FORM B10 (Official Form 10)

4005652

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

PROOF OF CLAIM
Chapter 11

In Re Kmart Corporation, et al.

Case Numbers 02-02462 through 02-02499

Name of Debtor: (see attached for complete list of debtors)

K-Mart Corporation

Case Number:

02-02474

Your claim is scheduled as follows:

Class

UNSECURED NON PRIORITY

Amount

CONTINGENT, DISPUTED, UNLIQUIDATED

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):

GUTIERREZ, URBELINA
C/O ALFRED H. FUENTE
ALFRED H. FUENTE
1385 CORAL WAY
SUITE 406
MIAMI, FL 33145

11 2431346

☐ 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.

If address differs from above, please complete the following:
Creditor Name:
Address: Same as above
City/St/Zip:
Telephone: # (305) 856-1233

10099043

This Space is for Court Use Only

Account or other number by which creditor identifies debtor:

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

1. Basis for Claim
☐ Goods sold
☐ Services performed
☐ Money loaned
☒ Personal injury/wrongful death
☐ Taxes
☐ Other

☐ Retiree benefits as defined in 11 U.S.C. §1114(a)
☐ Wages, salaries, and compensation (fill out below)
Your SS #: _____
Unpaid compensation for services performed from _____ (date) to _____ (date)

2. Date debt was incurred: 11/28/00

3. If court judgment, date obtained: N/A

4. Total Amount of Claim at Time Case Filed: $ 75,000.00 +
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 $4,650), 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).
☐ Contributions to an employee benefit plan – 11 U.S.C. §507(a)(4).
☐ 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).
☐ 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)(__).

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. Copy of Complaint attached

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.

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SM 6345

TRUMBULL SERVICES CORPORATION

2002 APR 17 AM 10:10

4-17-02

BANKRUPTCY

Date: 04/12/02

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):

Alfred H. Fuente
Attorney for Urbelina Gutierrez

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.

X IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA

☐ IN THE COUNTY COURT IN AND FOR DADE COUNTY, FLORIDA

DIVISION X CIVIL ☐ OTHER	SUMMONS	CASE NUMBER 01-17171 CA15
PLAINTIFF(S) URBELINA M. GUTIERREZ and, RAMON GUTIERREZ,	VS. DEFENDANT (S) K-MART CORPORATION, a foreign Corporation	CLOCK IN

THE STATE OF FLORIDA:

To Each Sheriff of the State:

You ARE COMMANDED to serve this summons and a copy of the complaint or petition in this action on defendant(s):

K-MART CORPORATION

By serving:

CT CORPORATION SYSTEM

1200 SOUTH PINE ISLAND ROAD

PLANTATION, FL 33326

Each defendant is required to serve written defenses to the complaint or petition on Plaintiff's Attorney:

Whose address is: ALFRED H. FUENTE, ESQUIRE

1385 CORAL WAY, SUITE 406

MIAMI, FL 33145

Within 20 days after service of this summons on that defendant, exclusive of the day of service, and to file the original of the defenses with the Clerk of this Court either before service on Plaintiff's attorney or immediately thereafter. If a defendant fails to do so, a default will be entered against that defendant for the relief demanded in the complaint or petition.

Harvey Ruvin Clerk of Court	By: _____ DEPUTY CLERK	DATE

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

URBELINA M. GUTIERREZ AND
RAMON GUTIERREZ,

Plaintiff,

vs.

K-MART CORPORATION, a
foreign corporation,

Defendant.
_____/

CIVIL DIVISION 01-17171 CA15

GENERAL JURISDICTION DIVISION

FLORIDA BAR NO.: 233171

COMPLAINT

The Plaintiffs, URBELINA M GUTIERREZ and RAMON GUTIERREZ, by and through their undersigned attorney, sue the Defendant, K-MART CORPORATION, (hereinafter referred to as K-MART), and say:

1. This is an action for damages in excess of FIFTEEN THOUSAND ($15,000.00) DOLLARS.
2. At all times material hereto, the Plaintiffs, URBELINA M GUTIERREZ and RAMON GUTIERREZ, were residents of Miami-Dade County, Florida, and married to one another.
3. At all times material hereto, the Defendant, K-MART, was a foreign corporation, duly authorized to conduct and was conducting business within the State of Florida. More specifically, the Defendant, K-MART, owned, operated and controlled a store known as BIG K-MART, located at or near 1460 West 49th Street, Hialeah, Florida.
4. On or about the 28th day of November, 2000, the Plaintiff, URBELINA GUTIERREZ, in the exercise of due care was on the premises of Defendant's store for the purpose of purchasing certain items. As owner

and operator of said store, the Defendant owed a duty to the Plaintiff and other patrons to maintain its premises in a reasonably safe and serviceable condition, free from any dangerous or hazardous condition.

