

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

KMART CORPORATION,

Debtor.

Case No. 02 B 02474

Honorable Susan Pierson Sonderby

Hearing Date: September 16, 2009

Hearing Time: 11:00 a.m.

NOTICE OF FILING OF DECLARATION OF THOMAS W. AVERY

Kmart Corporation (“Kmart”) respectfully files this Notice of Filing of Declaration of Thomas W. Avery in connection with Kmart’s Motion to Shift Electronic Discovery Costs.

On June 10, 2009, the Court ordered Kmart to produce to Global a directory of the subfolders for the thirty-eight (38) root folders on the P and W drives (the “July 10 Order”).

On June 18, 2009, Kmart provided the directory to Global. On July 15, 2009, Global identified the five (5) of the thirty-eight root folders to be indexed in accordance Precision Discovery’s proposal.

The July 10 Order further ordered Kmart to file a declaration by Kmart’s electronic discovery expert identifying the time and cost associated with indexing and searching the five root folders, which is attached hereto as Exhibit 1.

As Precision Discovery has previously advised, the rate to index and search the data is \$25 per GB. Precision Discovery previously estimated the total cost to index and search the data to be \$20,455, which did *not* include: (i) attorney time to confer with Global’s counsel about the search terms to be used; or (ii) attorney and/or paralegal time to review any “hits” for responsiveness and/or privileged material.

The actual cost to index and search the data will be \$35,695, which does not include:

(i) attorney time to confer with Global's counsel about the search terms to be used; or (ii) attorney and/or paralegal time to review any "hits" for responsiveness and/or privileged material. The actual cost is higher than the estimate because the estimate did not include the documents that Precision Discovery was not able to initially copy due to file system permission settings. *See* Reply in Support of Motion of Kmart Corporation to Shift Electronic Discovery Costs, Exhibit A (Declaration of Thomas W. Avery, ¶4). Subsequently, Precision Discovery has been able to copy the additional data, which accounts for the additional costs.

To expedite this matter, Kmart is willing to initially bear the cost of indexing and searching the five (5) root folders identified by Global. However, pursuant to the Court's July 10 Order, Kmart expressly reserves the right to recoup the cost borne by Kmart associated with the indexing and searching the five (5) root folders in accordance with the Court's final determination on Kmart's Motion, which is reserved for ruling on a future date.

Dated: September 4, 2009.

KMART CORPORATION

By: /s/ George R. Mesires

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CERTIFICATE OF SERVICE

I, George R. Mesires, an attorney in the law firm of Barack Ferrazzano Kirschbaum & Nagelberg LLP, certify that I have this 4th day of September 2009, caused to be served, via electronic mail, to the parties listed below, a copy of the foregoing **NOTICE OF FILING OF DECLARATION OF THOMAS W. AVERY:**

SERVICE LIST

Richard Samdal, Esq.
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/s/ George R. Mesires

EXHIBIT 1

_____)	
In re:)	Case No. 02 B 02474
)	
KMART CORPORATION,)	
)	
Debtor.)	Chapter 11
_____)	Judge Susan Pierson Sonderby

DECLARATION OF THOMAS W. AVERY

I, Thomas W. Avery, having personal knowledge of the facts contained in this declaration and being competent to testify to them, hereby state as follows:

1. I am a Vice President for the operations of the electronic discovery group at Precision Discovery, LLC, an IT risk and litigation consulting firm. Precision Discovery was retained by Kmart to analyze Global's proposal and to determine whether it is technically feasible to identify and collect data from the P and W drives relating to Global's claims.

2. On June 10, 2009, the Court ordered Kmart to produce to Global a directory of the subfolders for the thirty-eight (38) root folders on the P and W drives. On June 18, 2009, Kmart provided the directory to Global. On July 16, 2009, Kmart's counsel provided me a copy of Global's letter, dated July 15, 2009, wherein Global identified the five (5) of the thirty-eight root folders to be indexed in accordance Precision Discovery's proposal. A copy of Global's letter is attached hereto as Exhibit A.

