

KAZEROUNI LAW GROUP, APC
Abbas Kazerounian, Esq. (SBN: 249203)
ak@kazlg.com
245 Fischer Avenue, Suite D1
Costa Mesa, CA 92626
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

[Additional Counsel On Signature Page]

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA**

**ROBERT BARGAR and
ELINOR NELSON, Individually
and On Behalf of All Others
Similarly Situated,**

Plaintiff,

v.

**AMAZON.COM, INC. d/b/a
AMAZON,
Defendant.**

Case No.: 8:22-cv-01555

**CLASS ACTION COMPLAINT FOR
DAMAGES FOR VIOLATIONS OF:**

- 1) CALIFORNIA CONSUMER
LEGAL REMEDIES ACT
("CLRA"), CAL. CIV. CODE §§
1750, ET SEQ.;**
- 2) CALIFORNIA'S UNFAIR
COMPETITION LAW ("UCL"),
CAL. BUS. & PROF. CODE §§
17200, ET SEQ.;**
- 3) BREACH OF CONTRACT;**
- 4) UNJUST ENRICHMENT.**

JURY TRIAL DEMANDED



1 Plaintiff Robert Bargar (“Bargar”) and Elinor Nelson (“Nelson”) (together the
2 “Plaintiffs”) bring this complaint, by and through their attorneys and on behalf of all
3 others similarly situated, against Defendant Amazon.com, Inc. d/b/a Amazon
4 (“Amazon” or “Defendant”) and allege upon information and belief as follows:

5 **INTRODUCTION**

6 1. In August 2020, Amazon debuted its first Amazon Fresh grocery store in
7 Bellevue, Washington.¹

8 2. Amazon Fresh is an online and physical grocery store wherein Amazon claims
9 to offer low prices on everyday favorites, plus free same-day delivery and pickup in
10 select locations for Prime members.²

11 3. As of approximately July 2022, Amazon has Amazon Fresh grocery stores
12 located in California, Illinois, Maryland, New York, Washington, Pennsylvania,
13 Virginia and Washington, D.C.³

14 4. Upon information and belief, Amazon plans to open more Amazon Fresh
15 Markets in California, Connecticut, New Jersey, and Pennsylvania. Also, an
16 Amazon Fresh spokeswoman has noted that the chain is growing.⁴

17 5. On its website, Amazon states that shoppers “earn 5% back at Amazon Fresh
18 when you use your Amazon Prime Rewards Visa Signature Card [“Card”] with an
19 eligible Prime membership.”⁵

20 6. In another section of its website entitled: “How can Amazon Fresh help me
21 save money?”, Amazon expressly states: “Find weekly deals, free products, and

22 ¹ <https://www.winsightgrocerybusiness.com/amazon/inside-newest-amazon-fresh-store#:~:text=Amazon%20Fresh%20debuted%20in%20August,Connecticut%2C%20New%20Jersey%20and%20Pennsylvania.> (last visited August _ 2022).

23 ² <https://www.amazon.com/fmc/m/30003175?almBrandId=QW1hem9uIEZyZXNo>

24 ³ <https://www.winsightgrocerybusiness.com/amazon/inside-newest-amazon-fresh-store#:~:text=Amazon%20Fresh%20debuted%20in%20August,Connecticut%2C%20New%20Jersey%20and%20Pennsylvania.> (last visited August _ 2022).

25 ⁴ *Id.*

26 ⁵

27 <https://www.amazon.com/fmc/m/30003175?almBrandId=QW1hem9uIEZyZXNo>

1 more with In-Store Mode in the Amazon app. Plus, you can earn 5% back at
2 Amazon Fresh when you use your Amazon Prime Rewards Visa Signature Card or
3 Amazon Prime Store Card at checkout.” See **Exhibit A**.

4 7. Similarly, Amazon advertises in flyers that Card holders can earn 5% back at
5 Amazon Fresh. See **Exhibit B**.

6 8. As Plaintiffs learned, however, these claims by Amazon are false, as Card
7 holders in reality receive only 1% back at Amazon Fresh when they use their Card.

8 9. Amazon dupes Card holders into shopping at Amazon Fresh stores and
9 applying for the Card by falsely advertising that such Card holders would receive
10 5% back on purchases when using their Cards at such stores, even though Card
11 holders receive only 1% back on the purchases.

12 10. Through its deceptive practices, Amazon is failing to pay consumers
13 thousands if not millions of dollars to which the Card holders are entitled. Plaintiffs
14 seek to stop these deceptive practices, especially when Amazon is opening more
15 Amazon Fresh stores throughout the United States.

