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THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

TONNY STOREY, individually and on  
behalf of all persons similarly situated,

Plaintiff,

v.

AMAZON.COM SERVICES, LLC,

Defendant.

No. 2:23-CV-01529-KKE

**PLAINTIFF’S FIRST AMENDED  
CLASS ACTION COMPLAINT**

Jury Trial Requested

Plaintiff Tonny Storey (“Storey” or “Plaintiff”), by counsel, on behalf of himself and all others similarly situated, for his First Amended Class Action Complaint against Defendant Amazon.com Services, LLC (“Amazon” or “Defendant”), alleges as follows:

**I. NATURE OF CASE**

1.1. This proposed class action is brought by Plaintiff to remedy a systematic failure by Amazon to meet promised guaranteed delivery times and/or dates for products purchased on Amazon’s website. Plaintiff and millions of other customers have elected to pay Amazon additional shipping fees when purchasing products on the Amazon.com online retail platform in response to Amazon’s written offer, for a designated price, of a guaranteed delivery of their purchases on or before a specific date or during a designated time period on a specific date.

1           1.2. Amazon makes this promise of a guaranteed delivery in at least two ways. First,  
2 under its description of “Delivery Guarantees” and in its “Guaranteed Delivery Terms and  
3 Conditions,” Amazon explains that it offers guaranteed delivery on certain “delivery speeds”  
4 for eligible products in exchange for a stated shipping cost. For eligible products, Amazon then  
5 offers customers – on its checkout page – the option of paying an additional shipping fee to  
6 obtain a specified “delivery speed,” stated either as a specific day or a specified time window  
7 on a specified day. These offers, and their acceptance by paying customers, fall under  
8 Amazon’s “Delivery Guarantees” and its “Guaranteed Delivery Terms and Conditions,”  
9 including the promise to refund the additional shipping fee if the guaranteed delivery isn’t  
10 made.  
11

12           1.3. Second, when Amazon offers customers the option, on its checkout page, of  
13 paying an additional shipping fee to obtain delivery of a product on a specific day or a specified  
14 time window on a specified day, a customer’s acceptance of the offer and payment of additional  
15 consideration to Amazon constitutes either an addendum or modification of the contractual  
16 promise under Amazon’s “Delivery Guarantees” and its “Guaranteed Delivery Terms and  
17 Conditions,” or a distinct contract for delivery by the specified date or within the specified  
18 time window that is enforceable independent and regardless of Amazon’s “Delivery  
19 Guarantees,” “Guaranteed Delivery Terms and Conditions,” or other Conditions of Use.  
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21

22           1.4. Whether arising under Amazon’s “Delivery Guarantees” and its “Guaranteed  
23 Delivery Terms and Conditions,” or as an addendum, amendment, or distinct and independent  
24 contract, Amazon’s promise to customers to deliver certain products on or before a specific  
25 date or during a designated time period on a specific date, in exchange for the payment of an  
26 additional shipping fee is, referred to hereinafter as the “Guaranteed Delivery.”

1 1.5. Despite its frequent promise of a Guaranteed Delivery, Amazon sometimes fails  
2 to deliver products by the date or time promised. Amazon acknowledges as much in its  
3 “Guaranteed Delivery Terms and Conditions,” which state that Amazon will refund a  
4 customer’s shipping fees if it fails to meet its promised delivery date or time. As Plaintiff  
5 experienced, however, a refund is not always provided.  
6

7 1.6. Like millions of other customers on any given day, Plaintiff recently purchased  
8 a product from Amazon. On the checkout page, Plaintiff was offered the option of paying \$2.99  
9 for a guarantee to receive the product between 4:00 a.m. and 8:00 a.m. the following day.  
10 Plaintiff accepted the offer and was charged the additional shipping fee. Later that evening,  
11 Amazon’s own tracking reports stated that “a carrier delay has occurred,” and indeed Plaintiff’s  
12 purchase wasn’t delivered until after the Guaranteed Delivery period the next day.  
13

14 1.7. Even though Amazon acknowledged the delayed delivery, Plaintiff’s shipping  
15 fees were never returned, either to his credit card account or to his Amazon account. Amazon  
16 breached its promise to Plaintiff to deliver by the guaranteed time, and breached its promise in  
17 its terms and conditions to issue a refund to Plaintiff when the Guaranteed Delivery was not  
18 provided.  
19

20 1.8. Amazon is the largest e-commerce market in the United States. It has more than  
21 197 million monthly active users, and about 70% of American adults are Amazon Prime  
22 members. An estimated 31% of U.S. adults spend between \$50 and \$100 on Amazon.<sup>1</sup> And on  
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26 <sup>1</sup> [https://www.zippia.com/advice/amazon-statistics/#:~:text=Amazon%20research%20summary.&text=The%20Amazon%20app%20has%20over.members%20\(148.6%20million%20people\)](https://www.zippia.com/advice/amazon-statistics/#:~:text=Amazon%20research%20summary.&text=The%20Amazon%20app%20has%20over.members%20(148.6%20million%20people)) (visited June 26, 2023).

1 average, Amazon makes more than 1.6 million deliveries per day, which is more than half a  
2 billion deliveries per year.<sup>2</sup>

3 1.9. Despite the unprecedented size and reach of its operations, Amazon, like any  
4 other company, should be required to honor its contractual promises to customers. Even if only  
5 1% of its annual shipments represent unmet Guaranteed Deliveries for which no refund was  
6 provided, at the low tier of \$2.99, nearly \$15 million per year of shipping fees have been  
7 improperly retained by Amazon annually.

9 1.10. Amazon's Guaranteed Delivery promise to customers is simple, regardless of  
10 its source: If the customer pays an extra fee, they will receive delivery by a specified date or  
11 within a specified time window on a specified date. When Amazon breaks this delivery  
12 promise to paying customers, its failure should be remedied with an award of damages, which  
13 can easily be determined based on its own detailed records of transactions and deliveries.  
14 Plaintiff brings this action to obtain such relief for himself and for members of the Proposed  
15 Class defined below.

## 17 II. JURISDICTION AND VENUE

18 2.1. This Court has subject matter jurisdiction over this action under the Class  
19 Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

20 2.2. Venue is proper in this district because during the Class Period Defendant  
21 resided and transacted business in this district and a substantial part of the events or omissions  
22 giving rise to the claims occurred in this district.

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<sup>2</sup> <https://landingcube.com/amazon-statistics/#:~:text=How%20Many%20Orders%20Does%20Amazon, and%2018.5%20orders%20per%20second> (visited June 26, 2023).

