

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VIRGINIA HERRMANN,)	
<i>individually and on behalf of all others</i>)	
<i>similarly situated,</i>)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:20-cv-00706
)	
SAM’S EAST, INC. d/b/a SAM’S CLUB #6474)	JURY TRIAL DEMANDED
)	
Defendant.)	

NOTICE OF REMOVAL

Defendant Sam’s East, Inc. (“Sam’s Club”) files this notice of removal from the Circuit Court of St. Louis County, Missouri, to the United States District Court for the Eastern District of Missouri, pursuant to 28 U.S.C. §§ 1332(a), 1332(d) and 1441.

I. BACKGROUND

1. On April 20, 2020, Plaintiff Virginia Herrmann (“Herrmann” or “Plaintiff”) filed a Class Action Petition (the “Complaint”) in the Circuit Court of St. Louis County titled *Virginia Herrmann v. Sam’s Club East, Inc. d/b/a Sam’s Club #6474*, No. 20SL-CC02098 (Mo. Cir. Ct.). *See* Compl. (Ex. A).

2. The Complaint alleges violations of the Missouri Merchandising Practices Act (“MMPA”) and other common law claims in connection with class members’ Sam’s Club memberships (the “Memberships”). Compl. ¶¶ 2, 82.

3. Plaintiff alleges that at the beginning of 2019, Sam’s Club offered three different types of memberships: a Sam’s Savings Membership for \$45 per year, a “similarly-priced”

Sam's Business Membership, and a Sam's Plus Membership for \$100 per year. Compl. ¶ 12.

4. Plaintiff contends that she had a Sam's Business Membership at the beginning of 2019, which "renewed for an additional year on or about February 2, 2019." Compl. ¶ 13. She alleges that she had chosen the Business level of membership because it afforded access to the store before "regular shopping hours" began at 9 a.m. Compl. ¶ 12.

5. Plaintiff asserts that on July 5, 2019 she attempted to make a purchase before 9 a.m. and was advised by a store employee that she would have to wait until 9 a.m. to pay for her purchase unless she upgraded to a Sam's Plus Membership, because the Business tier of membership had been eliminated. Compl. ¶ 15. She states that she elected to upgrade her membership at that time in order to complete her purchase. Compl. ¶ 17.

6. At some time thereafter, Plaintiff contends she learned that her Sam's Club store had become open to all members during the 7:00 a.m. to 9:00 a.m. store hours, regardless of membership level, which she says rendered the charge she paid to upgrade her membership unnecessary. Compl. ¶ 18.

7. Plaintiff asserts that the aforementioned acts by Sam's Club breached express and implied terms of her contract with Sam's Club, and amounted to fraudulent misrepresentation, fraudulent inducement, negligent misrepresentation, and violation of the Missouri Merchandising Practice Act ("MMPA"). Compl. ¶¶ 44 – 82.

8. In addition to her individual claims described in paragraph 7 above, Plaintiff also purports to bring breach of contract, breached of implied warranty, fraudulent misrepresentation, fraudulent inducement, and negligent misrepresentation claims on behalf of a nationwide class of "all persons who were charged for an upgrade from a Sam's Business Membership to a Sam's Plus Membership between February 2, 2019 and February 2, 2020" (the "Nationwide Class")

based on the same allegations discussed above. Compl. ¶¶ 21, 83 – 87.

9. Plaintiff also purports to state a separate claim under the MMPA on behalf of a class of “all Missouri residents who were charged for an upgrade from a Sam’s Business Membership to a Sam’s Plus Membership between February 2, 2019 and February 1, 2020, as well as all non-Missouri residents who were charged for an upgrade from a Sam’s Business Membership to a Sam’s Plus Membership” during that same time period “at a Sam’s Club situated in the State of Missouri” (the “Missouri Class”). Comp. ¶¶ 22, 88 – 93.

II. NOTICE OF REMOVAL IS TIMELY

10. Sam’s Club was served with a summons and copy of the Complaint on May 1, 2020. Ex. A p. 27 (Affidavit of Personal Service). Accordingly, this Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

III. REMOVAL PURSUANT TO CLASS ACTION FAIRNESS ACT OF 2005

11. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(d). Under the Class Action Fairness Act (“CAFA”), federal district courts have original jurisdiction when: (1) the putative class consists of at least 100 members; (2) the citizenship of at least one proposed member of the class is different from that of any defendant; and (3) the aggregated amount in controversy exceeds \$5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d).

A. There Are More Than 100 Putative Class Members

12. Plaintiff purports to represent a nationwide class of “all persons who were charged for an upgrade from a Sam’s Business Membership to a Sam’s Plus Membership between February 2, 2019 and February 2, 2020.”¹

¹ Sam’s Club specifically notes and does not waive its jurisdictional defense that this Court lacks jurisdiction to hear nationwide class claims against Sam’s Club in light of the Supreme Court’s decision in *Bristol-Meyers Squibb Co. v. Super. Ct. of Cal.*, 137 S.Ct. 1773 (2017).

13. More than 150,000 individuals or entities upgraded from a Sam's Business Membership to a Sam's Plus Membership during this time frame.

14. Consequently, there are more than 100 putative class members in the Nationwide Class.

B. Minimal Diversity Exists Among the Parties

15. At the time this lawsuit was filed and at all times since, Plaintiff has been a citizen of Missouri. *See* Compl. ¶ 4.

16. At the time this lawsuit was filed and at all times since, Sam's Club has been an Arkansas corporation with its principal place of business in Arkansas. *See* Compl. ¶ 5. Therefore, at the time this action was filed and at all times since, Sam's Club has been a citizen of Arkansas. 28 U.S.C. § 1332(c)(1).

