

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT

MICHAEL PIETRANTONIO, individually
and on behalf of all others similarly situated,

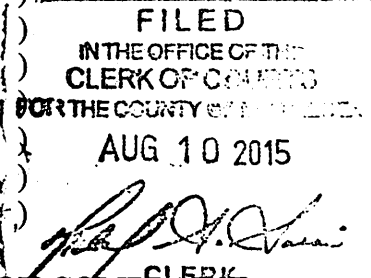
Plaintiff,

v.

KMART CORPORATION,

Defendant.

CIVIL ACTION NO. 15-5292



CLASS ACTION COMPLAINT

Plaintiff Michael Pietrantonio, individually and on behalf of all others similarly situated, by and through his counsel, brings this class action complaint against Defendant Kmart Corporation (“Defendant” or “Kmart”). Plaintiff, on his own behalf and on behalf of a class of similarly situated individuals (the “Class”), alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

I. NATURE OF THE ACTION

1. Mass. Gen Laws ch. 93 § 105(a) addresses and prevents the misuse and improper collection of personal identification information by retailers, and recognizes that there is no legitimate need to obtain such personal information from credit card customers except to the extent it is strictly necessary to complete the transaction.

2. Specifically, Mass. Gen Laws ch. 93 § 105(a) states that:

No person, firm, partnership, corporation or other business entity that accepts a credit card for a business transaction shall write, cause to be written or require that a credit card holder write

personal identification information, not required by the credit card issuer, on the credit card transaction form. Personal identification information shall include, but shall not be limited to, a credit card holder's address or telephone number.

3. This action arises from Kmart's violation of Mass. Gen Laws ch. 93 § 105(a) through its practice of writing Plaintiff's and the class members' personal identification information (not required by the credit card issuer) on a credit card transaction form, within the meaning of Section 105(a). This conduct constitutes violations of Mass. Gen Laws ch. 93A § 9.

4. Accordingly, Plaintiff brings this action on behalf of the below-defined class and seeks statutory damages pursuant to Mass. Gen Laws ch. 93A § 9, injunctive relief; and costs and attorneys' fees.

II. JURISDICTION AND VENUE

5. This Court has original jurisdiction pursuant to Mass. Gen. Laws Ann. ch. 212, § 3 because the action is for money damages and there is no reasonable likelihood that recovery by the plaintiff and the Class will be less than or equal to \$25,000.

6. This Court has personal jurisdiction over Kmart because, at all relevant times, Kmart was registered to do business in the State of Massachusetts and is therefore subject to general jurisdiction in this State. Mass. Gen. Laws Ann. ch. 223A, § 3.

7. Venue is proper in this County of Middlesex pursuant to Mass. Gen. Laws Ann. ch. 223, § 1, 8 as Kmart has a usual place of business here; is subject to personal jurisdiction here; and supplies goods here.

III. PARTIES

Plaintiff

8. Michael Pietrantonio is a natural person and citizen of the State of Massachusetts and resides at 8 Drury Lane, Wakefield, Middlesex County.

Defendant

9. Kmart is a corporation incorporated and existing under the laws of the State of Michigan with its principal place of business located at 3333 Beverly Road, Hoffman Estates, Illinois. Kmart conducts business throughout Massachusetts and operates retail locations at 180 Main Street, Saugus, Massachusetts 01906 and 77 Middlesex Avenue, Somerville, Massachusetts 02145.

IV. FACTUAL BACKGROUND

Defendant's Unlawful Collection of PII

10. Plaintiff Michael Pietrantonio shopped for and purchased items at a Kmart retail store location in Saugus, Massachusetts on September 30, 2010 and at a retail location in Somerville, Massachusetts on April 15, 2012.

11. To consummate his purchases, Plaintiff used his credit card as his chosen form of payment.

12. While standing at the register, Kmart requested that Plaintiff provide personal identification information, including his full and complete ZIP code, which Kmart recorded on a credit card transaction form within the meaning of Mass. Gen Laws ch. 93 § 105(a).

