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13 LINDA KELEMER

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 LINDA KELEMER, an individual,
17
18 Plaintiff,

19 vs.

20 WALMART INC., a Delaware
21 corporation,
22
23 Defendant.

Case No. _____

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

24 Plaintiff Linda Kelemer (“Kelemer”) alleges against Defendant Walmart Inc.
25 (“Walmart” or “Defendant”), as follows:

26 1. This is an action for willful infringement of design patents in violation
27 of the Patent Laws of the United States, as set forth in 35 U.S.C. §§ 271 and 280
28 through 285.

2. For the past 13 years, Kelemer has engaged in designing, developing,

1 and marketing various furniture embodying unique designs. Among other things,
 2 Kelemer developed designs and concepts for foldable chairs in the classic Parsons
 3 style, which in the past were sold by major retailers such as Bed, Bath & Beyond.
 4 Two of her furniture designs are protected under United States Patent No. D637,416
 5 (the “’416 Patent”) and United States Patent No. D630,449 (the “’449 Patent”).

6 3. A true and correct copy of the ’416 Patent is attached hereto as **Exhibit**
 7 **A.**

8 4. A true and correct copy of the ’449 Patent is attached hereto as **Exhibit**
 9 **B.**

10 5. Both the ’416 and ’449 describe and claim a unique design for foldable
 11 chairs in the classic Parsons style. Among other things, the ’416 Patent describes
 12 and claims a foldable chair with a completely upholstered back which runs flush to
 13 the seat, slightly beveled legs, and sleek, angular cushions. The ’449 Patent describes
 14 and claims a similar foldable Parsons-style chair with a larger gap between the back
 15 cushion and seat cushion.

16 6. Kelemer caused embodiments of the ’416 and ’449 Patents to be
 17 manufactured, and presented those embodiments at various tradeshows and in trade
 18 periodicals with the intent of selling her foldable furniture at major “big box”
 19 retailers. In her various presentations and marketing materials to retailers, Kelemer
 20 advised potential customers that the foldable furniture was patented.

21 7. In 2009, Kelemer began to supply foldable chairs embodying the ’416
 22 and ’449 Patents to Bed, Bath & Beyond in substantial numbers. Eventually,
 23 however, that relationship ended and Kelemer was no longer used as a supplier.

24 8. In or around July of 2017, Kelemer discovered that Defendant was
 25 selling foldable chairs embodying the ’416 and ’449 Patents.

26 **PARTIES**

27 9. Kelemer is an individual residing in the State of California, County of
 28 Los Angeles.

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including Defendant. As part of those presentations, representatives of potential retailer clients were provided with pictures of products embodying the '416 and '449 Patents and informed that those designs were patent protected.

16. Kelemer did not reach an agreement with Defendant for the distribution of the products.

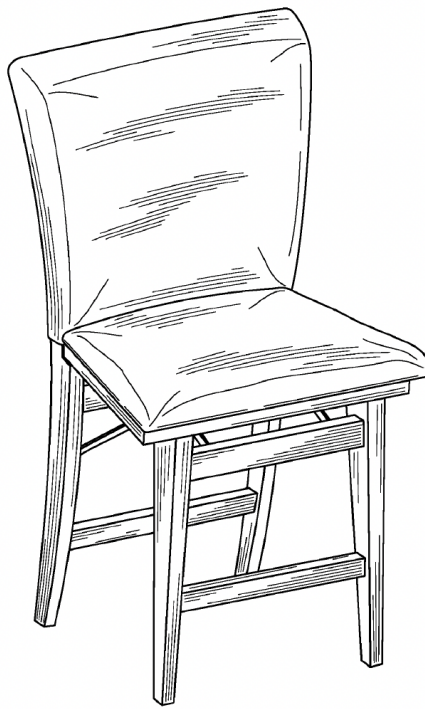

B. DEFENDANT’S UNLAWFUL CONDUCT.

17. Instead of licensing Kelemer’s patents, Defendant simply copied the designs and started selling knock-off foldable chairs, thereby intentionally and willfully infringing Kelemer’s '416 and '449 Patents.

18. Defendant has infringed and is currently infringing the '416 and '449 Patents in violation of 35 U.S.C. § 271 by making, having made, using, selling, and/or offering for sale, within the United States, products embodying the designs claimed in the '416 and '449 Patents, including, without limitation, foldable chairs with completely upholstered backs, the back cushion flush with the bottom cushion, curved and slightly tapered rear legs, slightly tapered front legs, and beveled cushions, as are described and claimed in one or both of the '416 and '449 Patents.

