

Hearing Date: 12/23/2022 10:00 AM
 Location: Court Room 2510
 Judge: Mullen, Michael Tully

12-Person Jury

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 8/25/2022 12:49 PM
 IRIS Y. MARTINEZ
 CIRCUIT CLERK
 COOK COUNTY, IL
 2022CH08422
 Calendar, 8
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**CIRCUIT COURT OF COOK COUNTY, ILLINOIS
 COUNTY DEPARTMENT, CHANCERY DIVISION**

ALEXANDRIA NICHOLAS, individually)
 and on behalf of similarly situated)
 individuals,)

Plaintiff,)

v.)

AMAZON.COM, INC., a Delaware)
 Corporation,)

Defendant.)

Case No. 2022CH08422

Hon.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Alexandria Nicholas, both individually and on behalf of similarly situated individuals, brings this Class Action Complaint against Defendant Amazon.com, Inc. (hereinafter “Amazon” or “Defendant”) for its deceptive and unlawfully administered “Subscribe & Save” program. Through the program, Defendant implements dark patterns – user interface design choices intended to confuse, deceive, and frustrate users who attempt to cancel their subscriptions or who do not intend to initiate a subscription to begin with. Plaintiff alleges as follows based on personal knowledge as to her own acts and experiences, and as to all other matters, upon information and belief, including an investigation conducted by her attorneys.

NATURE OF THE CASE

1. This case is a putative class action brought to obtain redress for consumers who have been harmed by Defendant’s use of unfair and deceptive business practices in implementing its “Subscribe & Save” program.

2. Through its Subscribe & Save automatic subscription renewal program (hereinafter, “S&S” or “S&S Program”), Defendant employs deceptive and unfair software design

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to induce consumers to enter into difficult to cancel subscriptions for recurring, automatic purchases of household goods and other consumer items. By using discounted prices to entice and induce its customers to set up automatically renewing subscriptions in place of one-time purchases, Defendant is able to multiply the revenue of each transaction by however many subscriptions go unnoticed, or until the subscriber is finally able to complete the many difficult steps required to cancel their subscription.

3. Although the Subscribe & Save program is advertised as a way for customers to simplify their online shopping experience and save money, Defendant has intentionally designed its S&S Program using deceptive “dark pattern” elements to ensure that customers overspend on items they do not need, overpay for items they do need, and, when they ultimately find it unreasonably difficult to cancel their automatic purchase subscriptions – that they give up before completing the cancellation process, thereby allowing Amazon to realize additional revenue and profit. Defendant uses dark patterns at almost every step of the purchase process to impose unnecessary, unfair, and deceptive procedural burdens on users who wish to cancel their subscriptions, or who did not intend to subscribe in the first place.

4. Defendant’s deceptive business practices do not stop at the use of dark pattern designs. It also deceives consumers in its representations about Subscribe & Save items. For example, Defendant sets the default of S&S products to automatically renew as frequent as every two weeks for expendable or consumable items such as over the counter medications that Amazon knows need replacement much less often. In presenting such unreasonably short default S&S renewal timeframes Amazon makes knowingly untrue representations that such items are “most commonly” bought with such frequency. In other cases, Defendant represents household appliances and similar such items that are not expendable or consumable as being most commonly

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bought on a frequent and regular basis, even when it is highly unlikely that anyone would purchase them with such frequency.

5. Through these deceptive practices, Defendant has knowingly harmed its customers and has retained significant financial benefits from its deceptive and unfair conduct. Defendant could easily prevent this harm by making straightforward and sensible adjustments to its user interface – as it has in countries which have criticized its use of dark patterns – but to date, Defendant has willfully continued its unfair and deceptive practices to its own benefit and to the detriment of consumers.

PARTIES

6. Defendant Amazon.com, Inc. is the world's largest e-commerce retailer. Defendant markets and sells consumer goods through its Amazon.com website and mobile application.

7. At all relevant times, Plaintiff has been a resident of Illinois, specifically Cook County.

JURISDICTION AND VENUE

8. This Court may assert personal jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 in accordance with the Illinois Constitution and the Constitution of the United States because Defendant is doing business within the state of Illinois and because Plaintiff's claims arise out of Defendant's unlawful in-state actions, as Defendant sold and delivered its Subscribe & Save subscriptions within this state.

9. Venue is proper in Cook County under 735 ILCS 5/2-101, because Defendant is a foreign corporation doing business in Cook County and thus resides there under § 2-102, and because the transactions out of which Plaintiff's causes of action arose occurred in Cook County.

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FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

I. Dark Patterns Generally

10. Dark patterns are online user interfaces that are intended to confuse users, increase the difficulty for users to express their actual preferences, and manipulate users into taking certain actions against their own interests.¹ Dark patterns work by exploiting cognitive biases, and “often employ strategies that render the ease of selecting different options asymmetric, cover up the mechanisms by which consumers are influenced, deceive users through acts or omissions, hide relevant information, or restrict choices likely to be popular among consumers.”²

11. Research has shown that the most effective dark pattern elements include hidden information,³ obstruction,⁴ trick questions, social proof,⁵ loaded questions, and default acceptance. In practice, dark patterns serve a very specific purpose: to achieve a financial goal for those who implement them by manipulating users into making decisions against their own interests.

12. For example, the bandwagon effect can cause consumers to purchase too much of a product based on representations that other consumers are purchasing similar quantities. Other dark patterns exploit cognitive biases like the endowment effect⁶ and status quo bias to keep

¹ Jamie Luguri, Lior Jacob Strahilevitz, Shining a Light on Dark Patterns, 13 J. Legal Analysis, Issue 1, 2021, Pages 43–109, <https://doi.org/10.1093/jla/laaa006>.