13. Kmart continues to store Plaintiff's personal identification information, including his name, ZIP code, and credit card number, in its databases.

14. The Supreme Judicial Court of Massachusetts has determined that a ZIP code constitutes personal identification information ("PII") within the meaning of Mass. Gen Laws ch. 93 § 105(a). *See Tyler v. Michaels Stores, Inc.*, 464 Mass. 492 (2013).

Receipt of Unwanted Marketing Materials

15. Subsequent to Plaintiff's purchases at Kmart – detailed above – Plaintiff received unwanted marketing materials from Kmart via United States mail.

Consumers Place a High Value on Their PII

16. At a Federal Trade Commission ("FTC") public workshop in 2001, then-Commissioner Orson Swindle described the value of a consumer's personal information as follows:

The use of third party information from public records, information aggregators and even competitors for marketing has become a major facilitator of our retail economy. Even [Federal Reserve] Chairman [Alan] Greenspan suggested here some time ago that it's something on the order of the life blood, the free flow of information.¹

17. Though Commissioner Swindle's remarks are more than a decade old, they are even more relevant today, as consumers' personal data functions as a "new form of currency" that supports a \$26 billion per year online advertising industry in the United States.²

18. The FTC has also recognized that consumer data is a new – and valuable – form of currency. In a recent FTC roundtable presentation, another former Commissioner, Pamela Jones Harbour, underscored this point by observing:

Most consumers cannot begin to comprehend the types and amount of information collected by businesses, or why their information may be commercially valuable. Data is currency. The larger the data set, the greater potential for analysis – and profit.³

¹ *The Information Marketplace: Merging and Exchanging Consumer Data*, https://www.ftc.gov/sites/default/files/documents/public_events/information-marketplace-merging-and-exchanging-consumer-data/transcript.pdf (last visited August 6, 2015).

² *See Web's Hot New Commodity: Privacy*, <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited August 6, 2015).

³ *Statement of FTC Commissioner Pamela Jones Harbour* (Remarks Before FTC Exploring Privacy Roundtable), https://www.ftc.gov/sites/default/files/documents/public_statements/remarks-ftc-exploring-privacy-roundtable/091207privacyroundtable.pdf (last visited August 6, 2015).

19. Recognizing the high value that consumers place on their PII, many companies now offer consumers an opportunity to sell this information to advertisers and other third parties. By making the transaction transparent, consumers will make a profit from the surrender of their PII.⁴ This business has created a new market for the sale and purchase of this valuable data.⁵

20. Consumers also ascribe economic value to the *privacy* of their PII. Studies confirm, for example, that “when [retailers’] privacy information is made more salient and accessible, some consumers are willing to pay a premium to purchase from privacy protective websites.”⁶

21. Consumers thus value their personal data highly and place an economic value on the privacy of that data. In one prominent survey, when consumers were asked how much they valued their personal data in terms of its protection against improper access and unauthorized secondary use, they valued the restriction of improper access to their data at between \$11.33 and \$16.58 per website, and prohibiting secondary use to between \$7.98 and \$11.68 per website.⁷

22. Thus, the question is not *whether* consumers value such privacy; the question is “*how much* [consumers] value” that privacy.⁸

V. CLASS ACTION ALLEGATIONS

23. Plaintiff brings Count I, as set forth below, on behalf of himself and as a class action, pursuant to the provisions of Mass. R. Civ. P. 23(a)(1-4) on behalf of a class defined as:

⁴ *You Want My Personal Data? Reward Me for It*, <http://www.nytimes.com/2010/07/18/business/18unboxed.html> (last visited August 6, 2015).

⁵ *See Web’s Hot New Commodity: Privacy*, <http://online.wsj.com/article/SB10001424052748703529004576160764037920274.html> (last visited August 6, 2015).

