

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION**

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K7 DESIGN GROUP, INC.,

Plaintiff,

Case No. 5:21-CV-05069-TLB

-against-

COMPLAINT

WALMART INC. d/b/a SAM'S CLUB,

JURY TRIAL DEMANDED

Defendant.

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Plaintiff, K7 Design Group, Inc., by its attorneys, Hardin, Jesson & Terry, PLC, as and for its Complaint, against Walmart, Inc. states as follows:

INTRODUCTION

1. This action arises from an enormous miscalculation by the defendant, Walmart Inc. d/b/a Sam's Club ("Sam's Club"), the nation's largest retailer, which over-ordered from plaintiff, K7 Design Group, Inc. ("K7"), a family owned business, millions of dollars worth of hand sanitizer and related products in the midst of the worldwide COVID-19 pandemic, and then failed to honor its commitment by refusing to take delivery and pay for over \$15 million worth of product it ordered from K7.

2. The pandemic quickly spread around the globe, ravaged millions, and imposed enormous demands on health systems. COVID-19 led people to take extraordinary precautions to avoid infection and spread. Before the COVID-19 pandemic, hand sanitizer, a common consumer product, was plentiful in retail establishments and widely available for purchase. Supply and demand were in balance. With the onset of the pandemic, public health authorities advised people to avoid contracting the virus, believed to spread both through airborne transmission and through contact with commonly used surfaces (like gas pump handles and elevator buttons), by frequently

washing or sanitizing their hands (among other precautions). Hand sanitizer quickly flew off of store shelves and became largely unavailable by the spring of 2020. Supply and demand were suddenly very much out of balance.

3. To take advantage of the worldwide spike in demand for hand sanitizer and similar products, Sam's Club placed very substantial product orders with K7 and repeatedly committed to those purchases.

4. However, Sam's Club apparently ordered more product than it needed and more than it could hold in storage pending retail sale. As the months unfolded during the pandemic, demand for hand sanitizer and related products did not keep pace with the explosion in supply. Sam's Club, like many retailers, was more than able to restock its shelves with sufficient supply to meet demand and found itself with excess inventory.

5. Once Sam's Club realized that it had over-ordered and did not have adequate storage space, it refused to accept further deliveries and pay for a substantial portion of product orders and commitments, leaving K7 with millions of dollars worth of hand sanitizer and related product that it manufactured specifically for Sam's Club based on Sam's Club's purchases.

6. In the course of renegeing on its product orders and purchases, Sam's Club, a division of the largest retailer in the United States with tremendous economic leverage, coerced K7 to make sales-related concessions that were not supported by any new consideration. K7 had no feasible commercial choice but to accept these unilateral demands as a means to mitigate its damages and to avert additional losses arising from Sam's Club's breach of its purchase orders.

7. K7 has suffered more than \$15 million in damages due to the repudiation and breach by Sam's Club of a significant portion of its purchase orders.

8. K7 has also incurred hundreds of thousands of dollars of storage fees for product that it manufactured specifically to fulfill Sam's Club's purchase orders when Sam's Club refused to take delivery.

9. K7 timely put Sam's Club on notice that its refusal to take delivery of the entirety of the hand sanitizer and related products to which Sam's Club committed was causing K7 tremendous losses. Nevertheless, Sam's Club unjustifiably refused to take delivery of millions of dollars worth of product by withholding delivery instructions. In so doing, Sam's Club has breached and repudiated its contractual commitments to accept and pay for the specially manufactured goods.

JURISDICTION AND VENUE

10. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1332(a)(1) as it is between citizens of different states and the matter in controversy exceeds \$75,000, exclusive of interest and costs.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2), as a substantial part of the events giving rise to the claims occurred in this district.

THE PARTIES

12. Plaintiff, K7 Design Group, Inc. ("K7"), is a corporation duly organized and existing pursuant to the laws of the State of New York, with its principal place of business at 2433 Knapp Street, Brooklyn, New York 11235.

13. Sam's Club is a division of Walmart Inc. ("Sam's Club"), a corporation organized and existing pursuant to the laws of the State of Delaware, with its principal place of business in Bentonville, Arkansas.