² Jamie Luguri, Lior Jacob Strahilevitz, Shining a Light on Dark Patterns, 13 J. Legal Analysis, Vol. 13, Issue 1, 2021, 43–109, <https://doi.org/10.1093/jla/laaa006> (citing Mathur, Arunesh, Jonathan Mayer, and Mihir Kshirsagar, What Makes a Dark Pattern.. Dark? Design Attributes, Normative Considerations, and Measurement Methods, ACM Conference on Human Factors in Computing Systems. 2021 (available at <https://arxiv.org/pdf/2101.04843.pdf>)).

³ A dark pattern in which important information is hidden or de-emphasized by placing it in a less visually-prominent location.

⁴ Making users jump through unnecessary hoops to reject or cancel a service.

⁵ Exploiting the “bandwagon effect” in which users are pressured to make a decision based on information about other users’ decisions.

⁶ The tendency for people to assign a higher value to objects they own than to identical objects they do not own.

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consumers subscribed to products they no longer want or need. Similarly, by using confusing language such as double negatives, the “trick questions” dark pattern imposes a cognitive burden on a user looking to perform an “undesirable” action like cancelling a subscription or withholding consent for data collection. For instance, a user attempting to cancel a subscription might be forced to select between buttons that continue or cancel the cancellation process itself, with the “continue” button cancelling the subscription and the “cancel” button continuing the subscription.

13. Asymmetric dark patterns nudge users toward making a particular decision by imposing unequal burdens on the user. User interface options that benefit the service, for example Amazon’s “Subscribe & Save” button, are featured prominently while options that benefit the user are hidden behind several clicks or are obscured from view by varying the style and position of the option.⁷

14. Covert dark patterns also inhibit the user’s ability to provide valid consent to the terms of an agreement. Covert dark patterns work by nudging a user toward making certain decisions or selecting for certain outcomes while hiding the fact that such nudging is taking place from the user. For example, a retailer might use attention grabbing font and coloring to make it seem as though its most profitable option is the only option available to the consumer, even though it knows other options will better suit the user’s needs.⁸

15. The “roach motel” dark pattern offers another salient example in which cancelling a subscription or membership is significantly tougher than initiating such a transaction. For example, a subscription that can be set up in only a few steps, or through a few clicks, might require

⁷ Mathur, Arunesh, Jonathan Mayer, and Mihir Kshirsagar. What Makes a Dark Pattern.. Dark? Design Attributes, Normative Considerations, and Measurement Methods, ACM Conference on Human Factors in Computing Systems. 2021, at 7 (available at <https://arxiv.org/pdf/2101.04843.pdf>) (last visited Aug. 4, 2022).

⁸ *Id.* at 8.

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a user who wishes to cancel to provide notice of cancellation long before when it is actually necessary, and to navigate menus and processes intended to make the user give up before completing the cancellation.

II. Dark Patterns within Defendant's Subscribe & Save Program

16. Defendant advertises its Subscribe & Save program as a way for shoppers to “[s]ave up to 15% with automatic deliveries” of items that they otherwise most likely would have bought as needed. Defendant highlights the ease and convenience with which users can set up a subscription to receive automatic deliveries of consumer goods like household cleaning supplies, food items, over the counter medicines and more.⁹

17. Defendant represents that Subscribe & Save is easy to use and that shoppers can save money using the program in only three simple steps: “Shop items,” “Create your subscription,” and “Subscribe more. Save more.”¹⁰

18. Defendant further encourages users to sign up for its Subscribe & Save program by highlighting the fact that users can “cancel anytime” and by prominently featuring the subscribe and save purchase option in a manner that showcases the subscription option, while downplaying the one-time purchase option. Defendant strategically omits the fact that even though a Subscribe & Save item can be shipped as quickly as the next day, a user who wishes to skip or cancel a delivery must provide at least eight days’ notice to do so.

19. For many products, Defendant even sets Subscribe & Save as the default purchase method. Any user who wishes to instead make a one-time purchase must first notice that they will

⁹ *Amazon.com: Subscribe & Save | Save on Everyday Essentials*, <https://www.amazon.com/gp/browse.html?node=5856181011> (last visited Aug. 12, 2022).

¹⁰ *Id.*

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be opted in to a recurring subscription by default, then must switch to the one-time purchase option before completing the transaction.

20. Amazon's Subscribe & Save program offers such a clear example of the use of dark patterns that it has been named to the "Deceptive Design Hall of Shame" by Dr. Harry Brignull, a cognitive scientist whose research focuses on deceptive user interfaces.¹¹

21. According to a case study available on [deceptive.design](https://growth.design/case-studies/amazon-purchase-ux), a website curated by Dr. Brignull, Amazon's Subscribe & Save program employs dark pattern design elements in at least five separate places on each Subscribe & Save product's Amazon mobile page.¹²

22. Using a listing of a dietary supplement as an example, Dr. Brignull first shows that "Subscribe & Save" is the default choice when a user navigates to the mobile ordering page for a Subscribe & Save eligible product. Dr. Brignull identifies the "default" dark pattern as "a user interface that has been **crafted to trick users** into doing things, such as [...] or **signing up for recurring bills.**" Dr. Brignull points out that the alternative design choice is to "aim to build a positive relationship between you and your users. If you want to change behaviors, **do it with [users'] consent.**"¹³

23. Defendant's deceptive design also exploits the endowment effect, a cognitive bias in which users who can be made to feel like they already own a product tend assign a higher value to it. Through Defendant's promotion of fast shipping – but only for purchases made before the expiration of a countdown – users are reminded that the product can be theirs in mere hours if they act now.

¹¹ *The Psychology Behind Amazon's Purchase Experience*, DECEPTIVE DESIGN, <https://growth.design/case-studies/amazon-purchase-ux> (last visited Aug. 12, 2022).