1 2.3. Venue is also proper in this Court based on Amazon’s Conditions of Use,<sup>3</sup>  
2 which provide in part: “Any dispute or claim relating in any way to your use of any Amazon  
3 Service will be adjudicated in the state or Federal courts in King County, Washington, and you  
4 consent to exclusive jurisdiction and venue in these courts.”

5  
6 **III. PARTIES**

7 3.1. Plaintiff Tonny Storey is a citizen and resident of the State of Indiana and  
8 resides in Westfield, Indiana.

9 3.2. Amazon.com Services, LLC is a Delaware Limited Liability Company  
10 registered in the State of Washington with a principal office located at 410 Terry Avenue North  
11 in Seattle, Washington.

12 **IV. FACTUAL ALLEGATIONS**

13 **A. Amazon’s Contractual Terms with Customers**

14 4.1. Amazon’s Conditions of Use are uniform contract terms that apply to all  
15 customers purchasing products on the Amazon online retail platform, including Plaintiff:  
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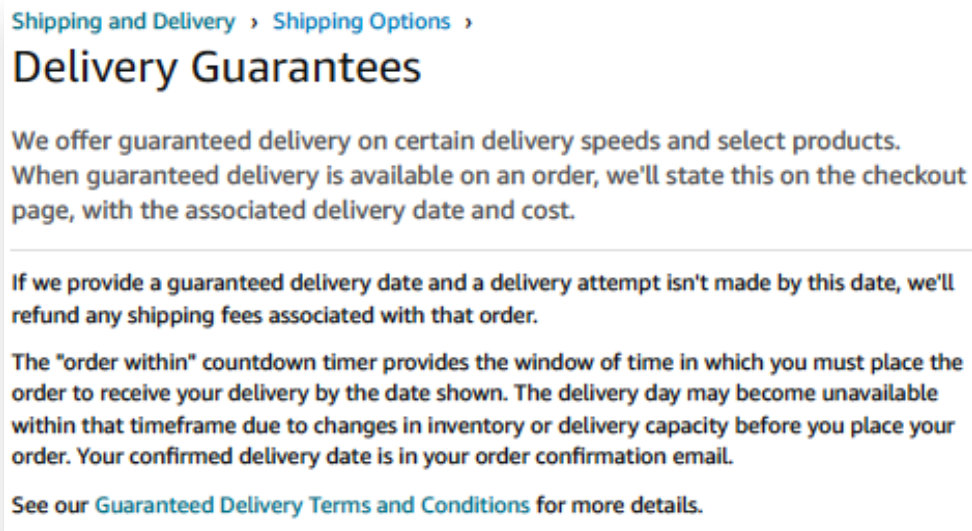
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18 **Welcome to Amazon.com. Amazon.com Services LLC and/or its affiliates ("Amazon") provide**  
19 **website features and other products and services to you when you visit or shop at**  
20 **Amazon.com, use Amazon products or services, use Amazon applications for mobile, or use**  
21 **software provided by Amazon in connection with any of the foregoing (collectively, "Amazon**  
22 **Services"). By using the Amazon Services, you agree, on behalf of yourself and all members of**  
23 **your household and others who use any Service under your account, to the following**  
24 **conditions.**

25 4.2. Amazon addresses guaranteed deliveries expressly in at least two locations in  
26 its terms and conditions. First, on a web page with this very title, Amazon informs customers

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<sup>3</sup> See, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM> (visited June 26, 2023) (“Conditions of Use”).

1 that it offers “Delivery Guarantees” on “certain delivery speeds and select products” on its  
2 checkout page:<sup>4</sup>



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13 4.3. Second, Amazon states the “Guaranteed Delivery Terms and Conditions” as  
14 follows:<sup>5</sup>

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26 <sup>4</sup> See, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GCNQVPEFZLZZVLVY> (visited June 26, 2023) (“Delivery Guarantees”).

<sup>5</sup> See, <https://www.amazon.com/gp/help/customer/display.html?nodeId=GZ5R2Y8QHENSLW75> (visited June 26, 2023) (“Guaranteed Delivery Terms and Conditions”).

Shipping and Delivery › Shipping Options ›

## Guaranteed Delivery Terms and Conditions

If we provide a guaranteed delivery date on the checkout page, your shipping fees may be refunded if we miss our promised delivery date.

The following requirements must be met to qualify for a delivery guarantee refund:

- Shipping method selected is shipping option advertised on a product detail page.
- Order is shipping to eligible address.
- Order is placed before "order within" countdown listed on the checkout page. The "order within" countdown timer provides the window of time in which you must place your order to receive your delivery by the date shown. That delivery date may become unavailable within that window of time due to changes in inventory or delivery capacity before you place your order. Your confirmed delivery date is included in your order confirmation email. Contact us with any concerns.
- If you order contains items that aren't eligible for guaranteed delivery, shipping preference "Ship my items as they become available" is selected.
- Your credit or debit card must be successfully charged before the deadline displayed on the checkout page.
- The guarantee does not apply if we miss our promised delivery date because of an unforeseen circumstance outside of our control, such as a strike, natural disaster, or severe winter storm. Also, delivery scans might be inaccurate.
  - An attempted delivery on or before the guaranteed delivery date meets our delivery guarantee.
  - An offer by the carrier of a delivery appointment on or before the guaranteed delivery date meets our delivery guarantee

4.4. The Conditions of Use, Delivery Guarantees, and Guaranteed Delivery Terms and Conditions provide the terms of a contract or contracts under which the Plaintiff and Proposed Class members paid Amazon for a Guaranteed Delivery date and/or time for products purchased from Amazon or on Amazon's online retail platform.

4.5. Further, during the checkout process, Amazon does and has offered Plaintiff and the Proposed Class members the option of paying an additional shipping fee to obtain delivery on a specific date or during a specified time window on a specified day. An example of such an offer is provided in paragraph 4.11 below.

1           4.6.     These offers, and their acceptance by paying customers, constitute: (i) a contract  
2 under Amazon’s “Delivery Guarantees” and its “Guaranteed Delivery Terms and Conditions,”  
3 including the promise to refund the additional shipping fee if the guaranteed delivery isn’t  
4 made; and/or (ii) an addendum or modification of the contractual promise under Amazon’s  
5 “Delivery Guarantees” and its “Guaranteed Delivery Terms and Conditions;” and/or (iii) a  
6 distinct contract for delivery by the specified date or within the specified time window that is  
7 enforceable independent and regardless of Amazon’s “Delivery Guarantees,” “Guaranteed  
8 Delivery Terms and Conditions” or other Conditions of Use.

