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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DENA GRIFFITH, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

Case No:

COMPLAINT- CLASS ACTION DEMAND
FOR JURY TRIAL

1 Plaintiff Dena Griffith (“Plaintiff”), hereby brings this Action against Defendant Amazon.com,
2 Inc. (“Defendant” or “Amazon”) for misleading consumers concerning the amounts they must pay for
3 grocery deliveries from Whole Foods Market, and upon information and belief and investigation of
4 counsel alleges as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has original jurisdiction over this action under the Class Action Fairness Act
7 of 2005 (“CAFA”), 28 U.S.C. § 1332(d). Defendant is a citizen of a state different from that of the
8 Plaintiff, the putative class size is greater than 100 persons, and the amount in controversy in the
9 aggregate for the putative Class exceeds the sum or value of \$5 million exclusive of interest and costs.

10 2. This Court has both general and specific personal jurisdiction over the Defendant
11 because Defendant has conducted and continues to conduct substantial business in the State of
12 Washington and in King County, Washington.

13 3. This Court has specific personal jurisdiction arising from Defendant’s decision to
14 conduct business in Washington. Defendant has sufficient minimum contacts with this State and
15 sufficiently avails itself to the markets of this State to render the exercise of jurisdiction by this Court
16 reasonable. Defendant maintains its corporate headquarters in the state of Washington.

17 4. Venue is proper in the United States District Court for the Western District of
18 Washington pursuant to 28 U.S.C. § 1391(b) because Defendant resides in this District.

19 **II. PARTIES**

20 5. Defendant Amazon is the world’s largest online marketplace. It is a Delaware
21 corporation that is headquartered at 410 Terry Avenue North, Seattle, Washington 98109-5210.

22 6. Plaintiff Dena Griffith is a citizen of the State of California who resides in Riverside
23 County, California.

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2 **III. FACTUAL ALLEGATIONS**

3 **A. Amazon Advertises that Its Prime Members Will Receive “Free Delivery” and**
4 **“Free 2-Hour Grocery Delivery”**

5 7. Amazon offers a service called Amazon Prime, which is a paid subscription service that
6 gives users access to additional services otherwise unavailable or available at a premium to other
7 Amazon customers. Amazon Prime services include same, one or two-day delivery of goods and
8 streaming music, video, e-books, gaming and grocery shopping services. In April 2021, Amazon
9 reported that Prime had more than 200 million subscribers worldwide.¹

10 8. Amazon charges its customers approximately \$14.99 per month or \$139 per year for an
11 Amazon Prime membership.

12 9. One of the advertised benefits of Amazon Prime is that members will receive “FREE
13 Delivery” and “FREE 2-Hour Grocery Delivery,” including grocery deliveries from Whole Foods
14 Market. Amazon makes these representations on the Amazon website and in television and print
15 advertisements. Below are representative examples of advertisements from Amazon’s website:
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23 ¹ See *Amazon Prime Tops 200 Million Members, Jeff Bezos Says*, VARIETY, available at
24 <https://variety.com/2021/digital/news/amazon-prime-200-million-jeff-bezos-1234952188/> (last visited June 6, 2022).

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FREE 2-Hour Grocery Delivery

Free ultrafast delivery on groceries and household essentials



Shop a wide selection of groceries including fresh foods and produce with free two-hour delivery from Fresh and your local Whole Foods Market. Available in select US cities

- Go to amazon.com/grocery to learn more
- Meet minimum order amount*
- Checkout using your existing Amazon account

* Threshold amount may vary

Check out what's included:



Fast, free delivery

Enjoy fast, free delivery, just for being a Prime member - including 2-hour delivery on thousands of items!



Popular movies and shows

New releases. Award-winning Amazon Originals. Watch what you love on your favorite devices.



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Join Prime

FREE One-Day Delivery
Get items the next day



Available on more than ten million products, with no minimum purchase. Receive orders by 9 p.m the next day. Filter by "Get it tomorrow" when shopping. Selection and order cutoff varies by area.

- Look for the One-Day logo
- Add eligible items to your cart.
- Select delivery option at checkout.

LEARN MORE

B. Amazon’s “Free Delivery” Advertisements Are False and Misleading Because Amazon Charges a \$9.95 Service Fee for Grocery Deliveries from Whole Foods Market

10. Whole Foods Market is a supermarket chain that is popularly known for its selections of organic foods. Whole Foods has approximately 500 stores in North America. In August of 2017, Amazon acquired Whole Foods Market and continues to own Whole Foods Market.

11. Amazon offers its prime members 2-hour grocery delivery from Whole Foods Market.



Pickup and delivery

Prime members get convenient 2-hour grocery delivery and 1-hour pickup from their local store (available in select cities). Learn more and find frequently asked questions [here](#).

Start a delivery or pickup order

12. Amazon advertises that its Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery,” including for grocery deliveries from Whole Foods Market. This is false.