¹² *Id.*

¹³ *Id.*

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24. Defendant's order page also illustrates Fitts's Law, which states that the time to acquire a target – in this case the “Subscribe now” button – is a function of the distance to and size of the target. Amazon exploits Fitts's law by dedicating almost a third of the screen to the subscription option while providing a small and visually-obscured button for the one-time purchase option. The effect, according to Dr. Brignull, is that “[m]ost people will likely start setting up their subscription as a result.”¹⁴

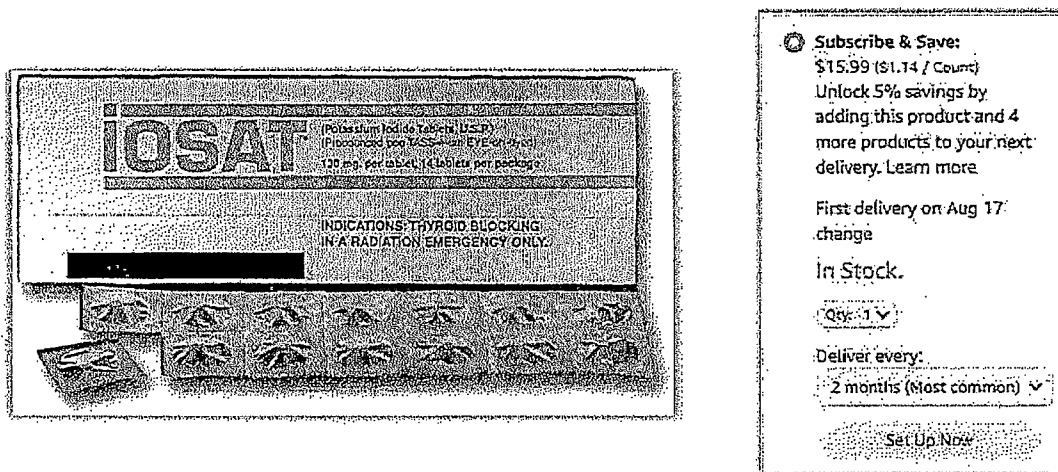
25. Defendant's user interface incorporates the “social proof” deceptive design element by presenting shoppers with the “most common” renewal frequency supposedly selected by other customers. If the user fails to notice that he or she is signing up for a subscription, or fails to adjust the “most common” renewal interval, the Subscribe & Save program sets the renewal frequency to that interval by default, even when such a delivery frequency creates absurd results like sending a customer the same new kitchen appliance each month.

26. Worse yet, Defendant's presentation of a “most common” renewal frequency is misleading at best and fraudulent at worst. For some nutritional supplements and similar items, the most common renewal frequency is not only highly improbable but would likely harm anyone who uses the product with such frequency.

¹⁴ *The Psychology Behind Amazon's Purchase Experience*, DECEPTIVE DESIGN, <https://growth.design/psychology#fitts-law> (last visited Aug. 12, 2022).

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27. For example, Defendant's listing for iOSAT brand Potassium Iodide tablets, a dietary supplement labeled for "thyroid blocking in a radiation emergency only" shows a "most common" Subscribe & Save delivery frequency of every two months. Even though the CDC recommends that potassium iodide be taken only at the instruction of healthcare or emergency response officials in the event of a radiation emergency like a nuclear meltdown, and the Nuclear Regulatory Commission advises that potassium iodide tablets are inherently shelf stable and do not lose their effectiveness over time, Defendant still represents that its subscribers most commonly purchase it every other month.¹⁵

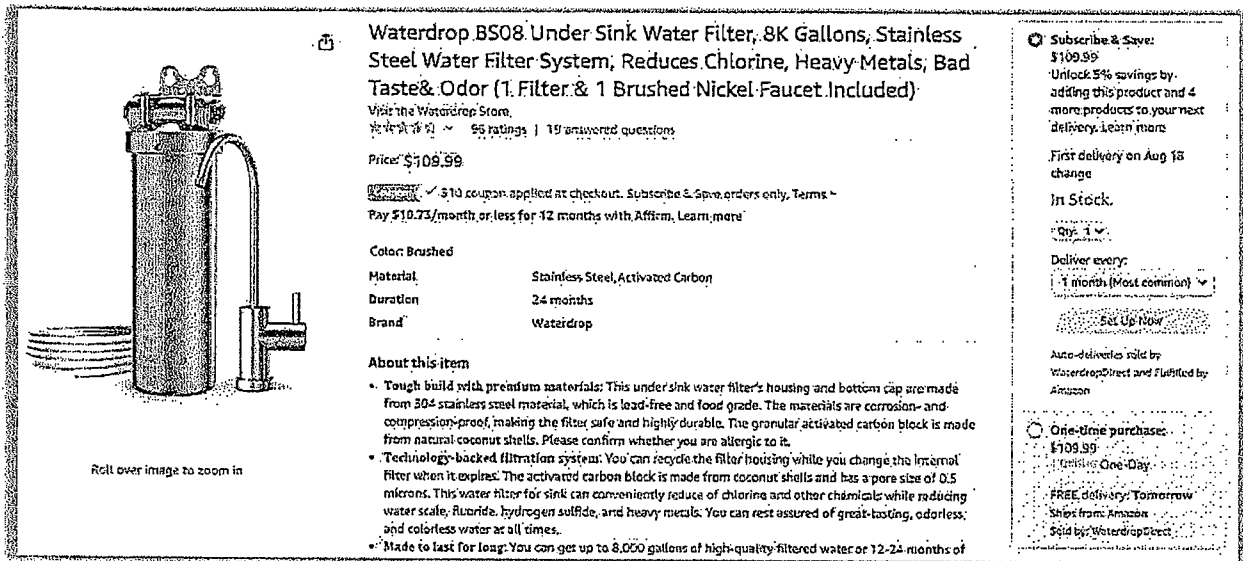


28. In another example of an improbable "most common" delivery schedule, Defendant markets the \$110 Waterdrop BS08 under-sink water filter system with a filter life of 8,000 gallons or 12-24 months.¹⁶ However, Defendant represents to its customers that once a month is the most common renewal frequency for this item. Given that the average household uses around 1,735