5. The Defendant, K-MART, by and through its agents, servants and/or employees, breached this duty to the Plaintiff, URBELINA GUTIERREZ, by committing one or more of the following negligent acts of commission and/or omission, which proximately caused injury to the Plaintiff as hereinafter alleged more fully:

   A) In carelessly and improperly stacking large boxes (containing smaller boxes of Christmas lights and/or ornaments) so high on a display shelf so as to be beyond the reach of customers and store employees, and in danger of tipping over by the force of gravity.

   B) In carelessly and improperly stacking the aforesaid boxes in such a manner that the boxes protruded or tilted forward from the shelves to such a degree that they were in danger of falling to the ground by the mere force of gravity.

   C) In stacking the aforesaid boxes on defective shelves. Said shelves were bent and tilted in forward to such an extreme degree that the boxes were in danger of falling to the floor by nothing more than the force of a gravity.

   D) In maintaining the aisle so littered, scattered, and packed with Christmas ornaments, wrapping paper and merchandize that mobility and/or evasive movements was rendered difficult, if not impossible.

E) In allowing the aforesaid conditions to exist for a considerable length of time prior to the accident herein complained of, without alleviating or correcting same.

F) In failing to warn of the aforesaid conditions that Defendant knew or should have known, in the exercise of ordinary care, was a dangerous condition. Defendant knew or should have known that the store customers and employees were in danger of being struck by a falling box, yet failed to exercise reasonable care to correct same.

6. At the aforesaid date, time, and place, the Plaintiff, URBELINA GUTIERREZ, while shopping was struck with great force and violence in about her head, body, and extremities by one or more boxes of the Christmas merchandise described above that fell from their shelves. The aforesaid boxes fell from their shelves without having been touched by anyone and simply because they had been negligently stacked on defective shelves. Furthermore, Plaintiff was unable to take evasive because of all the merchandize scattered along and/or placed on the aisle way.

7. As a result of the negligence of the Defendant as aforesaid, the Plaintiff has in the past and will in the future suffer the following damages:

a. Personal injury;

b. Pain and suffering;

c. Permanent injury and disability within reasonable medical probability;

d. Hospital and medical expenses;

e. Aggravations of known or not yet diagnosed pre-existing conditions;

f. Loss of the capacity for enjoyment of life;

g. Mental anguish.

8.) As a further direct result of the negligence of the Defendant, as aforesaid, the Plaintiff, RAMON GUTIERREZ, husband of Plaintiff, URBELINA GUTIERREZ, has in the past and will in the future suffer the loss of his wife's support, society services, and consortium.

WHEREFORE the Plaintiffs, URBELINA GUTIERREZ and RAMON GUTIERREZ, demand judgment against the Defendant, K-MART, for damages in excess of the jurisdictional limits of this Court, together with such other and further relief as this Court may deem just and proper and a trial by jury.

DATED at Miami-Dade County, Florida this 17th day of July, 2001

ALFRED H. FUENTE
Attorney for Plaintiff
1385 Coral Way – Suite 406
Miami, FL 33145
Telephone (305) 856-1233
Facsimile (305) 856-2070

ALFRED H. FUENTE

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1385 CORAL WAY
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MIAMI, FLORIDA 33145-2941

TELEPHONE (305) 856-1233
FAX (305) 856-2070
E MAIL ADDRESS:
LAWAHF@AOL.COM

April 12, 2002

K-Mart Corporation
c/o Trumbell Services, LLC
P.O. Box 426
Windsor, CT 06095

Re: K-Mart Corp.
Debtor : Urbelina Gutierrez
Case No. : 02-02474

Dear Sir or Madam:

Enclosed please find the original and one copy of the Proof of Claim Form duly completed on behalf of the debtor, Urbelina Gutierrez. Also enclosed is a self-addressed stamped envelope. Please send me a date stamped copy. Should you require additional information please feel free to call me.

Very truly yours,

ALFRED H. FUENTE

AHF/ef

Enclosure

Certified Mail - Return Receipt Requested # 7000 1670 0006 2638 7744

C:\My Documents\GUTIERREZ, URBELINA\LTR TO K-MART CORP