ALLEGATIONS COMMON TO ALL COUNTS

The Character Jar Hand Sanitizer Purchase

14. By email dated March 12, 2020 to K7, Sam's Club committed to the purchase from K7 of 50,000 jars of K7's character hand sanitizer (each jar containing 15 pieces of 30 ml animal-shaped bottles of hand sanitizer), to be delivered in three designated shipments in May 2020, at the agreed upon price of \$24 per jar, for a total of \$1.2 million (the "Character Jar Purchase").

15. By email dated April 7, 2020 to K7, Sam's Club confirmed its Character Jar Purchase, requesting K7 to provide its schedule for "production and order dates" so that Sam's Club could prepare to allocate product deliveries to coincide with the release by K7 of product to ground transporters.

16. Due to the large quantities of product that Sam's Club ordered from K7, it did not issue paperwork to K7 until the product was ready for actual delivery because Sam's Club first allocated product deliveries to designated locations at or near the time that K7 was ready to place product with ground transporters.

17. In response to Sam's Club's April 7 email, K7 sent an email dated April 8, 2020 setting forth the shipment dates for Sam's Club's Character Jar Purchase.

18. By reply email dated April 8, 2020, Sam's Club confirmed the shipment schedule for the Character Jar Purchase.

The Cookie Jar Purchase

19. In an exchange of emails between April 8 and 13, 2020, Sam's Club committed to purchase from K7 67,000 units of hand sanitizer packaged in what the parties referred to as a "cookie jar," each of which was to contain 15 individual 1-oz bottles of hand sanitizer, at the

agreed price of \$17 per “cookie jar,” for a total purchase price of \$1,139,000 (the “Cookie Jar Purchase”).

20. In an April 30, 2020 email, Sam’s Club increased the Cookie Jar Purchase to include an additional 65,000 units per week until the end of September 2020 at the same price of \$17 per jar.

21. By reason of the initial Cookie Jar Purchase and the increased Cookie Jar Purchase, as described above, the total Cookie Jar Purchase amounted to 522,000 jars at the agreed price of \$17 per jar, for a total purchase price of \$8,874,000 (the “Expanded Cookie Jar Purchase”).

The 4-Pack Hand Sanitizer Purchase

22. In an exchange of emails between April 27 and 30, 2020, Sam’s Club committed to purchase K7’s 4-pack of 8-ounce bottles of hand sanitizer at the agreed upon price of \$7.66 per 4-pack, with deliveries of 250,000 packs per week until the end of September 2020, for a total amount of 3,385,628 units (4-packs), amounting to an aggregate purchase price of \$25,933,910.48 (the “4-Pack Hand Sanitizer Purchase”).

23. In emails dated April 23, 2020, and April 27, 2020, Sam’s Club requested that K7 provide a schedule of four different K7 products and associated quantities that Sam’s Club had, as of that date, committed to purchase from K7, for the stated purposes of allowing Sam’s Club to ensure that K7’s schedule “matched” Sam’s Club’s records, and that Sam’s Club and K7 were 100 percent “aligned” with regard to Sam’s Club’s product purchases as of that date.

24. By email dated April 30, 2020, K7 responded to Sam’s Club’s request by providing, as an attachment to the email, a spreadsheet schedule that identified four separate K7 product items and the associated purchase commitments, including the Character Jar Purchase, the Expanded Cookie Jar Purchase, and the 4-pack Hand Sanitizer Purchase (the “April 30th Purchase Schedule”).

25. In an email dated April 30, 2020, Sam's Club confirmed the April 30th Purchase Schedule for product that K7 had not yet delivered.

26. The April 30th Purchase Schedule reflects the commitment by Sam's Club to purchase and pay for the following:

Item	Purchase Commitment (units)	Price Per Unit	Total Price
Character Jar: hand sanitizer bottles	50,000	\$24.00	\$1,200,960.00
4-pack hand Sanitizer	3,385,628	\$7.66	\$25,933,910.48
4-pack antibacterial soap	136,640	\$5.80	\$792,512.00
Cookie Jar: hand sanitizer bottles	522,000	\$17.00	\$8,874,000.00
	<i>Total</i>		\$36,801,382.40

27. By email dated May 22, 2020, Sam's Club presented K7 with a chart (the "May 22nd Chart") of the four K7 products which Sam's Club had, as of that date, purchased, asking that K7 advise if the shipping dates shown on the May 22nd Chart were "still accurate," and stating that Sam's Club "want[ed] to ensure orders are accurate so we can get them to the clubs quickly."

28. The May 22nd Chart confirmed Sam's Club's purchases, as of May 22, 2020, for the following items and number of units from K7, with associated shipment dates in 2020.