3. This declaration is submitted pursuant to the Court's order, dated June 10, 2009, wherein the Court ordered that I submit a declaration identifying the time and cost associated with indexing and searching the five root folders.

P Drive – Category Management Support	(35.3GB)
P Drive - StoreOperations	(318.7GB)
W Drive – Facility Management Division	(89.9GB)
W Drive - Finance	(625.3GB)
W Drive - Legal	(331.6GB)

The total data to be indexed and searched is 1,427.8GB.

5. The rate to index and search the data is \$25 per GB. Thus, the total cost to index and search the data will be \$35,695. There will be no additional cost to rerun search terms against this data. The cost identified above does *not* include: (i) attorney time to confer with Global’s counsel about the search terms to be used; or (ii) attorney and/or paralegal time to review any “hits” for responsiveness and/or privileged material.

6. I estimate that it will take approximately 38 hours to index and search the five root folders, not including the time it takes counsel to agree to the search terms to be used.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August __, 2009.

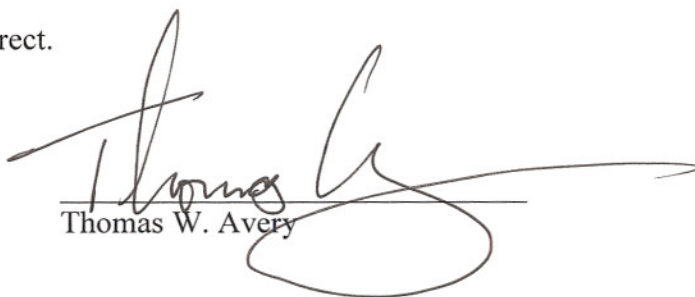

Thomas W. Avery

EXHIBIT A

To Declaration of Thomas W. Avery



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GRAND RAPIDS, MICHIGAN 49501-0352

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RICHARD A. SAMDAL

DIRECT DIAL 616/336-6826
E-MAIL rasamdal@varnumlaw.com

July 15, 2009

Mr. George R. Mesires
Barack Ferrazzano Kirschbaum Perlman & Nagelberg LLP
333 West Wacker Drive, Suite 2700
Chicago, IL 60606

Dear George:

Re: *In re Kmart Corp.*
Claims of Global Property Services, Inc.

I write to provide you with the list of five root folders that Global has selected for Kmart to index and search and to provide you with a brief explanation of our selection process.

Pursuant to the court's order, Kmart provided us with a directory of the subfolders for the 38 root folders on the P: and W: drives. This information was produced in electronic format (.pdf files). We searched the electronic information using the same search terms that Kmart developed for its electronic search of the P: and W: drives, as identified in your correspondence to the court and to Global on February 22, 2008. More specifically, we used all of the first- and second-tier search terms that Kmart developed and one of the third-tier search terms, "national contract," in conducting our search.

Using this search criteria, we were able to rank the root folders in terms of the number of "hits" for the search terms used on the titles of the root folders. There were 512 total "hits" in our global search of all of the root folders. Of this amount, 485 hits, or 95 percent of the total, were contained within the following five root folders, ranked in order of the number of total hits: **P:/Category Management Support, P:/Store Operations, W:/Facility Management Division, W:/Finance, and W:/Legal.** See Search Terms Spreadsheet, **Tab 1.** These five root folders represent approximately 25 percent of the total file size of all of the P: and W: root folders and contain 95 percent of the responsive hits on folder titles.

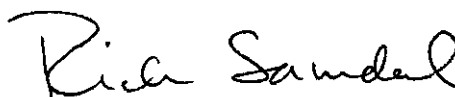
It is clear as a result of our search (using the search terms that Kmart developed) that these five folders are the appropriate folders for the court-ordered sampling. We therefore submit these five root folders to be indexed and searched in accordance with Kmart's proposal that was admitted into evidence during the June 10, 2009, hearing.

