _____
 amends

1. Basis for Claim

Goods sold Retiree benefits as defined in 11 U.S.C. § 1114(a)
 Services performed Wages, salaries, and compensation (fill out below)
 Money loaned Your SS #: _____
 Personal injury/wrongful death Unpaid compensation for services performed
 Taxes from _____ to _____
 Other _____ (date) (date)

2. Date debt was incurred: **SEPTEMBER 10, 1999** **3. If court judgment, date obtained:**

4. Total Amount of Claim at Time Case Filed: \$ **2,450,000.00**
 If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.
 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.

Check this box if your claim is secured by collateral (including a right of setoff).
 Brief Description of Collateral:
 Real Estate Motor Vehicle
 Other _____

Value of Collateral: \$ _____

Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____

6. Unsecured Priority Claim.

Check this box if you have an unsecured priority claim
 Amount entitled to priority \$ _____
 Specify the priority of the claim:

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).

Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).

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).

Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)

Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8)

Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____)

*Amounts are subject to adjustment on 4/1/01 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

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: 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.

9. Date-Stamped Copy: 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

XP 908

RECEIVED
 NATIONAL SERVICES
 COMPANY

29 MAR 29 PM 2:43

BANKRUPTCY
3/29/02

Date: **3/22/02**

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): **Attorney for Freddie Pérez González plaintiff**

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

MARIA DE LOURDES SEPULVEDA
MONTALVO by herself and representing
minor ANDREA RIVERA SEPULVEDA

Plaintiffs

vs.

KMART CORPORATION d/b/a KMART or
BIG KMART and INSURANCE
COMPANIES XYZ

Defendants

CASE NO.:

01-1961 JAB

CIVIL ACTION

PLAINTIFFS DEMAND
TRIAL BY JURY

RECEIVED AND FILED
01 JUL 16 AM 11:45
CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

COMPLAINT

TO THE HONORABLE COURT:

Plaintiffs, through their undersigned attorneys, for their cause of action respectfully
allege and pray as follows:

I
Jurisdiction and Venue

1. This is a tort action due to the negligence of the defendant, Kmart Corporation, d/b/a Kmart or Big Kmart ("Kmart"), who operates a chain of retail department stores through the United States and Puerto Rico who caused damages and injuries to the plaintiffs.

2. Plaintiffs are all citizens of Puerto Rico.

3. Defendant is a corporation, organized under the laws of Michigan, with principal offices in that state, or in any state other than Puerto Rico.

4. The matter in controversy exceeds the amount of \$75,000 exclusive of interests and costs.

5. The cause of action arose in one of defendants' stores, located in Trujillo Alto, Puerto Rico, and the witnesses are in Puerto Rico.

6. Based on the before stated, jurisdiction of this court lies in diversity of citizenship, pursuant to 28 U.S.C. Sec.1332(a) and venue lies in this district.

II

Facts Common to all Causes of Actions

A. The Parties

7. Plaintiff María de Lourdes Sepúlveda Montalvo ("Mrs. Sepúlveda") is the divorced mother and legal guardian with custody over her minor daughter, plaintiff Andrea Rivera Sepúlveda ("Andrea"). Both live in San Juan, Puerto Rico.

8. Mrs. Sepúlveda is a school professor with a Doctor Degree with a concentration in special education.

9. Andrea is 17 years old and studies on her first year of college at the University of Puerto Rico, Carolina Campus.

10. Kmart is dedicated to the general merchandise retailing industry through 2,106 Kmart stores with locations in each of the 50 United States, Puerto Rico, the United States Virgin Islands, and Guam.

11. Codefendants Insurance Companies XYZ are the fictitious names of the insurance companies which had issued and maintained in full force and effect insurance policies on behalf of Kmart, under whose terms and conditions they are jointly and severally liable with its insured for the facts and damages herein, and assume the citizenship of their insured. Once the identities of said insurance companies are known, the plaintiffs will request leave to amend the complaint to incorporate their correct names.

B. The negligence

12. On or about September 10, 1999 Mrs. Sepúlveda was shopping at Kmart store in Trujillo Alto, Puerto Rico.

13. While browsing at some merchandise a box filled with wooden tables that were stacked on top of a merchandise rack fell over Mrs. Sepúlveda, injuring her head, neck, and shoulders and trapping her against the rack of merchandise where she remained in great pain and fear for several minutes until released.

14. The above incident was due to the sole and exclusive negligence of the defendant when, among other reasons, it kept and warehoused said merchandise improperly and in an unsafe manner creating a dangerous situation to its patrons and customers.