10           4.7.     If Amazon does not intend for its offer to customers, on its checkout page, to  
11 deliver a product on a specific date or during a specified time window on a specified day in  
12 exchange for an additional shipping fee to be a “guaranteed” delivery covered by its “Delivery  
13 Guarantees,” “Guaranteed Delivery Terms and Conditions” or other Conditions of Use, it does  
14 not disclose this to customers on the checkout page when it collects the additional shipping  
15 fee, or at any other time or location.

17           4.8.     Neither Amazon’s “Delivery Guarantees,” “Guaranteed Delivery Terms and  
18 Conditions” or other Conditions of Use, nor the checkout page, nor any other communication  
19 with the Plaintiff and other customers by Amazon, states that when Amazon fails to make a  
20 Guaranteed Delivery a customer is only entitled to a refund of the shipping cost paid for that  
21 Guaranteed Delivery if the customer specifically requests one. A request for a refund is not a  
22 condition precedent to the Plaintiff’s or any other customer’s right to a refund for Amazon’s  
23 breach of its contractual promise to provide a Guaranteed Delivery.  
24



**B. Plaintiff’s Acceptance of Amazon’s Offer of Guaranteed Delivery**


4.9. On March 27, 2023, Plaintiff selected for purchase a product sold by Amazon.com Services, LLC identified as “Stash Tea Fruity Herbal Tea 6 Flavor Tea Sampler, 6 boxes With 18-20 Tea Bags Each” (the “Product”). The price of the Product was \$19.99.

4.10. As an Amazon Prime member, on the checkout page Plaintiff was offered a Guaranteed Delivery of the Product between 4:00 a.m. and 8:00 a.m. the following day for an additional shipping fee of \$2.99. Plaintiff accepted the Guaranteed Delivery offer and the additional \$2.99 was added to his order, for a total of \$22.98.

4.11. An example of the checkout page presented to Plaintiff for his purchase of the Product and selecting the Guaranteed Delivery offer (recreated at a later date) follows:

Select **FREE Amazon Day Delivery** to receive orders in fewer boxes on a single day.

**Delivery: Overnight 4 AM - 8 AM**  
Items shipped from Amazon.com



**Stash Tea Fruity Herbal Tea  
6 Flavor Tea Sampler, 6  
boxes With 18-20 Tea Bags  
Each**


**\$19.99**

Qty: 1

Sold by: Amazon.com Services LLC

**Subscribe & Save:**  
Save 35% today; Save up to 15% on future auto-deliveries

Delivery every: **3 months**  
(most common)

 Add gift options

**Item arrives in packaging that shows what’s inside.** To hide it, choose **Ship in Amazon packaging.**

**Choose your Prime delivery option:**

**Overnight**  
\$2.99 - Fastest Delivery

**Overnight**  
4 AM - 8 AM

Overnight  
7 AM - 11 AM

**Thursday, June 29**  
FREE Prime Delivery

**Friday, June 30**  
FREE Amazon Day Delivery  
**Fewer boxes, fewer trips.**  
[Change delivery day](#)


1           4.12. Plaintiff's Mastercard associated with his Amazon account was charged \$22.98  
2 on the day of his order of the Product. The charge is identified in the transaction history of  
3 Plaintiff's Amazon account on March 27, 2023 under Order No. 114-5465983-8034654.

4           4.13. The terms presented to the Plaintiff under which he agreed to pay \$2.99 for  
5 delivery of the Product between 4:00 a.m. and 8:00 a.m. the following day meet the  
6 requirements for the refund of a shipping fee under the Guaranteed Delivery Terms and  
7 Conditions. In addition, or in the alternative, they also constitute an addendum or modification  
8 of the contractual promise under Amazon's "Delivery Guarantees" and its "Guaranteed  
9 Delivery Terms and Conditions," and/or a distinct contract for delivery by the specified date  
10 or within the specified time window that is enforceable independent and regardless of  
11 Amazon's "Delivery Guarantees," "Guaranteed Delivery Terms and Conditions" or other  
12 Conditions of Use  
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14           4.14. For Amazon customers who are not Amazon Prime members, including  
15 Proposed Class members, the offered price of the same Guaranteed Delivery for this Product  
16 was \$9.99, for a total of \$29.98. An example of the checkout page that would have been  
17 presented to a Proposed Class member who is not an Amazon Prime member for the purchase  
18 of the Product and selecting the Guaranteed Delivery offer (recreated at a later date) follows:  
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**FREE TRIAL**

, we're giving you 30 days of Prime benefits for FREE Try Prime FREE for 30 days >

**Delivery: Overnight 4 AM - 8 AM**  
Items shipped from Amazon.com



**Stash Tea Fruity Herbal Tea 6 Flavor Tea Sampler, 6 boxes With 18-20 Tea Bags Each**  
**\$19.99**

Qty: 1 ▾

Sold by: Amazon.com Services LLC

**Subscribe & Save:**  
 Save 5% today; Save up to 15% on future auto-deliveries ▾

Delivery every: 3 months (most common)

Amazon Prime eligible [Join now](#)

[Add gift options](#)

**Item arrives in packaging that shows what's inside.** To hide it, choose **Ship in Amazon packaging.**

[Ship in Amazon packaging](#)

