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*Attorneys for Plaintiffs, LAURA MAKENNA, REGINALD SCOTT, LORI MARIE WEAVER, MARK CASTRO, and DRESSTIN WAGONER, and all others similarly situated*

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LAURA MAKENNA, REGINALD SCOTT, LORI MARIE WEAVER, MARK CASTRO, and DRESSTIN WAGONER, individually, and on behalf of other members of the general public similarly situated,

Plaintiff,

vs.

AMAZON.COM, LLC,

Defendant.

Case No.

**FIRST AMENDED CLASS ACTION COMPLAINT**

- (1) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17500 *et seq.*)
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)
- (3) Violation of Electronic Funds Transfer Act (15 U.S.C. §1693 *et seq.*)

**Jury Trial Demanded**

1 Plaintiffs LAURA MAKENNA, REGINALD SCOTT, LORI MARIE  
2 WEAVER, MARK CASTRO, and DRESSTIN WAGONER (collectively,  
3 “Plaintiffs”), individually and on behalf of all other members of the public similarly  
4 situated, allege as follows:

5 **NATURE OF THE ACTION**

6 1. Plaintiffs bring this class action Complaint against Defendant  
7 AMAZON.COM, LLC (hereinafter “Defendant”) to stop Defendant’s practice of  
8 falsely advertising its services and to obtain redress for a nationwide class of  
9 consumers (“Class Members”) who purchased these services, within the  
10 applicable statute of limitations period.

11 2. Defendant is a Delaware corporation and is engaged in the  
12 manufacture, sale, and distribution of computers and related equipment and  
13 services with its principle place of business in Delaware and headquarters in  
14 Washington.

15 3. Defendant represents to its consumers that they could use its services  
16 to purchase products directly from its website at no cost to the consumer in  
17 addition to the cost of the product.

18 4. However, despite these representations, Defendant charged Plaintiffs  
19 and similarly situated consumers additional fees. Specifically, when consumers  
20 purchased products from Defendant, they were also charged an additional  
21 “Amazon Prime” membership fee.

22 5. Defendant misrepresented and falsely advertised its services to  
23 Plaintiffs and others similarly situated.

24 6. Defendant’s misrepresentations to Plaintiffs and others similarly  
25 situated caused them to use Defendant’s services, which Plaintiffs and others  
26 similarly situated would not have used absent these misrepresentations by  
27 Defendant and its employees. In so doing, Defendant has violated California  
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1 consumer protection statutes.

2 **NATURE OF THE CASE & COMMON ALLEGATIONS OF FACT**

3 7. Consumers purchase products on Defendant's website.

4 8. Consumers rely on the representations and advertisements of retailers  
5 in order to know which products and services to use.

6 9. Defendant is an online company that is engaged in the sale of many  
7 different kinds of products through facilitating sales by third party retailers.

8 10. Consumers use Defendant's representations in order to determine  
9 whether or not to use its services and purchase products on Defendant's website.

10 11. Defendant profits from both from the sale of its products as well as  
11 its services. With proper representation, many of the consumers would not have  
12 purchased products from Defendant.

13 12. Defendant conceals that it charges a membership fee when consumers  
14 purchase products on its website.

15 13. Defendant does not present consumers with a written copy of the  
16 correct terms of the purchase prior to purchase.

17 14. Defendant makes written representations to consumers which  
18 contradict what is actually charged to Defendants.

19 15. The aforementioned written and oral representations are objectively  
20 false, and constitute a false advertisement under Cal. Bus. & Prof. Code §§ 17500  
21 *et. seq.* and Cal. Civ. Code §§ 1750 *et seq.*, and an unlawful, unfair, or deceptive  
22 business practices under Cal. Bus. & Prof. Code §§ 17200 *et. seq.* and Texas  
23 Business and Commerce Code § 17.40 *et seq.*.

24 16. Furthermore, Plaintiffs bring this Class Action Complaint for  
25 Defendant's violation of the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et*  
26 *seq.*.

27 17. Defendant's violations of the law include, but not limited to, the false  
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1 advertising, marketing, representations, and sale of the invalid Class Products to  
2 consumers in California.

3 18. On behalf of the class, Plaintiffs seek an injunction requiring  
4 Defendant to cease advertising its services as free and an award of damages to the  
5 Class Members, together with costs and reasonable attorneys' fees.

#### 6 **JURISDICTION AND VENUE**

7 19. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because minimal  
8 diversity exists and the damages Plaintiffs seek exceed five million dollars of  
9 money (\$5,000,000.00).

10 20. Venue is proper in the United States District Court for the Northern  
11 District of California pursuant to 28 U.S.C. § 1391(b)(2) because a substantial  
12 portion of the events giving rise to this action occurred here.

#### 13 **THE PARTIES**

14 21. Plaintiff LAURA MAKENNA ("MAKENNA") is a citizen and  
15 resident of the State of California, County of San Diego.

16 22. Plaintiff REGINALD SCOTT ("SCOTT") is a citizen and resident of  
17 the State of Texas, County of Harris.