	Week of 5/25	Week of 6/1	Week of 6/8	Week of 6/15	Week of 6/22	Week of 6/26
4PK Hand Sanitizer	97,860		195,720	117,432	224,616	

Unicorn Bucket ¹	27,500		7,540			
Travel Bucket ²					67,000	
4PK Hand Soap	34,160			102,480		

The 6-Pack Hand Sanitizer Purchase

29. In a series of emails between June 9, 2020, and June 17, 2020, K7 communicated with Sam's Club regarding K7's 6-pack of hand sanitizer, which K7 offered for sale to Sam's Club.

30. As a result of that exchange of emails, in a June 17, 2020 email, Sam's Club committed to purchase 5 million units of the K7 6-pack of hand sanitizer at the agreed price of \$4.28 per pack, for a total purchase of \$21,400,000 (the "6-Pack Hand Sanitizer Purchase").

The Aggregate of Sam's Club's Purchase

31. The several product purchases that Sam's Club made, set forth above (the "Total Purchases"), are reflected in the below chart (the "Total Purchases Chart").

Item	Units	Unit Price	Total
Character Jar Purchase Commitment	50,000	\$24.00	\$1,200,960.00
Extended Cookie Jar Purchase Commitment	522,000	\$17.00	\$8,874,000.00
4-Pack Hand Sanitizer	3,385,628	\$7.66	\$25,933,910.48

¹ "Unicorn Bucket" refers to the K7 Character Jar.

² "Travel Bucket" refers to the K7 Cookie Jar.

Purchase Commitment			
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6-pack Hand Sanitizer (2 varieties) Purchase Commitment	5,000,000	\$4.28	\$21,400,000.00
4-pack antibacterial soap	136,640	\$5.80	\$792,512.00
Total Purchases			\$58,201,382.48

32. The aggregate of Sam’s Club’s purchases amounts to \$58,201,382.48 (the “Aggregate Price”).

Sam’s Club Breached and Repudiated its Agreements to Purchase

33. Sam’s Club has taken delivery of, and paid K7 for, only \$40,876,575.50 of the Aggregate Price.

34. Thereafter, Sam’s Club refused to accept or pay for any additional goods that were part of its Total Purchases.

35. By reason of the foregoing, Sam’s Club breached its agreements for Total Purchases.

K7 Agreed to Certain Price Reductions Under Duress

36. In an exchange of emails and telephone calls between K7 and Sam’s Club in late October 2020 and November 2020, Sam’s Club partially relented by arguing to accept delivery of, and to pay for, 5,200 pallets of product that were part of the Total Purchases, but only on the

condition that K7 pay for Sam's Club to store 3,200 of the pallets before absorbing that portion of the product into its retail outlets for sale.

37. Sam's Club imposed this condition through price reductions that it compelled K7 to accept in order to account for the storage costs (such reductions, the "Price Reductions").

38. Sam's Club had no right to impose the Price Reductions and thereby shift to K7 the storage costs for goods that were part of the Total Purchases for which Sam's Club was already obliged to pay at the previously agreed prices.

39. K7 did not have storage capacity for the 5,200 pallets of goods without having to incur substantial third-party storage fees, which K7 already had incurred due to Sam's Club's breach of the agreements for the Total Purchases.

40. Sam's Club was well aware that K7 could not financially or otherwise continue to incur the huge storage costs for goods that comprised a substantial portion of the Total Purchases, and Sam's Club exerted unjust, unconscionable, and coercive pressure upon K7 in imposing the costs of further storage through the Price Reductions.

41. K7 had no feasible alternative but to accede to the Price Reductions, which K7 would not otherwise have agreed to but for the coercive actions by Sam's Club.

42. The Price Reductions included unit price reductions of the K7 4-pack of hand sanitizer from \$7.66 per unit (4-pack) to \$7.28 for 382,788 units, and to \$6.68 for 937,958 units, for a total price reduction of \$1,064,658.28 for the K7 4-pack of hand sanitizer.

43. The Price Reductions also included unit price reductions of the K7 6-pack of hand sanitizer from \$4.28 to \$4.07 for 1,349,568 units, and from \$4.28 to \$3.41 for 338,112 units, for a total price reduction of \$577,566.72 for the K7 6-pack of hand sanitizer.

