

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
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Myriam Fejzulai, individually and on	)	
behalf of all others similarly situated,	)	C.A. No.
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b>CLASS ACTION COMPLAINT</b>
	)	<b>Jury Trial Demanded</b>
Sam's West, Inc.; Sam's East, Inc.; and	)	
Wal-Mart Stores, Inc. (all d/b/a "Sam's	)	
Club" and/or "Sam's Wholesale Club"),	)	
	)	
Defendants.	)	
	)	

Plaintiff, on her own behalf and on behalf of all others similarly situated, alleges against Sam's West, Inc., Sam's East, Inc., and Wal-Mart Stores, Inc. (collectively referred to below as "Sam's Club") as follows:

**JURISDICTION AND VENUE**

1. This civil action seeks damages for breach of contract.
2. This Court has jurisdiction under 28 U.S.C. § 1332(d) because the matter in controversy, based on the aggregation of claims of individual class members (the "Class" is defined below) per 28 U.S.C. §1332(d)(6), exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and one or more members of the Class is a member of a State different from any Defendant. None of the Defendants are citizens of the State of South Carolina and, upon information and belief, less than one-third of the members of the Class are citizens of the State of South Carolina.
3. The Court has personal jurisdiction over the Defendants, and venue in this District is proper under 28 U.S.C. § 1391(b) and (c).

**P A R T I E S**

4. Plaintiff is a resident of Greenville County, South Carolina. She has been a member of Sam's Club for approximately eight years.

5. Defendant Sam's West, Inc. ("Sam's West"), d/b/a Sam's Club and/or Sam's Wholesale Club, is an Arkansas corporation registered to do business in South Carolina with its principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Upon information and belief, Sam's West is a wholly owned subsidiary of Defendant Wal-Mart Stores, Inc., and its operations are indistinct from Sam's East. Sam's West does business in this venue and is subject to the personal jurisdiction of the Court. Its registered agent for service of process is CT Corporation System, 2 Office Park Ct., Suite 103, Columbia, SC 29223.

6. Defendant Sam's East, Inc. ("Sam's East"), d/b/a Sam's Club and/or Sam's Wholesale Club, is an Arkansas corporation registered to do business in South Carolina with its principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Upon information and belief, Sam's East is a wholly owned subsidiary of Defendant Wal-Mart Stores, Inc., and its operations are indistinct from Sam's West. Sam's East does business in this venue and is subject to the personal jurisdiction of the Court. Its registered agent for service of process is CT Corporation System, 2 Office Park Ct., Suite 103, Columbia, SC 29223.

7. Defendant Wal-Mart Stores, Inc. ("Wal-Mart"), is a Delaware corporation registered to do business in South Carolina with its principal place of business at 702 S.W. 8th Street, Bentonville, Arkansas 72716. Wal-Mart does business in this venue and is subject to the personal jurisdiction of the Court. Its registered agent for service of process is C T Corporation System, 2 Office Park Ct., Suite 103, Columbia, SC 29223. Sam's Club is a division of Wal-Mart. Wal-Mart exercises control over Sam's Club and its operations and facilities with respect

to the matters described herein such that the breaches of contract set forth herein can be attributed to Wal-Mart's management, personnel, policies, directives and other controls. Upon information and belief, Wal-Mart actively and directly participated in the breaches described herein.

8. Wal-Mart, Sam's West, and Sam's East all do business as Sam's Club and are collectively referred to herein by that term ("Sam's Club" or "Sam's"). They are jointly and severally liable for the breaches described herein.

**BACKGROUND FACTS**  
***Sam's Club's 200% Freshness Guarantee***

9. Sam's Club operates through memberships which are sold to individuals and businesses. A standard individual or business membership is \$45 per year. A "Plus" membership is \$100 per year. (See Exhibit A, "Membership Page".<sup>1</sup>) A membership constitutes a contract between each member and the company. The Membership Page sets forth as a provision of membership for all categories, and thus a term of the contract between Sam's Club and each member, a "200% Freshness Guarantee" which reads as follows:

**Freshness Guarantee**

- 200% money-back guarantee on all fresh meat, seafood, bakery and produce. Non-Members receive 100% money-back guarantee.

(Exhibit A, p.2).

10. The Membership Page also references "More Membership Details" which links to another page entitled "Membership Terms and Conditions." (See Exhibit B, "Membership Terms and Conditions.") The "Membership Terms and Conditions" in turn references and contains links to Sam's "Return/Refund Policy" (attached as Exhibit C) and "Return/Refund

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<sup>1</sup> <http://www.samsclub.com/sams/pagedetails/content.jsp?pageName=aboutSams>

Exceptions” (attached as Exhibit D) for further information about returning products to Sam’s Club.