**Choose a delivery option:**

Friday, June 30  
\$6.99 - Shipping

**Overnight**  
\$9.99 - Fastest Delivery

**Overnight**  
4 AM - 8 AM

Overnight  
7 AM - 11 AM

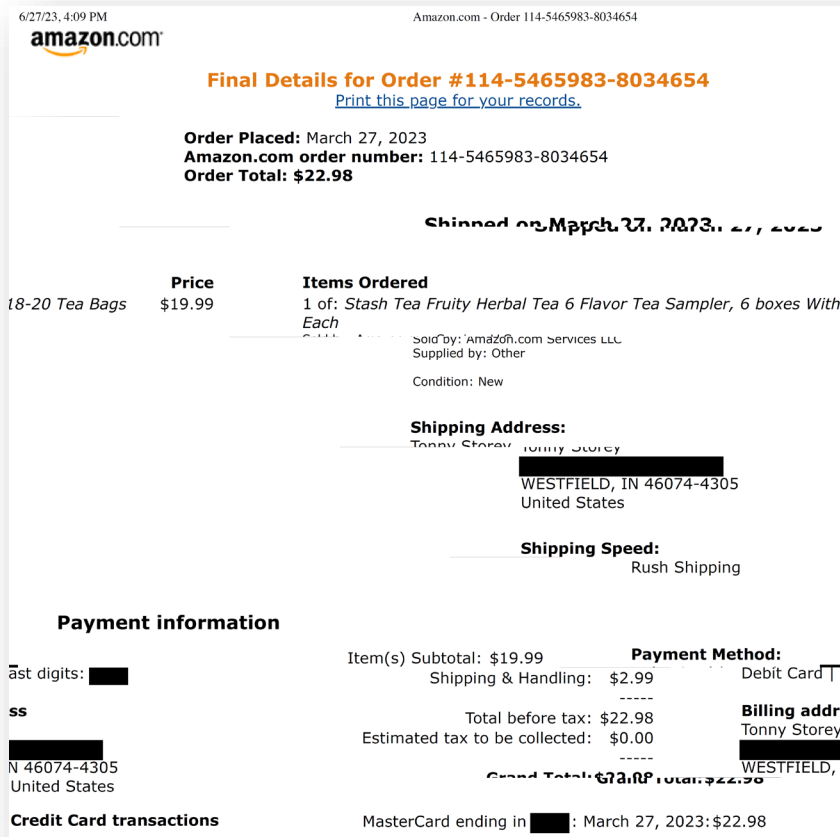
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4.15. In this example, the terms presented under which a non-Amazon Prime Proposed Class member could agree to pay \$9.99 for delivery of the Product between 4:00 a.m. and 8:00 a.m. the following day meet the requirements for the refund of a shipping fee under the Guaranteed Delivery Terms and Conditions. As with the Plaintiff, in addition, or in the alternative, they also constitute an addendum or modification of the contractual promise under Amazon's "Delivery Guarantees" and its "Guaranteed Delivery Terms and Conditions;" and/or a distinct contract for delivery by the specified date or within the specified time window that is enforceable independent and regardless of Amazon's "Delivery Guarantees," "Guaranteed Delivery Terms and Conditions" or other Conditions of Use.

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4.16. Amazon issued three notices to Plaintiff confirming the price and delivery terms for his purchase of the Product. Amazon issued the following "Final Details for Order" notice

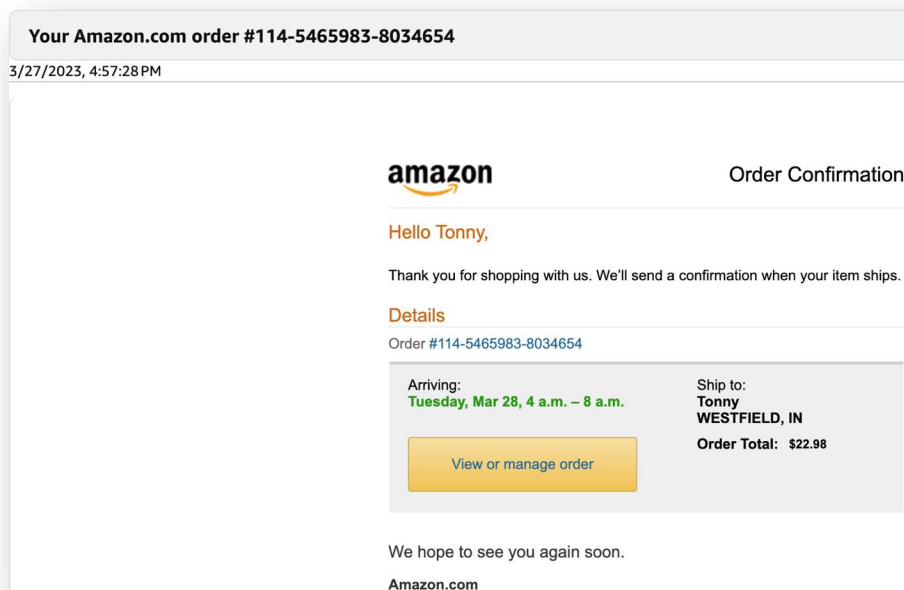
1 at 4:09 p.m. Pacific Time (7:09 p.m. Eastern)<sup>6</sup> on March 27, 2023, that confirmed a “Shipping  
 2 Speed” of “Rush Shipping” and the additional Guaranteed Delivery charge of \$2.99:  
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 19 4.17. On March 27, 2023 at 4:57 p.m. Pacific Time (7:57 p.m. Eastern) Amazon  
 20 confirmed the Guaranteed Delivery and Order Total of \$22.98:  
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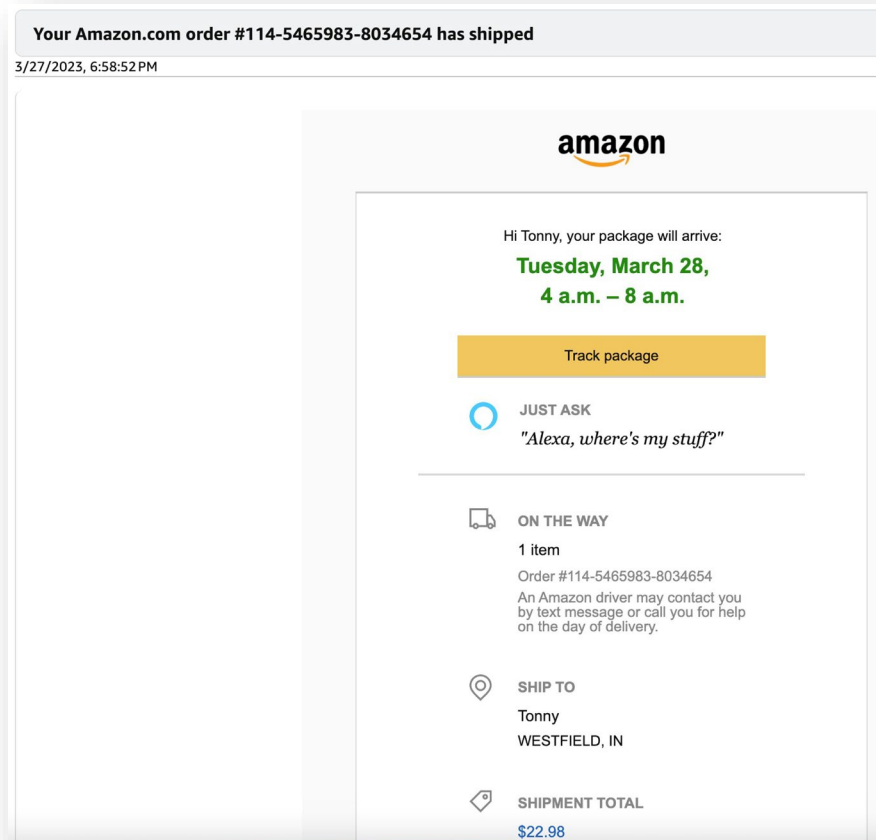
<sup>6</sup> Amazon’s notices are time-stamped in Pacific Time, the time zone of its headquarters in Seattle. Plaintiff resides in the Eastern Time Zone.

