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14 **WESTERN DISTRICT OF WASHINGTON**
15 **UNITED STATES DISTRICT COURT**

16
17 PLAINTIFFS JOY PECZNICK and GIL
18 KAUFMAN, individually and on behalf of
all others similarly situated,

19 Plaintiffs,

20 vs.

21 AMAZON.COM, INC., a Delaware
22 corporation,

23 Defendant.

Case No.:

CLASS ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiffs Joy Pecznick and Gil Kaufman, individually and on behalf of all others similarly
2 situated, bring this action based upon their personal knowledge and their own acts, and as to all
3 other matters upon information and belief, based upon, *inter alia*, their attorneys' investigation.

4 NATURE OF THE ACTION

5 1. Defendant Amazon.com, Inc. ("Amazon" or "Defendant") is a multinational
6 technology company headquartered in Seattle, Washington. In addition to providing cloud
7 computing, artificial intelligence and digital streaming services, it also holds a major influence
8 over e-commerce.

9 2. Since its founding in 1994, Amazon has become the parent of numerous subsidiary
10 companies. In 2017, Amazon acquired Whole Foods Market, Inc. ("Whole Foods"), a high-end
11 supermarket chain for around \$13 billion. At the time, Whole Foods had over 400 stores.

12 3. On or around February 2018, Amazon began enabling Amazon Prime¹ members
13 in various regions of the United States to order groceries from Whole Foods and have the
14 groceries delivered for free with a minimum \$35 purchase.

15 4. Free Whole Foods delivery became a major selling point for Amazon when
16 promoting its Amazon Prime membership. Indeed, the free Whole Foods two-hour delivery was
17 considered "a key perk of their [Amazon's] \$119-per-year Amazon Prime membership."² During
18 the coronavirus pandemic, Amazon's free Whole Foods delivery became one of Prime's most
19 important features.

20 5. It is no surprise that Amazon Prime customers were devastated when, in 2021,
21 Amazon pulled the rug out from its customers and began notifying Prime members that Whole
22 Foods deliveries would no longer be free with a minimum \$35 purchase. By October 25, 2021,
23 a \$9.95 fee was added to *every* Whole Foods delivery order placed via Amazon Prime.

24 6. When Amazon eliminated Prime's free Whole Foods delivery program, however,
25 the cost of a Prime membership was not reduced accordingly, nor was a partial refund offered.

26 _____
27 ¹ Amazon Prime is a paid subscription program that allows consumers to pay for a monthly or
28 yearly subscription.

² <https://www.supermarketnews.com/online-retail/whole-foods-go-chainwide-new-grocery-delivery-fee>.

1 13. This Court also has supplemental jurisdiction over the state law claims pursuant
2 to 28 U.S.C. § 1367(a) because all claims alleged herein form part of the same case or controversy.

3 14. Venue is appropriate in this District because Amazon maintains its headquarters
4 in this District.

5 **FACTUAL ALLEGATIONS**

6 **Whole Foods Acquisition**

7 15. On August 27, 2017, Amazon and Whole Foods announced that Amazon’s
8 acquisition of Whole Foods Market would close on Monday August 28, 2017, and the two
9 companies would “together pursue the vision of making Whole Foods Market’s high-quality,
10 natural and organic food affordable for everyone.” According to Amazon, as a down payment on
11 that vision, “Whole Foods Market will offer lower prices starting Monday [the date of closing]
12 on a selection of best-selling grocery staples across its stores, with more to come.” Amazon
13 touted that its members “will receive special savings and in-store benefits.”³

14 16. The media regarded the acquisition as a “deal that will instantly transform the
15 company that pioneered online shopping into a merchant with physical outposts in hundreds of
16 neighborhoods across the country.”⁴