17. CAFA jurisdiction "requires only *minimal* diversity, meaning 'any member of a class of plaintiffs is a citizen of a State different from any defendant.'" *Reece v. Bank of N.Y. Mellon*, 760 F.3d 771, 776 (8th Cir. 2014) (citing 28 U.S.C. § 1332(d)(2)(A)). Because Plaintiff is a Missouri citizen and Sam's Club is a citizen of Arkansas, minimal diversity exists among the parties.

C. The Amount in Controversy Exceeds \$5 Million in the Aggregate

18. Under 28 U.S.C. § 1332(d)(2), an action is removable under CAFA when "the matter in controversy exceeds the sum or value of \$5,000,000." To determine whether the matter in controversy exceeds the sum or value of \$5,000,000, "the claims of the individual class members shall be aggregated." 28 U.S.C. § 1332(d)(6).

19. When, as here, the complaint fails to allege a specific amount in damages sought,

“[t]he jurisdictional fact . . . is not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.” *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002) (emphasis added). For purposes of removal, Sam’s Club needs only to make a “plausible allegation” that the amount in controversy exceeds \$5 million. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014). Once a defendant makes such a showing, “the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 888 (8th Cir. 2013) (quotation omitted).

20. Assuming the truth of the allegations in the Complaint, there is more than \$5 million in controversy.²

21. The Nationwide Class Plaintiff purports to represent is a class of all Sam’s Club members nationwide who were charged for an upgrade from the Business membership level to the \$100 Plus membership level from February 2, 2019 to February 2, 2020. Compl. ¶¶ 22-23. A review of Sam’s Club’s records has shown that more than 150,000 members upgraded between these membership levels during this time and that more than \$5,000,000 was paid as a result of these upgrades.

22. Among other categories of damages, Plaintiff, purportedly on behalf of the Nationwide Class, seeks an order “compelling Defendant to return to Plaintiff and the Class any

² By alleging here that Plaintiff’s pleaded claims have put at issue more than \$5 million, Sam’s Club neither confesses any liability nor admits the appropriate amount of damages if found liable for any part of Plaintiff’s claims. Neither does Sam’s Club believe that punitive damages could be awarded here. Sam’s Club is only stating what the stakes of the litigation could be. *See Hartis v. Chicago Title Ins. Co.*, 694 F.3d 935, 945 (8th Cir. 2012) (“The removing party need not confess liability in order to show that the controversy exceeds the threshold.”) (internal quotation marks omitted). Likewise, Sam’s Club does not admit or concede that a Missouri court would have jurisdiction over the claims of absent class members who are not citizens of Missouri and whose claims have no connection to Missouri.

money collected from Sam's Business members for Sam's Plus Memberships between February 2, 2019 and February 2, 2020." Compl. ¶ 16. A review of Sam's Club's records shows that more than \$5 million dollars was paid for these upgraded memberships during this time period, and it appears that Plaintiff seeks to recover the entire \$100 fee for the Plus memberships. Even if Plaintiff is only seeking to recover the difference between the cost of the two membership levels (that is, \$55 per upgrade, based on the difference between the \$100 Plus membership and the \$45 for Business membership (Compl. ¶ 12)), there would still be more than \$5 million at issue, since there were more than 150,000 upgrades.

23. In addition, Plaintiff also seeks punitive damages, which may be considered in determining whether damages exceed \$5 million under CAFA. *See Raskas*, 719 F.3d at 887.

24. Punitive damage awards, when awarded, can be substantial in consumer fraud cases. *See, e.g.:*

- *Kerr v. Ace Cash Experts, Inc.*, No. 4:10 CV 1645 DDN, 2010 WL 5177977, at *2 (E.D. Mo. Dec. 14, 2010) (considering the possibility of more than \$4.4 million in attorneys' fees and punitive damages based upon allegations of \$594,000 in actual damages);
- *Bass v. Carmax Auto Superstores, Inc.*, No. 07-0883-CV-W-ODS, 2008 WL 441962, at *2 (W.D. Mo. Feb. 14, 2008) (noting that if 4,419 Missouri class members had total actual damages of \$658,431, the "total of punitive damages and attorney fees could easily (and legally) be sufficient to bring the total amount in controversy over the [\$5 million] jurisdictional requirement"); and
- *Dowell v. Debt Relief Am., L.P.*, No. 2:07-CV-27 (JCH), 2007 WL 1876478, at *2 (E.D. Mo. June 27, 2007) (denying remand after considering two prior judgments in MMPA cases and noting that "juries are inclined to assess large punitive damages awards in MMPA cases").

25. As a result of the sales of upgraded memberships during the specified time period, and Plaintiff's demand for punitive damages, attorneys' fees, and injunctive relief, the total amount in controversy exceeds \$5 million.

IV. REMOVAL PURSUANT TO 28 U.S.C. § 1332(A)

26. Removal is also proper under 28 U.S.C. §1441 because this Court has original jurisdiction over this matter pursuant to 28 U.S.C. §1332(a).

27. “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between-- (1) citizens of different States” 28 U.S.C. § 1332(a).

D. The Amount in Controversy on Plaintiff’s Individual Claim Exceeds \$75,000

28. The amount-in-controversy requirement is satisfied because more than \$75,000 is at issue on Plaintiff’s individual claim. The Complaint does not specify the total amount of damages sought, but demands actual and punitive damages, a preliminary and permanent injunction, restitution, disgorgement of profits, and attorney’s fees. *See* Compl. at Prayer for Relief.

29. When the complaint does not state an amount in controversy, “a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S.Ct. 547, 554 (2014).