16 11. Unless otherwise indicated, the use of Defendant’s names in this Complaint
17 include all agents, employees, officers, members, directors, heirs, successors,
18 assigns, principals, trustees, sureties, subrogees, representatives, and insurers of the
19 Defendant, respectively.

20 **JURISDICTION AND VENUE**

21 12. The Court has jurisdiction pursuant to the Class Action Fairness Act, 28
22 U.S.C. § 1332(d) because: (i) there is minimal diversity; (ii) Defendant is not a
23 government entity against whom the District Court may be foreclosed from ordering
24 relief; (iii) there are more than one hundred (100) people in the putative class; and
25 (iv) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs.

26 13. Venue is proper pursuant to 28 U.S.C. § 1391(b) because: (1) Defendant
27 transacts business within this judicial district and because Plaintiffs were, and are,
28 residents of Laguna Niguel, California, at all times relevant to these claims such that

1 a substantial part of the events giving rise to Plaintiffs’ causes of action against
2 Defendant arise in this judicial district; and (2) Defendant’s contacts with this
3 District are sufficient to subject them to personal jurisdiction within this judicial
4 district.

5 **PARTIES**

6 14. Plaintiff Bargar is, and at all times mentioned herein a natural person,
7 individual citizen and resident of County of Orange, California, in this judicial
8 district.

9 15. Plaintiff Nelson is, and at all times mentioned herein a natural person,
10 individual citizen and resident of County of Orange, California, in this judicial
11 district.

12 16. Upon information and belief, Amazon is a foreign corporation organized
13 under the laws of Delaware with its principal place of business in Seattle,
14 Washington.

15 **PLAINTIFFS’ FACTUAL ALLEGATIONS**

16 17. As longtime Card holders and Amazon Prime customers, Plaintiffs were
17 thrilled to learn that they could receive 5% cashback on purchases made at the
18 newly opened Amazon Fresh stores.

19 18. Plaintiffs first became aware of their ability to receive 5% cashback at
20 Amazon Fresh stores when they received a flyer in the mail advertising Amazon
21 Fresh in or about April 2022. As part of this flyer, Defendant advertises in bold
22 letters, “Earn 5% back at Amazon Fresh” and “Start earning with the Amazon Prime
23 Rewards Visa Signature Card and an eligible Prime membership.”⁶

24 19. Relying on Defendant’s flyer, Plaintiffs traveled to the Amazon Fresh store
25 located in Mission Viejo, California (“Store”) on or about April 28, 2022, and May
26 16, 2022, where Plaintiffs made certain purchases at the Store using a Card in Elinor

27 _____
28 ⁶ Defendant continues to send out flyers advertising 5% back at Amazon Fresh
stores. Such flyers are also available at Amazon Fresh store locations.

1 Nelson's name (account number ending in 5015).

2 20. On or about May 19, 2022, the Plaintiffs received a billing statement that
3 included, *inter alia*, the transactions made at the Store.

4 21. Upon reviewing the billing statement, however, Plaintiffs realized that they
5 only received 1% back for the purchases made at the Store in April 2022.

6 22. Particularly, Plaintiffs' purchases at the Store using the Card on April 28,
7 2022, and May 16, 2022, totaled \$65.75, and Plaintiffs received only 66 points,
8 which represented only 1% back, for those Amazon Fresh store purchases.

9 23. Because the advertisements expressly indicated Plaintiffs would receive 5%
10 back instead of 1% back, Plaintiff Bargar called the customer service phone number
11 on the statement, *i.e.* (888) 247-4080, and explained the issue to the customer
12 service representative. The representative seemed to understand and acknowledged
13 the error. Then, the representative agreed to adjust the percentage back for the
14 transactions and the conversation ended.

15 24. On or about May 29, 2022, Plaintiffs received a letter regarding the issue
16 ("May Letter"). A copy of the May Letter is annexed hereto as **Exhibit C**.

17 25. The May Letter indicated in part: "Thank you for contacting us about your
18 Amazon Prime Rewards Visa Signature credit card account. We researched the
19 transaction made at AMAZONSTORES on the May 19, 2022, billing statement.
20 We have documented feedback and have added a total of 197 points and you should
21 see this adjustment on your next billing statement⁷." *See id.*

22 26. After receiving this acknowledgment of the error, Plaintiffs shopped again at
23 the Store using the Card on May 24, 2022 (making purchases totaling approximately
24 \$40.15) and May 30, 2022 (making purchases totaling approximately \$40.59).⁸

25 _____
26 ⁷ Upon information and belief, Amazon uses a convoluted point system rather than
27 just dollars to track the rebates of customers. Plaintiff maintains that this makes it
even more confusing for the consumer.