¹⁵ *Facts About Potassium Iodide (KI)* | CDC, <https://www.cdc.gov/nceh/radiation/emergencies/ki.htm> (last visited Aug. 19, 2022); *Frequently Asked Questions About Potassium Iodide* | NRC.gov, <https://www.nrc.gov/about-nrc/emerg-preparedness/about-emerg-preparedness/potassium-iodide/ki-faq.html#shelflife> (last visited Aug. 19, 2022).

¹⁶ *Amazon.com: Waterdrop BS08 Under Sink Water Filter*, <https://a.co/d/duOclyx> (last visited Aug. 4, 2022).

gallons of water from faucets per month, it is exceedingly unlikely that subscribers most commonly make monthly purchases of a system that outputs more than four times that amount.¹⁷



Waterdrop BS08 Under Sink Water Filter, 8K Gallons, Stainless Steel Water Filter System; Reduces Chlorine, Heavy Metals, Bad Taste & Odor (1 Filter & 1 Brushed Nickel Faucet Included)

Visit the Waterdrop Store

95 ratings | 19 answered questions

Price: \$109.99

✓ \$10 coupon applied at checkout. Subscribe & Save orders only. Terms

Pay \$10.73/month or less for 12 months with Affirm. Learn more

Color: Brushed

Material: Stainless Steel, Activated Carbon

Duration: 24 months

Brand: Waterdrop

About this item

- **Tough build with premium materials:** This under sink water filter's housing and bottom cap are made from 304 stainless steel material, which is lead-free and food grade. The materials are corrosion- and compression-proof, making the filter safe and highly durable. The granular activated carbon block is made from natural coconut shells. Please confirm whether you are allergic to it.
- **Technology-backed filtration system:** You can recycle the filter housing while you change the internal filter when it expires. The activated carbon block is made from coconut shells and has a pore size of 0.5 microns. This water filter for sink can conveniently reduce of chlorine and other chemicals while reducing water scale, fluoride, hydrogen sulfide, and heavy metals. You can rest assured of great-tasting, odorless, and colorless water at all times.
- **Made to last for long:** You can get up to 8,000 gallons of high-quality filtered water or 12-24 months of

Subscribe & Save:
\$109.99
Unlock 5% savings by adding this product and 4 more products to your next delivery. Learn more

First delivery on Aug 18 change

In Stock

Qty: 1

Deliver every:
1 month (Most common)

Set Up Now

Auto-deliveries sold by WaterdropDirect and fulfilled by Amazon

One-time purchase:
\$109.99
Prime One-Day

FREE delivery: Tomorrow
Ships from Amazon
Sold by WaterdropDirect

29. The water filter example illustrates another of the deceptive aspects of Defendant's Subscribe & Save program. Although the BS08 filter system is a permanent appliance, the Subscribe & Save option suggests that the *entire system* is most commonly replaced monthly and defaults to that option. In reality only the filter cartridge itself needs to be replaced regularly, though not anywhere near monthly. Surprisingly, this \$20 replacement filter cartridge is not currently available via Defendant's Subscribe & Save program.¹⁸

30. Similarly deceptive is the fact that in the water filter example shown above, consumers do not actually "save" through enrolling in Defendant's S&S Program. Instead, they

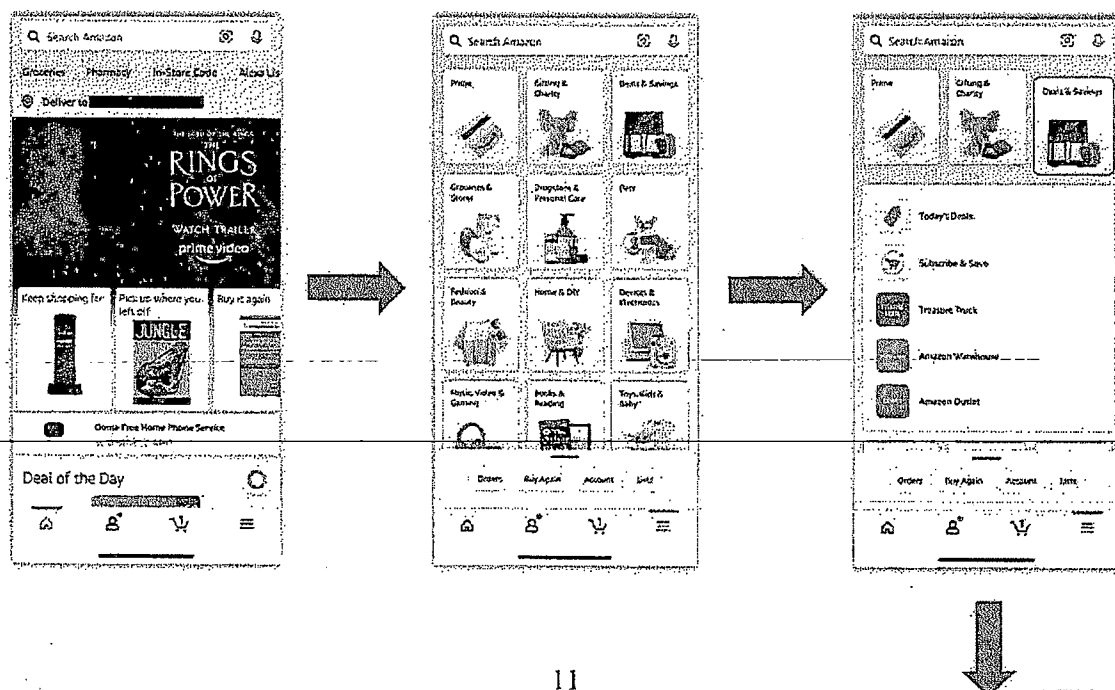
¹⁷ *How We Use Water* | US EPA, <https://www.epa.gov/watersense/how-we-use-water#:~:text=The%20average%20American%20family%20uses,water%20per%20day%20at%20home> (last visited Aug. 12, 2022) (figure calculated by multiplying the average household's use of 300 gallons per day by the 19% of water use attributed to faucets.).