13. In approximately October of 2021, Amazon began charging its customers— including its Prime member customers— a \$9.95 “service fee” for all grocery deliveries from Whole Foods Market.² Accordingly, Amazon’s representations that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery” are false, misleading, and likely to deceive a reasonable

² See *Amazon slaps a \$9.95 fee on Whole Foods deliveries. And Walmart pounces*, CNN, available at <https://www.cnn.com/2021/10/28/business/walmart-amazon-prime-fee/index.html> (last visited June 6, 2022).

1 consumer.

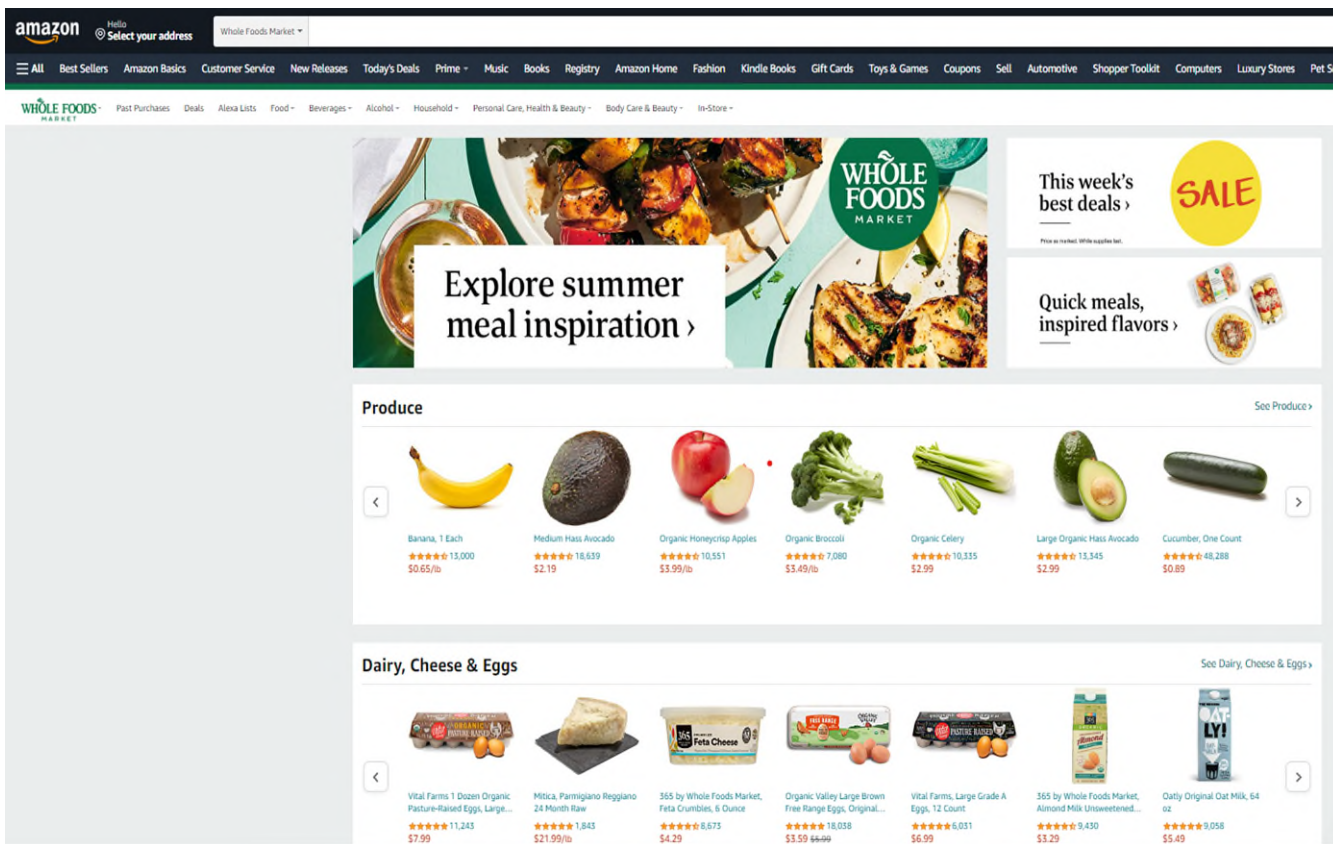
2 14. Amazon’s \$9.95 “service fee” is in essence a hidden delivery fee. In fact, the service fee
3 was “put in place to help cover delivery operating costs like equipment and technology without raising
4 product prices.”³ Amazon customers are only charged the \$9.95 “service fee” for Whole Foods grocery
5 deliveries. If a customer instead choses to pick up the items in-store, then that customer will not be
6 charged the service fee.