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4.18. On March 27, 2023, at 6:58 p.m. Pacific Time (9:58 p.m. Eastern), Amazon confirmed the Product had shipped and would arrive between 4:00 a.m. and 8:00 a.m.:

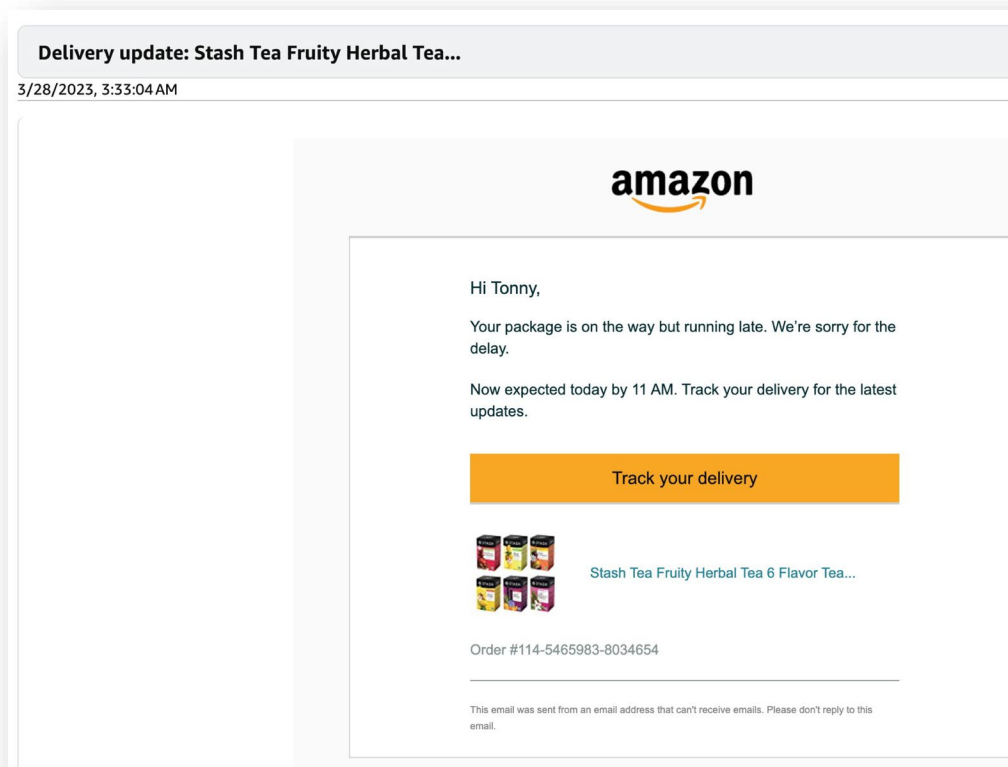
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**C. Amazon Failed to Meet the Guaranteed Delivery for the Product**

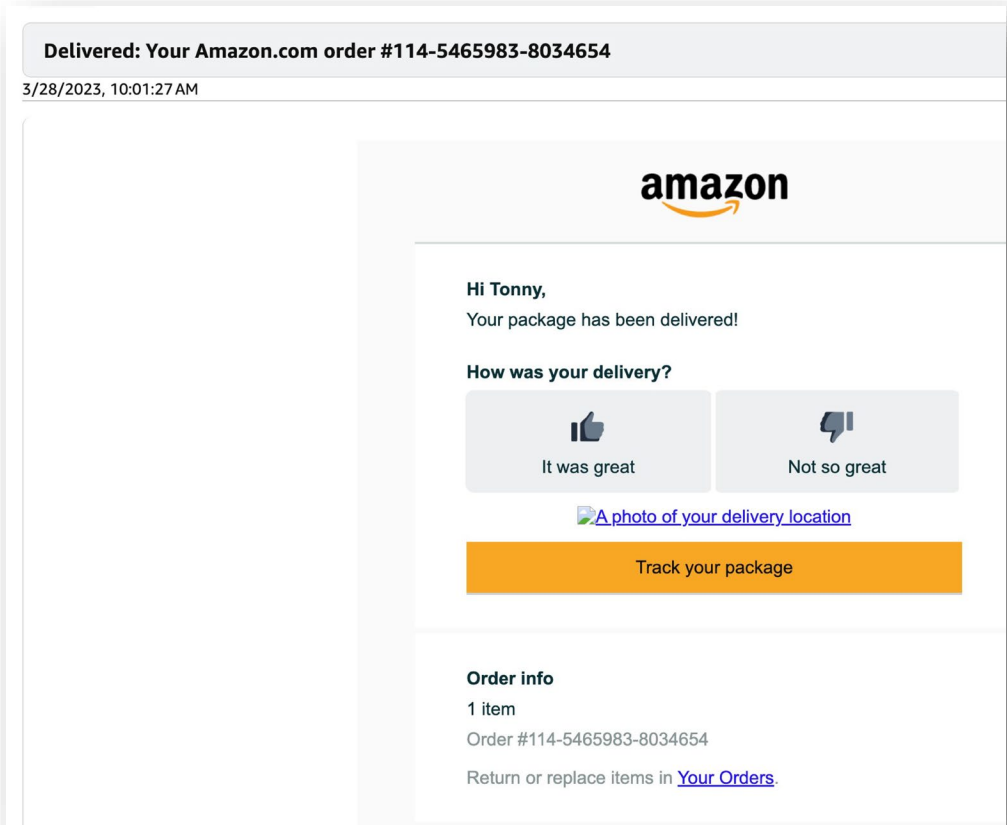
4.19. Amazon next issued a “delivery update” on March 28, 2023 at 3:33 a.m. Pacific Time (7:33 a.m. Eastern), stating that the Product was “on the way but running late” and expected to be delivered by 11:00 a.m., well after the Guaranteed Delivery time:

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4.20. On March 28, 2023 at 10:01 a.m. Pacific Time (1:01 p.m. Eastern Time) Amazon issued a notice that the Product had been delivered to Plaintiff, 5 hours after the Guaranteed Delivery time:

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4.21. Amazon’s own tracking history for its delivery of the Product, which displays events “in the local timezone,” also confirms that a delay occurred and was acknowledged by Amazon, and that Amazon did not satisfy the Guaranteed Delivery date and time offered by Amazon and accepted and paid for by Plaintiff:



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**Delivery by Amazon**  
**Tracking ID: TBA972325994000**

Tuesday, March 28

12:57 PM	Package delivered near the front door or porch. <i>Westfield, US</i>
10:17 AM	Package is out for delivery. <i>Greenwood, US</i>
10:12 AM	Package being processed at carrier facility. <i>Greenwood, US</i>
10:00 AM	Package arrived at a carrier facility. <i>Greenwood, US</i>

Carrier picked up the package.