18 23. Plaintiff LORI MARIE WEAVER ("WEAVER") is a citizen and  
19 resident of the State of California, County of Stanislaus.

20 24. Plaintiff MARK CASTRO ("CASTRO") is a citizen and resident of  
21 the State of California, County of Riverside.

22 25. Plaintiff DRESSTIN WAGONER ("WAGONER") is a citizen and  
23 resident of the State of Texas, County of Tarrant.

24 26. Plaintiffs LAURA MAKENNA, REGINALD SCOTT, LORI  
25 MARIE WEAVER, MARK CASTRO, and DRESSTIN WAGONER will  
26 collectively be referred to as "Plaintiffs" herein.

27 23. Defendant Amazon.com, LLC is a Limited Liability Company with  
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1 its principle place of business located in Delaware and headquarters in  
2 Washington. Defendant is a Delaware Corporation. Defendant's principle place  
3 of business is within Washington.

4 24. Plaintiffs allege, on information and belief, that Defendant's  
5 marketing campaigns, as pertains to this matter, were created by Defendant at its  
6 principal place of business in California, and were disseminated from California,  
7 nationwide.

8 25. Plaintiffs are informed and believe, and thereon allege, that at all time  
9 relevant, Defendant's sales of products and services are governed by the  
10 controlling law in the state in which it does business and from which the sales or  
11 products and services, and the allegedly unlawful acts originated, which is  
12 California.

13 26. Plaintiffs are informed and believe, and thereon allege, that each and  
14 all of the acts and omissions alleged herein were performed by, or is attributable  
15 to, Defendant and/or its employees, agents, and/or third parties acting on its behalf,  
16 each acting as the agent for the other, with legal authority to act on the other's  
17 behalf. The acts of any and all of Defendant's employees, agents, and/or third  
18 parties acting on its behalf, were in accordance with, and represent, the official  
19 policy of Defendant.

20 27. Plaintiffs are informed and believe, and thereon allege, that said  
21 Defendant is in some manner intentionally, negligently, or otherwise responsible  
22 for the acts, omissions, occurrences, and transactions of each and all its employees,  
23 agents, and/or third parties acting on its behalf, in proximately causing the  
24 damages herein alleged.

25 28. At all relevant times, Defendant ratified each and every act or  
26 omission complained of herein. At all relevant times, Defendant, aided and abetted  
27 the acts and omissions as alleged herein.  
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**PLAINTIFF LAURA MAKENNA' FACTS**

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2 29. In 2012 MAKENNA went to Defendant's website and purchased  
3 some products utilizing Defendant's services.

4 30. In utilizing these services, Plaintiff MAKENNA was informed  
5 through various written representations by Defendant that she would not be  
6 charged for membership and only the products that she purchased.

7 31. As a result of Defendant's representations, MAKENNA provided  
8 Defendant with her debit card information in order to purchase the products  
9 referred to above.

10 32. However, Defendant upgraded her account to the premium  
11 membership known as "Amazon Prime" without her permission or knowledge.

12 33. Over the next several years, from 2012 through 2016, MAKENNA  
13 was charged by Defendant each year for the premium "Amazon Prime"  
14 membership. That is, over the span of several years, Defendant automatically and  
15 regularly deducted funds from MAKENNA's debit card account sans  
16 MAKENNA's knowledge or consent.

17 34. Including taxes and fees MAKENNA was charged on her debit card  
18 for over \$400.00 for the premium membership.

19 35. MAKENNA is informed, believes, and thereupon alleges that  
20 Defendant set up MAKENNA's payment of the unauthorized and undesired  
21 membership to automatically withdraw money directly from MAKENNA's bank  
22 account.

23 36. MAKENNA did not realize that Defendant had been making  
24 automatic and regular deductions from her debit card until within the last year, and  
25 she demanded that Defendant cease doing so at her first opportunity and canceled  
26 her membership.

27 37. MAKENNA is informed, believes, and thereupon alleges that had not  
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1 MAKENNA canceled the membership services, the Defendant would have taken  
2 additional unauthorized, multiple, and reoccurring payments from MAKENNA's  
3 bank account.

4 38. MAKENNA was drawn to use Defendant's website in part by  
5 Defendant's prices.

6 39. Relying on Defendant's assurances that the prices by Defendant  
7 would be accurate, MAKENNA decided to purchase products from Defendant's  
8 website.

9 40. Such sales tactics rely on falsities and have a tendency to mislead and  
10 deceive a reasonable consumer.

11 41. MAKENNA alleges that Defendant's representations were part of a  
12 common scheme to mislead consumers and incentivize them to purchase products  
13 from its website.

14 42. In purchasing the products from Defendant, MAKENNA relied upon  
15 Defendant's representations.

16 43. MAKENNA would not have purchased products from Defendant if  
17 she knew that the above-referenced statements made by Defendant were false.

18 44. Had Defendant properly marketed, advertised, and represented its  
19 services as costing a hidden fee, MAKENNA would not have used Defendant's  
20 services.