7 **C. Amazon Engages in Bait-and-Switch Advertising by Not Disclosing the \$9.95**
8 **Service Fee with the Advertised Price of the Whole Foods Grocery Items**

9 15. In addition to Amazon’s false representations that Prime members will receive “FREE
10 Delivery” and “FREE 2-Hour Grocery Delivery,” Amazon engages in a bait-and-switch advertising
11 scheme by not disclosing the \$9.95 service fee along with the advertised price of the Whole Foods
12 grocery items.

13 16. The first page of the Whole Foods delivery section on Amazon’s website displays various
14 grocery items alongside the advertised price of the items. For example, the advertised price of Whole
15 Foods Feta Cheese is \$4.29. Nowhere on this initial webpage is the \$9.95 service fee disclosed as shown
16 below:

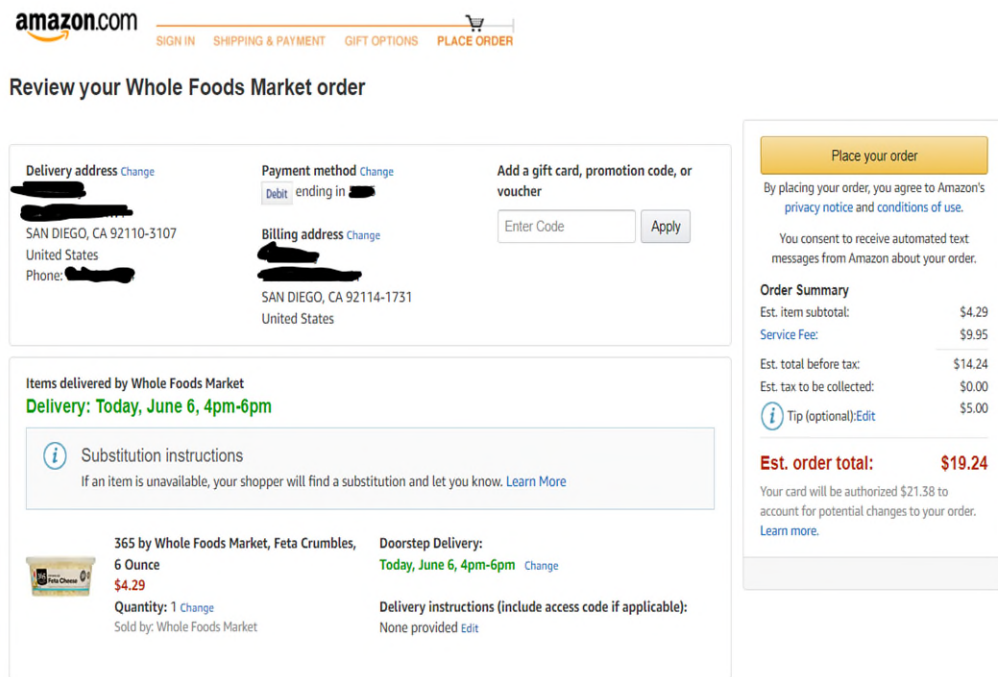
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24 ³ *Id.*



17. If a consumer then clicks on the desired grocery item, the next webpage states in opaque text “\$9.95 for 2-hour delivery.” This text is in small font and is unlikely to be noticed by a reasonable consumer. Moreover, the text is in smaller font and in a different color than the advertised price of the grocery item as shown below:



1 18. Once the consumer clicks on the “add to cart” icon, there is a series of webpages asking
 2 for payment and delivery information before the consumer arrives at the final “place your order” page.
 3 On the “place your order” page, the service fee is shown in small text above the total price of the delivery
 4 that is unlikely to be noticed by a reasonable consumer. Moreover, Amazon also includes a \$5 tip that
 5 is shown in small text above the total price of the delivery that is unlikely to be noticed by a reasonable
 6 consumer. Although the tip is “optional,” reasonable consumers would not notice that the \$5 tip has
 7 been added by default. Amazon’s “place order” page is shown below:



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2 19. Amazon’s practice of initially advertising only part of a price and then later revealing the
3 service fee as the consumer completes the buying process has been labeled “drip pricing” by the Federal
4 Trade Commission (“FTC”).⁴ Amazon uses drip pricing to bamboozle consumers using the tried and
5 true classic, and unlawful, bait advertising scheme.⁵ Again, Amazon advertises groceries from Whole
6 Foods at a certain price and then tacks on a mandatory “service fee” later in the ordering process after
7 the consumer is already invested in the ordering process.

8 **D. Plaintiff’s Experience**

9 20. Plaintiff Dena Griffith is an Amazon Prime member who read and relied on Amazon’s
10 online advertisements that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery
11 Delivery.”

12 21. On January 22, 2022, Plaintiff made an online order for a Whole Foods grocery delivery
13 from the Amazon website and was charged a \$9.95 service fee.