30. With Plaintiff seeking both punitive damages and attorney’s fees, her claim could certainly exceed \$75,000. *See, e.g., Mishra v. Coleman Motors, LLC*, 2017 WL 994868 (E.D. Mo. Mar. 15, 2017) (holding that individual claim for violation of the MMPA put at issue more than \$75,000 because punitive damages are allowed under the statute, there is no \$75,000 cap on such damages, and juries in Missouri have granted punitive damage awards of over \$500,000 in multiple MMPA cases involving actual damages of less than \$25,000).

31. Plaintiff also seeks preliminary and permanent injunctive relief preventing Sam’s

Club from upgrading individuals from a Sam's Business Membership to the Sam's Plus Membership, which adds additional value to the amount in controversy. Compl. ¶ 82.

E. There is Complete Diversity

32. As stated above, Plaintiff is a resident of Missouri, while Sam's Club resides in Arkansas. As a result, the parties are diverse.

V. COMPLIANCE WITH REMOVAL PROCEDURES

33. Venue is proper in this Court under 28 U.S.C. § 1441(a) because the removed action was filed in the Circuit Court of St. Louis County, Missouri, a court encompassed by the Eastern District of Missouri, Eastern Division.

34. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81-2.03, copies of all process, pleadings, orders, and other documents on file in the state court are attached as Ex. B.

35. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of the Notice of Removal will be promptly served on the attorneys for Plaintiff, and a copy will be promptly filed with the Clerk of the Circuit Court of St. Louis County, Missouri.

36. Sam's Club reserves the right to amend or supplement this Notice of Removal, and reserves all rights and defenses, including those available under Federal Rule of Civil Procedure 12.

WHEREFORE, Sam's Club respectfully removes this action from the Circuit Court of St. Louis County, Missouri, to the United States District Court for the Eastern District of Missouri, Eastern Division.

Dated: May 29, 2020

Respectfully submitted,

BRYAN CAVE LEIGHTON PAISNER LLP

By: /s/ Darci F. Madden

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2020, a copy of the foregoing was served via U.S. mail, first-class postage prepaid, to the following counsel and filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system on all counsel of record:

James G. Onder
OnderLaw LLC
190 East Lockwood
St. Louis, MO 63119
Attorneys for Plaintiff

/s/ Darci F. Madden



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 Return of Service Affidavit for Defendant Sams East Inc dba Sams Club 6474.
Filed By: WILLIAM WYLIE BLAIR
On Behalf Of: VIRGINIA HERRMANN
- 04/24/2020** [Summons Issued-Circuit](#)
 Document ID: 20-SMCC-3675, for SAM'S EAST, INC. D/B/A SAM'S CLUB #6474. Summons Attached in PDF Form for Attorney to Retrieve from Secure Case.Net and Process for Service.
- 04/20/2020** [Filing Info Sheet eFiling](#)
Filed By: WILLIAM WYLIE BLAIR
- [Note to Clerk eFiling](#)
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- [Motion Special Process Server](#)
 Request for Appointment of Special Process Server.
Filed By: WILLIAM WYLIE BLAIR
On Behalf Of: VIRGINIA HERRMANN
- [Pet Filed in Circuit Ct](#)
 Petition.
- [Judge Assigned](#)
 DIV 17

Exhibit A

IN THE CIRCUIT COURT FOR THE TWENTY-FIRST JUDICIAL CIRCUIT
ST. LOUIS COUNTY, MISSOURI

VIRGINIA HERRMANN,)	
)	
Plaintiff,)	
)	
v.)	Case No.
)	
SAM’S EAST, INC. d/b/a SAM’S)	Div.
CLUB #6474,)	
)	
Serve: CT Corporation System)	
120 South Central Ave.)	
Clayton, Missouri 63105)	
)	
Defendant.)	

PETITION

Plaintiff Virginia Herrmann, by and through her undersigned attorneys, for her consumer class action against defendant Sam’s East, Inc. d/b/a Sam’s Club #6474, states as follows:

1. This is a consumer class action against Defendant, and its predecessors and successors, seeking relief to redress an unlawful and deceptive pattern of wrongdoing followed by Defendant regarding the unilateral elimination without notice of the Sam’s Business Membership for members who had already paid for it and the up-charging of said members into Sam’s Plus Memberships.

2. Defendant violated common law, MO. STAT. ANN. § 407.020.1, 15 CSR 60-8.040(1), 15 CSR 60-8.050(1), 15 CSR 60-8.060(1), 15 CSR 60-8.070(1) and/or 15 CSR 60-8.080 by unilaterally eliminating, without notice, the Sam’s Business Membership after members

paid for it and/or by deceiving, fraudulently inducing and/or coercing Sam's Business Membership customers into paying to upgrade to a Sam's Plus Membership.

3. Herrmann sues individually and for all other similarly situated consumers. Herrmann seeks actual damages and such other and further relief as the Court may deem appropriate.

Parties

4. Plaintiff Virginia Herrmann is a resident of St. Louis County, Missouri.

5. Defendant Sam's East, Inc. d/b/a Sam's Club #6474 is a corporation organized and existing under the laws of the State of Arkansas and doing business in St. Louis County, Missouri. Defendant does business in Missouri under numerous fictitious registrations, including but not necessarily limited to Sam's Club #4741, Sam's Club #4875, Sam's Club #4920, Sam's Club #4985, Sam's Club #6252, Sam's Club #6415, Sam's Club #6479, Sam's Club #6505, Sam's Club #8125, Sam's Club #8163, Sam's Club #8182, Sam's Club #8205, Sam's Club #8207, Sam's Club #8243, Sam's Club #8251, Sam's Club #8293 and Sam's Club #8296.