15. Because of Kmart's negligence, the defendants are joint and severally liable to the plaintiffs for their damages, as provided by Art. 1802 of the Civil Code of Puerto Rico, 31 LPRA §5141.

C. Mrs. Sepúlveda's Damages

16. As a result thereof, Mrs. Sepúlveda suffered multiple traumas to her head, neck, back, and shoulders and has developed a chronic condition of upper and lower back muscle spasms, right shoulder depression, and right and left cervical compression.

17. Her constant muscle's spasms and tension have also made her to lose her neck's natural curvature ("lordosis") developing also a permanent condition known as "straight neck", which prevents her from rotating her head and which can be best described as a permanent torticollis.

18. Because of all of the above, Mrs. Sepúlveda has been suffering from constant physical pain and discomfort. Her life has become unbearable. Her physical appearance has changed because her back is combed, her neck is straight, and she has lost a significant amount of weight.

19. Mrs. Sepúlveda has visited several physicians and has required multiple treatments and therapies, including psychiatric treatment, which has required her to incur in great expenses, but her condition keeps worsening.

20. As a result of the above, Mrs. Sepúlveda has been also diagnosed as suffering from panic attacks with agoraphobia and major depression.

21. She has also become depressed, moody, and irritable and has suffered and is suffering deep emotional anguish.

22. Mrs. Sepúlveda has become physically incapacitated to the extreme of not being able to work any longer at Academia San Jorge in San Juan, Puerto Rico, where she used to work as a special education teacher.

23. The above damages are estimated in the following amounts:

- (a) \$1,000,000 for her physical damages;
- (b) \$1,000,000 for her emotional suffering;
- (c) \$300,000 for past and future medical expenses;
- (d) \$150,000 for past and future loss of income.

D. Andrea's Damages

24. At the time of her mother's accident, Andrea was a fourteen-year-old teenager who was just in the process of being adjusted to her parents divorce.

25. By that time, Mrs. Sepúlveda was Andrea's sole companionship, guidance, best friend, and emotional support.

26. Because of her mother's physical and emotional damages their relationship suddenly changed.

27. Due to the above, Andrea developed a major depression, that has required and will require psychiatric treatment.

28. Andrea's depression was of such nature that she attempted against her life.

29. Andrea has also lowered her academic performance and has had problems of discipline, which did not occur before her mother's accident. This includes the expulsion from her high school for insubordination.

30. Andrea's emotional damages and suffering are estimated in the amount of \$1,000,000.

31. The cost of Andrea's past and future psychiatric treatment is estimated in the amount of \$250,000.

32. Per letter dated July 14, 2000 by certified mail the plaintiffs notified K-Mart and their claims adjusters of an extrajudicial claim which tolled the statute of limitations in the instance case (Exhibit A).

33. From thereon the plaintiffs and the defendants commenced settlement discussions that were interrupted on March 16, 2001 after the plaintiffs notified a ten (10) day term to the defendants to conclude their discussions (Exhibit B).

WHEREFORE, plaintiffs pray for a judgment in their favor and against defendants, ordering payment of the above-mentioned amounts, together with interests thereon from the date of filing of the present complaint, plus costs, and reasonable attorneys' fees.

PLAINTIFFS DEMAND TRIAL BY JURY.

In San Juan, Puerto Rico, this 16th day of July, 2001.

FREDDIE PEREZ-GONZALEZ & ASSOC., P.S.C.

P.O. Box 193729

San Juan, PR 00919-3729

Tel.: (787) 751-4334

Fax: (787) 751-1116

E-Mail: perez.freddie@att.net



By: _____

Freddie Pérez-González
UDSC-PR 119005

FREDDIE PEREZ GONZALEZ & ASSOC.

LAW FIRM-BUFETE LEGAL
SUITE 433 HOME MORTGAGE PLAZA
268 PONCE DE LEON AVE., HATO REY, P.R. 00918

EXHIBIT A

P.O. BOX 193729
SAN JUAN, P.R. 00919-3729
Tel. (787)751-4334
(787) 763-3632
Fax (787) 751-1116
perez.freddie@att.net

July 14, 2000

FAX (850) 385-1681

**CERTIFIED MAIL
#7099-3400-0005-2019-1783**

Mr. Alex Díaz
Claims Adjuster
Cambridge Integrated
Services Group, Inc.
P.O. Box 3697
Tallahassee, FL 32315-3697

Dear Mr. Díaz:

**Re.: Mrs. María Sepúlveda-Montalvo
Soc. Sec. #584-80-4828**

Our firm represents Mrs. María de Lourdes Sepúlveda-Montalvo who on September 10, 1999 suffered an injury to her head, neck, and shoulders due the negligence of to your representative Big Kmart store, located in Trujillo Alto, Puerto Rico.