Monday, March 27

11:33 PM	A carrier delay has occurred. <i>Greenwood, US</i>
9:53 PM	Package being processed at carrier facility. <i>Greenwood, US</i>
9:52 PM	Package arrived at a carrier facility. <i>Greenwood, US</i>
9:49 PM	Delivery appointment scheduled <i>US</i>

*Times are shown in the local timezone.*

4.22. Amazon’s notices and tracking history for its delivery of the Product confirm that Amazon offered and Plaintiff accepted a Guaranteed Delivery, that Amazon failed to

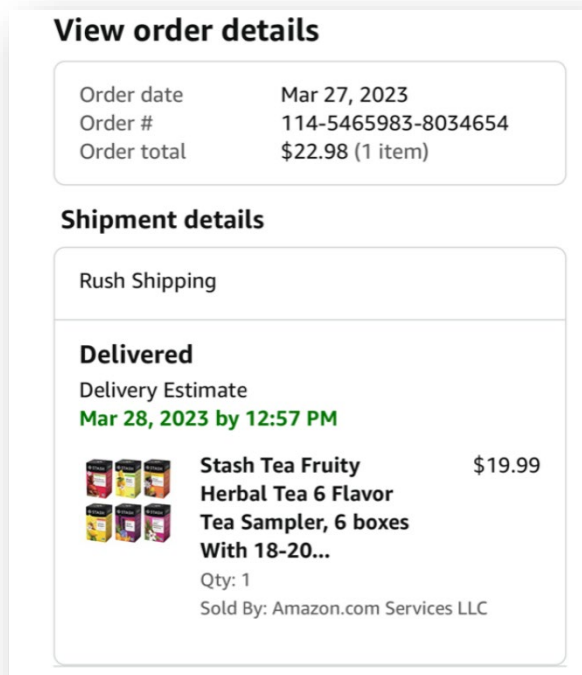
1 satisfy the Guaranteed Delivery date and time, and that Plaintiff is entitled to a refund of the  
2 shipping fees paid for a Guaranteed Delivery.

3 4.23. In particular, as required by the Guaranteed Delivery Terms and Conditions:

- 4 a. The shipping method selected by Plaintiff was a “shipping option  
5 advertised on a product detail page;”
- 6 b. The Product was ordered for delivery to an eligible address;
- 7 c. The order was placed before any “order within” countdown listed on the  
8 checkout page, and Plaintiff’s confirmed delivery date was included in his  
9 order confirmation email;
- 10 d. The order did not contain items that weren't eligible for guaranteed  
11 delivery, and the shipping preference “Ship my items as they become  
12 available” was therefore not offered;
- 13 e. Plaintiff’s credit card was successfully charged, including before any  
14 deadline displayed on the checkout page;
- 15 f. Amazon did not miss the Guaranteed Delivery date and time because of an  
16 unforeseen circumstance outside of its control, such as a strike, natural  
17 disaster, or severe winter storm;
- 18 g. Amazon did not make an attempted delivery before the Guaranteed  
19 Delivery date and time; and
- 20 h. Amazon did not make an offer of a delivery appointment on or before the  
21 Guaranteed Delivery date and time.

22 **D. Amazon Failed To Refund Plaintiff’s Shipping Fees**

23 4.24. Despite failing to satisfy the Guaranteed Delivery for the Product that was  
24 offered by Amazon and accepted and paid for by Plaintiff, Amazon has failed to issue a refund  
25 of the \$2.99 in shipping fees paid by Plaintiff for the Guaranteed Delivery. The currently  
26 existing Order Details for the Product confirm that Plaintiff paid \$19.99 for the cost of the  
product plus \$2.99 for “Rush Shipping,” even though the Product was delivered on March 28,  
2023 at 12:57 p.m. Eastern, 5 hours after the Guaranteed Delivery:



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4.25. Consistent with the Order Details, Plaintiff has confirmed that no refund or credit was received by him from Amazon for the shipping fees for the Product, including in his Amazon account or in his Mastercard account.

## 18 V. CLASS ALLEGATIONS

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5.1. Plaintiff brings this action on behalf of himself and as a class action under Federal Rule of Civil Procedure 23(a) and (b)(3), seeking relief on behalf of the following class (“Proposed Class”):

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All persons and entities who purchased a product from Amazon or a third party on the Amazon online retail platform who paid a fee for a Guaranteed Delivery by Amazon on a stated date and/or time, whose product was not delivered according to the terms of the Guaranteed Delivery, and who were not provided a refund of shipping fees by Amazon for its failure to satisfy the Guaranteed Delivery.

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5.2. The Proposed Class is believed to include millions of Amazon customers and is so numerous that joinder is impracticable.

1           5.3.    The claims of the Plaintiff are typical of the claims of members of the Proposed  
2 Class.

3           5.4.    There are questions of law and fact common to the Proposed Class that  
4 predominate over any individual issues. Those common issues include, but are not limited to:

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- 6           a.    Whether Amazon’s offers to members of the Proposed Class to deliver a  
7 product on a specific day or a specified time window on a specified day for  
8 an additional shipping fee constitutes a guaranteed delivery under  
9 Amazon’s promise regarding “Delivery Guarantees” and its “Guaranteed  
10 Delivery Terms and Conditions;”
- 11           b.    Whether Amazon’s offers to members of the Proposed Class on its checkout  
12 page to deliver a product on a specific day or by a specified time for an  
13 additional shipping fee, and the acceptance of that offer and payment of  
14 additional shipping fees by Proposed Class members, constitute an  
15 addendum or modification of the contractual promise under Amazon’s  
16 “Delivery Guarantees” and its “Guaranteed Delivery Terms and  
17 Conditions” and/or a distinct contract for delivery by the specified date or  
18 time that is enforceable independent and regardless of Amazon’s “Delivery  
19 Guarantees,” “Guaranteed Delivery Terms and Conditions” or other  
20 Conditions of Use;
- 21           c.    Whether Amazon’s failure to deliver products to members of the Proposed  
22 Class by the date or within the time promised constitutes a breach of  
23 contract under Amazon’s “Delivery Guarantees” and “Guaranteed Delivery  
24 Terms and Conditions,” of an addendum or modification of the contractual  
25 promise under Amazon’s “Delivery Guarantees” and its “Guaranteed  
26 Delivery Terms and Conditions,” and/or of a distinct contract for delivery  
by the specified date or within the specified time window;
- d.    Whether Amazon’s failure to deliver products to members of the Proposed  
Class by the date or within the time promised entitled members of the  
Proposed Class to refunds of the shipping fees paid for such guaranteed  
delivery;
- e.    Whether Amazon’s failure to issue refunds for not delivering products to  
members of the Proposed Class by the date or within the time promised  
constitutes a breach of contract under Amazon’s “Delivery Guarantees” and  
its “Guaranteed Delivery Terms and Conditions”;
- f.    The amount by which the Plaintiff and members of the Proposed Class were  
damaged by Amazon’s breach of contract;