17 17. Consumers also lauded the acquisition. ““Amazon could bring technology to all
18 Whole Foods locations, or it could absorb Whole Foods into AmazonFresh. Either way, it’s good
19 for consumers like myself,”” said Di Wu, a New York resident in her early 30s who is a member
20 of Amazon’s Prime fast-shipping club and who shops at Whole Foods at least twice a week.
21 ““Amazon is known to drive down prices and make the shopping experience more efficient,”” Wu
22 said.”⁵

23 18. The market also responded positively (for Amazon) to the news. Amazon’s stock
24 price rose on this news while that of grocery retailers such as Kroger’s, Ahold Delhaize (parent
25

26 ³ <https://press.aboutamazon.com/news-releases/news-release-details/amazon-and-whole-foods-market-announce-acquisition-close-monday>.

27 ⁴ <https://www.nytimes.com/2017/06/16/business/dealbook/amazon-whole-foods.html>.

28 ⁵ <https://www.reuters.com/article/us-whole-foods-m-a-amazon/amazon-to-buy-whole-foods-for-13-7-billion-wielding-online-might-in-brick-and-mortar-world-idUSKBN1971QJ>.

1 company of Food Lion and Giant supermarkets), Sprouts Farmers Market, Supervalu, and Costco
2 all declined. An estimated \$22 billion of share value disappeared from grocery-related stocks in
3 one day based on the knowledge of how a combined Amazon–Whole Foods go-to-market play
4 might disrupt traditional grocery performance measures—and the performance measures of other
5 retailers as well.⁶

6 19. At the time of the Whole Foods acquisition, Prime members paid \$99 for their
7 memberships and were offered additional benefits (*i.e.*, special savings and in-store benefits) for
8 shopping at Whole Foods.

9 Prime Members Offered Free Whole Foods Delivery

10 20. On February 8, 2018, Amazon and Whole Foods Market announced the
11 introduction of free two-hour delivery from Whole Foods Market through Prime Now, with plans
12 to expand across the U.S. in 2018:

13 Starting today, Prime customers in neighborhoods of Austin, Cincinnati, Dallas
14 and Virginia Beach can shop through Prime Now for bestselling items including
15 fresh produce, high quality meat and seafood, everyday staples and other locally
16 sourced items from Whole Foods Market. Customers can start shopping from
17 Whole Foods Market selection at www.primenow.com or by using the Prime
18 Now app available on Android and iOS devices.

19 “We’re happy to bring our customers the convenience of free two-hour delivery
20 through Prime Now and access to thousands of natural and organic groceries and
21 locally sourced favorites,” said John Mackey, Whole Foods Market co-founder
22 and CEO. “Together, we have already lowered prices on many items, and this
23 offering makes Prime customers’ lives even easier.”

24 Prime customers can shop thousands of items across fresh and organic produce,
25 bakery, dairy, meat and seafood, floral and everyday staples from Whole Foods
26 Market available for free two-hour delivery. Select alcohol is also available for
27 delivery to customers. Prime members receive two-hour delivery for free and
28 ultra-fast delivery within one hour for \$7.99 on orders of \$35 or more.

Delivery from Whole Foods Market through Prime Now is available daily from
8 a.m. to 10 p.m. Customers can visit www.primenow.com or download the
Prime Now app to enter their zip code to see if they are in the delivery area.

⁶ <https://www2.deloitte.com/us/en/pages/consumer-business/articles/amazon-whole-foods-acquisition.html>.

1 21. Whole Foods expanded delivery to Atlanta and San Francisco in March 2018; Los
2 Angeles and Orange Counties, Sacramento, Denver and San Diego in April 2018; Baltimore,
3 Boston, Philadelphia, Richmond, Chicago, Houston, Indianapolis, Minneapolis, and San Antonio
4 in June 2018; Fort Lauderdale, Miami, Palm Beach, Long Island and New York City in July 2018;
5 Columbus, Dayton, Portland, Greater Washington D.C., and additional New York City
6 neighborhoods in August 2018; Charlotte, Las Vegas, Memphis, Nashville, New Orleans,
7 Oklahoma City, Phoenix, Raleigh, Seattle and Tucson in September 2018; Albuquerque,
8 Birmingham, Boise, Charleston, Colorado Springs, Hartford, Kansas City, Providence, Salt Lake
9 City and Stamford, plus additional neighborhoods in Boston and Cincinnati, Annapolis,
10 Cleveland, Louisville, North and Central New Jersey and Pittsburgh as well as additional
11 locations in the San Francisco Bay Area in October 2018.