28 ⁸ Plaintiffs were originally charged \$69.75 on May 30, 2022, but were credited
\$29.16 on their Amazon Fresh purchases that day.

1 27. On or about June 19, 2022, Plaintiffs received the next billing statement for
2 the Card. On this statement, Plaintiffs observed that there was a “courtesy
3 adjustment” that added a credit of 197 points to Plaintiffs’ account. Plaintiffs further
4 observed that they were credited with 5% on \$25 worth of purchases made online
5 at amazon.com.

6 28. The 197 point adjustment on the June 19, 2022, billing statement represents
7 less than 3% back on Plaintiffs’ Amazon Fresh store purchases from April 28, 2022,
8 and May 16, 2022, when Plaintiffs were supposed to receive a credit of
9 approximately 264 points, representing 4% back on those purchases.

10 29. Furthermore, and to Plaintiffs’ surprise, the Amazon Fresh store purchases
11 made at the Store on May 24, 2022, and May 30, 2022, using the Card resulted in
12 1% back rather than 5%.

13 30. Once again, Bargar was forced to call the customer service number on the
14 bottom of the statement.

15 31. Bargar explained the issue to a different representative and pointed out that
16 the statement also reflected the courtesy adjustment for the error from the previous
17 statement. Like the prior representative, this representative also seemed to
18 comprehend the error and indicated it would be addressed on the subsequent
19 statement. However, Plaintiffs never received this adjustment.

20 32. Instead, on or about July 4, 2022, Plaintiff Nelson received a letter from
21 Amazon that explained there was no error and that Amazon Fresh in-store purchases
22 are entitled to only a 1% rebate. A copy of this letter is annexed hereto as **Exhibit**
23 **D**.

24 33. Specifically, the letter indicated: “Thank you for your recent inquiry about
25 your Amazon Prime Rewards Visa Signature credit card account. With this rewards
26 program, you earn 5% back for each \$1 of eligible purchases made using your card
27 account at Amazon.com and any Whole Foods site. The charges from
28 AMAZONSTORES are made at a store and not via an Amazon website, and hence

1 do not qualify for the additional reward points. We are unable to make any
2 adjustments on the account.” *See id.*

3 34. Plaintiffs were shocked, as this directly contradicted Amazon’s
4 advertisements and its own website.

5 35. Bargar immediately called the phone number offered in the letter, *i.e.* (800)
6 436-7937. After working through the prompts, Bargar reached an individual and
7 explained the issue. The representative asked Bargar to hold.

8 36. When the representative came to the phone, the representative explained that
9 the letter was correct. Specifically, the representative claimed that in-store
10 purchases made at Amazon Fresh using the Card are entitled to only 1% back.

11 37. During that call, Bargar pointed out that he had already received a “courtesy
12 adjustment” to correct the earlier month’s error. Then, Bargar asked the
13 representative if there was an email address to which he could forward a copy of
14 the screen shot from the Amazon website, which clearly indicates that he would
15 earn 5% back for those purchases. *See Exhibits A and B.*

16 38. In response, the representative firmly stated that Plaintiffs would only receive
17 1% back under the purported terms of service of the Card.

18 39. Bargar then requested to speak with a supervisor. After placing Bargar on
19 hold, the representative transferred Bargar to a supervisor. Unfortunately, Bargar
20 received the same response from the supervisor.

21 40. The supervisor then suggested that Plaintiffs contact Amazon since the Card
22 issuer purportedly did nothing wrong. Moreover, the supervisor stated that
23 Plaintiffs would receive no further adjustments or credit on their bill.

24 41. Although Plaintiffs were upset that Amazon was making false statements to
25 its customers, Plaintiffs were undeterred by Bargar’s unpleasant phone
26 conversation.

27 42. Specifically, Bargar searched the Amazon website to find a customer service
28 number and instead found that one could request a call from Amazon, which he did.

1 43. Upon receipt of the call, Bargar explained the issue to the representative. The
2 representative agreed that the Amazon Fresh store purchases charged to the Card
3 should yield a 5% rebate. The Amazon representative suggested that Plaintiffs call
4 the Card issuer.

5 44. Bargar explained that he and Nelson had already done that several times and
6 that, just before speaking with the Amazon representative, he had been told by two
7 of the Card issuer's representatives that he is only entitled to 1% back when using
8 his Card at an Amazon Fresh store.

9 45. Frustrated, Bargar asked the representative how it might be possible for this
10 apparent disconnect between the Card issuer and Amazon to be resolved. The
11 representative replied that there was no one in his department who could address
12 this issue. The Amazon representative then asked Bargar to provide his email
13 address and said that Amazon would follow up with Bargar via email on how to
14 proceed.

