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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THOMAS DOROBIALA,
Plaintiff,
v.
AMAZON.COM, INC., a Delaware
corporation,
Defendant.

Case No. 2:22-cv-01600

CLASS ACTION COMPLAINT

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1 Plaintiff alleges the following based on personal knowledge as to his own acts and
2 experiences and, as to all other matters, based on the investigation of counsel:

3 **I. INTRODUCTION**

4 1. Amazon, the largest online retailer in the United States, is open to all shoppers, but
5 it offers benefits, including free shipping on Prime items, to its 163 million U.S. subscribers.¹
6 Globally, Amazon collects \$25 billion a year in Prime subscription fees with U.S. subscribers
7 accounting for about three-quarters of its subscription revenue.² Amazon values its Prime members
8 not only for the subscription fees it collects from them, currently \$139 a year, but also because
9 Prime members spend more than twice as much as other Amazon customers, averaging about
10 \$1,400 per year.³

11 2. Having so many Prime members also increases Amazon’s share of online retail
12 commerce. On average Prime members in the U.S. do 53% of their shopping online and make
13 most of their online purchases on Amazon.⁴ Among Prime members, 92% look forward to being
14 able to order all goods through one retailer and 93% are more likely to buy from Amazon Prime
15 than directly from a retailer’s online site.⁵

16 3. Amazon also values Prime members for the wealth of data they provide Amazon.⁶
17 As the Guardian reports, “whether it’s the shopping app, the Kindle e-reader, the Ring doorbell,
18 Echo smart speaker or the Prime streaming service,” the more you use them, “the more their
19 algorithms can infer what kind of person you are and what you are most likely to buy next.”⁷
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22 ¹ David Chang, *The average Amazon Prime member spends this much per year*, MOTLEY FOOL (July 22, 2022),
23 <https://www.fool.com/the-ascent/personal-finance/articles/the-average-amazon-prime-member-spends-this-much-per-year/>.

24 ² Brian Dean, *Amazon Prime User and Revenue Statistics (2022)*, BACKLINKO (Jan. 5, 2022),
<https://backlinko.com/amazon-prime-users>.

25 ³ Chang, *supra* note 1.

26 ⁴ Patrick Munden, *The Amazon Prime Effect - setting a new standard for customer loyalty*, WUNDERMAN
27 THOMPSON, <https://www.wundermanthompson.com/insight/the-amazon-prime-effect> (last accessed Nov. 8, 2022).

28 ⁵ *Id.*

⁶ Kate O’Flaherty, *The data game: what Amazon knows about you and how to stop it*, THE GUARDIAN (Feb. 27,
2022), <https://www.theguardian.com/technology/2022/feb/27/the-data-game-what-amazon-knows-about-you-and-how-to-stop-it>.

⁷ *Id.*

1 4. Because Prime members are so valuable to Amazon, it is loath to let them go. And
 2 it shows. Cancelling Prime “requires multiple steps of confirmation offers before one can
 3 ultimately pull the plug on the ongoing fee.”⁸ In effect, the process tests the Prime member’s will
 4 to quit Amazon.

5 5. The hurdles to cancellation are intentional. In March 2022, Business Insider
 6 reviewed internal Amazon documents admitting that for several years and continuing today,
 7 Amazon has engaged in willfully deceptive practices to keep its Prime members locked into their
 8 memberships.⁹ The documents refer to a secret project known as “Project Iliad,” which Amazon
 9 implemented to thwart Prime membership cancellations by adding multiple layers of questions
 10 and new offers before a Prime member could cancel their subscription.¹⁰ The project was a success.
 11 After launching Project Iliad, Amazon managed to reduce the number of Prime cancellations by
 12 14% at one point in 2017 as fewer members managed to reach the final cancellation page.¹¹

13 6. This layered and confusing cancellation process relies on “dark patterns,” *i.e.*,
 14 methods of deception derived from behavioral psychology that exploit cognitive biases to
 15 influence and manipulate consumer choices. “Dark patterns are design features used to deceive,
 16 steer, or manipulate users into behavior that is profitable for an online service, but often harmful
 17 to users or contrary to their intent This could include using buttons with the same style but
 18 different language, a checkbox with double negative language, disguised ads, or time pressure
 19 designed to dupe users into clicking, subscribing, consenting, or buying.”¹²

20 7. As explained in a January 2021 report by the Norwegian Consumer Council,
 21 Amazon employs dark patterns in the wording, graphic design, and redundancies which Amazon
 22

23 ⁸ Gerald Lynch, *Amazon Prime memberships are now harder to cancel – and it’s no accident*, TECH RADAR
 24 (Mar. 17, 2022), <https://www.techradar.com/news/amazon-prime-memberships-are-now-harder-to-cancel-and-its-no-accident>.