44. The total Price Reductions amount to \$1,642,225.

45. K7 is entitled to recover the Price Reduction because they resulted from undue, unjust, and unconscionable requirements imposed by Sam's Club as a condition to its required contract performance and K7 had no feasible choice but to accede to the Price Reductions.

46. Despite the coerced Price Reductions, Sam's Club has failed and refused to accept delivery of, or to pay for, additional quantities of goods that comprise part of the Total Purchases having an aggregate agreed price of \$15,681,621.98 (collectively, the "Unaccepted Goods").

47. When making its various Total Purchases, Sam's Club was fully aware that each separate product order that collectively comprised the Total Purchases was non-cancellable and that K7 was going to specially manufacture the goods for Sam's Club.

48. Sam's Club has manifested no intention to accept delivery of, or to pay for, the Unaccepted Goods, and, in fact, has informed K7 that it will not take or pay for any more goods that were part of the Total Purchases.

49. As a result of the breach and repudiation by Sam's Club of its Total Purchases, K7 has incurred and paid, and continues to incur and pay, storage charges that mount each day and that already total in the hundreds of thousands of dollars.

FIRST COUNT
(Breach of Contract)

50. K7 repeats and realleges the allegations set forth in paragraphs 1 through 49 hereof as if fully set forth herein.

51. Sam's Club has breached and repudiated the agreements which constitute the Total Purchases by refusing to take the Unaccepted Goods and by imposing the Price Reductions.

52. As a result of Sam's Club's breach and repudiation, K7 has been left with Unaccepted Goods in the amount of \$15,681,621.98 and Price Reductions in the amount of \$1,642,225,00, together with continuing storage charges.

53. K7 has complied with all the terms and conditions of the agreements which constitute the Total Purchases.

54. Due to the worldwide COVID-19 pandemic and consequent widespread and accelerated ramp-up of production by suppliers to meet heightened demand for hand sanitizer and anti-bacterial soap, the market for the Unaccepted Goods presently is saturated.

55. K7 has made reasonable attempts to mitigate its damages by finding alternative purchasers for the Unaccepted Goods.

56. As a result of these market conditions, K7 has no channel through which to sell the Unaccepted Goods to alternate buyers at anywhere close to the prices that Sam's Club agreed to pay.

57. By reason of the foregoing, K7 is entitled to recover as damages from Sam's Club the unpaid portion of the Aggregate Price, amounting to \$15,681,621.98, plus \$1,642,225, representing the Price Reductions, together with the continued cost of storing the Unaccepted Goods.

SECOND COUNT
(In the Alternative, Promissory Estoppel)

58. K7 repeats and realleges the allegations set forth in paragraphs 1 through 57 hereof as if fully set forth herein.

59. Sam's Club knew or reasonably should have known when it made the Total Purchases that K7 would manufacture the various products specifically for Sam's Club.

60. K7 reasonably relied on the Total Purchases.

61. In reliance on the Total Purchases by approximately July 2020, all of the goods constituting the Aggregate Price and the Total Purchases had been manufactured, including the millions of bottles, bottle caps, and labels necessary to unitize the several product categories comprising the Total Purchases for the consumer market, as Sam's Club had ordered and to which it had and purchased from K7.

62. Sam's Club has refused to take delivery of, or to pay for, product that K7 manufactured specifically for Sam's Club, as described above, having an aggregate agreed price of \$15,681,621.98.

63. As a result, K7 has been damaged in an amount not less than \$15,681,621.98, plus the continued cost of storing the Unaccepted Goods.

64. As a result of the foregoing, basic fairness and justice require that Sam's Club pay K7 for the agreed upon price of the Unaccepted Goods, in an amount not less than \$15,681,621.98, plus the continuing cost to K7 of storing the Unaccepted Goods.

WHEREFORE, K7 demands judgment as follows:

1. On the First Count, in an amount to be determined by the Court, but in no amount less than \$17,323,846.98, together with the continuing cost of storing the Unaccepted Goods;
2. On the Second Count, in an amount to be determined by the Court, but in no amount less than \$15,681,621.98, together with the continuing cost of storing the Unaccepted Goods;
3. For interest, and the costs and disbursements of this action, including attorney's fees, and;

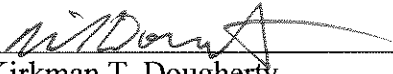
4. For such other and further relief as the Court deems just and equitable under the circumstances.

Dated: April 13, 2021

Respectfully submitted,

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