

**UNITED STATES DISTRICT COURT
 MIDDLE DISTRICT OF FLORIDA
 ORLANDO DIVISION**

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 6:01-cv-1133-Orl-28DAB
)	
KMART CORPORATION,)	
)	
Defendant.)	
)	

SETTLEMENT AGREEMENT

1. This Settlement Agreement is made and entered into by and between Plaintiff, the U.S. Equal Employment Opportunity Commission (hereinafter referred to as the “Commission” or “EEOC”) and Defendant, Kmart Corporation (hereinafter referred to as “Kmart”). The Commission and Kmart are collectively referred to herein as “the Parties.”

HISTORY OF PROCEEDINGS

2. On September 28, 2001, EEOC initiated this action against Kmart under Title VII of the Civil Rights Act of 1964, and Title I of the Civil Rights Act of 1991, to correct alleged unlawful employment practices on the basis of sex and retaliation, and to provide appropriate relief to Virginia Anderson, Tracy Brow, Y’Sheena McCoy, Jennifer Valdez and Lisa Williams (collectively referred to herein as the “Charging Parties”), and any other similarly situated aggrieved individuals. Specifically, EEOC alleged that the Charging Parties were subjected to unwelcome verbal and physical verbal and physical conduct of a sexual nature by employees of the Defendant because of their sex, female. The conduct was alleged to be sufficiently severe and pervasive to constitute an intimidating, hostile and offensive work environment. The Commission further alleged that as a result of the hostile work environment, the conditions of

Ms. Anderson's, Ms. Brown's and Ms. Valdez' employment were so intolerable that they were compelled to resign their positions. In addition, the Commission alleged that Defendant retaliated against Ms. McCoy for complaining of the alleged unlawful harassment by subjecting her to adverse terms and conditions of employment and discharge.

3. Each of the five Charging Parties filed her own Complaint in Intervention which complaint alleged violations of Title VII substantially the same as those alleged by the EEOC as well as alleging violations of the Florida Civil Rights Act and other federal and state claims.

4. Defendant filed Answers to the EEOC's Complaint and to the Complaint in Intervention of each of the five Charging Parties wherein Defendant denied the allegations of unlawful actions and asserted several affirmative defenses. This Settlement Agreement does not constitute and cannot be considered to be an admission that Kmart engaged in or is liable for any unlawful employment practice under any federal or state laws.

5. On January 22, 2002, defendant Kmart filed for bankruptcy protection. As a result of the bankruptcy filing the Complaints in Intervention of each of the five Charging Parties were dismissed by Order of November 13, 2003. No appeal was taken with respect to those dismissals. Kmart emerged from bankruptcy pursuant to a Plan of Reorganization on May 6, 2003.

6. Charging Parties Virginia Anderson, Tracy Brown, Jennifer Valdez and Lisa Williams filed claims with the bankruptcy court. Y'Sheena McCoy did not file a claim with the bankruptcy court. Virginia Anderson and Tracy Brown each received a small monetary payment from the bankruptcy estate for their claims. The claims of Jennifer Valdez and Lisa Williams were disallowed and/or expunged in the bankruptcy proceedings.

7. In the interest of resolving the claims remaining in this action, to avoid the cost of litigation, and as a result of having engaged in comprehensive settlement negotiations, the EEOC and Kmart have agreed that this action should be finally resolved by this Settlement Agreement. This Settlement Agreement is final and binding on the EEOC and Kmart.

8. The EEOC and Kmart agree that this Settlement Agreement resolves all claims against Kmart alleged in EEOC Charge Numbers 150 A0 1461, 150 A0 1479, 260 A0 1481, 150 A0 1676 and 150 A0 2546 and the Complaint filed by the EEOC in this action. The EEOC and Kmart further agree that this Settlement Agreement does not resolve any charges of

discrimination that may be pending with the EEOC other than the charges referred to in this paragraph.

**ENFORCEMENT
OF SETTLEMENT AGREEMENT**

9. EEOC or Kmart may bring an action before this court for an alleged violation of any of the terms of this Settlement Agreement during the duration of the agreement.