21 45. MAKENNA gave her money to Defendant because of the prices of  
22 Defendant's products. Defendant benefited from falsely advertising its products  
23 and services. MAKENNA received nothing for giving her money to Defendant.  
24 Defendant benefited on the loss to MAKENNA and provided nothing of benefit  
25 to MAKENNA in exchange.

26 46. Had Defendant properly marketed, advertised, and represented its  
27 services, no reasonable consumer who purchased a printer would have believed  
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1 that they could purchase products from Defendant without paying a membership  
2 fee.

3 **PLAINTIFF REGINALD SCOTT'S FACTS**

4 47. In 2015, SCOTT went to Defendant's website and purchased some  
5 products utilizing Defendant's services.

6 48. In utilizing these services, SCOTT was informed through various  
7 written representations by Defendant that he would not be charged for membership  
8 and only the products that he purchased.

9 49. As a result of Defendant's representations, SCOTT provided  
10 Defendant with his debit card information in order to purchase the products  
11 referred to above.

12 50. However, Defendant upgraded his account to the premium  
13 membership known as "Amazon Prime" without his permission or knowledge.

14 51. Over the next two years, from 2015 through 2017, SCOTT was  
15 charged by Defendant multiple times for the premium "Amazon Prime"  
16 membership. That is, from 2015 through 2017, Defendant automatically and  
17 regularly deducted funds from SCOTT's debit card account in the amount of  
18 \$107.17 sans SCOTT's knowledge or consent.

19 52. SCOTT is informed, believes, and thereupon alleges that Defendant  
20 set up SCOTT's payment of the unauthorized and undesired membership to  
21 automatically withdraw money directly from SCOTT's bank account.

22 53. SCOTT did not realize that Defendant had been making automatic  
23 and regular deductions from his debit card until within the last year, and he  
24 demanded that Defendant cease doing so at his first opportunity and canceled his  
25 membership.

26 54. SCOTT is informed, believes, and thereupon alleges that had not  
27 SCOTT canceled the membership services, the Defendant would have taken  
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1 additional unauthorized, multiple, and reoccurring payments from SCOTT's bank  
2 account.

3 55. Furthermore, Defendant refused to give SCOTT a full refund based  
4 on Defendant's policy on only refunding money to the card from which funds were  
5 taken. In other words, Defendant refused to refund SCOTT's money merely  
6 because SCOTT had since closed the account from which Defendant deducted  
7 funds.

8 56. SCOTT was drawn to use Defendant's website in part by Defendant's  
9 prices.

10 57. Relying on Defendant's assurances that the prices by Defendant  
11 would be accurate, SCOTT decided to purchase products from Defendant's  
12 website.

13 58. Such sales tactics rely on falsities and have a tendency to mislead and  
14 deceive a reasonable consumer.

15 59. SCOTT alleges that Defendant's representations were part of a  
16 common scheme to mislead consumers and incentivize them to purchase products  
17 from its website.

18 60. In purchasing the products from Defendant, SCOTT relied upon  
19 Defendant's representations.

20 61. SCOTT would not have purchased products from Defendant if he  
21 knew that the above-referenced statements made by Defendant were false.

22 62. Had Defendant properly marketed, advertised, and represented its  
23 services as costing a hidden fee, SCOTT would not have used Defendant's  
24 services.

25 63. SCOTT gave his money to Defendant because of the prices of  
26 Defendant's products. Defendant benefited from falsely advertising its products  
27 and services. SCOTT received nothing for giving his money to Defendant.  
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1 Defendant benefited on the loss to SCOTT and provided nothing of benefit to  
2 SCOTT in exchange.

3 64. Had Defendant properly marketed, advertised, and represented its  
4 services, no reasonable consumer who purchased a printer would have believed  
5 that they could purchase products from Defendant without paying a membership  
6 fee.

7 **PLAINTIFF LORI MARIE WEAVER'S FACTS**

8 65. In or around 2016, WEAVER went to Defendant's website and  
9 purchased some products utilizing Defendant's services.

10 66. In utilizing these services, WEAVER was informed through various  
11 written representations by Defendant that she would not be charged for  
12 membership with "Amazon Prime" and only the products that she purchased.

13 67. As a result of Defendant's representations, WEAVER provided  
14 Defendant with her debit card information in order to purchase the products  
15 referred to above.

16 68. However, Defendant upgraded her account to the premium  
17 membership known as "Amazon Prime" without her permission or knowledge.

18 69. That is, Plaintiff paid a onetime fee for "Amazon Prime" as  
19 represented by Defendant, for one year, but after that year, Defendant enrolled her  
20 in "Amazon Prime" membership and continued to debit her account without her  
21 knowledge or consent.

22 70. WEAVER is informed, believes, and thereupon alleges that  
23 Defendant set up WEAVER's payment of the unauthorized and undesired  
24 membership to automatically withdraw money directly from WEAVER's bank  
25 account.

26 71. WEAVER did not realize that Defendant had been making automatic  
27 and regular deductions from her debit card until within the last year, and she  
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1 demanded that Defendant cease doing so at her first opportunity and canceled her  
2 membership.