¹⁸ Amazon.com: Waterdrop WF08 Under Sink Replacement Water Filter, <https://a.co/d/09MWVzQ> (last visited Aug. 12, 2022).

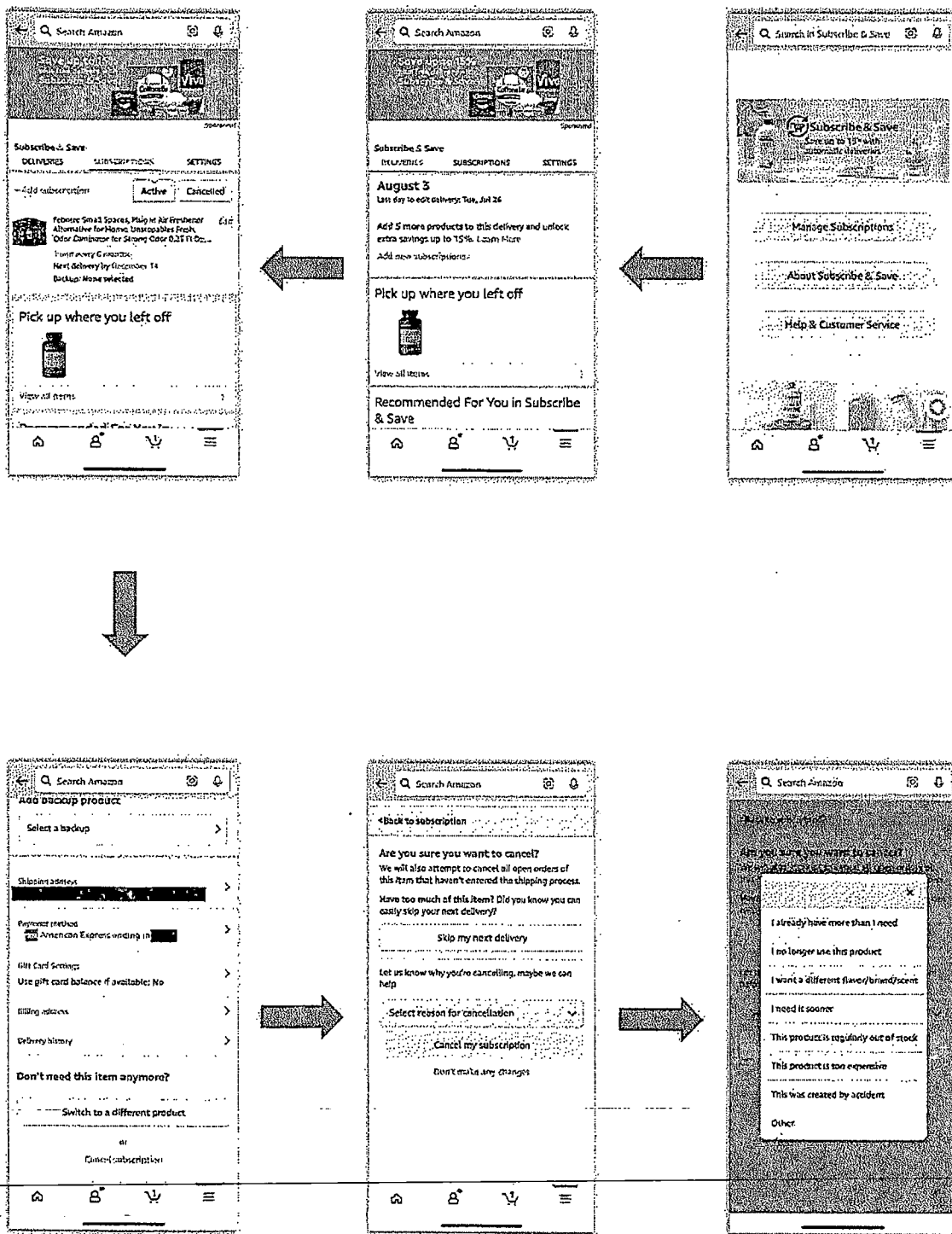
will pay \$109.99, the same price as they would pay to make a one-time purchase. No discount would apply until the customer purchases four other products for delivery on the same day.

31. Rather than allowing for easy cancellation of Subscribe & Save orders, Amazon's user interface intentionally nudges users who are seeking to cancel their subscriptions to "skip a delivery" instead, thereby allowing likely unwanted deliveries to resume after a brief pause. Users persistent enough to proceed beyond the "skip a delivery" screen are still at only the beginning of the journey required to cancel a subscription.

32. In a nearly textbook illustration of the "roach motel" dark pattern, Defendant subjects users who wish to cancel a subscription through its popular mobile app to a tedious and confusing nine-step process that includes dozens of abstruse menu options, icons, and even a multiple-choice question. That this complexity is intentional is obvious because the same mobile app requires only a frictionless two-step process to initiate a Subscribe & Save subscription, and allows users to purchase items generally with "one click." Defendant purposely avoids building such convenience into the S&S cancellation process, as shown below.



