

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

| | | |
|-----------------------------|---|------------------------|
| WALGREEN CO., |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. 1:22-cv-04753 |
| v. |) | |
| |) | JURY DEMANDED |
| |) | |
| ADURO PRODUCTS, LLC, |) | |
| |) | |
| |) | |
| Defendant. |) | |

COMPLAINT

Walgreen Co. (“Walgreens”), by and through its undersigned attorneys, hereby files this Complaint for breach of contract against Aduro Products, LLC (“Aduro”), alleging as follows:

I. NATURE OF THE CASE

1. This is an action for breach of contract or, alternatively, unjust enrichment. It arises from Aduro’s breach of its promises and obligations pursuant to the parties’ contracts and agreements. Specifically, Aduro sold UV light tech accessories, namely Tech Theory UV lights and UV mini wands (collectively, the “Tech Accessories”), to Walgreens on a guaranteed-sale basis. Aduro specifically agreed to: (1) refund Walgreens to the extent that the Tech Accessories did not meet agreed-to benchmarks and unsold units of Tech Accessories were ultimately returned to Aduro; and (2) pay any amounts that a post-audit of the parties’ transactions performed by Walgreens found that it owed. In each of these regards, Aduro has failed to live up to its agreements with Walgreens.

2. As a direct and proximate result of Aduro’s breaches of contract, Walgreens has suffered damages in an amount to be proven at trial, but not less than \$408,000.41. This amount

accounts for offsets that Walgreens has applied to Aduro's account with Walgreens, as the parties agreed that Walgreens could do. Walgreens files this lawsuit to recover those damages.

II. THE PARTIES

3. Walgreens is an Illinois corporation with its principal place of business at 200 Wilmot Road, Deerfield, Illinois, 60015. Walgreens is in the business of providing consumer goods and services, as well as pharmacy, health and wellness services, through thousands of retail drugstores throughout the United States.

4. Aduro is an active, New York limited liability company with its principal place of business at 250 Liberty Street, Metuchen, New Jersey, 08840. Aduro is engaged primarily in the production and distribution of electronics accessories. On information and belief, and based on Walgreens' research, including review of the public record through New York's Department of State, Division of Corporations, and New Jersey's Department of the Treasury, Division of Revenue and Enterprise Services, Aduro's members are not citizens of Illinois. *See Carolina Cas. Ins. Co. v. Team Equip., Inc.*, 741 F.3d 1082, 1086 (9th Cir. 2014) (“[B]ecause the information necessary to establish the diversity of the citizenship of some of the defendants was not reasonably available to plaintiff, we conclude that the court should have permitted Carolina to plead its jurisdictional allegations as to those defendants on information and belief and without affirmatively asserting those defendants' citizenship.”); *Lincoln Ben. Life Co. v. AEI Life, LLC*, 800 F.3d 99, 108 (3d Cir. 2015) (“If, after this inquiry [of public records], the plaintiff has no reason to believe that any of the association's members share its state of citizenship, it may allege complete diversity in good faith.”); *Employers Preferred Ins. Co. v. C&K Hotel Grp., LLC*, No. 15-cv-1500, 2016 U.S. Dist. LEXIS 23259 (C.D. Ill. Feb. 25, 2016) (same).

III. JURISDICTION AND VENUE

5. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. § 1332 because the citizenship of Walgreens and Aduro is diverse and the amount in controversy is in excess of \$75,000.

6. Venue is proper in the Northern District of Illinois pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims made in this lawsuit occurred within the Northern District of Illinois. Moreover, in the parties' written agreement (discussed further below), they "consent[ed] to the exclusive jurisdiction of the courts of the State of Illinois or Federal District Court of the Northern District of Illinois and agree[d] to waive all objections as to venue and *forum non conveniens*."

IV. FACTUAL ALLEGATIONS

A. The Parties' Agreements

7. In 2020, Walgreens and Aduro agreed that Walgreens would buy Tech Accessories from Aduro and stock the Tech Accessories at its stores for resale to consumers. Walgreens and Aduro agreed that these purchases by Walgreens would be pursuant to certain written agreements.