We have been informed that you have recently trying to contact Mrs. Sepúlveda-Montalvo. This is in order to put you and your representative Big Kmart on notice that any further communication regarding this matter should be through our office.

Big Kmart's negligence in omitting to secure some store's merchandise that fell on Mrs. Sepúlveda-Montalvo has caused her several physical damages and has impaired her and her daughter's Andrea Rivera-Sepúlveda, a minor, emotional health.

As of this moment, our firm is in the process of gathering all the medical evidence in order to ascertain our client's damages, that as of now we estimate exceed \$1,000,000.00.

In furtherance thereof, please send to our office copies of all the documents prepared by your company regarding this accident, including but not limited to, a copy of the accident report prepared by your client and the name of your client's insurance company covering these risks.

Finally, be advised that this letter also intends to toll any statute of limitations regarding this matter.

Cordially,

Freddie Pérez-González

mtwv

c: Mrs. María Sepúlveda-Montalvo
Big Kmart

cambridge integrated-14jul2000.wpd

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services
- Complete items 3, 4a, and 4b
- Print your name and address on the reverse of this form so that we can return this card to you
- Attach this form to the front of the mailpiece. Or on the back if space does not permit
- Write "Return Receipt Requested" on the mailpiece below the article number
- The Return Receipt will show to whom the article was delivered and the date delivered

Also wish to receive the following services (for an extra fee):

- Addressee's Address
- Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:
Alex Diaz
Claims Adjuster
Cambridge Integrated Serv. Group
P.O. Box 3697
Tallahassee, FL 32315-3697

4a. Article Number
7099-3400-0005-2019-1763

4b. Service Type
 Registered
 Express Mail
 Certified
 Insured
 COD

5. Received By: (Print Name)
Alex Diaz

6. Signature: (Addressee or Agent)
(Signature)

7. Date of Delivery
7-18-00

8. Addressee's Address (if different from above and fee is paid)
Tallahassee, FL 32315-3697

PS Form 3811, December 1994
102595-98-B-0229 Domestic Return Receipt

Thank you for using Return Receipt Service.

**U.S. Postal Service
CERTIFIED MAIL RECEIPT**
(Domestic Mail Only; No Insurance Coverage Provided)

Article Sent To:
Re: Maria Sepulveda-Montalvo 7-14-2000

Postage	\$.33
Certified Fee	1.40
Return Receipt Fee (Endorsement Required)	1.30
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 2.98

Stamp: LAS AMERICAS POSTAL STORES 14 JUL 2000

Name (Please Print Clearly) (to be completed by addressee)
Alex Diaz, Cambridge Integrated Serv.
Street, Apt. No., or PO Box No.
P.O. Box 3697
City, State, ZIP+4
Tallahassee, FL 32315-3697

PS Form 3800, July 1999 See Reverse for Instructions

EPRT 6T02 5000 004E 6P02

HP OfficeJet
Personal Printer/Fax/Copier/Scanner

Fax History Report for
Freddie Perez-Gonzalez
787-751-1116
Jul-14-00 9:46am

Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Jul 14	9:45am	Sent	18503851681	0:42	2	OK

Alex Diaz

FREDDIE PEREZ GONZALEZ & ASSOC.

LAW FIRM-BUFETE LEGAL
SUITE 433 HOME MORTGAGE PLAZA
268 PONCE DE LEON AVE., HATO REY, P.R. 00918

P.O. BOX 193729
SAN JUAN, P.R. 00919-3729
Tel. (787)751-4334
(787) 763-3632
Fax (787) 751-1116
perez.freddie@att.net

March 16, 2001

FAX (850) 385-1681

CERTIFIED MAIL

#7099-3400-0017-9730-7761

Mr. Marc Cosme
Claims Adjuster
Cambridge Integrated
Services Group, Inc.
P.O. Box 3697
Tallahassee, FL 32315-3697

Dear Mr. Cosme:

**Re.: Mrs. María Sepúlveda-Montalvo
Soc. Sec. #584-80-4828**

I make reference to our conversation of March 13, 2000 where you offered \$5,000 to settle this matter. As I told you, Mrs. Sepúlveda did furnish all of her medical records to Kmart so they must be in your possession. As you will see, our client has developed a permanent injury consisting of a straight neck syndrome that subjects her to constant pain, which forced her to limit her work activities and which has caused her a deep-emotional condition. Her only daughter, Andrea Rivera, has been also emotionally affected, including a suicidal attempt. If this case goes to trial, I bet the verdict will be no less than \$3 million (enclosed please find copy of her psychiatrist report).