15 46. Thereafter, Bargar received two emails from Amazon. One was a survey
16 asking how satisfied Bargar was with the call and the other provided a link to online
17 customer service. These links did not address the failure of Amazon to abide by the
18 terms of its advertising and website.

19 47. To date, Plaintiffs have not received an adjustment from 1% to 5% for the
20 Amazon Store purchases that appeared on the billing statement received on or about
21 June 19, 2022, nor have Plaintiffs received a full adjustment for the Amazon Fresh
22 store purchases that appeared on the previous statement, which was received on or
23 about May 19, 2022.

24 48. As such, Amazon continues to reap substantial unjustified profits at the
25 expense of its Card holders. While claiming in its plethora of advertisements that
26 use of the Card will result in 5% back on purchases at Amazon Fresh stores,
27 Amazon refuses to honor its promises and simply keeps the remaining 4% at the
28 expense of consumers.

1 49. Plaintiffs bring this action to stop such deceptive and unfair practices.

2 **CLASS ALLEGATIONS**

3 50. Plaintiffs bring this action on behalf of themselves and on behalf of all other
4 persons similarly situated. Plaintiffs are members of and seek to represent a
5 nationwide Class, pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3) defined as:

6
7 All Card holders within the United States that shopped at
8 an Amazon Fresh Store using their Card(s) since 2020 who
9 did not receive 5% back on one or more purchases.

10 51. Additionally, Plaintiffs are members of and seeks to represent a California
11 Sub-Class, pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), defined as:

12 All Card holders within California that shopped at an
13 Amazon Fresh Store using their Card(s) since 2020 who
14 did not receive 5% back on one or more purchases.

15 52. Excluded from the Class and Sub-Class are Defendant's officers, directors,
16 and employees; any entity in which Defendant has a controlling interest; and the
17 affiliates, legal representatives, attorneys, successors, heirs, and assigns of
18 Defendant. Further excluded from the Class and Sub-Class are members of the
19 judiciary to whom this case is assigned, their families, and members of their staff.

20 53. Plaintiffs reserve the right to modify the proposed class definitions, including
21 but not limited to expanding the class to protect additional individuals and to assert
22 additional sub-classes as warranted by additional investigation.

23 54. Numerosity: The members of the Class and Sub-Class are so numerous that
24 joinder of all of them is impracticable. While the exact number of Class Members is
25 unknown to Plaintiffs at this time, based on information and belief, the Class and
26 Sub-Class consists of thousands of individuals nationwide and also within
27 California.

1 55. Commonality: There are questions of law and fact common to the Class and
2 Sub-Class, which predominate over any questions affecting only individual Class
3 Members. These common questions of law and fact include, without limitation:

4 a. The nature, scope, and operations of the wrongful practices of
5 Defendant;

6 b. Whether Defendant negligently or intentionally misrepresented
7 and/or omitted the fact that Plaintiffs, Class and Sub-Class Members
8 would not actually receive 5% back on their Amazon Fresh purchases;

9 c. Whether Defendant knew or should have known that its business
10 practices were unfair, fraudulent, and/or unlawful;

11 d. Whether Defendant breached its contract with Plaintiffs, the
12 Class and Sub-Class Members by failing to provide 5% back on eligible
13 purchases;

14 e. Whether Plaintiffs, Class and Sub-Class Members were deceived
15 into shopping at Amazon Fresh stores based on Defendant's promise
16 that they would receive 5% back on their purchases;

17 f. Whether Plaintiffs, Class and Sub-Class Members were provided
18 with a 4% rebate on their purchases at Amazon Fresh stores;

19 g. Whether the conduct of Defendant violated the CLRA;

20 h. Whether the conduct of Defendant was "unlawful" as that term
21 is defined in the UCL;

22 i. Whether the conduct of Defendant was "unfair" as that term is
23 defined in the UCL;

24 j. Whether Defendant was unjustly enriched by its failure to
25 provide Plaintiffs and Class members with 5% back on their purchases;

26 k. Whether Plaintiffs and Class members suffered monetary
27 damages as a result of Defendant's conduct and, if so, the appropriate
28 amount of damages; and

1 1. Whether Plaintiffs, Class and Sub-Class Members are entitled to
2 injunctive relief, including public injunctive relief.

3 56. Typicality: Plaintiffs' claims are typical of those of the Class and Sub-Class.
4 Plaintiffs and all members of the Classes have been injured by the same wrongful
5 practices of Defendant. Plaintiffs' claims arise from the same course of conduct that
6 gave rise to the claims of the Classes and are based on the same legal theories.