6. All allegations of acts and/or omissions by Defendant include, but are not limited to, acts and omissions of Defendant's officers, directors, operators, managers, supervisors, employees, affiliates, subsidiaries, vice-principals, partners, agents, servants and/or owners; and that such acts and/or omissions were made with Defendant's express and/or implied authority, or were ratified or otherwise approved by Defendants; or that such acts and/or omissions were made in the routine normal course and scope of their agency and employment as Defendant's officers,

directors, operators, managers, supervisors, employees, affiliates, subsidiaries, vice-principals, partners, agents, servants and/or owners.

Jurisdiction and Venue

7. This is a civil action in which Plaintiff and the classes seek over \$25,000. Defendant Sam’s East, Inc. d/b/a Sam’s Club #6474 maintains its principal place of business in St. Louis County, Missouri.

8. Venue is proper in under MO. STAT. ANN. § 508.010 because Herrmann is a resident of St. Louis County, Defendant may be found in St. Louis County, Missouri and the acts, transactions, omissions and/or injuries at issue first occurred in St. Louis County, Missouri.

General Allegations

9. Sam’s Club is an international chain of membership-only retail warehouse clubs owned and operated by Walmart Inc. Founded in 1983, Sam’s Club is named after Walmart founder Sam Walton. It ranks second in sales volumes among warehouse clubs in the United States, grossing nearly \$60 billion in sales in 2019. As of January 31, 2020, Sam’s Club operated 599 membership warehouse clubs throughout the United States in 44 states, Puerto Rico and the U.S. Virgin Islands.

10. Until 2006, Sam’s Club used the slogan “We Are In Business for Small Business,” reflecting a focus on serving small businesses. The slogan was retired as part of Sam’s Club’s effort to shift its marketing focus from small businesses to individual consumers.

11. Sam’s Club memberships are available to qualifying owners or operators of businesses or licensed professionals. Members pay an annual fee.

12. At the beginning of 2019, Sam's Club offered three different membership options: a Sam's Savings Membership for \$45 per year, a similarly-priced Sam's Business Membership, which allowed members to shop before regular shopping hours, and a Sam's Plus Membership for \$100 per year, which included free prescriptions, cash rewards and optical benefits.

13. At the beginning of 2019, Herrmann had a Sam's Business Membership. Her Sam's Business Membership renewed for an additional year on or about February 2, 2019. In connection with her renewal, Herrmann paid an annual Sam's Business Membership fee for 2019 – 2020. Her membership number was 10190130388140352.

14. Herrmann routinely availed herself of the benefits of Sam's Business Membership, including the ability to shop as early as 7:00 a.m., before regular shopping hours. Herrmann relied on the availability of early shopping hours as a means to shop when the store was less crowded, allowing her to get in and out faster than she could during other times of the day.

15. On or about July 5, 2019, Herrmann went to shop at Sam's Club #6474 in Maplewood, Missouri between 7:00 a.m. and 9:00 a.m., prior to regular shopping hours pursuant to the terms of her Sam's Business Membership. She proceeded to checkout and was informed Sam's had unilaterally eliminated the Business Membership tier and that she could not check out prior to 9:00 a.m. unless she upgraded to a Sam's Plus Membership. During a subsequent visit, the shopper before in line was told substantially the same.

16. A Sam's customer service representative told Herrmann that Sam's was informing customers of the change in membership levels on a "case by case" basis as customers came into the store.

17. On or about July 5, 2019, Sam's charged Herrmann \$34.35 for an upgrade to a Sam's Plus Membership. In paying said amount, Herrmann relied upon Sam's Club's false representation that paying to upgrade to Sam's Plus Membership was necessary in order to continue shopping before 9:00 a.m. going forward.

18. At a subsequent visit to Sam's Club #6474 shortly thereafter, Herrmann noted the store greeters were no longer checking membership cards to confirm whether shoppers were eligible to shop before 9:00 a.m. Herrmann was at that time informed by a Sam's Club #6474 employee that the store was open to all members at 7:00 a.m., regardless of membership level. Consequently, there was no need for Herrmann to have been charged for a Plus Membership in order to be able to shop before 9:00 a.m.

19. Upon information and belief, at some point during 2019 Sam's Club eliminated the previous membership tiers and adopted a two-tier system consisting of Primary Membership and Plus Membership. Upon information and belief, at some point during 2019 Sam's also eliminated its restriction on shopping hours, allowing all members to shop as early as 7:00 a.m. regardless of membership level.

Class Allegations

20. Plaintiff brings her Petition individually and for classes designated under MO. R. CIV. P. 52.08(b)(3) to remedy the ongoing unfair, unlawful and/or deceptive business practices alleged and seeks redress for all persons harmed.

21. The Class is comprised of all persons who were charged for an upgrade from a Sam's Business Membership to a Sam's Plus Membership between February 2, 2019 and February 2, 2020.

22. The Missouri Class is comprised of all Missouri residents who were charged for an upgrade from a Sam's Business Membership to a Sam's Plus Membership between February 2, 2019 and February 1, 2020, as well as all non-Missouri residents who were charged for an upgrade from a Sam's Business Membership to a Sam's Plus Membership between February 2, 2019 and February 1, 2020 at a Sam's Club situated in the State of Missouri.

23. Members of the class are so numerous their individual joinder is impracticable, insofar as Defendant does business through 599 locations nationwide, is the second largest warehouse club by sales volume in the United States and the class is comprised of all individuals who participated in the second tier of Defendant's three-tier membership program between February 2, 2019 and February 1, 2020 who were charged for an upgrade from a Sam's Business Membership to a Sam's Plus Membership between February 2, 2019 and February 1, 2020. The classes are sufficiently numerous to make joinder impracticable, if not impossible. The precise number of class members is unknown.