12 **Amazon Raises its Membership Prices**

13 22. Amid instituting free Whole Foods delivery services for Amazon Prime members,
14 - specifically, on April 26, 2018 – Amazon announced that, beginning on May 11, 2018, the cost
15 of an Amazon Prime membership would increase from \$99 to \$119. This was the first time
16 Amazon increased the price of an Amazon Prime membership since 2014, when it increased the
17 cost of Prime membership from \$79 to \$99. While this increased cost immediately applied to
18 new members who joined on or after May 11, 2018, preexisting Amazon Prime members’ fees
19 would increase upon renewal on or after June 16, 2018 (around the time of this announcement,
20 Amazon had approximately 100 million members worldwide).

21 23. Amazon, without a doubt, understood that offering free two-hour delivery Whole
22 Food orders to Prime members increased the monetary value of Amazon Prime. Amazon Chief
23 Financial Officer, Brian Olsavsky, claimed that price increase is a natural consequence of the
24 growing benefits associated with an Amazon Prime membership, including free deliveries from
25 Whole Foods. “We [at Amazon] continue to increase the value of Prime,” Olsavsky celebrated.⁷

26 ///

27 _____
28 ⁷ <https://arstechnica.com/information-technology/2018/04/amazon-to-raise-annual-membership-price-of-prime-to-119/>.

Amazon’s Pandemic Profits Soared

1
2 24. Throughout 2019, Amazon continued to offer Whole Foods free delivery to more
3 cities and states throughout the U.S. These cities included, Asheville, Charlottesville, Columbia,
4 Lexington, Little Rock, Manchester, Mobile, Naples, and Savannah, as well as Chattanooga and
5 Knoxville, Destin, Tallahassee, Greensboro, Wilmington, Allentown, Fort Collins, Huntsville and
6 Montgomery, Jackson, Palm Desert, and Portland, Maine, to name a few.

7 25. In 2019, the number of adults that ordered groceries at least once a month was
8 about 11%. However, that drastically changed when the COVID-19 pandemic hit.

9 26. By March 2020, Whole Foods was seeing an unprecedented demand for online
10 orders and Prime members were scrambling to place online Whole Foods orders.

11 27. As a result, Amazon had to create a detailed plan on how it would address
12 consumer demand for Whole Foods delivery recognizing that, “[w]ith the new world of social
13 distancing and stay-at-home orders in place for most of the country, customers have generated
14 unprecedented demand for grocery delivery.”⁸

15 28. The decision to add in free Whole Foods deliveries was a lucrative decision for
16 Amazon, as deliveries more than *tripled* for Whole Foods from 2019 to 2020, according to the
17 supermarket.⁹ According to Amazon’s 2021 10-K, the company earned over \$33.36 billion in
18 net income. Amazon’s pandemic profits soared.

19 29. In fact, Amazon reported a 70% increase in earnings in the first nine months of
20 2020, up \$5.8 billion from a year earlier. As per a New York Times study, Amazon reported a
21 near 200-percent rise in profits, accelerated by much of North America’s swift shift to exclusively
22 online shopping. Amazon’s sales were \$96.1 billion, up 37% from 2019.¹⁰

23 30. Amazon benefitted greatly from its Prime memberships. Amazon disclosed that
24 200 million people pay for Prime memberships, and subscription revenue for that service and
25

26 ⁸ <https://www.aboutamazon.com/news/company-news/new-ways-were-getting-groceries-to-people-during-the-covid-19-crisis>.