14 22. Plaintiff Griffith was deceived by and relied upon Defendant’s misleading bargain and
15 bait advertising, and specifically the hidden and deceptive nature of the service fee and the fact that
16 Amazon advertises that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery
17 Delivery.” Plaintiff purchased grocery items from Defendant in reliance on the false and deceptive
18 bargain and bait advertising and without knowledge of the true amount being charged based on

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20 ⁴ See *The Economics of Drip Pricing*, FEDERAL TRADE COMMISSION, available at
<https://www.ftc.gov/news-events/events/2012/05/economics-drip-pricing> (last visited June 6, 2022).

21 ⁵ “Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in
22 truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised
23 merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous
24 to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in
buying merchandise of the type so advertised.” 16 CFR § 238.0.

1 Defendant’s deceptive advertising and buried service fee.

2 23. Plaintiff, as a reasonable consumer, is not required to scrutinize advertisements to ferret
3 out misleading facts and omissions, ascertain whether Defendant’s pricing includes or excludes a service
4 fee. In fact, Plaintiff is lawfully entitled to rely on statements that Defendant deliberately places on its
5 website that Prime members will receive “FREE Delivery” and “FREE 2-Hour Grocery Delivery.”

6 24. Because Plaintiff reasonably assumed that her grocery delivery order would conform to
7 the advertised price and be free of unlawful or hidden charges, when it was not, she did not receive the
8 benefit of her purchase. Instead of receiving the benefit of a free delivery as advertised, Plaintiff paid a
9 \$9.95 service fee.

10 25. Plaintiff would not have placed her online grocery order, and would not have paid as
11 much as she had for the grocery order, in the absence of Defendant’s misrepresentations and omissions.
12 Had Defendant not violated Washington and California law, Plaintiff would not have been injured as
13 she was. Plaintiff was also unable, and will not be able in the future, to effectively compare grocery
14 delivery prices when purchasing from Amazon’s website due to Amazon’s initial deception of
15 advertising grocery prices that are less than what a consumer will ultimately pay. Plaintiff has suffered
16 a concrete, tangible, injury in fact caused by Defendant’s wrongful acts and omissions.

17 26. Plaintiff and the Class have lost money as a result of Defendant’s unlawful behavior.
18 Plaintiff and the Class altered their position to their detriment and suffered loss in an amount equal to
19 the deceptively advertised service fees they paid for Whole Foods grocery deliveries.

20 27. Plaintiff intends to, seeks to, and will purchase Whole Foods grocery deliveries from the
21 Amazon website again when she can do so with the assurance that the advertising of free delivery is
22 lawful.

1 **IV. CLASS ACTION ALLEGATIONS**

2 28. Plaintiff brings this action on behalf of herself and all others similarly situated pursuant
3 to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3).

4 29. **The Nationwide Class is defined as follows:**

5 All U.S. citizens who were Amazon Prime members that were charged a service fee in
6 connection with an online delivery from Whole Foods Market from August 1, 2021 until
7 the date notice is disseminated to the class, excluding Defendant and Defendant's officers,
8 directors, employees, agents and affiliates, and the Court and its staff.

9 30. **The California Class is defined as follows:**

10 All California residents who were Amazon Prime members that were charged a service fee in
11 connection with an online delivery from Whole Foods Market from August 1, 2021 until the
12 date notice is disseminated to the class, excluding Defendant and Defendant's officers, directors,
13 employees, agents and affiliates, and the Court and its staff.

14 31. The proposed Classes meet all criteria for a class action, including numerosity,
15 commonality, typicality, predominance, superiority, and adequacy of representation.

16 32. This action has been brought and may properly be maintained as a class action against
17 Defendant. While the exact number and identities of other Class Members are unknown to Plaintiff at
18 this time, Plaintiff is informed and believes that there are hundreds of thousands of Members in the
19 Class. The Members of the Class are so numerous that joinder of all Members is impracticable and the
20 disposition of their claims in a class action rather than in individual actions will benefit the parties and
21 the courts.

22 33. The proposed Classes satisfy typicality. Plaintiff's claims are typical of and are not
23 antagonistic to the claims of other Class members. Plaintiff and the Class members all purchased Whole
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1 Foods grocery deliveries, were deceived by the false and deceptive advertising, and lost money as a
2 result.

3 34. The proposed Classes satisfy superiority. A class action is superior to any other means
4 for adjudication of the Class members' claims because it would be impractical for individual Class
5 members to bring individual lawsuits to vindicate their claims.

6 35. Because Defendant's misrepresentations were uniformly made on Amazon's website, all
7 Class members including Plaintiff were exposed to and continue to be exposed to the omissions and
8 affirmative misrepresentations. If this action is not brought as a class action, Defendant can continue to
9 deceive consumers and violate federal and state law with impunity.