19. Defendant’s products infringing upon the '416 Patent include, by way of example and without limitation, the “Parson’s hardwood folding chair in espresso finish and Jax fabric (Brown)” contained in the Stakmore product line (the “'416 and '449 Infringing Product”).

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'416 Patent	'416 and '449 Infringing Product
 <p data-bbox="576 1029 657 1060">FIG. 1</p>	

COUNT I
INFRINGEMENT OF '416 PATENT
UNDER 35 U.S.C. § 271

20. Kelemer repeats paragraphs 1-20, above, and incorporates the allegations thereof as if set forth herein in their entirety.

21. Defendant has infringed and is currently infringing '416 Patent in violation of 35 U.S.C. § 271 by making, having made, using, selling, and/or offering for sale, within the United States, products embodying the design claimed in the '416 Patent. Defendant's infringing products including, by way of example and without limitation, the "Parson's hardwood folding chair in espresso finish and Jax fabric (Brown)" contained in the Stakmore product line.

22. Defendant had actual knowledge of the '416 Patent and Kelemer's

1 patented products.

2 23. Defendant’s infringement of the ’416 Patent has been and continues to
3 be willful and deliberate.

4 24. Kelemer has been injured and damaged, and will continue to be injured
5 and damaged, by Defendant’s infringement of the ’416 Patent. Defendant’s
6 infringement has caused, and will continue to cause, irreparable harm to Kelemer
7 unless and until enjoined by this Court.

8 **COUNT II**
9 **INFRINGEMENT OF ’449 PATENT**
10 **UNDER 35 U.S.C. § 271**

11 25. Kelemer repeats paragraphs 1-20 above, and incorporates the
12 allegations thereof as if set forth herein in their entirety.

13 26. Defendant has infringed and is currently infringing the ’449 Patent in
14 violation of 35 U.S.C. § 271 by making, having made, using, selling and/or offering
15 for sale, within the United States, products embodying the design claimed in the ’449
16 Patent. Defendant’s infringing products include, by way of example and without
17 limitation, the “Parson’s hardwood folding chair in espresso finish and Jax fabric
18 (Brown)” contained in the Stakmore product line.

19 27. Defendant’s had actual knowledge of the ’449 Patent and Kelemer’s
20 patented products.

21 28. Defendant’s infringement of the ’449 Patent has been and continues to
22 be willful and deliberate.

23 29. Kelemer has been injured and damaged, and will continue to be injured
24 and damaged, by Defendant’s infringement of the ’449 Patent. Defendant’s
25 infringement has caused, and will continue to cause, irreparable harm to Kelemer
26 unless and until enjoined by this Court.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment against Defendant, as follows:

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- 1. That Defendant has willfully infringed the '416 and '449 Patents;
- 2. That an accounting be had for the damages caused to Plaintiff by Defendant's infringing activities, and that such damages, including damages for lost profits and/or reasonable royalty in an amount not known at this time, which amount should be trebled under 35 U.S.C. § 284, with interest, be awarded to Plaintiff;
- 3. That Plaintiff be granted preliminary and permanent injunctive relief restraining and enjoining Defendant and their agents, servants, employees, and all persons acting thereunder, in concert with, or on its behalf, from infringing the '416 and '449 Patents, including without limitation restraining and enjoining the making, advertising, marketing, using, importing, selling, and/or offering to sell the '416 and '449 Infringing Products;
- 4. That the Court enter an order declaring that such damages and other monetary relief not be dischargeable through bankruptcy or otherwise;
- 5. That this be adjudged an exceptional case and that Plaintiff be awarded her attorneys' fees and costs in this action pursuant to 35 U.S.C. § 285; and
- 6. That Plaintiff be awarded such further relief as the Court may deem equitable and just.

JURY TRIAL DEMANDED

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Linda Kelemer hereby demands trial by jury on all issues.

DATED: February 15, 2022

RUSS, AUGUST & KABAT
Marc C. Fenster
Nathan D. Meyer
Timothy M. Baumann

By: /s/ Marc C. Fenster
Marc C. Fenster
Attorneys for Plaintiff
Linda Kelemer