27 ⁹ Jay Greene, *Amazon Prime Members Bristle at News of Whole Foods Delivery Charge*, WASH.
28 POST (Sept. 29, 2021).

¹⁰ <https://researchfdi.com/amazon-covid-19-pandemic-profits/>.

1 others reached almost \$7.6 billion in the first quarter 2021. In addition to paying Amazon \$119
2 a year or \$12.99 a month for free shipping and other perks (including free Whole Foods delivery),
3 households with Prime memberships typically spend \$3,000 a year on Amazon, more than twice
4 what households without the membership spend, according to Morgan Stanley.¹¹

5 **With Prime Members Accustomed, and Contractually Entitled to, Free Whole**
6 **Foods Delivery, Amazon Unfairly Rescinds the Benefit**

7 31. Despite Amazon’s record 2021 profits, in the summer of 2021, Amazon piloted a
8 new fee for Whole Foods delivery in six markets - Portland, Maine; Providence, Rhode Island;
9 Manchester, New Hampshire; and the greater Detroit, Boston and Chicago areas - before making
10 the move nationally.

11 32. On September 24, 2021, Amazon announced the Whole Foods delivery fee
12 nationally via email:

13
14 Dear Prime Member,

15 We are writing to let you know about an upcoming change to Prime grocery delivery
16 benefits at Whole Foods Market in your area. Starting October 25, 2021, delivery orders
17 from Whole Foods Market in your area will include a \$9.95 service fee. This service fee
18 helps to cover operating costs so we can continue to offer the same competitive everyday
19 prices in-store and online at Whole Foods Market.

20 ...

21 If you have questions about the grocery service fee at Whole Foods Market, you can learn
22 more here. And if you’d like to make changes to your membership, you can go here.

23 Sincerely,

24 Amazon Prime

25 33. Amazon’s decision to impose a \$9.95 Whole Foods delivery fee sparked outrage
26 amongst Amazon Prime members.

27 34. Brandy O’Neill, a food blogger who has ordered about \$100 worth of groceries
28 weekly from Whole Foods Market “signed up for Amazon Prime, which costs \$119 annually, this

¹¹ <https://www.nytimes.com/2021/04/29/technology/amazons-profits-triple.html>.

1 year [2021] largely for the perk of Whole Foods delivery being included.”¹² When Amazon
2 announced the \$9.95 fee for Whole Foods deliveries, she “felt they were taking away a service,
3 and the fee is ridiculous...It’s just rude.”¹³

4 35. One Amazon Prime member disclosed on a Reddit post: “[I]t[’]s no longer cost
5 effective for me. Taking my grocery buying elsewhere. The next step is to evaluate my prime
6 membership and if it still makes sense.”¹⁴

7 36. Another member lamented: “Ah yes, having a \$1.7 trillion market cap isn’t
8 enough, let’s water down the Prime benefits even more.”¹⁵

9 37. Yet another Amazon Prime member revealed: “I’ve only been keeping my prime
10 membership because of the free delivery since I don’t have a car. It’s starting to become not
11 worth being a member. Amazon has enough money charging a delivery fee is being greedy.”¹⁶

12 38. Another member lamented: “I just renewed my year membership a couple months
13 ago and big part of it was because of Whole Foods delivery that I’d order weekly. It was included
14 in the membership and now it will cost \$520 extra, or more than 4x the year membership price.
15 At a time that Amazon more than doubled its market value they are starting to squeeze their
16 customers, it became a monopoly. Prime isn’t worthy anymore, home staples are perpetually out
17 of stock, customer service just copy/paste canned texts. Time to look for alternatives.”¹⁷

18 39. Amazon Prime members were rightfully upset. Not only was a contractual benefit
19 that Prime members were entitled to under their \$119 membership unilaterally revoked, but
20 Amazon offered no partial refunds to members after modifying the contract. The “changes to
21 your membership” link provided to Prime members in the September 24, 2021 notification email
22 routed consumers to Amazon Prime’s cancellation policy.