3 72. WEAVER is informed, believes, and thereupon alleges that had not  
4 WEAVER canceled the membership services, the Defendant would have taken  
5 additional unauthorized, multiple, and reoccurring payments from WEAVER's  
6 bank account.

7 73. WEAVER was drawn to use Defendant's website in part by  
8 Defendant's prices.

9 74. Relying on Defendant's assurances that the prices by Defendant  
10 would be accurate, WEAVER decided to purchase products from Defendant's  
11 website.

12 75. Such sales tactics rely on falsities and have a tendency to mislead and  
13 deceive a reasonable consumer.

14 76. WEAVER alleges that Defendant's representations were part of a  
15 common scheme to mislead consumers and incentivize them to purchase products  
16 from its website.

17 77. In purchasing the products from Defendant, WEAVER relied upon  
18 Defendant's representations.

19 78. WEAVER would not have purchased products from Defendant if she  
20 knew that the above-referenced statements made by Defendant were false.

21 79. Had Defendant properly marketed, advertised, and represented its  
22 services as costing a hidden fee, WEAVER would not have used Defendant's  
23 services.

24 80. WEAVER gave her money to Defendant because of the prices of  
25 Defendant's products. Defendant benefited from falsely advertising its products  
26 and services. WEAVER received nothing for giving her money to Defendant.  
27 Defendant benefited on the loss to WEAVER and provided nothing of benefit to  
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1 WEAVER in exchange.

2 81. Had Defendant properly marketed, advertised, and represented its  
3 services, no reasonable consumer who purchased a printer would have believed  
4 that they could purchase products from Defendant without paying a membership  
5 fee.

6 **PLAINTIFF MARK CASTRO'S FACTS**

7 82. In or around late 2016 or early 2017, CASTRO went to Defendant's  
8 website and purchased some products utilizing Defendant's services.

9 83. In utilizing these services, CASTRO was informed through various  
10 written representations by Defendant that he would not be charged for membership  
11 and only the products that he purchased.

12 84. As a result of Defendant's representations, CASTRO provided  
13 Defendant with his debit card information in order to purchase the products  
14 referred to above.

15 85. However, Defendant upgraded his account to the premium  
16 membership known as "Amazon Prime" without his permission or knowledge.

17 86. Over the course of several months, from late 2016 through the  
18 present, CASTRO was charged by Defendant multiple times for the premium  
19 "Amazon Prime" membership.

20 87. CASTRO is informed, believes, and thereupon alleges that Defendant  
21 set up CASTRO's payment of the unauthorized and undesired membership to  
22 automatically withdraw money directly from CASTRO's bank account.

23 88. As soon as CASTRO realized that Defendant had been making  
24 automatic deductions from his bank account, he cancelled his membership.

25 89. CASTRO is informed, believes, and thereupon alleges that had not  
26 CASTRO canceled the membership services, the Defendant would have taken  
27 additional unauthorized, multiple, and reoccurring payments from CASTRO's  
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1 bank account.

2 90. CASTRO was drawn to use Defendant's website in part by  
3 Defendant's prices.

4 91. Relying on Defendant's assurances that the prices by Defendant  
5 would be accurate, CASTRO decided to purchase products from Defendant's  
6 website.

7 92. Such sales tactics rely on falsities and have a tendency to mislead and  
8 deceive a reasonable consumer.

9 93. CASTRO alleges that Defendant's representations were part of a  
10 common scheme to mislead consumers and incentivize them to purchase products  
11 from its website.

12 94. In purchasing the products from Defendant, SCOTT relied upon  
13 Defendant's representations.

14 95. SCOTT would not have purchased products from Defendant if he  
15 knew that the above-referenced statements made by Defendant were false.

16 96. Had Defendant properly marketed, advertised, and represented its  
17 services as costing a hidden fee, SCOTT would not have used Defendant's  
18 services.

19 97. SCOTT gave his money to Defendant because of the prices of  
20 Defendant's products. Defendant benefited from falsely advertising its products  
21 and services. SCOTT received nothing for giving his money to Defendant.  
22 Defendant benefited on the loss to SCOTT and provided nothing of benefit to  
23 SCOTT in exchange.

24 98. Had Defendant properly marketed, advertised, and represented its  
25 services, no reasonable consumer who purchased a printer would have believed  
26 that they could purchase products from Defendant without paying a membership  
27 fee.

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**PLAINTIFF DRESSTIN WAGONER'S FACTS**

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2 99. In or around August of 2016, WAGONER went to Defendant's  
3 website and purchased some products utilizing Defendant's services.

4 100. In utilizing these services, WAGONER was informed through various  
5 written representations by Defendant that he would not be charged for membership  
6 and only for the products that he purchased.

7 101. As a result of Defendant's representations, WAGONER provided  
8 Defendant with his debit card information in order to purchase the products  
9 referred to above.

10 102. However, Defendant upgraded his account to the premium  
11 membership known as "Amazon Prime" without his permission or knowledge.