On July 14, 2000, when we made our formal demand of \$1,000,000 we were not counting with Andrea's damages (we also requested you to produce all documents that your company has, but this was not complied with).

As a last effort to settle, we are willing to recommend our clients \$1,250,000 for all their damages, which offer we will maintain for ten (10) days. If the same is not accepted, we will sue in the Federal Court for an amount much in excess.

Cordially,


Freddie Pérez-González

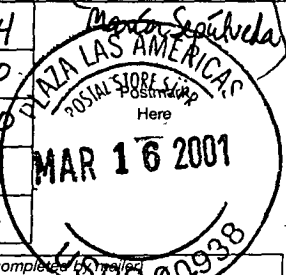
mtw
Enclosure
c: Mrs. María Sepúlveda-Montalvo

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

Re: carta 3-16-2001

File de

Postage	\$.34
Certified Fee	1.90
Return Receipt Fee (Endorsement Required)	1.50
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 3.74



Recipient's Name (Please Print Clearly) (to be completed by addressee)
 Marc Cosme - Cambridge Integrated...
 Street, Apt No., or PO Box No
 P.O. Box 3697
 City, State, ZIP+4
 Tallahassee, FL 32315-3697

PS Form 3800, February 2000 See Reverse for Instructions

7922 DECB 4700 004E 6A02

PS Form 3811, July 1999 Domestic Return Receipt 102595-99-M-1789

2. Article Number (Copy from service label)
 7099-3400-0017-9730-7761

<p>1. Article Addressed to: Mr. Marc Cosme Claims Adjuster Cambridge Integrated Services Group, Inc. P.O. Box 3697 Tallahassee, FL 32315-3697</p>	
<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>	
<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>C. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>	
<p>A. Received by (Please Print Clearly) B. Date of Delivery</p>	

SENDER: COMPLETE THIS SECTION **COMPLETE THIS SECTION ON DELIVERY**

Annette L. Pagán, M.D.

PSIQUIATRA
NIÑOS Y ADOLESCENTES
CALLE 1 NO. 1111, VILLA NEVAREZ
RIO PIEDRAS, PUERTO RICO 00927
TELEFONO: 751-4425

Nombre: Andrea V. Rivera Sepulveda

Edad: 15 años

Fecha de Nacimiento: lro. de octubre de 1984

Escolaridad: 10mo. grado - Colegio San Antonio

Fecha: 14 de febrero del 2000

Resumen de Intervenciones

La paciente Andrea V. Rivera inicio un proceso de evaluación desde el 14 de enero del 2000. Habia estado en psicoterapia desde noviembre con el Dr. Jorge Montilla, Psiquiatra Niños y Adolescentes por presentar un intento suicida. Madre solicito evaluación para seguimiento.

Al momento de evaluación, adolescente presenta síntomas compatibles con una Depresión Mayor, irritabilidad, coraje, sueño excesivo durante el día, problemas para concentrarse, desánimo, autoestima baja, mucha preocupación en relación a su madre, quién tuviera un accidente *ACC*, y se ha visto imposibilitada de trabajar, muy consiente de los problemas económicos. Coraje hacia su padre, quién se ha desligado afectivamente y no es consistente con sus responsabilidades de pensión alimenticia. Andrea se siente frustrada con la situación de sus padres. Teme pueda perder año escolar o que no puedan pagar escuela, admite en ocasiones pensamientos suicidas.

Se inicio en Paxil 10mg diarios y debe continuar en psicoterapia. La necesidad de hospitalización se evaluara en el proceso de intervención.

Página 2
Resumen de Intervenciones
Andrea V. Rivera Sepulveda
Dra. Annette L. Pagán Castro

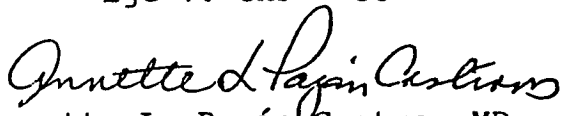
Dx.: Eje I: Depresión Mayor

Eje II: R/O No Diagnóstico

Eje III: Asma por historial

Eje IV: Estresores psicosociales severos, accidente de la madre, problemas económicos, divorcio de padres y mudanza a Puerto Rico

Eje V: GAF - 55


Annette L. Pagán Castro, MD
Psiquiatra de Niños y Adolescentes

HP OfficeJet
Personal Printer/Fax/Copier/Scanner

Fax History Report for
Freddie Perez-Gonzalez
787-751-1116
Mar-19-01 10:53am

Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Mar 19	10:52am	Sent	18503851681	1:01	3	OK

Copia Carta 16/mar/01