10 36. The proposed Class representative satisfies adequacy of representation. Plaintiff is an
11 adequate representative of the Class as she seeks relief for the Class, her interests do not conflict with
12 the interests of the Class members, and she has no interests antagonistic to those of other Class members.
13 Plaintiff has retained counsel competent in the prosecution of consumer fraud and class action litigation.

14 37. The proposed Classes satisfy commonality and predominance. There is a well-defined
15 community of interest in questions of law and fact common to the Class, and these predominate over
16 any individual questions affecting individual Class members in this action.

17 38. Questions of law and fact common to Plaintiff and the Class include:

18 a. Whether Defendant failed to disclose the presence of a service fee during the online ordering
19 process;

20 b. Whether Defendant's advertising omissions and representations constituted false advertising
21 under Washington and California law;

22 c. Whether Defendant's advertising omissions and representations constituted unfair business
23 practices under the Washington Consumer Protection Act;

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2 d. Whether Defendant’s conduct constituted a violation of California’s Unfair Competition Law;

3 e. Whether Defendant’s conduct constituted a violation of California’s Consumer Legal
4 Remedies Act;

5 f. Whether the Class is entitled to restitution, rescission, actual damages, punitive damages,
6 attorney fees and costs of suit, and injunctive relief; and

7 g. Whether members of the Class are entitled to any such further relief as the Court deems
8 appropriate.

9 39. Plaintiff will fairly and adequately protect the interests of the Class, has no interests that
10 are incompatible with the interests of the Class, and has retained counsel competent and experienced in
11 class litigation.

12 40. Defendant has acted on grounds applicable to the entire Class, making final injunctive
13 relief or declaratory relief appropriate for the Class as a whole.

14 41. Class treatment is therefore appropriate under Federal Rule of Civil Procedure 23.

15 42. Class damages will be adduced and proven at trial through expert testimony and other
16 competent evidence, including evidence exclusively in Defendant’s possession.

17 **V. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**

20 **RCW 19.86.010 *ET SEQ.***

21 43. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
22 forth in full herein.

23 44. The Washington Consumer Protection Act (“WCPA”) makes unlawful to commit
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1 “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
2 commerce.” REV. CODE WASH. ANN. § 19.86.020. The WCPA provides a private right of action for
3 “[a]ny person who is injured in his or her business or property” by violations of the Act. REV. CODE
4 WASH. ANN. 19.86.090.

5 45. In the course of the Defendant’s business, it knowingly and intentionally failed to
6 disclose and actively concealed material facts and made false and misleading statements regarding its
7 service fee for grocery deliveries from Whole Foods Market.

8 46. Defendant’s actions as set forth above occurred in the conduct of trade or commerce, and
9 constitute unfair or deceptive trade practices under the WCPA. Defendant’s actions impact the public
10 interest because Plaintiff was injured in exactly the same way as thousands of others who paid a service
11 fee for grocery deliveries from Whole Foods Market as a result of Defendant’s generalized course of
12 deception. Defendant’s conduct has the capacity to, and has actually caused injury not only to Plaintiff,
13 but to thousands of others in Washington and around the country.

14 47. Plaintiff and the Class relied upon and were deceived by the Defendant’s unfair and
15 deceptive misrepresentations of material fact in deciding to enter into contracts or continue doing
16 business with Defendant. Buyers such as Plaintiff and members of the Class would have acted
17 differently knowing that the Defendant charges a service fee in connection with grocery deliveries from
18 Whole Foods Market. Plaintiff and members of the Class would have wanted to know, as would any
19 reasonable person, that the Defendant charges a service fee in connection with grocery deliveries from
20 Whole Foods Market and this information would have changed their and any reasonable customer’s
21 decision to purchase Defendant’s grocery delivery service.

22 48. Plaintiff and the Class were injured as a result of the Defendant’s conduct, and suffered
23 ascertainable monetary loss.

1 49. Plaintiff seeks an award of actual damages, treble damages, attorney’s fees and costs as
2 permitted by the WCPA. REV. CODE WASH. ANN. § 19.86.090.

3 50. Pursuant to WASH. REV. CODE. ANN. § 19.86.095, Plaintiff will serve the
4 Washington Attorney General with a copy of this complaint as Plaintiff seeks injunctive relief.

5 **SECOND CAUSE OF ACTION**

6 **VIOLATIONS OF THE CONSUMERS LEGAL REMEDIES ACT**

7 **CAL. CIV. CODE §§ 1750 *ET SEQ.***

8 51. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
9 forth in full herein.

10 52. The CLRA prohibits unfair or deceptive practices in connection the sale of goods or
11 services to a consumer.

12 53. Moreover, the CLRA is meant to be “[c]onstrued liberally and applied to promote its
13 underlying purposes, which are to protect consumers against unfair and deceptive business practices
14 and to provide efficient and economical procedures to secure such protection.” Civil Code Section 1760,
15 *inter alia*.