12 103. Including taxes and fees WAGONER was charged on his debit card  
13 for over \$107.17 for the premium membership. Also, Defendant charged  
14 WAGONER \$11.9 for a renewal of his "Amazon Prime" membership and  
15 automatically deducted that amount from his banking or debit card account.

16 104. WAGONER is informed, believes, and thereupon alleges that  
17 Defendant set up WAGONER's payment of the unauthorized and undesired  
18 membership to automatically withdraw money directly from WAGONER's bank  
19 account.

20 105. WAGONER canceled the membership with Defendant after one  
21 withdrawal of \$11.9.

22 106. However, Defendant continued to charge WAGONER for "Amazon  
23 Prime" an additional \$107.17.

24 107. WAGONER is informed, believes, and thereupon alleges that had he  
25 not canceled the membership services, Defendant would have taken additional  
26 unauthorized, multiple, and reoccurring payments from his bank account.

27 108. WAGONER was drawn to use Defendant's website in part by  
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1 Defendant's prices.

2 109. Relying on Defendant's assurances that the prices by Defendant  
3 would be accurate, WAGONER decided to purchase products from Defendant's  
4 website.

5 110. Such sales tactics rely on falsities and have a tendency to mislead and  
6 deceive a reasonable consumer.

7 111. WAGONER alleges that Defendant's representations were part of a  
8 common scheme to mislead consumers and incentivize them to purchase products  
9 from its website.

10 112. In purchasing the products from Defendant, WAGONER relied upon  
11 Defendant's representations.

12 113. WAGONER would not have purchased products from Defendant if  
13 he knew that the above-referenced statements made by Defendant were false.

14 114. Had Defendant properly marketed, advertised, and represented its  
15 services as costing a hidden fee, WAGONER would not have used Defendant's  
16 services.

17 115. WAGONER gave his money to Defendant because of the prices of  
18 Defendant's products. Defendant benefited from falsely advertising its products  
19 and services. WAGONER received nothing for giving his money to Defendant.  
20 Defendant benefited on the loss to WAGONER and provided nothing of benefit  
21 to WAGONER in exchange.

22 116. Had Defendant properly marketed, advertised, and represented its  
23 services, no reasonable consumer who purchased a printer would have believed  
24 that they could purchase products from Defendant without paying a membership  
25 fee.

26 **CLASS ACTION ALLEGATIONS**

27 117. Plaintiffs incorporate all preceding paragraphs as though fully set  
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1 forth herein.

2 118. Plaintiffs bring this action, on behalf of themselves and all others  
3 similarly situated, and thus, seeks class certification under *Federal Rule 23*.

4 119. The class Plaintiffs seek to represent (the “Class”) is defined as  
5 follows:

6 All consumers in the United States, who, between the  
7 applicable statute of limitations and the present, used  
8 Defendant’s services and were charged an additional  
membership fee.

9 120. As used herein, the term “Class Members” shall mean and refer to the  
10 members of the Class described above.

11 121. Excluded from the Class are Defendant, its affiliates, employees,  
12 agents, and attorneys, and the Court.

13 122. In addition, Plaintiffss seek to represent the subclass (“EFTA  
14 subclass”) defined as follows:

15 All persons in the United States whose bank accounts  
16 were debited on a reoccurring basis by Defendants  
17 without Defendants obtaining a written authorization  
18 signed or similarly authenticated for preauthorized  
electronic fund transfers within the one year prior to the  
filing of this Complaint.

19 123. Plaintiffs MAKENNA, WEAVER, and CASTRO also seek to  
20 represent the subclass (“California subclass”) defined as follows:

21 All consumers in California, who, between the  
22 applicable statute of limitations and the present, used  
Defendant’s services and were charged an additional  
membership fee.

23 124. Plaintiffs WAGONER and SCOTT seek to represent the subclass  
24 (“Texas subclass”) defined as follows:

25 All consumers in Texas, who, between the applicable  
26 statute of limitations and the present, used Defendant’s  
services and were charged an additional membership fee.

27 125. Plaintiffs reserve the right to amend the Class, and to add additional  
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1 subclasses, if discovery and further investigation reveals such action is warranted.

2 126. Upon information and belief, the proposed class is composed of  
3 thousands of persons. The members of the class are so numerous that joinder of  
4 all members would be unfeasible and impractical.

5 127. No violations alleged in this complaint are contingent on any  
6 individualized interaction of any kind between class members and Defendant.

7 128. Rather, all claims in this matter arise from the identical, false,  
8 affirmative written statements that consumers would not need to pay additional  
9 fees to purchase products from Defendant's website.