⁶ Tsai, Cranor, Acquisti, and Egelman, *The Effect of Online Privacy Information on Purchasing Behavior*, 22(2) Information Systems Research 254, 254 (June 2011).

⁷ *Id.*

⁸ Hann *et al.*, *The Value of Online Information Privacy: An Empirical Investigation* (Mar. 2003) at 2, available at <http://econwpa.repec.org/eps/io/papers/0304/0304001.pdf> (emphasis added) (last visited August 3, 2015)

All persons from whom Kmart requested and recorded personal identification information during a credit card transaction occurring in Massachusetts (the “Class”).

Excluded from the Class are Kmart and its subsidiaries and affiliates; governmental entities; and the judge to whom this case is assigned and any immediate family members thereof.

24. Certification of Plaintiff’s claims for classwide treatment is appropriate because Plaintiff can prove the elements of his claims on a classwide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

25. **Numerosity – Massachusetts Rule of Civil Procedure 23(a)(1).** The members of the class are so numerous that individual joinder of all class members is impracticable. On information and belief, there are thousands of consumers who have been affected by Kmart’s wrongful conduct. The precise number of the class members and their addresses is presently unknown to Plaintiff, but may be ascertained from Kmart’s books and records. Class members may be notified of the pendency of this action by recognized, court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

26. **Commonality and Predominance – Massachusetts Rule of Civil Procedure 23(a)(2) and 23(b).** This action involves common questions of law and fact, which predominate over any questions affecting individual class members, including, without limitation:

- a. whether Kmart engaged in the conduct as alleged herein;
- b. whether Kmart’s conduct constitutes violations of Mass. Gen Laws ch. 93 § 105(a) and Mass. Gen Laws ch. 93A § 9;
- c. whether Plaintiff and the other class members are entitled to statutory, or other forms of damages, and other monetary relief and, if so, in what amount(s); and

- d. whether Plaintiff and other class members are entitled to equitable relief, including but not limited to injunctive relief and restitution.

27. **Typicality – Massachusetts Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are typical of the other class members' claims because, among other things, all class members were comparably injured through the uniform misconduct described above.

28. **Adequacy of Representation – Massachusetts Rule of Civil Procedure 23(a)(4).** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the other class members he seeks to represent; he has retained counsel competent and experienced in complex class action litigation; and Plaintiff intends to prosecute this action vigorously. The class members' interests will be fairly and adequately protected by Plaintiff and his counsel.

29. **Declaratory and Injunctive Relief – Kmart has acted or refused to act on grounds generally applicable to Plaintiff and the other class members, thereby making appropriate final injunctive relief and declaratory relief, as described below, with respect to class members as a whole.**

30. **Superiority – Massachusetts Rule of Civil Procedure 23(b).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Kmart, so it would be impracticable for class members to individually seek redress from Kmart's wrongful conduct. Even if class members could afford individual litigation, the court system could not. Individualized litigation creates the potential for

inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CLAIMS ALLEGED

COUNT I

Violation of Massachusetts Unfair Trade Practices Act

Mass. Gen. Laws ch. 93A

(On behalf of Plaintiffs and the Class)

31. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

32. Mass. Gen Laws ch. 93 § 105(a) provides:

No person, firm, partnership, corporation or other business entity that accepts a credit card for a business transaction shall write, cause to be written or require that a credit card holder write personal identification information, not required by the credit card issuer, on the credit card transaction form. Personal identification information shall include, but shall not be limited to, a credit card holder's address or telephone number.

33. Kmart is a corporation that accepts credit cards for retail transactions.

34. Through the practices detailed above, Kmart has violated, and continues to violate, Mass. Gen Laws ch. 93 § 105.

35. Mass. Gen. Laws ch. 93 § 105(c) provides that: “Any violation of the provisions of this chapter shall be deemed to be an unfair and deceptive trade practice, as defined in section 2 of chapter 93A.”