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24 _____
25 ¹² Jay Greene, *Amazon Prime Members Bristle at News of Whole Foods Delivery Charge*, WASH.
POST (Sept. 29, 2021).

26 ¹³ *Id.*

27 ¹⁴ Comment by barrach128 in September 2021.

28 ¹⁵ Comment by goodcowfilms in August 2021.

¹⁶ Comment by Awkotaco95 in October 2021.

¹⁷ Comment by damzkff in October 2021.

1 40. The Prime cancellation policy in place at the time read as follows:

2 If you signed-up for your Prime membership directly through us, you may cancel
3 your Prime membership any time by visiting Your Account and adjusting your
4 membership settings. If you cancel within 3 business days of signing up for or
5 converting from a free trial to a paid membership, we will refund your full
6 membership fee; provided that we may charge you (or withhold from your refund)
7 the value of Prime benefits used by you and your account during this 3-business
8 day period. *If you cancel at any other time, we will refund your full membership
9 fee only if you and your account did not make any eligible purchases or take
10 advantage of Prime benefits since your latest Prime membership charge.* If you
11 signed up for your Prime membership through a third party, you may need to
12 contact the third party to cancel your membership or receive any refund under its
13 applicable policies. Prime memberships redeemed through a Prime gift code or
14 promotional code are not refundable.

15 41. Under this cancellation policy, Prime members who wanted to cancel their
16 membership as a result of this unfair unilateral contract modification, but who had used Amazon's
17 Prime service even once during their annual membership were not entitled to *any membership
18 fee refund* whatsoever even though they had paid \$119 for the benefit of free Whole Foods
19 delivery.

20 42. By way of example, a Prime member who renewed her annual contract in early
21 August 2021 paid \$119 for Prime, including the benefit of free Whole Foods delivery. If that
22 Prime Member ordered Whole Foods delivery once in August 2021, that Prime member was not
23 entitled to cancel her membership and obtain a refund of *any* of the \$119 membership fee, partial
24 or otherwise, when Amazon notified Prime members that it would unilaterally modify the contract
25 in October 2021.

26 43. Amazon has engaged in unfair business practices, breached its duty of good faith,
27 and deprived Prime members of the benefit of their bargain.

28 CLASS ACTION ALLEGATIONS

44. Plaintiffs bring this action on their own behalf and pursuant to Federal Rule of
Civil Procedure 23. Plaintiffs intend to seek certification of a class defined as follows:

All Amazon Prime members residing in the United States who ordered
Amazon's Whole Foods free delivery and were annual members when the
\$9.95 fee was introduced on October 25, 2021 (the "Class").

1 45. Excluded from the Class are: (a) Defendant, including any entity in which any of
2 the Defendant has a controlling interest, is a parent or a subsidiary of, or which is controlled by
3 the Defendant; (b) the officers, directors, and legal representatives of Defendant; and (c) the judge
4 and the court personnel in this case as well as any members of their immediate families. Plaintiffs
5 reserve the right to amend the definition of the Class if discovery, further investigation and/or
6 rulings by the Court dictate that it should be modified.

7 46. *Numerosity.* The members of the Class are so numerous that the joinder of all Class
8 Members is impractical. While the exact number of Class Members is unknown to Plaintiffs at
9 this time, given the number of Amazon Prime members in the United States, it stands to reason
10 that the number of Class Members is at least in the thousands. Class Members are readily
11 identifiable from information and records in Defendant’s possession, custody, or control, such as
12 account information and sales records.