- 1 g. Whether Amazon breached its duty of good faith and fair dealing by  
2 charging the Plaintiff and members of the Proposed Class an additional  
3 shipping fee for delivery on a specific day or specified time window and  
4 then failing to refund the shipping fee if the promised delivery date or time  
5 was not met;
- 6 h. Whether Amazon breached its duty of good faith and fair dealing by failing  
7 to refund additional shipping fees, collected for promised deliveries on  
8 specific days or specified time windows that were not met, unless the  
9 customer affirmatively requested a refund;
- 10 i. The amount by which the Plaintiff and members of the Proposed Class were  
11 damaged by Amazon’s breach of its duty of good faith and fair dealing;
- 12 j. Whether Amazon was unjustly enriched by its failure to issue refunds after  
13 not delivering products on specific days or specified time windows to  
14 members of the Proposed Class, for which Class members paid additional  
15 shipping fees;
- 16 k. The amount by which Amazon was unjustly enriched at the expense of  
17 Plaintiff and Proposed Class members;
- 18 l. Whether Amazon’s publication of the “Delivery Guarantees” and  
19 “Guaranteed Delivery Terms and Conditions,” which promise a refund for  
20 failure to meet the guaranteed delivery promised, constitutes a deceptive act  
21 or practice in trade or commerce in violation of the Washington Consumer  
22 Protection Act (“CPA”), RCW 19.86 *et seq.*, in light of its failure to issue  
23 such refunds when due;
- 24 m. Whether Amazon’s failure to issue refunds for failure to meet the terms of  
25 its promised deliveries, “Delivery Guarantees” and “Guaranteed Delivery  
26 Terms and Conditions” constitutes an unfair or deceptive act or practice in  
trade or commerce in violation of the CPA;
- n. Whether Amazon engaged in an unfair or deceptive practice in trade or  
commerce in violation of the CPA by allowing or encouraging consumers  
to pay an extra shipping fee in exchange for specified delivery times on its  
checkout pages without disclosing that delivery during the specified time  
window is not “guaranteed” within the meaning or for purposes of its  
“Delivery Guarantees,” “Guaranteed Delivery Terms and Conditions” or  
other Conditions of Use;
- o. Whether Amazon engaged in an unfair or deceptive practice in trade or  
commerce in violation of the CPA by offering specified delivery times on  
its checkout pages in exchange for payment of an extra shipping fee without

1 disclosing that it would not issue refunds if the guaranteed delivery time  
2 was not met;

3 p. Whether Amazon engaged in an unfair or deceptive practice in trade or  
4 commerce in violation of the CPA by failing to refund additional shipping  
5 fees for unmet guaranteed deliveries unless the consumer affirmatively  
6 requested a refund;

7 q. The amount by which the Plaintiff and members of the Proposed Class were  
8 damaged by Amazon's violations of the CPA.

9 5.5. The commonality of the foregoing questions of fact and law, and others that  
10 may arise in this litigation, is further supported by the choice of Applicable Law in Amazon's  
11 Conditions of Use: "By using any Amazon Service, you agree that applicable federal law, and  
12 the laws of the state of Washington, without regard to principles of conflict of laws, will govern  
13 these Conditions of Use and any dispute of any sort that might arise between you and Amazon."

14 5.6. A class action is superior to other available methods for the fair and efficient  
15 adjudication of this controversy. Treatment as a class action will permit a large number of  
16 similarly situated persons to adjudicate their common claims in a single forum simultaneously,  
17 efficiently and without duplication of effort and expense that numerous, separate individual  
18 actions, or repetitive litigation, would entail.

19 5.7. The Proposed Class is readily definable and is one for which all relevant  
20 information exists in Amazon's records.

21 5.8. Class treatment will permit the adjudication of claims by many Proposed Class  
22 members who otherwise could not afford to litigate the claims alleged herein.

23 5.9. This class action presents no difficulties of management that would preclude its  
24 maintenance as a class action, since all aspects of the claims by the Plaintiff and Proposed  
25 Class members can be determined by data in the possession of Amazon.  
26



1 Amazon failed to deliver the products purchased at or before the Guaranteed Delivery dates  
2 and times promised by Amazon.

3 6.6. Amazon breached its contractual duty to Plaintiff and Proposed Class members  
4 when it: (i) failed to deliver the products purchased to Plaintiff and Proposed Class members  
5 at or before the Guaranteed Delivery dates and times promised by Amazon; and (ii) failed to  
6 issue refunds to Plaintiff and Proposed Class members in the amount of the additional shipping  
7 fees paid by Plaintiff and Proposed Class members for Guaranteed Delivery.  
8

9 6.7. Amazon's breach of its contractual duty to Plaintiff and Proposed Class  
10 members proximately caused damages to Plaintiff and Proposed Class members in the amount  
11 of the additional shipping fees paid by Plaintiff and Proposed Class members for Guaranteed  
12 Delivery.  
13

14 6.8. Plaintiff and Proposed Class members satisfied all conditions precedent to  
15 Amazon's contractual duties stated above.

16 **B. Breach of the Duty of Good Faith and Fair Dealing**

17 6.9. Plaintiff incorporates the above allegations.

18 6.10. Amazon had a duty to perform its contractual obligations in good faith.