8. The written agreement through which all purchases by Walgreens from Aduro were made was the Walgreen Co. General Trade and Electronic Data Interchange Agreement (the "GTA"). Aduro, through its authorized representative Gary Levy, signed the GTA with an effective date of May 19, 2020.

9. The GTA states in its preamble that: "The terms and conditions contained herein shall apply to all merchandise . . . sold by Vendor [Aduro], directly or indirectly through its distributors, to Walgreen[s]."

10. The GTA further provides that: "[Aduro's] performance shall be in accordance with these terms, dating and conditions. Any other terms in [Aduro's] acceptance are rejected unless

agreed to in writing and signed by Walgreen[s'] authorized representative.” Further clarifying that the GTA controls the parties’ relationship, it provides that: “In the event of a conflict between these terms or any purchase order issued by Walgreen[s], and any document issued by [Aduro], the terms of this Agreement shall control.” The GTA also provides that: “No oral modification or waiver of any of the provisions of this Agreement shall be binding on either party.”

11. The parties never signed any written modification of the GTA that contradicts or modifies any of its terms.

12. The GTA states that “if a purchase order is designated as a ‘Guaranteed Sale,’ . . . Walgreen[s] shall not be obligated to pay for any merchandise until after it is sold by Walgreen[s] in accordance with terms agreed upon by the parties.”

13. The GTA also states that “Walgreen[s] shall have the unrestricted right to rescind its purchase of the merchandise from [Aduro] both before and after acceptance of such merchandise by Walgreen[s] and return any remaining merchandise to [Aduro] for full refund of any amounts paid for such merchandise.”

14. On July 23, 2020, Walgreens and Aduro entered into a Merchandise Vendor Agreement (the “Merchandise Agreement”).

15. The Merchandise Agreement adds specific agreed-upon terms to the parties’ contract. Specifically, the Merchandise Agreement states that: “The Merchandise will be sold by [Aduro] to Walgreen[s] on a ‘Guaranteed Sale’ basis. At its sole discretion, Walgreen[s] may return . . . any unsold merchandise, and Walgreen[s] shall be entitled to a credit from Vendor for the cost of such Merchandise.”

16. Thus, consistent with the GTA and Merchandise Agreement, all purchases by Walgreens from Aduro were on a “Guaranteed Sale” basis such that Walgreens was not obligated

to pay for the merchandise until it was sold pursuant to agreed-upon terms. Moreover, if Walgreens' sales expectations were not met, Walgreens had a right to return the merchandise to Aduro (with no payment obligation having arisen), which would provide a corresponding refund to Walgreens for the Tech Accessories and costs incurred by Walgreens to return the unsold Tech Accessories to Aduro, including the agreed-upon upcharge fee and applicable freight expenses.¹

17. The Merchandise Agreement further provides that “[Aduro] will pay four percent (4%) of total purchases of Merchandise towards co-op advertising support (‘Co-op Support’) (i.e., Rotos, TLCs, Easy Saver, etc.).”

18. Lastly, the GTA expressly incorporates Walgreens' Post Audit Policy. The Post Audit Policy provides that “Walgreens reserves the right to audit all transactions up to two and one-half years from the end of the calendar year that the transaction occurred.”

B. Aduro Breaches its Agreements with Walgreens

19. Walgreens ordered Tech Accessories from Aduro at \$8.00-\$9.00 per unit, paid for the items and placed them for sale in its stores. However, the units of Tech Accessories did not all sell, and some units were returned or never delivered to Walgreens.

20. Consistent with the terms of the GTA and Merchandise Agreement, Walgreens returned at least 44,247 units of Tech Accessories to Aduro between April 2021 and August 2021. Each unit of Tech Accessories that Walgreens returned to Aduro was authorized by the parties' agreements either because the Tech Accessories did not meet agreed-to benchmarks or because they were sold to Walgreens on a guaranteed sale basis. Aduro accepted those returned items, for which Walgreens had paid Aduro approximately \$380,000.00.

¹ Pursuant to the Merchandise Agreement, the upcharge fee was either 4% (distribution center returns), 6% (retail merchandise returned at the end of its life cycle), or 8% (retail merchandise returned in the ordinary course of business).

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