10 129. There are common questions of law and fact as to the Class Members  
11 that predominate over questions affecting only individual members, including but  
12 not limited to:

- 13 (a) Whether Defendant engaged in unlawful, unfair, or deceptive  
14 business practices in charging Plaintiffs and other Class  
15 Members for membership fees when they purchased products  
16 from Defendant;
- 17 (b) Whether Defendant made misrepresentations with respect to its  
18 services;
- 19 (c) Whether Defendant profited from charging membership fees;
- 20 (d) Whether Defendant violated California Bus. & Prof. Code §  
21 17200, *et seq.* and California Bus. & Prof. Code § 17500, *et*  
22 *seq.*;
- 23 (e) Whether Plaintiffs and Class Members are entitled to equitable  
24 and/or injunctive relief;
- 25 (f) Whether Defendant's unlawful, unfair, and/or deceptive  
26 practices harmed Plaintiffs and Class Members; and
- 27 (g) The method of calculation and extent of damages for Plaintiffs  
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1 and Class Members.

2 130. Plaintiffs are members of the class they seeks to represent

3 131. The claims of Plaintiffs are not only typical of all class members, they  
4 are identical.

5 132. All claims of Plaintiffs and the class are based on the exact same legal  
6 theories.

7 133. Plaintiffs have no interest antagonistic to, or in conflict with, the  
8 class.

9 134. Plaintiffs are qualified to, and will, fairly and adequately protect the  
10 interests of each Class Member, because Plaintiff bought Class Products from  
11 Defendant during the Class Period. Defendant's unlawful, unfair and/or  
12 fraudulent actions concerns the same business practices described herein  
13 irrespective of where they occurred or were experiences. Plaintiffs' claims are  
14 typical of all Class Members as demonstrated herein.

15 135. Plaintiffs will thoroughly and adequately protect the interests of the  
16 class, having retained qualified and competent legal counsel to represent  
17 themselves and the class.

18 136. Common questions will predominate, and there will be no unusual  
19 manageability issues.

20 **FIRST CAUSE OF ACTION**

21 **Violation of the California False Advertising Act**

22 **(Cal. Bus. & Prof. Code §§ 17500 *et seq.*)**

23 **-Plaintiffs MAKENNA, WEAVER, & CASTRO and the California**

24 **SubClass-**

25 137. Plaintiffs incorporate by reference each allegation set forth above.

26 138. Pursuant to California Business and Professions Code section 17500,  
27 *et seq.*, it is unlawful to engage in advertising "which is untrue or misleading, and  
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1 which is known, or which by the exercise of reasonable care should be known, to  
2 be untrue or misleading...or...to so make or disseminate or cause to be so made or  
3 disseminated any such statement as part of a plan or scheme with the intent not to  
4 sell that personal property or those services, professional or otherwise, so  
5 advertised at the price stated therein, or as so advertised.”

6 139. California Business and Professions Code section 17500, *et seq.*'s  
7 prohibition against false advertising extends to the use of false or misleading  
8 written statements.

9 140. Defendant misled consumers by making misrepresentations and  
10 untrue statements about its services, namely, Defendant informed Plaintiffs and  
11 California Subclass Members that it would not charge them for membership fees  
12 in order to purchase products on its website, and made false representations to  
13 Plaintiffs and other putative California Subclass members in order to solicit these  
14 transactions.

15 141. Defendant knew that their representations and omissions were untrue  
16 and misleading, and deliberately made the aforementioned representations and  
17 omissions in order to deceive reasonable consumers like Plaintiffs and other  
18 California Subclass Members.

19 142. As a direct and proximate result of Defendant's misleading and false  
20 advertising, Plaintiffs and the other California Subclass Members have suffered  
21 injury in fact and have lost money or property. Plaintiffs reasonably relied upon  
22 Defendant's representations regarding Defendant's services. In reasonable  
23 reliance on Defendant's false advertisements, Plaintiffs and other California  
24 Subclass Members purchased products from Defendant. In turn, Plaintiffs and  
25 other California Subclass Members were charged more than represented, and  
26 therefore Plaintiffs and other California Subclass Members have suffered injury in  
27 fact.

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1 143. Plaintiffs allege that these false and misleading written  
2 representations made by Defendant constitute a “scheme with the intent not to sell  
3 that personal property or those services, professional or otherwise, so advertised  
4 at the price stated therein, or as so advertised.”

5 144. Defendant advertised to Plaintiffs and other putative California  
6 Subclass members, through written representations and omissions made by  
7 Defendant and its employees, that they could purchase products without paying a  
8 membership fee.

9 145. Defendant knew that a membership fee would be charged.

10 146. Thus, Defendant knowingly sold charged Plaintiffs and other putative  
11 California Subclass members for fees that it represented as not charging.

12 147. The misleading and false advertising described herein presents a  
13 continuing threat to Plaintiffs and the California Subclass Members in that  
14 Defendant persists and continues to engage in these practices, and will not cease  
15 doing so unless and until forced to do so by this Court. Defendant’s conduct will  
16 continue to cause irreparable injury to consumers unless enjoined or restrained.  
17 Plaintiffs are entitled to preliminary and permanent injunctive relief ordering  
18 Defendant to cease their false advertising, as well as disgorgement and restitution  
19 to Plaintiffs and all California Subclass Members Defendant’s revenues associated  
20 with their false advertising, or such portion of those revenues as the Court may  
21 find equitable.