11. The “Return/Refund Exceptions” page also references the 200% Freshness Guarantee, stating:

**No Receipt or Proof of Purchase Required:**

- Refund on Fresh product (i.e., Meat, Bakery, or Produce) will follow the 200% guarantee: Double the Member's money back OR refund of the original purchase price and replacement of the item. The 200% guaranteed applies only to paid Members with Sam's Club. It does not apply to one-day or other passes.

12. The 200% Freshness Guarantee is also set forth on a page on Sam’s website for mobile users. This page, also entitled “Terms and Conditions,” includes the following:

**200% Freshness Guarantee:** Sam’s Club offers members a 200% guarantee for fresh products (i.e., meat, bakery and produce). We will refund double the member’s purchase price or refund the purchase price and replace the product. A 100% guarantee will be offered to all other customers.

(Exhibit E, page 2.)

13. The 200% Freshness Guarantee has been part of the terms and conditions of a Sam’s membership since at least 2008.

14. Sam’s Club touts the Freshness Guarantee in its marketing materials. One example is a press release dated July 31, 2012. (See Exhibit F). In the release, Sam’s states:

Sam’s Club is committed to providing Members with fresh, peak-season fruits that are bursting with flavor and nutrients. Each Northwest cherry found at Sam’s Club is handpicked by passionate produce experts from growers dedicated to innovations in freshness and sustainability, ensuring the highest quality at an exceptional value. **And with the 200% satisfaction guarantee\* on crisp produce, fresh meats, savory seafood and gourmet-to-go desserts, families can feel secure about the quality of ingredients they are grilling this summer.**

\* \* \*

\*Sam’s Club will double the Member’s money back or refund of the original purchase price and replacement of Fresh product. The 200% Guarantee applies only to paid members with SAMS CLUB. It does not apply to 1-Day or other Passes. Non-members may return fresh product for their purchase price only.

(Emphasis added.<sup>2</sup>) Another example is Exhibit G, from Sam’s “meat guide,” where Sam’s writes:

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<sup>2</sup> [www3.samsclub.com/newsroom/Press/1205](http://www3.samsclub.com/newsroom/Press/1205)

Whether it's a skeptical youngster at the family dinner table or a discerning customer in a restaurant, everyone will agree that the select fresh meats from Sam's Club are a delicious hit! **And, with the Sam's Club 200% guarantee on all fresh meat, you just can't lose.**

(Emphasis added.<sup>3</sup>)

***Plaintiff's Experience With Sam's Club And The 200% Freshness Guarantee***

15. As noted above, Plaintiff has been a member of Sam's Club for approximately eight years, paying the yearly membership fee each year. Plaintiff has bought most of her groceries at Sam's Club since becoming a member.

16. Over the years, Plaintiff has bought a large amount of fresh meat, bakery and produce items. She has also returned a significant number of those items in the last several years. Until May 2014, she has never been refunded more than the purchase price of the items nor ever been offered the return of her purchase plus a replacement product as she was entitled to under the terms of her membership with Sam's. Plaintiff believes that she has returned hundreds of dollars of products covered by the 200% Freshness Guarantee over the last several years without receiving what she was contractually entitled to under the guarantee in her membership contract.

17. Upon information and belief, Sam's has treated numerous members who have returned goods covered by the 200% Freshness Guarantee in the same manner as it has treated Plaintiff: it has failed to honor the 200% Freshness Guarantee as required by the terms of its Membership Agreement. Given that Sam's has, on information and belief, over 47 million members, Plaintiff alleges that Sam's has failed to honor the 200% Freshness Guarantee for many thousands, if not millions, of its members.

<sup>3</sup>

[www.samsclub.com/sams/pagedetails/content.jsp?pageName=meatGuide](http://www.samsclub.com/sams/pagedetails/content.jsp?pageName=meatGuide)

**C L A S S   D E F I N I T I O N   A N D   P E R I O D**

18. This action is brought by Plaintiff on behalf of herself and of a nationwide class of similarly situated persons.

19. The proposed class is all those persons (a) who were, or are, members of Sam's Club, (b) who purchased from Sam's one or more "Fresh Product" (meat, seafood, produce, or bakery) items, (c) who returned "Fresh Product" to Sam's during the class period, and (d) to whom Sam's failed to refund 200% of the purchase price of the returned item(s) (or to refund 100% of the purchase price and replace the item(s)) in accordance with Sam's Membership Agreement.