16 54. The online grocery deliveries from Whole Foods Market that Amazon provides are
17 “Services” as defined by the CLRA. The Whole Foods grocery items are also “Goods” as defined by
18 the CLRA.

19 55. Plaintiff and the Class Members are “Consumers” as defined by the CLRA.

20 56. Each of the purchases made by the Plaintiff and the Class Members from the Defendant
21 were “Transactions” as defined by the CLRA.

22 57. Amazon’s false and misleading pricing practices and other policies, acts, and practices
23 described herein were designed to, and did, induce Plaintiff’s and Class Members’ purchases of Whole
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1 Foods grocery deliveries for personal, family, or household purposes, and violated and continues to
2 violate at least the following sections of the CLRA:

3 a. § 1770(a)(9): Advertising goods with intent not to sell them as advertised;

4 b. § 1770(a)(14) Representing that a transaction confers or involves rights, remedies, or
5 obligations that it does not have or involve, or that are prohibited by law; and

6 c. § 1770(a)(20): Advertising that a product is being offered at a specific price plus a
7 specific percentage of that price unless (A) the total price is set forth in the advertisement, which may
8 include, but not limited to, shelf tags, displays, and media advertising in a size larger than any other
9 price in that advertisement, and (B) the specific price plus a specific percentage of that price represents
10 a markup from the seller's costs or from the wholesale price of the product.

11 58. Amazon violated Sections 1770(a)(9), (14), and (20) by marketing and falsely
12 representing a lower grocery delivery price than what consumers were actually charged. Moreover,
13 Amazon advertised that Prime members would receive "FREE Delivery" and "FREE 2-Hour Grocery
14 Delivery" when, in fact, grocery deliveries from Whole Foods Market are not free and subject to a \$9.95
15 service fee.

16 59. Amazon never intended to sell its grocery deliveries with free delivery.

17 60. On information and belief, Amazon's violations of the CLRA discussed above were done
18 with the actual knowledge, intent, and awareness that the conduct alleged was wrongful.

19 61. On information and belief, Amazon committed these acts knowing it would harm
20 Plaintiff and Class Members.

21 62. Plaintiff and Class Members were injured by Amazon because Plaintiff and Class
22 Members were baited and defrauded into paying more for grocery deliveries than was represented due
23 to Amazon's false representations and advertisements.

1 63. Plaintiff and Class Members were harmed as a direct and proximate result of Amazon’s
2 violations of the CLRA and are thus entitled to a declaration that Defendant violated the CLRA.

3 64. Plaintiff, on behalf of herself and Class Members, seeks only injunctive and declaratory
4 relief under Civil Code § 1782(d) in connection with Amazon’s violations of the CLRA.

5 **THIRD CAUSE OF ACTION**

6 **VIOLATIONS OF THE FALSE ADVERTISING LAW**

7 **CAL. BUS. & PROF. CODE §§ 17500 ET SEQ.**

8 65. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
9 forth in full herein.

10 66. Under the FAL, “[i]t is unlawful for any person, firm, corporation or association, or any
11 employee thereof with intent directly or indirectly to dispose of real or personal property or to perform
12 services” to disseminate any statement “which is untrue or misleading, and which is known, or which
13 by the exercise of reasonable care should be known, to be untrue or misleading.” Cal. Bus. & Prof. Code
14 § 17500.

15 67. As alleged herein, Amazon’s advertisements that Prime members will receive “FREE
16 Delivery” and “FREE 2-Hour Grocery Delivery” are false and misleading.

17 68. Plaintiff suffered injury in fact as a result of Amazon’s actions as set forth herein because
18 plaintiff purchased a grocery delivery from Whole Foods Market in reliance on Amazon’s false and
19 misleading marketing claims.

20 69. Amazon’s business practices as alleged herein constitute unfair, deceptive, untrue, and
21 misleading advertising pursuant to the FAL because Amazon advertised its grocery delivery service in
22 a manner that is untrue and misleading, which Amazon knew or reasonably should have known.
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1 70. Amazon profited from its sales of the falsely and deceptively advertised grocery delivery
2 service to unwary consumers.

3 71. As a result, pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiff and Class Members
4 are entitled to injunctive and equitable relief and restitution.

5 **FOURTH CAUSE OF ACTION**

6 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

7 **CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.**

8 72. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
9 forth in full herein.

10 73. The UCL prohibits any “unlawful, unfair or fraudulent business act or practice.” Cal.
11 Bus. & Prof. Code § 17200.

12 74. The acts, omissions, misrepresentations, practices, and non-disclosures of Amazon as
13 alleged herein constitute business acts and practices.

14 **FRAUDULENT**

15 75. A statement or practice is fraudulent under the UCL if it is likely to deceive the public,
16 applying a reasonable consumer test.

17 76. As set forth herein, Amazon’s claims relating to the online marketing of its grocery
18 delivery services are likely to deceive reasonable consumers and the public.