7 57. Adequacy of Representation: Plaintiffs will fairly and adequately represent
8 and protect the interests of Class and Sub-Class Members. Plaintiffs' Counsel are
9 competent and experienced in litigating consumer class actions. Plaintiffs have
10 retained counsel experienced in consumer protection law, including complex class
11 action litigation. Plaintiffs have no adverse or antagonistic interests to those of the
12 Classes and will fairly and adequately protect the interests of the Classes. Plaintiffs'
13 attorneys are aware of no interests adverse or antagonistic to those of Plaintiffs and
14 the proposed Classes.

15 58. Predominance: Defendant has engaged in a common course of conduct
16 toward Plaintiffs, Class Members, and Sub-Class Members, in that Plaintiffs', Class
17 and Sub-Class Members were induced to shop at Amazon Fresh stores as opposed
18 to other grocery stores because Defendant misrepresented that Card holders would
19 receive 5% back on all purchases at said Amazon Fresh stores. The common issues
20 arising from Defendant's conduct affecting Class and Sub-Class Members set out
21 above predominate over any individual issues. Adjudication of these common
22 issues in a single action has important and desirable advantages of judicial
23 economy.

24 59. Superiority: A class action is superior to other available methods for the fair
25 and efficient adjudication of the controversy. Class treatment of common questions
26 of law and fact is superior to multiple individual actions or piecemeal litigation.
27 Absent a Class action, most Class and Sub-Class Members would likely find that
28 the cost of litigating their individual claims is prohibitively high and would

1 therefore have no effective remedy. The prosecution of separate actions by
2 individual Class and Sub-Class Members would create a risk of inconsistent or
3 varying adjudications with respect to individual Class and Sub-Class Members,
4 which would establish incompatible standards of conduct for Defendant. In
5 contrast, the conduct of this action as a Class action presents far fewer management
6 difficulties, conserves judicial resources and the parties' resources, and protects the
7 rights of each Class Member.

8 60. Defendant has acted on grounds that apply generally to the Class and Sub-
9 Class, so that class certification is appropriate.

10 61. Notice: Plaintiffs anticipate providing direct notice to the Class and Sub-
11 Class for purposes of class certification, via U.S. Mail and/or email, based upon
12 Defendant's and/or Defendant's agents' records.

13 **FIRST CAUSE OF ACTION**

14 **Violations of the Consumer Legal Remedies Act ("CLRA")**

15 **(Cal. Civ. Code § 1750, *et seq.*)**

16 **(On Behalf of Plaintiffs and the Sub-Class)**

17 62. Plaintiffs reallege and incorporate herein by reference the allegations
18 contained in all preceding paragraphs, and further allege as follows:

19 63. Plaintiffs bring this claim individually and on behalf of the members of the
20 proposed California Sub-Class against Defendant.

21 64. The CLRA prohibits "unfair methods of competition and unfair or deceptive
22 acts or practices . . . undertaken by any person in a transaction intended to result or
23 that results in the sale or lease of goods or services to any consumer . . ." Cal. Civ.
24 Code § 1770(a).

25 65. Defendant is a "[p]erson," as that term is defined in Cal. Civ. Code § 1761(c),
26 because it is a "corporation" or "other group, however organized."

27 66. Plaintiffs and putative Sub-Class Members are all "[c]onsumer[s]," as that
28 term is defined in Cal. Civ. Code § 1761(d), because they are "individual[s] who

1 seek[] or acquire[], by purchase or lease, any goods or services for personal, family,
2 or household purposes.”

3 67. Defendant offered “[s]ervices,” as that term is defined by Cal. Civ. Code §
4 1761(b), because it offered “services for other than a commercial or business use,
5 including services furnished in connection with the sale . . . of goods” when it offered
6 Plaintiffs and Sub-Class members 5% back on all purchases made at its Amazon
7 Fresh Stores.

8 68. Plaintiffs and Sub-Class Members engaged in “[t]ransactions” with
9 Defendant, as that term is defined in Cal. Civ. Code § 1761(e), because there was
10 “an agreement between [Plaintiffs and Sub-Class Members] and [Defendant],”
11 whereby Defendant agreed to provide Plaintiffs and Sub-Class Members with 5%
12 back on purchases at Amazon Fresh Stores.

13 69. Defendant violated the CLRA, as it relates to Plaintiffs and Sub-Class
14 Members by (i) representing that its services had characteristics, uses, benefits,
15 and/or quantities that they do not have, Cal. Civ. Code § 1770(a)(5); (ii) advertising
16 services with the intent not to sell them as advertised, Cal. Civ. Code § 1770(a)(9);
17 and (iii) representing that a transaction confers or involves rights, remedies, or
18 obligations that it does not have or involve, Cal. Civ. Code § 1770(a)(14).