10. This Settlement Agreement shall apply only to the Kmart store located at 2620 N. Hiawassee Road, Orlando, Florida also known as store number 7339(hereinafter "Hiawassee Location"). The Kmart store at said location was closed in April of 2003 as part of the Kmart bankruptcy and remains closed as of the entry date of this Settlement Agreement. Kmart makes no representations as to if or when in the future Kmart will operate a store at said location.

GENERAL PROVISIONS

11. Should Kmart operate a store at the Hiawassee Location at any time within three (3) years of the entry date of this Settlement Agreement, this Settlement Agreement shall become effective at said store starting when the initial complement of employees are initially hired and continuing for three (3) years thereafter. This Settlement Agreement shall terminate three (3) years from its entry date if no Kmart store is operated at the Hiawassee Store Location within three (3) years of the entry date of this Settlement Agreement. Except for the monetary relief provisions, all other provisions of this Settlement Agreement obligating Kmart shall be effective only if a Kmart Store is operated at the Hiawassee Location within three (3) years of the entry date of this Settlement Agreement. The Settlement Agreement shall remain in effect for three (3) years thereafter.

12. Kmart, its officers, managers, employees, agents, and partners agree not to engage in conduct which violates Title VII of the Civil Rights Act of 1964, as amended, by adversely affecting the terms and conditions of any individual's employment at the Hiawassee Store Location subjecting the employee to a hostile work environment on the basis of sex.

13. Kmart, its officers, managers, employees, agents, and partners agree not to discriminate against any individual at the Hiawassee Location because he/she opposes any of Kmart's practices which the employee believes to be unlawful employment discrimination; because he/she files a charge of discrimination with the EEOC alleging violations of the statutes

the Commission enforces; because he/she cooperates with the EEOC in investigation and/or prosecution of any charge of discrimination; or because he/she cooperated in the investigation and/or offered testimony or information in the above styled litigation which resulted in this Settlement Agreement.

TRAINING AND POSTING

14. In the event Kmart reopens the Hiawassee Location, Kmart shall:

A. Establish a written policy that adheres to Title VII and submit that policy to the EEOC for review.

B. Distribute a complete copy of that policy to all persons who become employees of the Hiawassee Store Location within one week of employment.

C. Conduct a four-hour annual training seminar throughout the duration of this Settlement Agreement for all of its managers and supervisory personnel at the Hiawassee Store Location, with specific emphasis on recognizing sexual harassment in the workplace and/or if they receive a complaint of such discrimination.

D. Provide the EEOC with at least two (2) weeks notice before it conducts its training session(s), with the date(s) and location(s) of the training, the identification of the training materials to be used at the training session, and the name and job title of the employees who will be in attendance at the training. EEOC may, at its discretion, be in attendance at the training.

E. Post within seven (7) days from the effective date of the Settlement Agreement a laminated, 11" x 14" sized copy of the Notice attached hereto as Exhibit A. Said notice shall be posted at Kmart's Hiawassee Store Location for the duration of the effective period of this Settlement Agreement in conspicuous locations accessible to all employees (i.e. employee bulletin board or lunch room).

15. Kmart agrees that the training described in paragraph 14 B-C shall be conducted within sixty (60) days of the effective date of this Settlement Agreement, and, should thereafter take place by July 31st annually for the duration of the effective period of the Settlement Agreement. Kmart further agrees that the training described in paragraph 14 B-C shall be given

to all new managers and supervisors, who did not attend the annual training, within thirty (30) days of being placed in a management or supervisory position.

MONITORING

16. In the event Kmart reopens the Hiawassee Location, Kmart shall:

A. Retain all employment records relating in any way to any complaint made to a supervisor, manager or human resource officer and to any investigation of sexual harassment at the Hiawassee Store Location for the duration of the effective period of this Settlement Agreement and as required by law.

B. Provide the EEOC once every six (6) months with the name, last known address and last known phone number of any person employed at Kmart's Hiawassee Store Location who has complained to his or her Manager/Supervisor, Human Resources Department, or any other management official that he or she has been subjected to sexual harassment while working at Kmart's Hiawassee Store Location during the preceding six (6) months. Kmart will also state its actions taken in response to each such allegation. The first report shall be submitted no later than six (6) months after the Settlement Agreement becomes effective at the Hiawassee Store Location, and thereafter by June 30th, and December 31st annually, throughout the duration of the effective period of this Settlement Agreement. Kmart will provide upon request by the Commission any and all documentation associated with each such complaint.