19 **UNLAWFUL**

20 77. The acts alleged herein are “unlawful” under the UCL in that they violate at least the
21 following laws:

- 22 • The False Advertising Law, Cal. Bus. & Prof. Code §§ 17500 *et seq.*; and
23 • The Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 *et seq.* [SEP]

UNFAIR

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2 78. Amazon’s conduct with respect to the advertising and sale of its grocery delivery service
3 was unfair because Amazon’s conduct was immoral, unethical, unscrupulous, or substantially injurious
4 to consumers and the utility of its conduct, if any, does not outweigh the gravity of the harm to its
5 victims.

6 79. Amazon’s conduct with respect to the advertising and sale of its grocery delivery service
7 was also unfair because it violated public policy as declared by specific statutory or regulatory
8 provisions, including but not limited to the False Advertising Law.

9 80. Amazon’s conduct with respect to the advertising and sale of its grocery delivery service
10 was also unfair because the consumer injury was substantial, not outweighed by benefits to consumers
11 or competition, and not one consumers themselves could reasonably have avoided.

12 81. Amazon profited from the sale of its falsely, deceptively, and unlawfully advertised
13 grocery delivery service to unwary consumers.

14 82. Plaintiff and Class Members are likely to be damaged by Amazon’s deceptive trade
15 practices, as Amazon continues to disseminate, and is otherwise free to continue to disseminate
16 misleading information. Thus, injunctive relief enjoining this deceptive practice is proper.

17 83. Amazon’s conduct caused and continues to cause substantial injury to Plaintiff and the
18 other Class Members, who have suffered injury in fact as a result of Amazon’s fraudulent, unlawful,
19 and unfair conduct.

20 84. In accordance with Bus. & Prof. Code § 17203, Plaintiff, on behalf of herself, Class
21 Members, and the general public, seeks an order enjoining Amazon from continuing to conduct business
22 through unlawful, unfair, and/or fraudulent acts and practices, and to commence a corrective advertising
23 campaign.

1 85. Plaintiff, on behalf of herself and Class Members, also seeks an order for the restitution
2 of all monies from Amazon's grocery delivery service fee that Amazon unjustly acquired through acts
3 of unlawful competition.

4 **FIFTH CAUSE OF ACTION**

5 **UNJUST ENRICHMENT/ QUASI CONTRACT**

6 86. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
7 forth in full herein.

8 87. Plaintiff and the Class allege that Defendant owes money to them for the unlawful or
9 deceptive conduct described herein.

10 88. Plaintiff and Class Members paid for a service fee in connection with a Whole Foods
11 Market grocery delivery.

12 89. Defendant, by charging consumers a service fee, received additional money from
13 Plaintiff and the Class.

14 90. The additional money was paid by mistake, where an undue advantage was taken from
15 the Plaintiff's and the Class's lack of knowledge of the deception, whereby money was exacted to which
16 the Defendant had no legal right.

17 91. Defendant is therefore indebted to Plaintiff and the Class in a sum certain, specifically
18 the service fee actually paid during the Class period as consideration for which Defendant unlawfully
19 charged consumers.

20 92. Defendant is therefore indebted to Plaintiff and the Class in a sum certain for the
21 additional money had and received by the Defendant, which the Defendant in equity and good conscious
22 should not retain.

23 93. Defendant is therefore liable to Plaintiff and the Class in the amount of unjust enrichment
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1 or money had and received to be determined at trial.

2 **SIXTH CAUSE OF ACTION**

3 **NEGLIGENT MISREPRESENTATION**

4 94. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
5 forth in full herein.

6 95. Defendant represented that Prime members would receive “FREE Delivery” and “FREE
7 2-Hour Grocery Delivery” when, in fact, Prime members would not receive free grocery delivery
8 because Defendant charges a mandatory service fee.

9 96. The misrepresentations concerned material facts about the price of Defendant’s grocery
10 delivery service that influenced Plaintiff and the Class Members to purchase the delivery service.

11 97. At the time Defendant made the misrepresentations, Defendant knew or should have
12 known that the misrepresentations were false or Defendant made the misrepresentations without
13 knowledge of their truth or veracity.

14 98. Plaintiff and the class members reasonably, justifiably, and detrimentally relied on the
15 misrepresentations and, as a proximate result thereof, have and will continue to suffer damages in the
16 form of lost money from the payment of the service fee.

17 **SEVENTH CAUSE OF ACTION**

18 **CONCEALMENT/ NON-DISCLOSURE**

19 99. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
20 forth in full herein.

21 100. Defendant knew at the time of sale that it had falsely represented the actual price of the
22 grocery delivery service that consumers would pay upon checkout.

23 101. Defendant fraudulently concealed from and/or intentionally failed to disclose to Plaintiff
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1 and the Class Members that Defendant would charge a service fee for its grocery delivery service beyond
2 the advertised price.