20. The class period shall be based on the applicable statute of limitations for contract claims. In the event the Court determines that the Sam's Membership Agreement is governed by Arkansas law, the class period shall commence on September 11, 2009, as per Arkansas's five-year statute of limitations for contract claims, and go through the date of judgment. In the event the Court determines that each membership contract is governed by the member's state of residence, the class periods for members of the various states shall be based on the statute of limitations of the members' states of residence. For example:

a. In states with a three-year statute of limitations (e.g., AK, CO, DE, DC, MD, NH, NC & SC), the class period shall commence on September 11, 2011 and go through the date of judgment.

b. In states with a four-year limitations period (e.g., CA, PA & TX), the class period shall commence on September 11, 2010, and go through the date of judgment.

c. In states with a five-year limitations period (e.g., AR, FL, ID, KS, MO, NE, OK & VA), the class period shall commence on September 11, 2009, and go through the date of judgment.

d. In states with a six-year limitations period e.g., AL, AZ, CT, GA, HI, ME, MA, MI, MN, MS, NV, NJ, NM, NY, ND, OR, SD, TN, UT, VT, WA & WI), the class period shall commence on September 11, 2008, and go through the date of judgment.

e. In states with an eight-year limitations period (e.g., MT & OH), the class period shall commence on September 11, 2006, and go through the date of judgment.

f. In states with a ten-year limitations period (e.g., IL, IN, IA, LA, RI, WV & WY), the class period shall commence on September 11, 2004, and go through the date of judgment. And

g. In states with a fifteen-year limitations period (e.g., KY), the class period shall commence on September 11, 1999, and go through the date of judgment.

21. Excluded from the Class are the Defendants, their respective officers, directors and employees, any entity that has a controlling interest in any defendant, and all of its respective employees, affiliates, legal representatives, heirs, successors, or assignees. Any claims for personal injury or consequential damages, not otherwise permitted under the facts pled herein, are expressly excluded from this action.

#### **C L A S S   A C T I O N   A L L E G A T I O N S**

22. Plaintiff bring this class action under Federal Rules of Civil Procedure 23(a) and 23(b)(3).

23. The members of the class are so numerous that joinder of all members is impracticable. The disposition of these claims as a class action will provide substantial benefits

to the parties and the Court including the just, speedy, and inexpensive determination of this matter. Sam's is a nationwide chain with over 45 million members in the United States and Puerto Rico, and the Sam's Membership Agreement, the contract at issue, is identical with respect to each class member.

24. Plaintiff's claims are both typical and aligned with the proposed class claims. The damages sustained by Plaintiff are also typical of those sustained by class members.

25. Plaintiff will fairly and adequately protect the interests of the Class, and Plaintiff has retained competent counsel with experience in class action litigation. Plaintiffs have no interests that are contrary to, or in conflict with, those of the class that Plaintiff seeks to represent.

26. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of potentially millions of Sam's Club members is impracticable, the damages suffered by individual class members may be relatively small, and the expense and burden of litigation would make it difficult if not impossible for the members of the Class to individually redress the wrongs done to them by the defendants. However, because of the commonality of the predominant issues involved in the claims, defenses, and damages alleged, there will be no difficulty in maintaining this dispute as a class action.

27. There is a well-defined community of interest in the questions of law and fact involved in this matter such that a class action is clearly the superior method for the fair and efficient handling of this dispute.



**COUNT I**  
**Breach of Contract**

28. Plaintiff incorporates by reference each and every allegation contained in the foregoing paragraphs.

29. The terms and conditions of Sam's Membership Agreement, including the 200% Freshness Guarantee, and Plaintiff's payment of membership fees or dues constitute a contract between Plaintiff and Sam's Club.

30. Defendants breached that contract as alleged above each time they failed to refund 200% of the purchase price of any returned item subject to the 200% Freshness Guarantee (or refund 100% the purchase price of any returned item subject to the 200% Freshness Guarantee and replace the item).

31. Plaintiff has been damaged as a proximate result of these actions and is entitled to actual damages in an amount to be determined by a jury.

**RELIEF REQUESTED**

32. Plaintiff respectfully requests that this Honorable Court:

a. Enter judgment against the Defendants in an amount to be determined for the actual and consequential damages of Plaintiff and the class members;

b. Award costs, attorneys' fees and expenses reasonably incurred in the prosecution of the instant action to the extent permitted by law.

c. For such other and further relief as the Court deems just and proper.

**J U R Y   T R I A L   D E M A N D E D**

33. Plaintiff demands a trial by jury as to all issues.

Respectfully submitted,

/s/ William D. Herlong

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