24. There are questions of law and fact common to the classes, which questions predominate over any issues involving individual class members.

25. The principal legal question common to Plaintiff and each Class member is whether Sam's Club's violated consumers' contractual and/or common law rights by unilaterally eliminating, without notice, the Sam's Business Membership after members paid for it and/or by deceiving, fraudulently inducing and/or coercing Sam's Business Membership members customers into paying to upgrade to a Sam's Plus Membership.

26. The principal legal question common to Plaintiff and each Missouri Class member, in addition to that set forth in the foregoing paragraph, is whether Sam's Club's conduct violated MO. STAT. ANN. § 407.020.1, 15 CSR 60-8.040(1), 15 CSR 60-8.050(1), 15 CSR 60-8.060(1), 15 CSR 60-8.070(1) and/or 15 CSR 60-8.080.

27. Plaintiff's claims are typical of the claims of the Class and Missouri Class members.

28. Plaintiff's and the classes' claims are based on the same factual and legal theories.

29. Plaintiff's and the class members' rights derive from common law and, in the case of the Missouri Class, Missouri's Merchandising Practices Act and implementing regulations.

30. Upon information and belief, Sam's Club membership status changes for all Class Members were substantively identical to that of Plaintiff.

31. Plaintiff and each of the class members were damaged and may recover actual damages, including but not limited to the amount charged by Sam's Club for Sam's Business members to upgrade to Sam's Plus Membership status.

32. Plaintiff will fairly and adequately represent and protect the interest of the classes.

33. The class members and Plaintiff have no antagonistic interests.

34. Plaintiff's counsel is competent and experienced in consumer and class litigation.

35. Plaintiff and all class members have an interest in determining their rights in the circumstances.

36. The questions of law or fact common to the classes predominate over questions affecting only individual members.

37. Plaintiff and each class member will rely on the same basic evidence, specifically the date and amount of their last Sam's Business Membership renewal, the date and amount they were charged for a Sam's Plus Membership and any communications with Sam's Club regarding their change in membership status.

38. Determining the legal basis, or lack thereof, for the charges assessed by Sam's Club for a change in membership status from Sam's Business Membership to Sam's Plus Membership resolves all class members' claims because all members of the class and/or Missouri Class were charged for such a change in membership.

39. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

40. Most class members are probably unaware Defendant violated their rights and the law.

41. If each of the class members were forced to bring an individualized suit, such suits would burden judicial resources and would create the risk of multiple inconsistent results for similarly situated parties.

42. Concentrating the litigation of Plaintiff's and the class members' claims is also desirable and logical given the predominance of common questions of law and fact alleged above.

43. The classes should be certified under Rule 52.08(b)(3) as the superior method for the fair and efficient adjudication of this controversy.

Count I – Breach of Contract

44. The allegations set forth in paragraphs 1 – 43 are incorporated by this reference as if fully set forth herein.

45. Herrmann and Sam's Club had a contract in the form of Herrmann's Sam's Business Membership and the rights and expectancies arising out of same, including but not limited to the ability to shop before 9:00 a.m. with the benefit of not having members who were not also Sam's Business members shopping at the same time.

46. Sam's Club breached its contract with Herrmann by unilaterally terminating the Sam's Business Membership without notice to Herrmann and by withdrawing the benefits said membership conferred, including but not limited to the ability to shop before 9:00 a.m. with the benefit of not having members who were not also Sam's Business members shopping at the same time.

47. As a result of Sam's Club's breach of contract, Herrmann was damaged.

WHEREFORE, plaintiff Virginia Herrmann prays this Court enter judgment for Plaintiff and against Defendant awarding actual damages, prejudgment and post-judgment interest and such other and further relief as the Court deems just and proper.

Count II – Breach of the Implied Covenant of Good Faith and Fair Dealing

48. The allegations set forth in paragraphs 1 – 43 are incorporated by this reference as if fully set forth herein.

49. Herrmann and Sam’s Club had a contract in the form of Herrmann’s Sam’s Business Membership and the rights and expectancies arising out of same, including but not limited to the ability to shop before 9:00 a.m. with the benefit of not having members who were not also Sam’s Business members shopping at the same time.

50. Sam’s Club unilaterally terminated the Sam’s Business Membership without notice to Herrmann and by withdrawing the benefits said membership conferred, including but not limited to the ability to shop before 9:00 a.m. with the benefit of not having members who were not also Sam’s Business members shopping at the same time.

51. In so doing, Sam’s Club exercised a judgment conferred by the express terms of its contract with Herrmann in such a manner as to evade the spirit of the transaction and/or to deny Herrmann of the expected benefit of the contract.

52. As a result of Sam’s Club’s breach of the implied covenant of good faith and fair dealing, Herrmann was damaged.

WHEREFORE, plaintiff Virginia Herrmann prays this Court enter judgment for Plaintiff and against Defendant awarding actual damages, prejudgment and post-judgment interest, punitive damages and such other and further relief as the Court deems just and proper.

Count III – Fraudulent Misrepresentation

53. The allegations set forth in paragraphs 1 – 43 are incorporated by this reference as if fully set forth herein.

54. Sam's Club, through the cashier, customer service representative and/or agents and employees at Sam's Club #6474, represented to Herrmann that in order to continue shopping and/or checking out before 9:00 a.m., she would need to pay to upgrade to a Sam's Plus Membership.

55. The representation that Herrmann would need to pay to upgrade to Sam's Plus Membership in order to continue shopping and/or checking out before 9:00 a.m. was false when made.

56. The representation that Herrmann would need to pay to upgrade to Sam's Plus Membership in order to continue shopping and/or checking out before 9:00 a.m. was material.