22 **SECOND CAUSE OF ACTION**

23 **Violation of Unfair Business Practices Act**

24 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

25 **-Plaintiffs MAKENNA, WEAVER, & CASTRO and the California**  
26 **Subclass-**

27 148. Plaintiffs incorporate by reference each allegation set forth above.  
28

1 149. Actions for relief under the unfair competition law may be based on  
2 any business act or practice that is within the broad definition of the UCL. Such  
3 violations of the UCL occur as a result of unlawful, unfair or fraudulent business  
4 acts and practices. A plaintiff is required to provide evidence of a causal  
5 connection between a defendant's business practices and the alleged harm--that is,  
6 evidence that the defendant's conduct caused or was likely to cause substantial  
7 injury. It is insufficient for a plaintiff to show merely that the defendant's conduct  
8 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory  
9 definition of unfair competition covers any single act of misconduct, as well as  
10 ongoing misconduct.

**UNFAIR**

11  
12 150. California Business & Professions Code § 17200 prohibits any  
13 “unfair ... business act or practice.” Defendant’s acts, omissions,  
14 misrepresentations, and practices as alleged herein also constitute “unfair”  
15 business acts and practices within the meaning of the UCL in that its conduct is  
16 substantially injurious to consumers, offends public policy, and is immoral,  
17 unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs  
18 any alleged benefits attributable to such conduct. There were reasonably available  
19 alternatives to further Defendant’s legitimate business interests, other than the  
20 conduct described herein. Plaintiff reserves the right to allege further conduct  
21 which constitutes other unfair business acts or practices. Such conduct is ongoing  
22 and continues to this date.

23 151. In order to satisfy the “unfair” prong of the UCL, a consumer must  
24 show that the injury: (1) is substantial; (2) is not outweighed by any countervailing  
25 benefits to consumers or competition; and, (3) is not one that consumers  
26 themselves could reasonably have avoided.

27 152. Here, Defendant’s conduct has caused and continues to cause  
28

1 substantial injury to Plaintiff and members of the California Subclass. Plaintiffs  
2 and members of the California Subclass have suffered injury in fact due to  
3 Defendant's decision to charge them for its services in order to buy products.  
4 Thus, Defendant's conduct has caused substantial injury to Plaintiffs and the  
5 members of the California Subclass.

6 153. Moreover, Defendant's conduct as alleged herein solely benefits  
7 Defendant while providing no benefit of any kind to any consumer. Such  
8 deception utilized by Defendant convinced Plaintiffs and members of the  
9 California Subclass that Defendant's services were free, in order to induce them  
10 to spend money on its website. In fact, knowing that Defendant's services cost  
11 money, Defendant's unfairly profited from Plaintiffs and California Subclass  
12 Members. Thus, the injury suffered by Plaintiffs and the members of the  
13 California Subclass is not outweighed by any countervailing benefits to  
14 consumers.

15 154. Finally, the injury suffered by Plaintiffs and members of the  
16 California Subclass is not an injury that these consumers could reasonably have  
17 avoided. After Defendant, falsely represented Defendant's services, these  
18 consumers suffered injury in fact due to Defendant's charge for premium  
19 membership. Defendant failed to take reasonable steps to inform Plaintiffs and  
20 California Subclass members that Defendant's services included a charge for  
21 premium membership, including failing to provide an opportunity to Plaintiffs and  
22 California Subclass members to read and review the accurate conditions of the  
23 purchase prior to purchasing items from Defendant. As such, Defendant took  
24 advantage of Defendant's position of perceived power in order to deceive  
25 Plaintiffs and the California Subclass members to use its services. Therefore, the  
26 injury suffered by Plaintiffs and members of the California Subclass is not an  
27 injury which these consumers could reasonably have avoided.

28

1 155. Thus, Defendant’s conduct has violated the “unfair” prong of  
2 California Business & Professions Code § 17200.

3 **FRAUDULENT**

4 156. California Business & Professions Code § 17200 prohibits any  
5 “fraudulent ... business act or practice.” In order to prevail under the “fraudulent”  
6 prong of the UCL, a consumer must allege that the fraudulent business practice  
7 was likely to deceive members of the public.

8 157. The test for “fraud” as contemplated by California Business and  
9 Professions Code § 17200 is whether the public is likely to be deceived. Unlike  
10 common law fraud, a § 17200 violation can be established even if no one was  
11 actually deceived, relied upon the fraudulent practice, or sustained any damage.

12 158. Here, not only were Plaintiffs and the California Subclass members  
13 likely to be deceived, but these consumers were actually deceived by Defendant.  
14 Such deception is evidenced by the fact that Plaintiffs purchased products using  
15 Defendant’s website under the basic assumption that he would not be charged an  
16 additional price. Plaintiffs’ reliance upon Defendant’s deceptive statements is  
17 reasonable due to the unequal bargaining powers of Defendant and Plaintiffs. For  
18 the same reason, it is likely that Defendant’s fraudulent business practice would  
19 deceive other members of the public.

20 159. As explained above, Defendant deceived Plaintiffs and other  
21 California Subclass Members by representing its services as being free, falsely  
22 represented these services to consumers.