13 47. *Commonality and Predominance.* There are questions of law and fact common to
14 Class Members, which predominate over any questions affecting only individual Class Members.
15 These common questions of law and fact include, without limitation, whether:

16 a. Whether Defendant had formed valid contracts with Plaintiffs and Class
17 Members;

18 b. Whether there was a mutual understanding between Defendant and
19 Plaintiffs and Class Members, and assent on the subject matter and essential terms of the
20 contract;

21 c. Whether Plaintiffs and Class Members performed their obligations under
22 their contracts;

23 d. Whether Defendant breached its contracts with Plaintiffs and Class
24 Members;

25 e. Whether Defendant breached its duty of good faith and fair dealing;

26 f. Whether Defendant was unjustly enriched;

27 g. Whether Defendant committed “unfair or deceptive acts or practices” as
28 defined by RCW 19.86.020;

1 h. Whether Plaintiffs and Class Members suffered damages; and

2 i. Whether Plaintiffs and Class Members are entitled to damages.

3 48. *Typicality.* Plaintiffs' claims are typical of those of other Class Members because
4 Plaintiffs, like the other Class Members, enrolled in Amazon Prime at an annual rate of \$119 to
5 benefit from Amazon's free two-hour delivery service for Whole Foods orders of at least \$35.

6 49. *Adequacy of Representation.* Plaintiffs will fairly and adequately represent and
7 protect the interests of the Class Members. Plaintiffs have retained competent counsel
8 experienced in litigation of class actions, including consumer class actions, and Plaintiffs intend
9 to prosecute this action vigorously. Plaintiffs and Class Members have a unified and non-
10 conflicting interest in pursuing the same claims and obtaining the same relief. Therefore, all Class
11 Members will be fairly and adequately represented by Plaintiffs and their counsel.

12 50. *Superiority of Class Action.* A class action is superior to other available methods
13 for the fair and efficient adjudication of the claims alleged in this action. The adjudication of this
14 controversy through a class action will avoid the possibility of inconsistent and potentially
15 conflicting adjudications of the asserted claims. There will be no difficulty in the management
16 of this action as a class action, and the disposition of the claims of the Class Members in a single
17 action will provide substantial benefits to all parties and to the Court. Damages for any individual
18 Class Member are likely insufficient to justify the cost of individual litigation so that, in the
19 absence of class treatment, Defendant's violations of law inflicting substantial damages in the
20 aggregate would go un-remedied.

21 51. Class certification is also appropriate because Defendant has acted or refused to
22 act on grounds generally applicable to the Class Members, such that final injunctive relief or
23 corresponding declaratory relief is appropriate as to the Class as a whole.

24 **CHOICE OF LAW**

25 52. Per Amazon's Conditions of Use, last updated on May 3, 2021, federal law and
26 the laws of the state of Washington govern the resolution of the legal issues embodied in this
27 Complaint.

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FIRST CAUSE OF ACTION

(Violation of the Consumer Protection Act, RCW 19.86.020)

53. Plaintiffs repeat and incorporate herein by reference each and every allegation contained in paragraphs 1 through 52, inclusive, of this Complaint as if set forth fully herein.

54. The Washington State Consumer Protection Act, RCW 19.86.020 (the “CPA”) prohibits any “unfair or deceptive acts or practices” in the conduct of any trade or commerce as those terms are described by the CPA and relevant case law.

55. Defendant engages in “trade” and “commerce” as described in RWC 19.86.010(2) in that it engages in selling products and services, that directly and indirectly affect the people of the State of Washington. Moreover, Amazon is headquartered in Washington; its strategies, decision-making, and commercial transactions originate in Washington; most of its key operations and employees reside, work, and make company decisions in Washington; and Amazon and many of its employees are part of the people of the State of Washington.

56. By virtue of the above-described wrongful actions, Defendant engaged in unfair practices within the meaning, and in violation of, the CPA, in that Defendant’s practices were injurious to the public interest because they injured other persons and have the capacity to injure other persons.

57. In the course of conducting business, Defendant committed “unfair or deceptive acts or practices” by, *inter alia*, unilaterally rescinding Amazon free Whole Foods delivery with a \$35 purchase, an important term of which formed the basis of Plaintiffs’ and Class Member’s Prime membership contract with Defendant. Plaintiffs and Class Members reserve the right to allege other violations of law by Defendant constituting other unlawful business acts or practices.