57. Sam's Club's employees and/or agents knew the representation that Herrmann would need to pay to upgrade to Sam's Plus Membership in order to continue shopping and/or checking out before 9:00 a.m. was false when made or, in the alternative, were ignorant of its truth.

58. Sam's Club's employees and/or agents intended that their representation be acted upon by Herrmann in the manner reasonably contemplated.

59. Herrmann was unaware of the falsity of Sam's Club's representation, and in fact actually, and incorrectly, believed that neither she nor any other Sam's Club member would in the future be allowed to shop and/or check out before 9:00 a.m. without having a Sam's Plus Membership.

60. Herrmann relied upon the truth of Sam's Club's representation and had the right to do so.

61. Sam's Club's fraudulent misrepresentation proximately caused Herrmann damage.

WHEREFORE, plaintiff Virginia Herrmann prays this Court enter judgment for Plaintiff and against Defendant awarding actual damages, prejudgment and post-judgment interest, punitive damages and such other and further relief as the Court deems just and proper.

Count IV – Fraudulent Inducement

62. The allegations set forth in paragraphs 1 – 43 are incorporated by this reference as if fully set forth herein.

63. Sam's Club, through the cashier, customer service representative and/or agents and employees at Sam's Club #6474, represented to Herrmann that in order to continue shopping and/or checking out before 9:00 a.m., she would need to pay to upgrade to a Sam's Plus Membership.

64. The representation that Herrmann would need to pay to upgrade to Sam's Plus Membership in order to continue shopping and/or checking out before 9:00 a.m. was false.

65. The representation that Herrmann would need to pay to upgrade to Sam's Plus Membership in order to continue shopping and/or checking out before 9:00 a.m. was material.

66. Sam's Club's employees and/or agents knew the representation that Herrmann would need to pay to upgrade to Sam's Plus Membership in order to continue shopping and/or

checking out before 9:00 a.m. was false or, in the alternative, were ignorant of its truth and/or should have known of its falsity.

67. Sam's Club's employees and/or agents intended that their representation be acted upon by Herrmann.

68. Herrmann was unaware of the falsity of Sam's Club's representation, and in fact actually, and incorrectly, believed that neither she nor any other Sam's Club member would in the future be allowed to shop and/or check out before 9:00 a.m. without having a Sam's Plus Membership.

69. Herrmann relied upon the truth of Sam's Club's representation and had the right to do so.

70. Sam's Club's fraudulent inducement proximately caused Herrmann damage.

WHEREFORE, plaintiff Virginia Herrmann prays this Court enter judgment for Plaintiff and against Defendant awarding actual damages, prejudgment and post-judgment interest, punitive damages and such other and further relief as the Court deems just and proper.

Count V – Negligent Misrepresentation

71. The allegations set forth in paragraphs 1 – 43 are incorporated by this reference as if fully set forth herein.

72. Sam's Club, through the cashier, customer service representative and/or agents and employees at Sam's Club #6474, acting in Sam's Club's pecuniary interest of collecting the Sam's Plus Membership fee, represented to Herrmann that in order to continue shopping and/or checking out before 9:00 a.m., she would need to pay to upgrade to a Sam's Plus Membership.

73. Due to Sam's Club's agents' and/or employees' failure to exercise reasonable care or competence in obtaining and/or communicating the information in the foregoing paragraph, said information was false.

74. Sam's Club, through its agents and/or employees, intentionally provided the information set forth in paragraph 72 for the guidance of a limited group of persons in a particular business transaction, namely Sam's Business members who Sam's Club was attempting to induce to upgrade to Sam's Plus Membership.

75. Herrmann justifiably relied on Sam's Club's representations.

76. As a result of her reliance on Sam's Club's representations, Herrmann suffered pecuniary loss.

WHEREFORE, plaintiff Virginia Herrmann prays this Court enter judgment for Plaintiff and against Defendant awarding actual damages, prejudgment and post-judgment interest and such other and further relief as the Court deems just and proper.

Count VI – Missouri Merchandising Practices Act

77. The allegations set forth in paragraphs 1 – 76 are incorporated by this reference as if fully set forth herein.

78. Herrmann purchased a Sam's Business Membership for 2019 – 2020. On or about July 5, 2019, Sam's Club terminated her Sam's Business Membership and charged her for a Sam's Plus Membership.

79. Herrmann maintained her Sam's Business Membership for personal, family or household purposes.

80. Herrmann suffered ascertainable loss of money in connection with the transactions at issue.

81. Herrmann's loss was the result of an unlawful act committed before, during and/or after a sale or advertisement that was unlawful.

82. Sam's Club's actions were unlawful under MO. STAT. ANN. § 407.020.1, 15 CSR 60-8.040(1), 15 CSR 60-8.050(1), 15 CSR 60-8.060(1), 15 CSR 60-8.070(1) and/or 15 CSR 60-8.080.

WHEREFORE, plaintiff Virginia Herrmann prays this Court enter judgment for Plaintiff and against Defendant awarding actual damages, prejudgment and post-judgment interest, a preliminary and permanent injunction enjoining Defendant from engaging in practices alleged, Plaintiff's reasonable attorneys' fees, punitive damages and such other and further relief as the Court deems just and proper.

Count VII – Class's Claim

83. The allegations set forth in paragraphs 1 – 76 are incorporated by this reference as if fully set forth herein.

84. Sam's Club violated the common law rights of the class members by unilaterally terminating the Sam's Business Membership without notice and by withdrawing the benefits said membership conferred, including but not limited to the ability to shop before 9:00 a.m. with the benefit of not having members who were not also Sam's Business members shopping at the same time.

85. Sam's Club further violated the common law rights of the class members by inducing and/or charging them for Sam's Plus Memberships based on false pretenses, as set forth hereinabove and incorporated by this reference.