36. Accordingly, Kmart’s violations of Mass. Gen Laws ch. 93 § 105 constitute unfair and deceptive trade practices within the meaning of Mass. Gen Laws ch. 93A § 2.

37. Mass. Gen Laws ch. 93A § 9 provides:

Any person ... who has been injured by another person’s use or employment of any method, act or practice declared to be unlawful by section two ... may bring an action in the superior court ... for damages

and such equitable relief, including an injunction, as the court deems to be necessary and proper Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons.

38. Plaintiff and the members of the Class have been injured by Kmart's collection of their Zip Codes in connection with their credit card transactions and resultant violations of Mass. Gen Laws ch. 93A § 9.

39. First, Plaintiff and the Class have been injured because they have received unwanted marketing materials from Kmart as a result of having provided their ZIP codes when using credit cards at Kmart. And second, Plaintiff and the Class have been injured because Kmart misappropriated their economically valuable PII without consideration.

40. More than 30 days prior to filing suit, Plaintiff made a pre-suit demand pursuant to Mass. Gen Laws ch. 93A § 9(3) (the "93A Demand"), in which Plaintiff sought: classwide relief limited to statutory damages of \$25 pursuant to Mass. Gen Laws ch. 93A § 9, for each violation of Mass. Gen Laws ch. 93 § 105; injunctive relief; and reasonable attorneys' fees and costs. Kmart did not accept the terms of this demand. A true and correct copy of the 93A Demand is attached here as Exhibit A.

41. Plaintiff and the Class are entitled to damages as a result of Kmart's violations of Mass. Gen Laws ch. 93A § 9.

VII. REQUEST FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, requests that the Court enter an order and judgment in his favor and against Kmart as follows:

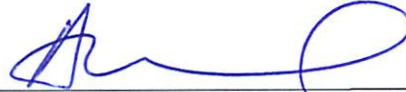
- a. Certification of the proposed Class pursuant to Massachusetts Rule of Civil Procedure 23(a)(1-4) and (b);

- b. Designation of Plaintiff as representative of the proposed Class and designation of Plaintiff's counsel as Class Counsel;
- c. Declaration that Defendant's actions, as described herein, violate Mass. Gen Laws ch. 93 § 105 and Mass. Gen Laws ch. 93A § 9;
- d. Awarding statutory damages of \$25 pursuant to Mass. Gen Laws ch. 93A § 9, for each violation of Mass. Gen Laws ch. 93 § 105;
- e. Enjoining Defendant's continued violations of Mass. Gen Laws ch. 93 § 105, pursuant to Mass. Gen Laws ch. 93A § 9;
- f. Awarding Plaintiff's and the Class their reasonable litigation expenses and attorneys' fees;
- g. Awarding Plaintiff and the Class pre- and post-judgment interest; and
- h. Such other and further relief as may be just and proper.

Dated: August 10, 2015

Respectfully submitted,

By:



One of the Attorneys for Plaintiffs
And the Proposed Putative Class

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***Counsel for Plaintiff and
the Proposed Putative Class***

**** Pro Hac Vice*** to be submitted

4826-3901-9811, v. 2

| | | |
|---|---|--|
| CIVIL ACTION COVER SHEET | DOCKET NUMBER <div style="font-size: 1.5em; font-weight: bold;">15-5292C</div> | Trial Court of Massachusetts The Superior Court |
| PLAINTIFF(S): MICHAEL PIETRANTONIO ADDRESS: 8 DRURY LANE, WAKEFIELD, MA 01880 | COUNTY Middlesex | |
| DEFENDANT(S): KMART CORPORATION | | |
| ATTORNEY: ALEXANDER SHAPOVAL, ESQ. ADDRESS: 84 WINNISIMMET STREET CHELSEA, MA 02150 TEL. 617-889-5800 BBO: 654543 | ADDRESS: 77 MIDDLESEX AVENUE, SOMERVILLE, MA 01245 | |

1399

CODE NO.