58. The gravity of Defendant’s wrongful conduct outweighs any alleged benefits attributable to such conduct. There were reasonably available alternatives to further Defendant’s legitimate business interests other than engaging in the above-described wrongful conduct.

59. As a direct and proximate result of Amazon’s violations of the Consumer Protection Act, Plaintiffs and Class members sustained injuries, including out-of-pocket losses for funds paid for their Amazon Prime membership without the benefit of free Whole Foods

1 delivery with a minimum \$35 purchase.

2 60. Plaintiffs, on behalf of themselves and the Class Members also seek to recover
3 actual damages sustained by each Class Member together with the costs of the suit, including
4 reasonable attorney fees. In addition, Plaintiffs, on behalf of themselves and the Class Members
5 request that this Court use its discretion, pursuant to RCW 19.86.090, to increase the damages
6 award for each Class Member by three times the actual damages sustained not to exceed
7 \$25,000.00 per class member.

8 **SECOND CAUSE OF ACTION**

9 (Breach of Contract)

10 61. Plaintiffs repeat and incorporate herein by reference each and every allegation
11 contained in paragraphs 1 through 52, inclusive, of this Complaint as if set forth fully herein.

12 62. Plaintiffs and Class Members entered into a contract with Amazon for a Prime
13 membership that included free Whole Foods delivery with a minimum \$35 purchase for a yearly
14 fee of \$119.

15 63. Defendant breached the contract when Amazon rescinded free Whole Foods
16 delivery with a minimum \$35 purchase.

17 64. As a direct and proximate result of Defendant's contractual breach, Plaintiffs and
18 the Class have been damaged.

19 65. Plaintiffs and the Class are entitled to damages caused by Defendant's breach of
20 contract.

21 **THIRD CAUSE OF ACTION**

22 (Breach of Duty of Good Faith and Fair Dealing)

23 66. Plaintiffs repeat and incorporate herein by reference each and every allegation
24 contained in paragraphs 1 through 52, inclusive, of this Complaint as if set forth fully herein.

25 67. Defendant had a duty to perform its contractual obligations in good faith.

26 68. By failing to perform under the contract by continuing to provide Plaintiffs and
27 the Class with free Whole Foods delivery with a minimum \$35 purchase during the duration of
28 Plaintiffs' and Class Member's annual contract, Defendant breached the implied covenant of good

1 faith and fair dealing.

2 69. As a direct and proximate result of Defendant's breaches of the implied covenant
3 of good faith and fair dealing, Plaintiffs and the Class have been damaged.

4 70. Plaintiffs and the Class are entitled to damages caused by Defendant's breach of
5 the implied covenant of good faith and fair dealing.

6 **FOURTH CAUSE OF ACTION**

7 (Unjust Enrichment)

8 71. Plaintiffs repeat and incorporate herein by reference each and every allegation
9 contained in paragraphs 1 through 52, inclusive, of this Complaint as if set forth fully herein.

10 72. Plaintiffs and Class Members conferred a benefit upon Defendant by paying
11 Amazon \$119 for an Amazon Prime membership.

12 73. Defendant accepted the \$119 from Plaintiffs and Class Members.

13 74. Defendant retained the \$119 membership fee paid by Plaintiffs and Class Members
14 when it unilaterally revoked Prime members' benefit of free Whole Foods delivery with a
15 minimum \$35 purchase.

16 75. As a result of Defendant's actions, Amazon has been unjustly enriched.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for relief as
19 follows:

- 20 (1) For compensatory damages in an amount to be proven at trial;
21 (2) For costs of suit and litigation expenses;
22 (3) For such other and further relief as this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial for all claims so triable.

Dated: May 31, 2022

Respectfully submitted,

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