86. As a direct and proximate result of Sam's Club's acts and/or omissions, Herrmann and the Class suffered actual damages in an amount exceeding \$25,000.

87. Defendant's actions were wanton, outrageous and/or malicious because of its reckless indifference to or conscious disregard of the rights of Plaintiff and the Class.

WHEREFORE, plaintiff Virginia Herrmann prays this Court certify the Class and enter judgment for Plaintiff and the Class and against Defendant awarding actual damages, prejudgment and post-judgment interest, a preliminary and permanent injunction enjoining Defendant from engaging in practices alleged, a mandatory injunction compelling Defendant to return to Plaintiff and the Class any money collected from Sam's Business members for Sam's Plus Memberships between February 2, 2019 and February 1, 2020, punitive damages and such other and further relief as the Court deems just and proper.

Count VIII – Missouri Class's Claim

88. The allegations set forth in paragraphs 1 – 82 are incorporated by this reference as if fully set forth herein.

89. Sam's Club violated the common law rights of the Missouri Class members and the Missouri Merchandising Practices Act by unilaterally terminating the Sam's Business Membership without notice and by withdrawing the benefits said membership conferred,

including but not limited to the ability to shop before 9:00 a.m. with the benefit of not having members who were not also Sam's Business members shopping at the same time.

90. Sam's Club further violated the common law rights of the Missouri Class members and the Missouri Merchandising Practices Act by inducing and/or charging them for Sam's Plus Memberships based on false pretenses, as set forth hereinabove and incorporated by this reference.

91. As a direct and proximate result of Sam's Club's acts and/or omissions, Herrmann and the Missouri Class suffered actual damages in an amount exceeding \$25,000.

92. Plaintiff and the Missouri Class are entitled to attorneys' fees pursuant to MO. STAT. ANN. § 407.020.1.

93. Defendant's actions were wanton, outrageous and/or malicious because of its reckless indifference to or conscious disregard of the consumer rights of Plaintiff and the Missouri Class. Plaintiff and the Missouri Class are therefore entitled to punitive damages pursuant to MO. STAT. ANN. § 407.020.1.

WHEREFORE, plaintiff Virginia Herrmann prays this Court certify the Missouri Class and enter judgment for Plaintiff and the Missouri Class and against Defendant awarding actual damages, prejudgment and post-judgment interest, a preliminary and permanent injunction enjoining Defendant from engaging in practices alleged, a mandatory injunction compelling Defendant to return to Plaintiff and the Missouri Class any money collected from Sam's Business members for Sam's Plus Memberships between February 2, 2019 and February 1,

2020, Plaintiff and the Missouri Class's reasonable attorneys' fees, punitive damages and such other and further relief as the Court deems just and proper.

Respectfully submitted,

ONDERLAW LLC

By: /s/ W. Wylie Blair

James G. Onder, # 38049

onder@onderlaw.com

W. Wylie Blair, # 58196

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Martin L. Daesch # 40494

daesch@onderlaw.com

Lawanna S. Wichmann, # 53999

wichmann@onderlaw.com

190 East Lockwood

St. Louis, MO 63119

Telephone: (314) 963-9000

Facsimile: (314) 963-1700

Attorneys for Plaintiff

In the
CIRCUIT COURT
Of St. Louis County, Missouri



For File Stamp Only

Virginia Herrmann
Plaintiff/Petitioner

April 20, 2020
Date

vs.
SAM'S EAST, INC. d/b/a SAM'S CLUB #6474,
Defendant/Respondent

Case Number

Division

REQUEST FOR APPOINTMENT OF PROCESS SERVER

Comes now Plaintiff, pursuant to Local Rule 28, and at his/her/its own risk requests the appointment of the Circuit Clerk of

John Houseman -Captured Investigative Agency, 8235 Forsyth Blvd., Ste., St. Louis, MO 314-392-3205
Name of Process Server Address Telephone

Dave Condon - Captured Investigative Agency, 8235 Forsyth Blvd., Ste 282., St. Louis, MO 314-392-3205
Name of Process Server Address or in the Alternative Telephone

Name of Process Server Address or in the Alternative Telephone

Natural person(s) of lawful age to serve the summons and petition in this cause on the below named parties. This appointment as special process server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVE:
SAM'S EAST, INC. d/b/a SAM'S CLUB #6474
Name
CT Corporation System, 120 S. Central Ave.
Address
Clayton, Missouri 63105
City/State/Zip

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

SERVE:

Name

Address

City/State/Zip

Appointed as requested:

JOAN M. GILMER, Circuit Clerk

By /s/Laura Scotece
Deputy Clerk

04/24/2020
Date

/s/ W. Wylie Blair
Signature of Attorney/Plaintiff/Petitioner

58196
Bar No.

(314) 963-9000 (314) 963-1700
Address Phone No. Fax No.

Local Rule 28. SPECIAL PROCESS SERVERS

(1) Any Judge may appoint a Special Process Server in writing in accordance with the law and at the risk and expense of the requesting party except no special process server shall be appointed to serve a garnishment [except as allowed by Missouri Supreme Court Rule 90.03(a)].

This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

(2) The Circuit Clerk may appoint a natural person other than the Sheriff to serve process in any cause in accordance with this subsection;

(A) Appointments may list more than one server as alternates.

(B) The appointment of a person other than the Sheriff to serve process shall be made at the risk and expense of the requesting party.

(C) Any person of lawful age, other than the Sheriff, appointed to serve process shall be a natural person and not a corporation or other business association.

(D) No person, other than the Sheriff, shall be appointed to serve any order, writ or other process which requires any levy, seizure, sequestration, garnishment, [except as allowed by Missouri Supreme Court Rule 90.03(a)], or other taking.