19 6.11. Amazon breached the implied duty of good faith and fair dealing by: failing to  
20 deliver products to Plaintiff and the Proposed Class members by the dates or within the time  
21 windows specified on its checkout pages when Plaintiff and the Proposed Class members paid  
22 an additional shipping fee for delivery by those dates or during those time windows; construing  
23 its contractual obligations and failing to disclose to Plaintiff and the Proposed Class members  
24 its determination that payment of an additional shipping fee would not guarantee delivery by  
25 the dates or during the selected time windows; construing its contractual obligations and failing  
26



1 to disclose to Plaintiff and the Proposed Class members its determination that selection of a  
2 specified date or time window and payment of an additional shipping fee would not constitute  
3 a “guaranteed” delivery within the meaning and for purposes of Amazon’s “Delivery  
4 Guarantees,” “Guaranteed Delivery Terms and Conditions” or other Conditions of Use; failing  
5 to provide refunds of additional shipping fees to Plaintiff and the Proposed Class members  
6 when delivery was not made by the specified date or within the specified time window, either  
7 pursuant to the “Guaranteed Delivery Terms and Conditions” or otherwise; and construing its  
8 contractual obligations to require Plaintiff and the Proposed Class Members to affirmatively  
9 claim a refund of additional shipping fees in order for a refund to be provided.  
10

11 6.12. Plaintiff and the Proposed Class members were damaged as a result of  
12 Amazon’s breaches of the implied duty of good faith and fair dealing.  
13

14 6.13. Plaintiff and the Proposed Class members are entitled to damages caused by  
15 Amazon’s breaches of the implied duty of good faith and fair dealing.  
16

17 **C. Unjust Enrichment**

18 6.14. In the alternative to the causes of action stated above, in the event of a finding  
19 that the parties did not enter into an express contract, or that the express contract does not  
20 include a contractual duty by Amazon to deliver the products purchased to Plaintiff and  
21 Proposed Class members at or before the Guaranteed Delivery dates and times promised by  
22 Amazon, or a contractual duty to issue refunds to Plaintiff and Proposed Class members,  
23 Amazon was unjustly enriched in the amount of the additional shipping fees paid by Plaintiff  
24 and Proposed Class members for Guaranteed Delivery.  
25  
26

1           6.15. Amazon received a benefit at Plaintiff’s and Proposed Class members’ expense  
2 in the form of additional shipping fees paid by Plaintiff and Proposed Class members for  
3 Guaranteed Delivery. Amazon had knowledge of the benefit.

4           6.16. Because Amazon failed to deliver the products purchased to Plaintiff and  
5 Proposed Class members at or before the Guaranteed Delivery dates and times presented by  
6 Amazon, it would be unjust for Amazon to retain the additional shipping fees paid by Plaintiff  
7 and Proposed Class members for Guaranteed Delivery.

8           6.17. Under the circumstances described herein, Amazon profits or enriches itself at  
9 the expense of Plaintiff and Proposed Class members contrary to equity.

10  
11           **D. Violation of The Washington Consumer Protection Act**

12           6.18. Plaintiff incorporates the above allegations.

13           6.19. Amazon’s “Delivery Guarantees” and “Guaranteed Delivery Terms and  
14 Conditions” promise consumers that they will receive a refund of additional shipping fees,  
15 subject to limited exceptions, if their orders are not delivered by the Guaranteed Delivery dates  
16 and times. However, Amazon fails to issue such refunds when due. Therefore, Amazon’s  
17 publication of this promise in the “Delivery Guarantees” and “Guaranteed Delivery Terms and  
18 Conditions” constitutes a deceptive act or practice occurring in trade or commerce within the  
19 meaning of the Washington Consumer Protection Act (“CPA”), RCW 19.86 et seq.  
20

21           6.20. Amazon’s failure to issue refunds of additional shipping fees when it fails to  
22 meet the Guaranteed Delivery dates and times further constitutes an unfair or deceptive act or  
23 practice occurring in trade or commerce within the meaning of the CPA.

24           6.21. In addition and in the alternative, Amazon engaged in an unfair or deceptive  
25 practice in trade or commerce in violation of the CPA by allowing or encouraging consumers  
26

1 to pay an extra shipping fee in exchange for specified delivery dates or times on its checkout  
2 pages without disclosing that delivery during the specified time window is not “guaranteed”  
3 within the meaning or for purposes of its “Delivery Guarantees,” “Guaranteed Delivery Terms  
4 and Conditions” or other Conditions of Use.

5  
6 6.22. Amazon further engaged in an unfair or deceptive practice in trade or commerce  
7 in violation of the CPA by offering specified delivery dates and times on its checkout pages in  
8 exchange for payment of an extra shipping fee without disclosing that it would not issue  
9 refunds if the specified delivery time was not met.

10 6.23. Amazon further engaged in an unfair or deceptive practice in trade or commerce  
11 in violation of the CPA by requiring Plaintiff and the Proposed Class members to affirmatively  
12 claim a refund of additional shipping fees in order for a refund to be provided.

13  
14 6.24. Amazon’s unfair or deceptive acts or practices affect the public interest and  
15 have caused injury to Plaintiff and the Proposed Class.

16 6.25. Amazon’s acts and omissions constitute a violation of Washington’s CPA  
17 giving rise to claims for relief under RCW 19.86.090.

18 **VII. REQUEST FOR RELIEF**

19 7.1. WHEREFORE, Plaintiff and the Proposed Class demand judgment against the  
20 Defendant as follows:

- 21
- 22 a. For an order certifying this lawsuit as a class action under Federal Rule  
23 of Civil Procedure 23(a) and (b)(3), designating Plaintiff as Class  
24 representatives, and appointing Plaintiff’s counsel as counsel for the  
25 Class;
  - 26 b. For an award of all damages to Plaintiff and the Class resulting from  
Defendant’s breach of contract;
  - c. For an award of all damages to Plaintiff and the Class resulting from  
Defendant’s breach of the duty of good faith and fair dealing;

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- d. For an award of restitution to remedy Defendants’ unjust enrichment at the Plaintiff’s and Class Members’ expense as alleged herein;
- e. For an award of actual and treble damages pursuant to the Washington Consumer Protection Act, RCW 19.86.090;
- f. For an award of prejudgment interest on the refunds and damages owed;
- g. For an award of reasonable attorneys’ fees and expenses, as provided by law; and
- h. For all other just and proper relief.

**VIII. JURY TRIAL DEMAND**

8.1. Plaintiff hereby demands a trial by jury of all eligible issues.

DATED this 9th day of January, 2024.

SCHROETER GOLDMARK & BENDER

*s/ Adam J. Berger*  
 \_\_\_\_\_  
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*Counsel for Plaintiff Tonny Storey*

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 9th day January, 2024, the foregoing document was filed with the Clerk of the Court via the Court’s electronic filing system, which will provide electronic mail notice to all counsel of record.

DATED: January 9, 2024, at Vashon, Washington.

*s/Mary Dardeau*  
\_\_\_\_\_  
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