19 70. Particularly, Defendant represented that all Card holders would receive 5%
20 back on all purchases made at Amazon Fresh stores when, in fact, Plaintiffs and Sub-
21 Class Members received 1% back from Defendant.

22 71. Plaintiffs and Sub-Class Members all relied on Defendant’s representation
23 that they would receive 5% back on all Amazon Fresh purchases when they made
24 purchases at Amazon Fresh stores instead of other grocery stores.

25 72. Upon information and belief, Defendant disseminated several advertisements
26 on its website, radio, television, and print media misrepresenting to Plaintiffs and
27 Sub-Class Members that they would receive 5% back on Amazon Fresh purchases
28 even though Defendant affords only 1% back on such purchases.

1 73. Upon information and belief, Defendant never intended to provide Plaintiffs
2 Sub-Class Members with 5% back on all Amazon Fresh purchases, and Defendant
3 violated the CLRA with the awareness of the fact that the conduct alleged was
4 wrongful under California law, and Defendant was motivated solely by its own self-
5 interest, monetary gain, and increased profits.

6 74. Defendant knew, or reasonably should have known, that harm was likely to
7 result to Plaintiffs and Sub-Class. Defendant engaged in such unfair and deceptive
8 conduct notwithstanding such knowledge.

9 75. Plaintiffs and Sub-Class members all suffered actual monetary harm as a
10 direct and proximate result of Defendant's CLRA violations, as they received 4%
11 less on each of their Amazon Fresh purchases than what Defendant had promised
12 they would receive.

13 76. Pursuant to Cal. Civ. Code § 1782(a), on or about August 22, 2022, Plaintiffs'
14 counsel notified Defendant in writing particular violations of § 1770 of the CLRA
15 and demanded that it rectify the problems associated with the actions detailed above
16 and give notice to all affected consumers of Defendant's intent to act. Should
17 Defendant fail, within 30 days of receipt of Plaintiffs' demand, to provide Plaintiffs
18 and Sub-Class Members with an appropriate correction, repair, replacement, or other
19 remedy, Plaintiffs intend to amend this complaint to allege damages and attorneys'
20 fees and costs. At present, under the CLRA, this complaint seeks injunctive relief
21 only.

22 77. Plaintiffs and Sub-Class Members are entitled to injunctive relief, including
23 public injunctive relief prohibiting such conduct in the future.

24 78. Attached hereto as **Exhibit E** is a sworn declaration from Plaintiff Bargar
25 pursuant to California Civil Code § 1780(d).

26 79. Attached hereto as **Exhibit F** is a sworn declaration from Plaintiff Nelson
27 pursuant to California Civil Code § 1780(d).

1 **SECOND CAUSE OF ACTION**

2 **CALIFORNIA’S UNFAIR COMPETITION LAW (“UCL”),**

3 **CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.***

4 **(On Behalf of Plaintiffs and the Sub-Class)**

5 80. Plaintiffs reallege and incorporate herein by reference the allegations
6 contained in all preceding paragraphs, and further allege as follows:

7 81. The UCL defines “unfair business competition” to include any “unlawful,
8 unfair, or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
9 misleading” advertising. Cal. Bus. & Prof. Code § 17200.

10 82. The UCL imposes strict liability. Plaintiffs need not prove that Defendant
11 intentionally or negligently engaged in unlawful, unfair, or fraudulent business
12 practices—but only that such practices occurred.

13 ***“Unfair” Prong***

14 83. A business practice is “unfair” under the UCL if it offends an established
15 public policy or is immoral, unethical, oppressive, unscrupulous or substantially
16 injurious to consumers, and that unfairness is determined by weighing the reasons,
17 justifications and motives of the practices against the gravity of the harm to the
18 alleged victims.

19 84. Defendant’s actions constitute “unfair” business practices because, as alleged
20 above, Defendant engaged in a misleading and deceptive practice of intentionally
21 misrepresenting and/or omitting the fact from consumers that they would receive
22 less back on their Amazon Fresh purchases than what Defendant has advertised.

23 85. This is done to trick Card holders into shopping at Amazon Fresh stores
24 instead of other grocery stores, thus allowing Defendant to increase its profits at the
25 expense of Card holders.

26 86. Through their practices, Amazon retains tens of thousands if not millions of
27 dollars which should have, in all fairness, been permanently credited to Plaintiffs
28 and the California Sub-Class Members.

1 87. Defendant’s acts and practices offend an established public policy of
2 transparency when it comes to advertising goods and services, and are immoral,
3 unethical, oppressive, and unscrupulous activities that are substantially injurious to
4 consumers.