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33. This tedious and confusing cancellation flow is no accident. Each step of the lengthy process is designed to frustrate users into abandoning their goal of cancelling before they can achieve it. Defendant has not implemented a simple, two-step cancellation process because it fears its customers would find it *too easy* to use. For Amazon, the friction associated with cancelling a Subscribe & Save subscription is a feature, not a bug.

34. Furthermore, the overly difficult and time-consuming process of cancelling a Subscribe & Save subscription is completely unnecessary. For example, Amazon recently agreed to allow its European users to cancel their Amazon Prime subscriptions through a cancellation flow that more closely resembles the purchase flow that initiated the order.¹⁹ Rather than having to navigate the labyrinth of menus and icons that Amazon subjects its American users to, those in Europe are able to cancel their subscriptions in just two steps using a prominent and clear “cancel” button.²⁰

35. Plaintiff has experienced the frustration and other costs associated with trying and failing to cancel a Subscribe & Save order firsthand.

36. On January 24, 2022, and again on June 17, 2022, Plaintiff initiated a Subscribe & Save subscription for Inception Dry dog food and Wellness Core RawRev dog food, respectively, through Defendant’s website on her mobile device.

37. Upon realizing after her first delivery that she had set up a Subscribe & Save order and that she did not intend to receive the dog food on a subscription basis, Plaintiff attempted to

¹⁹ *Consumer Protection: Amazon Prime Changes its Cancellation Practices to Comply with EU Consumer Rules*, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4186 (last visited Aug. 12, 2022).

²⁰ *Amazon to Ease Cancellation Process After EU Probe*, <https://www.law360.com/articles/1508017/amazon-to-ease-cancellation-process-after-eu-probe> (last visited Aug. 12, 2022).

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cancel her subscriptions through Defendant's mobile website. Through such attempts, Plaintiff believed she had cancelled her S&S orders and subscriptions.

38. Despite her best efforts to cancel, and despite being led to believe by Defendant's mobile website that she had indeed cancelled her subscriptions, Plaintiff continued to receive shipments of dog food from Defendant at regular intervals. On January 24, 2022, and again on March 2, 2022 she received deliveries of the Inception brand dog food, and on June 18, 2022 and August 1, 2022, she received deliveries of Wellness Core brand dog food.

39. Defendant's representations that its Subscribe & Save program could be cancelled without unreasonable and undue burden were material to Plaintiff's decision to enroll in the program. Plaintiff would not have subscribed to the Subscribe & Save program had she known that the cancellation process was disproportionately harder than that of initiating a subscription, and that she would not be able to promptly cancel her subscriptions as a result of Defendant's objectively difficult and confusing cancellation procedure.

40. As a result, Plaintiff has experienced financial harm from her unwanted subscription renewals, in addition to the time wasted attempting to cancel her subscriptions.

CLASS ALLEGATIONS

41. Plaintiff brings this action both individually on her own behalf and, pursuant to 735 ILCS § 5/2-801, as representative on behalf of a Class and Subclass defined as follows:

The Class: All individuals who, during the applicable limitations period, were charged for purchases on an automatically recurring basis in connection with Defendant's Subscribe & Save program.

The Illinois Subclass: All members of the Class whose purchase(s) were made within the state of Illinois.

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42. Excluded from the Class and Subclass are any members of the judiciary assigned to preside over this matter; any officer or director of Defendant; and any immediate family member of such officer or director.

43. There are at least thousands of members of the Class and Subclass, making the members of the Class and Subclass so numerous that joinder of all members is impracticable. Although the exact number of members of the Class and Subclass is currently unknown to Plaintiff, the members can be easily identified through Defendant's records.

44. Plaintiff's claims are typical of the claims of the Class and Subclass she seeks to represent, because the bases of Defendant's liability to Plaintiff and the Class and Subclass is substantially the same, and because Defendant's conduct has resulted in similar injuries to Plaintiff and to the other members of the Class and Subclass.

45. There are many questions of law and fact common to the claims of Plaintiff and the Class and Subclass, and those questions predominate over any questions that may affect individual members of the Class and Subclass. Common questions for the Class and Subclass include, but are not limited to, the following:

- a. Whether Defendant's Subscribe & Save subscriptions constitute automatic contract renewals or continuous service offers under the Illinois Automatic Contract Renewal Act, 815 ILCS 601/1 *et seq.*;
- b. Whether Defendant failed to disclose the automatic renewal clause clearly and conspicuously in its Subscribe & Save contracts in violation of 815 ILCS 601/10 (a);

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- c. Whether Defendant failed to provide a cost-effective, timely, and easy-to-use mechanism for cancellation of its Subscribe & Save contracts in violation of 815 ILCS 601/10 (b-5);
- d. Whether Defendant's conduct in violation of the Illinois Automatic Contract Renewal Act constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act;
- e. Whether Defendant's conduct otherwise constitutes a violation of the Illinois Consumer Fraud and Deceptive Business Practices Act;
- f. Whether Defendant made representations or omissions to the Class and Subclass regarding the difficulty of cancelling Subscribe & Save subscriptions, the frequency with which Subscribe & Save purchases are made, and other material facts related to Subscribe & Save transactions;
- g. Whether Defendant knew that such representations were false;
- h. Whether the members of the Class and Subclass relied on such representations and omissions in making their purchasing decisions;
- i. Whether Defendant has been unjustly enriched by the revenues it has retained in connection with its unlawful conduct imposed on members of the Class and Subclass;
- j. Whether Defendant has a duty to accurately communicate information to consumers;
- k. Whether Defendant has breached its duty to consumers by misrepresenting how often its customers most commonly purchase items from Defendant;

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- l. Whether Plaintiff and the Class and Subclass have incurred costs and otherwise suffered harm as a result of Defendant's misrepresentations; and
- m. Whether Plaintiff and the other members of the Class and Subclass are entitled to monetary damages and/or injunctive relief or other remedies, and, if so, the nature of such remedies.