3 102. Defendant had exclusive knowledge of Misrepresentations' falsity at the time of sale.
4 The defect (the actual price of the delivery service upon checkout) is latent and not something that
5 Plaintiff or the Class Members, in the exercise of reasonable diligence, could have discovered
6 independently prior to purchase. The defect would not be disclosed by careful, reasonable inspection
7 by the purchaser.

8 103. Defendant had the capacity to, and did, deceive Plaintiff and the Class Members into
9 believing that they would pay the advertised price for the grocery delivery service upon checkout, when
10 in reality, Plaintiff and the Class Members were charged more than the advertised price for the grocery
11 delivery service upon checkout.

12 104. Defendant undertook active and ongoing steps to conceal the actual price of the grocery
13 delivery service.

14 105. The facts concealed and/or not disclosed by Defendant to Plaintiff and the Class
15 Members are material facts in that a reasonable person would have considered them important in
16 deciding whether to purchase the grocery delivery service.

17 106. Defendant had a duty to disclose accurate information regarding the actual price that
18 consumers would pay for its grocery delivery service upon checkout.

19 107. Defendant intentionally concealed and/or failed to disclose the actual price of the grocery
20 delivery service that consumers would pay upon checkout for the purpose of inducing Plaintiff and the
21 Class Members to act thereon.

22 108. Plaintiff and the Class Members justifiably acted or relied upon the concealed and/or
23 non-disclosed facts to their detriment, as evidenced by their purchase of the grocery delivery service.
24

1 109. Plaintiff and Class Members suffered a loss of money as a result of Defendant's false
2 information because they would not have purchased the grocery delivery service, or would not have
3 paid as much for the grocery delivery service, if the truth concerning Defendant's Misrepresentations
4 had been known.

5 **EIGHTH CAUSE OF ACTION**

6 **FRAUD**

7 110. Plaintiff realleges and incorporates the allegations elsewhere in the Complaint as if set
8 forth in full herein.

9 111. Defendant willfully, falsely, and knowingly misrepresented that Prime members would
10 receive "FREE Delivery" and "FREE 2-Hour Grocery Delivery." The Misrepresentations were
11 communicated to Plaintiff and the Class Members through Amazon's website.

12 112. At all relevant times, Defendant knew that it had misrepresented the advertised price for
13 its grocery delivery service because Defendant knew it was charging an additional service fee upon
14 checkout without disclosing this fee to Plaintiff and the Class Members.

15 113. Defendant's misrepresentations were made with the intent that the general public,
16 including Plaintiff and the Class Members, would rely upon it. Defendant's Misrepresentations were
17 made with knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.

18 114. Plaintiff and the class members' reliance upon Defendant's misrepresentations was
19 reasonable. The hidden service fee charged by Defendant is latent and not something that Plaintiff or
20 the class members, in the exercise of reasonable diligence, could have discovered independently prior
21 to purchase.

22 115. In actual and reasonable reliance upon the Misrepresentations, Plaintiff and the Class
23 Members purchased Defendant's grocery delivery service. Plaintiff and the Class members suffered a
24

1 loss of money as a result of Defendant's intentional misrepresentations because they would not have
2 purchased the grocery delivery service, or would have paid less for the grocery delivery service, if the
3 truth concerning Defendant's Misrepresentations had been known.

4 **VI. PRAYER FOR RELIEF**

5 Wherefore, Plaintiff, on behalf of herself, all others similarly situated, and the general public,
6 prays for judgment against Defendant as to each and every cause of action, and the following remedies:

7 (a) An Order declaring this action to be a proper class action, appointing Plaintiff as class
8 representative, and appointing her undersigned counsel as class counsel;

9 (b) An Order requiring Amazon to bear the cost of class notice;

10 (c) An Order enjoining Amazon from engaging in the unfair, unlawful, and deceptive
11 business practices and false advertising complained of herein;

12 (d) An Order compelling Amazon to conduct a corrective advertising campaign;

13 (e) An Order compelling Amazon to recall and destroy all misleading and deceptive
14 advertising materials;

15 (f) An Order requiring Amazon to disgorge all monies, revenues, and profits obtained by
16 means of any wrongful act or practice;

17 (g) An Order requiring Amazon to pay restitution to restore all funds acquired by means of
18 any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or practice,
19 untrue or misleading advertising, plus pre-and post-judgment interest thereon;

20 (h) An Order requiring Amazon to pay all actual damages, treble damages, and statutory
21 damages permitted under the causes of action alleged herein;

22 (i) An award of attorneys' fees and costs; and

23 (j) Any other and further relief that Court deems necessary, just, or proper.
24

VII. JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable.

DATED this 7th day of June 2022.

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**ATTORNEYS FOR PLAINTIFF and the
Proposed Classes**