(E) Requests for appointment of a person other than the Sheriff to serve process shall be made on a "Request for Appointment of Process Server" electronic form, which may be found on the Court's Web Site, <https://wp.stlcountycourts.com > forms>.

(F) This appointment as Special Process Server does not include the authorization to carry a concealed weapon in the performance thereof.

SERVICE RETURN

Any service by the St. Louis County Sheriff's Office shall be scanned into the courts case management system. Any service by another Sheriff or a Special Process Server or any other person authorized to serve process shall return to the attorney or party who sought service and the attorney shall file the return electronically to the Circuit Clerk.




IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOSEPH L. WALSH III	Case Number: 20SL-CC02098
Plaintiff/Petitioner: VIRGINIA HERRMANN	Plaintiff's/Petitioner's Attorney/Address WILLIAM WYLIE BLAIR 110 East Lockwood, 2nd Floor ST LOUIS, MO 63119
Defendant/Respondent: SAM'S EAST, INC. D/B/A SAM'S CLUB #6474	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Breach of Contract	(Date File Stamp)

Summons in Civil Case

The State of Missouri to: SAM'S EAST, INC. D/B/A SAM'S CLUB #6474
 Alias:
 SERVE: CT CORPORATION SYSTEM
 120 SOUTH CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

 ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.
SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

24-APR-2020
 Date

Further Information:
 LES

Joan P. Delaney
 Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons	\$ _____
Non Est	\$ _____
Sheriff's Deputy Salary	\$ _____
Supplemental Surcharge	\$ 10.00
Mileage	\$ _____ (_____ miles @ \$. _____ per mile)
Total	\$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the “neutral,” who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator’s decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 105 South Central Ave., 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

CCADM73

IN THE 22nd JUDICIAL CIRCUIT, CITY OF ST. LOUIS, MISSOURI
22nd JUDICIAL CIRCUIT

VIRGINIA HERRMANN

Plaintiff

v.

SAMS EAST INC DBA SAMS CLUB #6474

Defendant

Case No.:20SL-CC02098

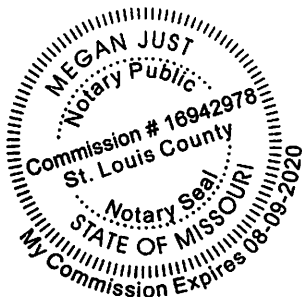
AFFIDAVIT OF PERSONAL SERVICE

That I, John G Houseman hereby solemnly affirm under penalties of perjury and upon personal knowledge that the contents of the following document are true and do affirm I am a competent person over 18 years of age, not a party to this action and that I am certified and in good standing and/or authorized to serve process in the Judicial Circuit in which the process was served,

That on 5/1/2020 at 12:21 PM at 120 S Central Ave Ste 400, Clayton, MO 63105-1705 I served SAMS EAST INC DBA SAMS CLUB #6474 C/O REGISTERED AGENT CT CORP with the following list of documents: SUMMONSPETITION by then and there personally delivering a true and correct copy of the documents into the hands of and leaving with SAMS EAST INC DBA SAMS CLUB #6474 C/O REGISTERED AGENT CT CORP.

That I asked the person spoken to whether the Served was in the active duty military service of the United States or in the state in which this service was made and was told [] No they were not [] Yes they are [] No answer was given.

That the fee for this Service is \$ 65.00



John G Houseman
Contracted by Captured Investigative Agency
8235 Forsyth Blvd., STE 1100
Clayton, MO 63105
(314) 392-3205

5/4/2020

Executed On:



Order #:16915
VIRGINIA HERRMANN

IN THE 22nd JUDICIAL CIRCUIT, CITY OF ST. LOUIS, MISSOURI
22nd JUDICIAL CIRCUIT

VIRGINIA HERRMANN

Plaintiff

v.

SAMS EAST INC DBA SAMS CLUB #6474

Defendant

Case No.:20SL-CC02098

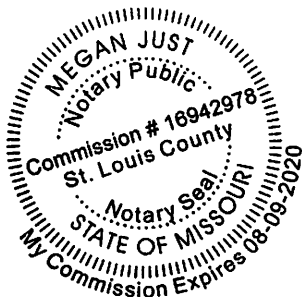
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That the fee for this Service is \$ 65.00



John G Houseman
Contracted by Captured Investigative Agency
8235 Forsyth Blvd., STE 1100
Clayton, MO 63105
(314) 392-3205

5/4/2020

Executed On:



Order #:16915
VIRGINIA HERRMANN

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Virginia Herrmann, individually and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff St. Louis (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

James G. Onder, ONDERLAW LLC, 190 East Lockwood, St. Louis, MO 63119, (314) 963-9000

DEFENDANTS

Sam's East, Inc., d/b/a Sam's Club #6474

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Darci F. Madden, BRYAN CAVE LEIGHTON PAISNER LLP, 211 N. Broadway, Suite 3600, St. Louis, MO 63102, (314) 259-2000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category contains a list of legal codes with checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. Section 1332. Brief description of cause: Removal of class action seeking relief under MMPA, RsMo 407.020, et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 25.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 05/29/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Darci F. Madden

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Virginia Herrmann, individually and on behalf)	
of all others similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:20-cv-00706
)	
Sam's East, Inc., d/b/a Sam's Club #6474,)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN INITIATING A NEW CASE.

THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____ AND ASSIGNED TO THE HONORABLE JUDGE _____.

THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 05/29/2020

/s/ Darci F. Madden
Signature of Filing Party

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Sam's Club Sued Over 'Fraudulently Inducing' Members to Upgrade to Sam's Plus Membership](#)