OTHER

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

TYPE OF ACTION (specify)

TRACK

F

HAS A JURY CLAIM BEEN MADE?
☒ YES ☐ NO

***If "Other" please describe:** VIOLATION OF CONSUMER PROTECTION MGL 93 105(A), MISUSE AND IMPROPER COLLECTION OF CONSUMER INFORMATION

STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(attach additional sheets as necessary)

FILED

IN THE OFFICE OF THE
CLERK OF COURTS

FOR THE COUNTY OF MIDDLESEX

AUG 10 2015

CLERK

| | | | |
|--|----------------------|----|--|
| A. Documented medical expenses to date: | | \$ | |
| 1. Total hospital expenses | | \$ | |
| 2. Total doctor expenses | | \$ | |
| 3. Total chiropractic expenses | | \$ | |
| 4. Total physical therapy expenses | | \$ | |
| 5. Total other expenses (describe below) | | \$ | |
| | Subtotal (A): | \$ | |
| B. Documented lost wages and compensation to date | | \$ | |
| C. Documented property damages to dated | | \$ | |
| D. Reasonably anticipated future medical and hospital expenses | | \$ | |
| E. Reasonably anticipated lost wages | | \$ | |
| F. Other documented items of damages (describe below) | | \$ | |

G. Briefly describe plaintiff's injury, including the nature and extent of injury:

TOTAL (A-F): \$ _____

CONTRACT CLAIMS

(attach additional sheets as necessary)

Provide a detailed description of claims(s):

TOTAL: \$ _____

Signature of Attorney/Pro Se Plaintiff: X

Date: 8/10/15


RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Date: 8/10/15

| | | |
|--|--|--|
| CIVIL TRACKING ORDER (STANDING ORDER 1- 88) | DOCKET NUMBER 1581CV05292 <i>C</i> | Trial Court of Massachusetts The Superior Court  |
| CASE NAME: Michael Pietrantonio Individually and on Behalf of All others similarly situated vs. Kmart Corporation | | Michael A. Sullivan, Clerk of Court Middlesex County |
| TO: Alexander Shapoval, Esq. Law Office of Alexander Shapoval 84 Winnisimmet Street Chelsea, MA 02150 | | COURT NAME & ADDRESS Middlesex County Superior Court - Woburn 200 Trade Center Woburn, MA 01801 |

TRACKING ORDER - F - Fast Track

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

STAGES OF LITIGATION

DEADLINE

| | SERVED BY | FILED BY | HEARD BY |
|--|------------|------------|------------|
| Service of process made and return filed with the Court | | 11/09/2015 | |
| Response to the complaint filed (also see MRCP 12) | | 12/08/2015 | |
| All motions under MRCP 12, 19, and 20 | 12/08/2015 | 01/07/2016 | 02/08/2016 |
| All motions under MRCP 15 | 12/08/2015 | 01/07/2016 | 02/08/2016 |
| All discovery requests and depositions served and non-expert depositions completed | 06/06/2016 | | |
| All motions under MRCP 56 | 07/05/2016 | 08/04/2016 | |
| Final pre-trial conference held and/or firm trial date set | | | 12/02/2016 |
| Case shall be resolved and judgment shall issue by | | | 08/09/2017 |

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to

| | | |
|----------------------------------|--|-------------------------------|
| DATE ISSUED 08/10/2015 | ASSISTANT CLERK Arthur T DeGuglielmo | PHONE (781)939-2757 |
|----------------------------------|--|-------------------------------|

EXHIBIT A

January 23, 2014

VIA FEDERAL EXPRESS AND CERTIFIED U.S. MAIL

K Mart Corporation
c/o CT Corporation System
155 Federal Street, Suite 700
Boston, MA 02110

**Re: *Notice of Claims Pursuant to Mass. Gen Laws ch. 93A § 9
for Violations of Mass. Gen Laws ch. 93 § 105***

Dear Sir or Madam:

I am writing to you under the provisions of Massachusetts General Laws, Chapter 93A, Section 9, and to request relief as outlined in that statute.