46. Absent a class action, most members of the Class and Subclass would find the cost of litigating their claims to be prohibitively expensive and would thus have no effective remedy. The class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants and promotes consistency and efficiency of adjudication.

47. Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class and Subclass she seeks to represent. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class and Subclass and have the financial resources to do so. Neither Plaintiff nor her counsel has any interest adverse to those of the other members of the Class and Subclass.

48. Defendant has acted and failed to act on grounds generally applicable to the Plaintiff and the other members of the Class and Subclass, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and Subclass and making injunctive or corresponding declaratory relief appropriate for the Class and Subclass as a whole.

COUNT I

**Violations of the Illinois Automatic Contract Renewal Act
(815 ILCS 601/1 *et seq.*)
(On behalf of Plaintiff and the Illinois Subclass)**

49. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

50. 815 ILCS 601/10 (a) provides that “[a]ny person, firm, partnership, association, or corporation that sells or offers to sell any products or services to a consumer pursuant to a contract, where such contract automatically renews unless the consumer cancels the contract, shall disclose the automatic renewal clause clearly and conspicuously in the contract, including the cancellation procedure.”

51. Defendant is a person, firm, partnership, association, or corporation that sells or offers to sell products or services to consumers, such as Plaintiffs and the Illinois Subclass, pursuant to a contract.

52. Defendant’s Subscribe & Save contracts automatically renew unless the consumers, such as Plaintiff and the Illinois Subclass, cancel the contracts.

53. Defendant failed to disclose the automatic renewal clause clearly and conspicuously in the contracts, including the cancellation procedure.

54. The contracts automatically renew continuously unless consumers, such as Plaintiff and the Class, cancel the contract.

55. Upon information and belief, Defendant has not established and implemented written procedures to comply with the Illinois Automatic Contract Renewal Act and enforce compliance with its procedures.

56. Upon information and belief, Defendant’s failure to comply with the Illinois Automatic Contract Renewal Act was not the result of error.

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57. Defendant did not provide a full refund or credit for all amounts billed to or paid by consumers, such as Plaintiff and the Class, from the date of the renewal until the date of the termination of the account, or the date of the subsequent notice of renewal.

58. Plaintiff and the members of the Class and Subclass have suffered reasonably foreseeable costs caused by the continuance of their contracts without their valid consent. These costs include, but are not limited to, the direct costs of charges for unwanted products and pecuniary injury in the form of time and expense to mitigate the effects of unauthorized shipments to their homes.

COUNT II

Violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 502/1 *et seq.*) (On behalf of Plaintiff and the Illinois Subclass)

59. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

60. The Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), prohibits deceptive acts and practices in the sale of goods to consumers.

61. Plaintiff and other members of the Illinois Subclass engaged in consumer transactions with Defendant in purchasing goods using Defendant’s Subscribe & Save program.

62. Defendant engaged in a deceptive act or practice by misrepresenting material facts to Plaintiff and the members of the Illinois Subclass with intent that they rely upon such misrepresentations. These material facts include, but are not limited to the following:

-
- a. That a purchase will take the form of an automatically renewing subscription;
 - b. The “most common” delivery intervals at which other consumers take delivery of an item delivery of an item;
-

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- c. That an automatically renewing subscription is a common and reasonable way to purchase an item; and
- d. That a subscription can be cancelled at any time.

63. Plaintiff and other members of the Illinois Subclass reasonably believed that they would not need to expend undue time and effort to cancel their subscriptions, that they could cancel their subscriptions at any time, and that Defendant's representations accurately conveyed the "most common" intervals at which other shoppers purchase Subscribe & Save items were accurate.

64. Instead, Plaintiff and the other members of the Subclass are not able to cancel their subscriptions at any time, Defendant's other customers do not "most common[ly]" subscribe to purchase items at the intervals that Defendant represents, and Defendant's Subscribe & Save subscriptions are unnecessarily difficult to cancel because of Defendant's deliberate efforts to complicate the cancellation process.

65. Defendant's misrepresentations to Plaintiff and the other members of the Subclass that a recurring subscription is the default method of buying an item, that such subscriptions are for a "most common" interval more frequent than is reasonable for such items, and that Subscribe & Save subscriptions can be easily cancelled, constitute a violation of ICFA.

66. Plaintiff and the other members of the Subclass have been harmed to the extent that they have been forced to spend money on items they do not want, to expend time and effort to store or discard unwanted items, or to attempt to return unwanted items to Defendant.

~~67. Under ICFA, Plaintiff and other members of the Subclass are entitled to recover~~
~~their actual or compensatory damages in an amount to be proven at trial, an award of reasonable~~
~~attorney's fees, injunctive relief prohibiting Defendant's unfair and deceptive conduct~~
~~prospectively, and any other penalties or awards that may be appropriate under applicable law.~~

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COUNT III
Common Law Fraud
(On behalf of Plaintiff and the Class and Subclass)

68. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

69. Through its affirmative misrepresentations, omissions, suppressions, and concealment of material facts. Defendant defrauded Plaintiff and the Class and Subclass members by leading them to believe that the Subscribe & Save program has material characteristics that it in fact does not: that the program can be cancelled at any time, that the Subscribe & Save delivery option is the default or most common method of purchasing certain items, that other shoppers most commonly purchase Subscribe & Save items at frequent intervals when in fact such intervals are not the “most common,” and that Subscribe & Save subscriptions can be cancelled without undue and unreasonable difficulty.