23 160. Thus, Defendant’s conduct has violated the “fraudulent” prong of  
24 California Business & Professions Code § 17200.

25 **UNLAWFUL**

26 161. California Business and Professions Code Section 17200, et seq.  
27 prohibits “any unlawful...business act or practice.”  
28

1 162. As explained above, Defendant deceived Plaintiffs and other  
2 California Subclass Members by representing the services as being free.

3 163. Defendant used false advertising, marketing, and misrepresentations  
4 to induce Plaintiffs and California Subclass Members to purchase the California  
5 Subclass Products, in violation of California Business and Professions Code  
6 Section 17500, *et seq.* Had Defendant not falsely advertised, marketed or  
7 misrepresented the California Subclass Products, Plaintiffs and California  
8 Subclass Members would not have purchased the California Subclass Products.  
9 Defendant's conduct therefore caused and continues to cause economic harm to  
10 Plaintiffs and California Subclass Members.

11 164. These representations by Defendant are therefore an "unlawful"  
12 business practice or act under Business and Professions Code Section 17200 *et*  
13 *seq.*

14 165. Defendant has thus engaged in unlawful, unfair, and fraudulent  
15 business acts entitling Plaintiffs and California Subclass Members to judgment  
16 and equitable relief against Defendant, as set forth in the Prayer for Relief.  
17 Additionally, pursuant to Business and Professions Code section 17203, Plaintiff  
18 and California Subclass Members seek an order requiring Defendant to  
19 immediately cease such acts of unlawful, unfair, and fraudulent business practices  
20 and requiring Defendant to correct its actions.

21  
22 **THIRD CAUSE OF ACTION**

23 **Electronic Funds Transfer Act**

24 **(15 U.S.C. Section 1693 *et seq.*)**

25  
26 **- Plaintiffs and the Class and EFTA Sub Class-**

27 166. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a  
28



1 “preauthorized electronic fund transfer from a consumer’s account may be  
2 authorized by the consumer only in writing, and a copy of such authorization  
3 shall be provided to the consumer when made.”

4 167. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the  
5 term “preauthorized electronic fund transfer” means “an electronic fund transfer  
6 authorized in advance to recur at substantially regular intervals.”

7 168. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides  
8 that “[p]reauthorized electronic fund transfers from a consumer’s account may  
9 be authorized only by a writing signed or similarly authenticated by the  
10 consumer. The person that obtains the authorization shall provide a copy to the  
11 consumer.”

12 169. Section 205.10(b) of the Federal Reserve Board's Official Staff  
13 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he  
14 authorization process should evidence the consumer’s identity and assent to the  
15 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary  
16 further provides that “[a]n authorization is valid if it is readily identifiable as  
17 such and the terms of the preauthorized transfer are clear and readily  
18 understandable.” *Id.* at ¶10(b), comment 6.

19 170. In multiple instances, Defendants have debited Plaintiffs’ and the  
20 Class and EFTA Subclass’ bank accounts on a recurring basis without obtaining  
21 a written authorization signed or similarly authenticated for preauthorized  
22 electronic fund transfers from Plaintiffs the Class and EFTA Subclass’ accounts,  
23 thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
24 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

25 171. In multiple instances, Defendants have debited Plaintiffs the Class  
26 and EFTA Subclass’ bank accounts on a recurring basis without providing a  
27 copy of a written authorization signed or similarly authenticated by Plaintiffs the  
28

1 Class and EFTA Subclass' for preauthorized electronic fund transfers, thereby  
2 violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section  
3 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

4 **MISCELLANEOUS**

5 172. Plaintiffs and Class Members allege that they have fully complied  
6 with all contractual and other legal obligations and fully complied with all  
7 conditions precedent to bringing this action or all such obligations or conditions  
8 are excused.

9 **REQUEST FOR JURY TRIAL**

10 173. Plaintiffs request a trial by jury as to all claims so triable.

11 **PRAYER FOR RELIEF**

12 174. Plaintiffs, on behalf of himself and the Class, requests the following  
13 relief:

- 14 (a) An order certifying the Class and appointing Plaintiffs as  
15 Representative of the Class;
- 16 (b) An order certifying the undersigned counsel as Class Counsel;
- 17 (c) An order requiring AMAZON.COM, LLC, at its own cost, to  
18 notify all Class Members of the unlawful and deceptive  
19 conduct herein;
- 20 (d) An order requiring AMAZON.COM, LLC to engage in  
21 corrective advertising regarding the conduct discussed above;
- 22 (e) Actual damages suffered by Plaintiffs and Class Members as  
23 applicable or full restitution of all funds acquired from  
24 Plaintiffs and Class Members from the sale of misbranded  
25 Class Products and Services during the relevant class period;
- 26 (f) Punitive damages, as allowable, in an amount determined by  
27 the Court or jury;
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- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys’ fees and costs provided by statute, common law or the Court’s inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiffs and Class Members may be justly entitled as deemed by the Court.

Dated: August 3, 2017

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN , PC

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