C. Certify to the EEOC every six (6) months throughout the duration of the effective period of this Settlement Agreement that is in compliance with all aspects of this Settlement Agreement. The first such certification will be due no later than six (6) months from the effective date of this Settlement Agreement at the Hiawassee Store Location.

MONETARY RELIEF

17. Kmart shall pay a total lump sum amount of thirty-five thousand dollars (\$35,000.00) to be divided among the Charging Parties in resolution of this litigation within ten (10) calendar days from the Court's execution of this Settlement Agreement and entry of the Joint Stipulation for Dismissal. This amount shall be representative of compensatory damages. Defendant shall

cause to be issued an IRS Form 1099 to each Charging Party for these monies. The monies shall be distributed as set forth in Exhibit B.

18. If Kmart fails to tender the above-mentioned payments, Kmart shall:
- A. Pay interest on the defaulted payment at the rate calculated pursuant to 26 U.S.C. § 6621(b) until the same is paid; and
 - B. Bear any additional costs incurred by EEOC caused by non-compliance or delay of the Defendant.


ENFORCEMENT SETTLEMENT AGREEMENT

19. The Commission shall have independent authority to seek the judicial enforcement of any aspect, term or provision of this Settlement Agreement to the extent provided by law.

COSTS

20. The EEOC and Kmart shall bear their own costs associated with this litigation.

SO ORDERED this 12 day of January 2006.



JOHN ANTOON II
UNITED STATES DISTRICT JUDGE

AGREED TO:
FOR THE PLAINTIFF,
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

by: Delner Franklin-Thomas
Delner Franklin-Thomas
Regional Attorney
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Date: 1/13/06

Miami District Office
One Biscayne Tower, Suite 2700
2 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 530-6001
Facsimile: (305) 536-4494

AGREED TO:
FOR THE DEFENDANT
KMART CORPORATION

by: *Dallas Moon*
Dallas Moon
Associate General Counsel

Date: 1/12/06

EXHIBIT A

**NOTICE TO ALL HIAWASSEE ROAD STORE EMPLOYEES
POSTED PURSUANT TO A SETTLEMENT AGREEMENT BETWEEN THE
UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND
KMART CORPORATION**

This notice is being posted pursuant to a Settlement Agreement agreed to by the EEOC and Kmart in U.S. EEOC vs. Kmart Corporation, Civil Case No.: 6:01-cv-1133-ORL-28KRS. In settling with the EEOC, Kmart did not admit that it violated any law. Kmart Corporation will not tolerate discrimination against employees in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"). Title VII protects individuals from employment discrimination because of their race, religion, color, national origin, and sex. Title VII also protects individuals from retaliation for having complained of an unlawful employment practice. Kmart Corporation will not condone employment discrimination of any kind as set forth in federal anti-discrimination laws, including, but not limited to, sexual harassment.

Furthermore, Kmart Corporation, assures its employees that it supports Title VII and will not take any action against an individual because he/she has exercised his/her rights under the law to oppose discriminatory acts or to file charges with the EEOC.

Appropriate corrective action, up to and including termination, shall be taken against any employee (including management personnel) found to violate the policies regarding discrimination, based upon the circumstances involved.

This notice shall remain posted for three (3) years from the date signed. Employees or applicants for employment who have questions about their rights under Title VII or any other federal anti-discrimination law may telephone the Miami District Office of the Equal Employment Opportunity Commission at 1-800-669-4000.

Signed this _____ day of _____,

KMART CORPORATION
DO NOT REMOVE BEFORE _____

EXHIBIT B

MONETARY DISTRIBUTION

All monies referenced in paragraph 17 of this agreement shall be paid as set forth below. The Defendant shall cause to be issued IRS Form 1099 for each Claimant. The checks and IRS Form 1099 shall be mailed to the addresses provided to Kmart by the EEOC.

	<u>CLAIMANT</u>	<u>AMOUNT</u>
1.	Virginia Anderson	\$5,000.00
2.	Tracy Brown	\$9,000.00
3.	Y'Sheena McCoy	\$9,000.00
4.	Jennifer Valdez	\$5,000.00
5.	Lisa Williams	\$7,000.00