70. However, these representations were false, as detailed herein. Furthermore, Defendant knew such representations were false because it affirmatively implemented design choices adverse to its own representations about how its subscriptions could be cancelled and other material aspects of the Subscribe & Save subscriptions.

71. The misrepresentations and omissions made by Defendant were intended to induce, and did induce Plaintiff and the members of the Class to enroll in Defendant’s Subscribe & Save subscriptions. Plaintiff and the members of the Class and Subclass reasonably relied upon Defendant’s misrepresentations in making their purchasing decisions.

72. As a direct and proximate result of Defendant’s intentional misrepresentations and concealment of facts, and Plaintiff’s and the Class’s and Subclass’s reasonable reliance on

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Defendant's misrepresentations and concealments, Plaintiff and the other members of the Class and Subclass have been damaged in an amount to be determined at trial.

COUNT IV
Negligent Misrepresentation
(On behalf of Plaintiff and the Class and Subclass)

73. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

74. Defendant had a duty to communicate accurate information to Plaintiff and the Class and Subclass. Market research shows that many, if not most online shoppers use Amazon to gather information about products before they make a purchase, with 72% reporting that they "use amazon to find product ideas and information before making a purchase" and 51% saying that "even if they find something that seems right on another site they will usually look on Amazon to find alternative ideas, compare prices or gather more information before making a purchase."²¹ Defendant thus obtains and communicates information on which others may reasonably be expected to rely in the conduct of their economic affairs, and therefore has a duty to communicate accurately to its customers.

75. Defendant made false statements of material facts to Plaintiff and the members of the Class and Subclass when it represented to them that other customers purchase Subscribe & Save items far more often than they actually do.

76. Defendant negligently failed to ascertain the truth of statements conveyed to it by ~~sellers regarding how often Subscribe & Save users most commonly purchase products from~~ Defendant's website.

²¹ *Amazon: The Big e-Commerce Marketing Opportunity for Brands*, Kenshoo, Ltd.
https://skai.io/file?source=2017/09/Kenshoo_WhitePaper_210917-3-2.pdf (last visited Aug. 11, 2022).

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77. Defendant made the statements with the intent to induce Plaintiff and the Class and Subclass to purchase items more often than they otherwise would, and more often than they would reasonably need to.

78. Plaintiff and the Class and Subclass acted in reliance on the truth of Defendant's misrepresentations. Had they known the true frequency with which other customers purchase such products from Defendant, Plaintiff and the members of the Class and Subclass would not have ordered Subscribe & Save items with the frequency that they did

79. Plaintiff and the members of the Class and Subclass have suffered damage as a result of their reliance on Defendant. Plaintiff and the members of the Class and Subclass have been forced to take the time to package and return unwanted items to Defendant, make room to store items that were delivered without their knowing consent, or to wastefully discard unwanted items at their own expense.

COUNT V
Unjust Enrichment
(On behalf of Plaintiff and the Class and Subclass)

80. Plaintiff incorporates by reference the foregoing allegations as though fully set forth herein.

81. Plaintiff and the other members of the Class and Subclass conferred a benefit on Defendant by paying money to Defendant to purchase Subscribe & Save items.

82. Defendant unjustly and unlawfully retained a portion of this benefit by accepting and keeping money from Plaintiff and members of the Class and Subclass for their Subscribe & Save purchases without providing them with adequate means to cancel those subscriptions.

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83. Defendant has been unjustly enriched by the revenues it has retained from Plaintiff and the Class's and Subclass's Subscribe & Save subscriptions. Defendant appreciates or knows of such benefit.

84. Defendant's retention of this excess benefit violates fundamental principles of justice, equity, and good conscience because Defendant's failure to disclose material terms of the purchase agreement, in violation of common law, induced Plaintiff and the Class and Subclass to purchase Subscribe & Save subscriptions when they did not intend to, and caused them to be unable to cancel Subscribe & Save subscriptions deliveries once they had commenced. These omissions harmed Plaintiff and the Class and Subclass because they would not have purchased the subscriptions at all, or on the same terms, if the true facts were known.

85. It would be inequitable and unjust for Defendant to retain the benefit of monies wrongfully charged to customers.

86. Therefore, to the extent that Defendant has unlawfully retained any money collected or derived from unauthorized Subscribe & Save deliveries, Defendant has been enriched, and it would be unjust to allow Defendant to retain this enrichment.

87. Because Defendant will be unjustly enriched if it is allowed to retain such funds, Plaintiff and the other members of the Class and Subclass are entitled to an order requiring Defendant to disgorge any benefit it has unjustly retained, and requiring Defendant to pay restitution to Plaintiff and the other members of the Class and Subclass in the amount by which Defendant was unjustly enriched by each transaction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Class and Subclass, asks this Court to enter an Order:

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- a. Certifying the Class and Subclass as defined above, appointing Plaintiff as Class representative and the undersigned as Class counsel;
- b. For Defendant to immediately cease the wrongful conduct set forth above;
- c. Declaring Defendant's conduct violates the statutes referenced herein;
- d. For restitution of all unauthorized charges and other costs paid by Plaintiff and the Class and Subclass as a result of these wrongs in an amount to be determined at trial;
- e. For prejudgment interest at the maximum rate permitted by applicable law;
- f. For costs and disbursements assessed by Plaintiff in connection with this action, including reasonable attorneys' fees under applicable law; and
- g. Awarding such further and other relief as the Court deems just and equitable.

JURY DEMAND

Plaintiff requests trial by jury of all claims that can be so tried.

Dated: August 25, 2022

Respectfully submitted,

ALEXANDRIA NICHOLAS, individually
and on behalf of classes of similarly situated
individuals

By: /s/ Joseph Dunklin
One of Plaintiff's Attorneys

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David L. Gerbie
Joseph Dunklin
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