George R. Mesires
July 15, 2009
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Pursuant to the Court's order, we will await a declaration from Kmart's expert identifying the time and costs associated with indexing and searching these five root folders. Please do not hesitate to contact me to discuss this further.

Very truly yours,

VARNUM

A handwritten signature in cursive script that reads "Rich Samdal".

Richard A. Samdal

bbd/tmg
2775717_1.DOC
Attach.
VIA E-MAIL

EXHIBIT 1

GPS v KIMART
SUMMARY OF HITS
BY SEARCH TERM

SEARCH TERM/HITS													
Drive	File Path Title	Site	Exempt	Public	Private	Home	GPS	Keyword	Similar	Plow(ing)	Lawn*	Landscape	National Contract
P	Accounting	0	0	0	0	0	0	0	0	0	0	0	1
P	Bulleting	0	0	0	0	0	0	0	0	0	0	1	0
P	Category Management Support	0	0	0	0	0	0	0	0	0	163	0	0
P	Construction	0	0	0	0	0	0	0	0	0	3	0	0
P	Customer Direct	0	0	0	0	0	0	0	0	0	0	0	0
P	DesktopFolderDB	0	0	0	0	0	0	0	0	0	0	0	0
P	Finance	0	0	0	0	0	0	0	0	0	0	0	0
P	Logistics	0	0	0	0	0	0	0	0	0	0	0	0
P	QA	0	0	0	0	0	0	0	0	0	1	0	0
P	Store Operations	0	0	0	0	0	0	0	0	0	2	0	0
P	VendorAdministration	0	0	0	0	0	0	0	0	31	60	40	0
W	Accounting	0	0	0	0	0	0	0	0	0	0	0	0
W	ALT	0	0	0	0	0	0	0	0	0	0	0	0
W	AuditServices	0	0	0	0	0	0	0	0	0	0	0	0
W	BuildingServices	0	0	0	0	0	0	0	0	0	0	1	0
W	CEO Archive	0	0	0	0	0	0	0	0	0	0	0	0
W	Construction	0	0	0	0	0	0	0	0	0	0	0	0
W	CorpCommunications	0	0	0	0	0	0	0	0	0	2	1	0
W	CrossFunctionalTeams	0	0	0	0	0	0	0	0	0	2	0	0
W	ERoom	0	0	0	0	0	0	0	0	0	0	0	0
W	Facility Management Division	8	0	0	7	0	1	0	78	0	12	18	0
W	FieldOrganizationalDevelopment	0	0	0	0	0	0	0	0	0	0	0	0
W	Finance	2	0	0	5	0	0	0	0	0	15	4	0
W	ICT	0	0	0	0	0	0	0	0	0	0	0	0
W	Innovations	0	0	0	0	0	0	0	0	0	0	0	0
W	Legal	10	1	0	2	0	0	0	0	0	5	2	0
W	Logistics	0	0	0	0	0	2	0	0	0	0	0	0
W	OperationalEfficiency	0	0	0	0	0	0	0	0	0	0	0	0
W	Price Services	0	0	0	0	0	0	0	0	0	0	0	0
W	PriceOptimization	0	0	0	0	0	0	0	0	0	0	0	0
W	Process Re-Engineering	0	0	0	0	0	0	0	0	0	0	0	0
W	Real Estate	2	0	0	1	0	0	0	0	0	0	1	0
W	StoreClosing	0	0	0	0	0	0	0	0	0	0	0	0
W	StoreOperations	2	0	0	0	0	0	0	0	0	2	0	0
W	Superk	0	0	0	0	0	0	0	0	0	0	0	0
W	Unsolicited	0	0	0	0	0	0	0	0	0	0	0	0
W	VendorAdministration	0	1	0	0	0	0	0	0	0	2	0	0
		24	1	15	3	78	31	289	68	1	512		
			2										
		*many hits for "lawn" on "lawn & garden dept." or city names (i.e., Oaklawn)											