Mass. Gen Laws ch. 93 § 105(a) addresses and prevents the misuse and improper collection of personal identification information by retailers, and recognizes that there is no legitimate need to obtain such personal information from credit card customers except to the extent it is strictly necessary to complete the transaction. Specifically, Mass. Gen Laws ch. 93 § 105(a) states that:

No person, firm, partnership, corporation or other business entity that accepts a credit card for a business transaction shall write, cause to be written or require that a credit card holder write personal identification information, not required by the credit card issuer, on the credit card transaction form. Personal identification information shall include, but shall not be limited to, a credit card holder's address or telephone number.

We contend that K Mart Corporation ("K-Mart") is in violation of Mass. Gen Laws ch. 93 § 105(a) through its practice of requiring, as a condition of using a credit card to make a purchase, consumers' personal identification information, and specifically their ZIP codes. The Supreme Judicial Court of Massachusetts has determined that a Zip Code constitutes personal identification information ("PII") within the meaning of Mass. Gen Laws ch. 93 § 105(a). *See Tyler v. Michaels Stores, Inc.*, 464 Mass. 492 (2013).

Mass. Gen. Laws ch. 93 § 105(c) provides that: "Any violation of the provisions of this chapter shall be deemed to be an unfair and deceptive trade practice, as defined in section 2 of chapter 93A." Accordingly, K-Mart's violations of Mass. Gen Laws ch. 93 § 105 constitute unfair and deceptive trade practices within the meaning of Mass. Gen Laws ch. 93A § 2.

Mass. Gen Laws ch. 93A § 9 provides:

Any person ... who has been injured by another person's use or employment of any method, act or practice declared to be unlawful by section two ... may bring an action in the superior court ... for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons.

Within the four-year statutory period stated in Mass. Gen. Laws Ann. ch. 93, § 13 our client shopped at a K-Mart location in Massachusetts where his Zip Code was requested in conjunction with a credit card transaction. K-Mart requested Plaintiff Mark Pietrantonio's Zip Code at its location in Somerville on April 15, 2012 (\$22.24). K-Mart requested Plaintiff Michael Pietrantonio's Zip Code at its location in Saugus on September 30, 2010 (\$36.49).

These Plaintiffs and all similarly situated individuals from whom K-Mart requested and recorded PII in conjunction with a credit card transaction occurring in Massachusetts (the "Class"), have been injured by K-Mart's violations of Mass. Gen Laws ch. 93A § 9. First, Plaintiffs and the Class have been injured because they have received unwanted marketing materials from K-Mart as a result of having provided their Zip Codes when using credit cards at K-Mart. And second, Plaintiffs and the Class have been injured because K-Mart misappropriated their economically valuable PII without consideration.

* * *

We demand that K-Mart pay Plaintiff and the Class statutory damages of \$25 pursuant to Mass. Gen Laws ch. 93A § 9, for each violation of Mass. Gen Laws ch. 93 § 105 within the statutory period, and that K-Mart cease and desist from this unlawful conduct. We also demand reasonable attorneys' fees and costs, and a reasonable incentive award for Plaintiff for services as the proposed Class representative.

Please note that if K-Mart fails to accept the terms of this demand, given that K-Mart knows or should know that the practice complained of does, in fact, violate Mass. Gen Laws ch. 93 § 105 and Mass. Gen Laws ch. 93A § 9, and that Plaintiffs and the Class are entitled to the relief demanded as a matter of law, K-Mart may be subject to double or treble damages under Mass. Gen Laws ch. 93A § 9.

We require a response to this demand within 30 days. If we do not receive a response, we will commence a civil lawsuit against K-Mart based on the facts and claims in this letter.

Yours sincerely,



Joseph J. Siprut

cc: Brandon M. Cavanaugh