5 88. The harm to Plaintiffs and Class Members grossly outweighs the utility of
6 Defendant’s practices. Indeed, Plaintiffs allege that there is no utility of Amazon’s
7 conduct that justifies the practices alleged with specificity herein.

8 ***“Fraudulent” Prong***

9 89. A business act or practice is “fraudulent” under the UCL if it is likely to
10 deceive members of the consuming general public.

11 90. Defendant’s acts and practices alleged above constitute fraudulent business
12 acts or practices as they deceived Plaintiffs and Sub-Class Members and are highly
13 likely to deceive members of the consuming public.

14 91. In not receiving a forthright disclosure from Defendant about the percentage
15 Card holders would receive on their purchases at Amazon Fresh stores, Plaintiffs
16 and Sub-Class Members can only draw one reasonable conclusion—that they would
17 receive 5% back on their Amazon Fresh purchases—contrary and more than what
18 they actually received on their billing statements for said purposes.

19 ***“Unlawful” Prong***

20 92. A business act or practice is “unlawful” under the UCL if it violates any other
21 law or regulation.

22 93. Defendant’s acts and practices alleged above constitute unlawful business acts
23 or practices as they have violated the plain language of the CLRA, as described in
24 Plaintiffs’ First Cause of Action.

25 94. The violation of any law constitutes as “unlawful” business practice under the
26 UCL.

27 95. These acts and practices alleged were intended to or did result in violations of
28 the CLRA.

1 96. Defendant's practices, as set forth above, have misled Plaintiffs, Sub-Class
2 Members, and the public in the past and will continue to mislead them in the future.
3 Consequently, the practices of Defendant constitute unfair and unlawful business
4 practices within the meaning of the UCL.

5 97. Pursuant to the UCL, Plaintiffs and the Class are entitled to preliminary and
6 permanent injunctive relief and order Amazon to cease this unfair and unlawful
7 competition, as well as disgorgement and restitution to Plaintiffs and the Class of all
8 the revenues associated with this unfair and unlawful competition, or such portion
9 of said revenues as the Court may find applicable.

10
11 **THIRD CAUSE OF ACTION**

12 **Breach of Contract**

13 **(On Behalf of Plaintiffs, the Class and the Sub-Class)**

14 98. Plaintiffs reallege and incorporate herein by reference the allegations
15 contained in all preceding paragraphs.

16 99. Plaintiffs, Class Members, Sub-Class Members entered a contract with
17 Defendant, whereby Defendant offered them 5% back on all purchases made at
18 Amazon Fresh stores in exchange for Plaintiffs, Class Members and Sub-Class
19 Members shopping and spending money at Defendant's Amazon Fresh stores.

20 100. Pursuant to the terms of the contract, Plaintiffs, Class Members and Sub-Class
21 Members all shopped at Amazon Fresh stores. Thus, Plaintiffs, Class Members and
22 Sub-Class Members all performed all, or substantially all, of the significant things
23 that the contract required them to do.

24 101. However, after Plaintiffs, Class Members and Sub-Class Members satisfied
25 their obligations under the contract, Defendant failed to provide Plaintiffs, Class
26 Members and Sub-Class Members 5% back on all their Amazon Fresh purchases.

27 102. As a direct and proximate result of Defendant's material failure to perform
28 under contract, Plaintiffs, Class Members and Sub-Class Members were all

1 individually and collectively harmed, as Plaintiffs, Class Members and Sub-Class
2 Members were not afforded the promised total of 5% back on their Amazon Fresh
3 purchases during the Class Period for each qualifying purchase.

4 103. Therefore, Plaintiffs, Class Members and Sub-Class Members are entitled to
5 actual damages.

6 **FOURTH CAUSE OF ACTION**

7 **Unjust Enrichment**

8 **(On Behalf of Plaintiffs, the Class and the Sub-Class)**

9 104. Plaintiffs reallege and incorporate herein by reference the allegations
10 contained in all preceding paragraphs, and further allege as follows:

11 105. Plaintiffs bring this claim individually and on behalf of the members of the
12 proposed Class and California Sub-Class against Defendant, in the alternative to the
13 breach of contract claim.

14 106. Under California law, the elements of unjust enrichment are receipt of a
15 benefit and unjust retention of the benefit at the expense of another.

16 107. Plaintiffs, Class Members and Sub-Class Members conferred non-gratuitous
17 benefits upon Defendant by essentially paying 4% more on purchases at Amazon
18 Fresh stores than what Defendant had advertised and continued to advertise.

19 108. Plaintiffs, Class Members and Sub-Class Members allege that Defendant
20 owes them money for the conduct alleged herein.

21 109. An undue advantage was taken from Plaintiffs', Class Members' and Sub-
22 Class Members' lack of knowledge of the deception, whereby money was extracted
23 to which Defendant had no legal right. Defendant is therefore indebted to Plaintiffs,
24 Class Members and Sub-Class Members in a sum certain, specifically the extra 4%
25 each of them paid to shop at Amazon Fresh stores.

26 110. Defendant is therefore indebted to Plaintiffs, Class Members and Sub-Class
27 Members in a sum certain for money had and received by Defendant, which
28 Defendant in equity and good conscience should not retain.

1 111. Defendant is therefore liable to Plaintiffs, Class Members and Sub-Class
2 Members in the amount unjustly enriched.

3 112. Defendant's retention of any benefit collected directly and indirectly from
4 Plaintiffs, Class Members and Sub-Class Members violates principles of justice,
5 equity, and good conscience. As a result, Defendant has been and continues to be
6 unjustly enriched.

7 113. Plaintiffs, Class Members and Sub-Class Members are entitled to recover
8 from Defendant all amounts that Defendant has wrongfully and improperly obtained,
9 and Defendant should be required to disgorge to Plaintiffs, Class Members and Sub-
10 Class Members the benefits it has unjustly obtained.

11 114. Defendant accepted or retained such benefits with knowledge that the rights
12 of Plaintiffs, Class Members and Sub-Class Members were being violated for
13 financial gain. Defendant has been unjustly enriched in retaining the revenues and
14 profits from Plaintiffs, Class Members and Sub-Class Members, which retention
15 under these circumstances is unjust and inequitable.

16 115. As a direct and proximate result of Defendant's unlawful practices and
17 retention of the monies paid by Plaintiffs, Class Members and Sub-Class Members
18 in excess of what was promised, Plaintiffs, Class Members and Sub-Class Members
19 have all suffered concrete harm and injury, including, but not limited to monetary
20 loss in connection with their payments made to Defendant during a time of record-
21 high inflation.

22 116. Defendant's retention of the non-gratuitous benefits on them by Plaintiffs,
23 Class Members and Sub-Class Members would be unjust and inequitable.

24 117. Plaintiffs, Class Members and Sub-Class Members are entitled to seek
25 disgorgement and restitution of wrongful profits, revenue, and benefits conferred
26 upon Defendant in a manner established by this Court.

1 118. Plaintiffs, Class Members and Sub-Class Members request the Court enter an
2 order awarding them restitution, rescission, and or/damages, and that they are
3 entitled to recover their reasonable attorneys’ fees.

4 119. Plaintiffs, Class Members and Sub-Class Members therefore also seek pre-
5 and-post judgment interest and attorneys’ fees and costs as allowed by statute,
6 including without limitation those recoverable under Cal. Civ. Proc. Code § 1021.5,
7 any common law “private attorney general” equitable doctrine, any “common fund”
8 doctrine, any “substantial benefit” doctrine, and/or any equitable principles of
9 contribution and/or other methods of awarding attorneys’ fees and costs.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for relief and judgment against Defendant as
12 follows:

- 13 • Class certification of this action;
- 14 • Appointment of Plaintiffs as Class Representatives;
- 15 • Appointment of Plaintiffs’ attorneys as Class Counsel;
- 16 • An award of actual damages, in an amount to be determined at trial;
- 17 • Injunctive and other equitable relief against Defendant as necessary to protect
18 the interests of Plaintiffs and other Class Members, and an order prohibiting
19 Defendant from engaging in unlawful and/or unfair acts described above,
20 including public injunctive relief;
- 21 • An order of restitution from Defendant;
- 22 • An order declaring Defendant’s conduct as unlawful;
- 23 • Costs of Suit;
- 24 • Pre- and post-judgment interest;
- 25 • An award of reasonable attorneys’ fees; and
- 26 • Any other relief the Court may deem just and proper, including interest.

27 **DEMAND FOR TRIAL BY JURY**

1 119. Plaintiffs, individually and on behalf of all others similarly situated, hereby
2 demand a jury trial on all claims so triable.

3
4 Dated: August 22, 2022

Respectfully submitted,
KAZEROUNI LAW GROUP, APC

5
6 By: /s/ Abbas Kazerounian
Abbas Kazerounian, Esq.
ATTORNEYS FOR PLAINTIFF

7
8
9 **ADDITIONAL PLAINTIFF'S COUNSEL**
KAZEROUNI LAW GROUP, APC

10 Jason A. Ibey, Esq. (SBN: 284607)
jason@kazlg.com
11 321 N Mall Drive, Suite R108
12 St. George, Utah 84790
13 Telephone: (800) 400-6808
Facsimile: (800) 520-5523