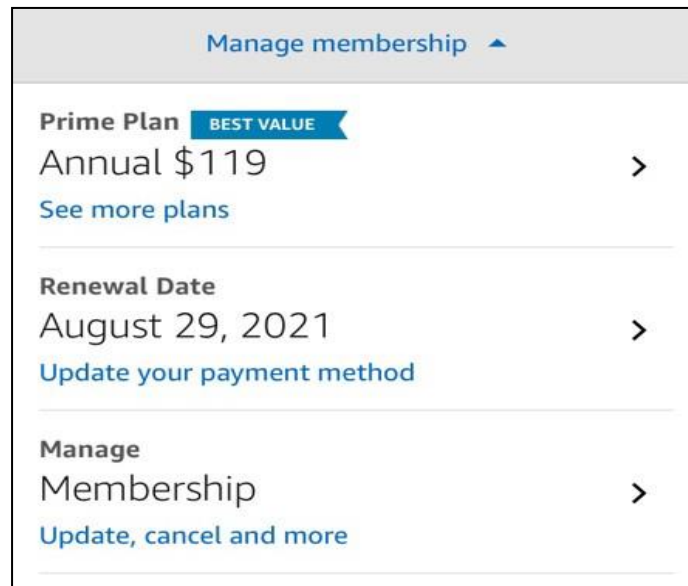
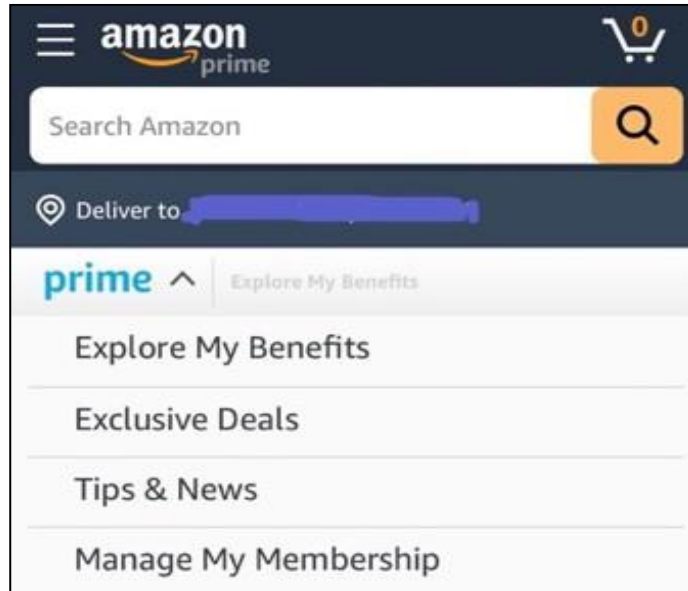
25 ⁹ Hannah Towey & Eugene Kim, *Amazon used a sneaky tactic to make it harder to quit Prime and
 26 cancellations dropped 14%, according to leaked data*, BUSINESS INSIDER (Mar. 16, 2022),
 27 <https://www.businessinsider.com/amazon-project-iliad-made-cancel-prime-membership-harder-leaked-data-2022-3>.

28 ¹⁰ *Id.*

¹¹ *Id.*

¹² Rohit Chopra, *Statement of Commissioner Rohit Chopra Regarding Dark Patterns in the Matter of Age of Learning, Inc.*, FTC File No. 1723186 (Sept. 2, 2020), https://www.ftc.gov/system/files/documents/public_statements/1579927/172_3086_abcmouse_-_rchopra_statement.pdf.

1 employs to make its cancellation process needlessly difficult, time-consuming, and frustrating to
 2 users.¹³ To begin with, whereas signing up with Amazon is simple and intuitive, cancellation
 3 involves navigating through three pages or “clicks,” just to start the process. Users who want to
 4 unsubscribe first need to log in to their Amazon account, navigate to the Amazon account menu,
 5 and find the “Prime membership” option:¹⁴



26 ¹³ Forbrukerrådet, *You Can Log Out, But You Can Never Leave. How Amazon manipulates consumers to keep*
 27 *them subscribed to Amazon Prime* (Jan. 14, 2021), [https://storage.forbrukerradet.no/media/wp-](https://storage.forbrukerradet.no/media/wp-content/uploads/2021/01/2021-01-14-you-can-log-out-but-you-can-never-leave-final.pdf)
 28 [content/uploads/2021/01/2021-01-14-you-can-log-out-but-you-can-never-leave-final.pdf](https://storage.forbrukerradet.no/media/wp-content/uploads/2021/01/2021-01-14-you-can-log-out-but-you-can-never-leave-final.pdf).

¹⁴ Complaint filed against Amazon by the Electronic Privacy Information Center (EPIC) with the D.C. Attorney
 General, at Figures E-G (Feb. 23, 2021), available at [https://epic.org/privacy/dccppa/amazon/EPIC-Complaint-In-](https://epic.org/privacy/dccppa/amazon/EPIC-Complaint-In-Re-Amazon.pdf)
 Re-Amazon.pdf (hereafter “EPIC Complaint”).

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8. Notably, the third page, which the user gets to by clicking the “Manage membership” button, is confusingly labeled “Membership Sharing” and prompts the user in the first instance to “Share your benefits,” whereas the “End Membership” button is at the bottom of the page after the prompt “Remind me before renewing.” This pattern of multiple redundant layers and needless sidetracks, which Amazon uses throughout the cancellation process, is a dark pattern known as a “roach motel,” where it is easy to get in, but almost impossible to escape.¹⁵ Whereas signing up with Amazon requires only a few clicks, that is not the case for cancellation.¹⁶

9. The “End Membership” button is also accompanied by a warning that “[b]y ending your membership you will lose access to your Prime benefits.” This vague warning is an example of a dark pattern known as confirm-shaming, which Amazon’s cancellation process also frequently relies on.¹⁷ This dark pattern exploits a cognitive bias of loss aversion, where the disadvantages of leaving a service appear more prominent than the advantages, so that individuals have a strong

¹⁵ EPIC Complaint ¶ 17 n.27 (quotation omitted).

¹⁶ *Id.* ¶ 9.

¹⁷ Forbrukerrådet, *supra* note 13, at 19.

1 tendency to remain at the status quo (*i.e.*, subscribed to the service).¹⁸ Amazon exploits the user’s
 2 fear of missing out on benefits to undermine the user’s resolve to cancel the Prime membership.¹⁹

3 10. After clicking on the “End Membership” button, canceling a Prime subscription
 4 further requires multiple clicks, decisions, and confirmations. Prime members are required to
 5 navigate as many as six additional webpages, and along the way Amazon provides confusing or
 6 manipulative messages.²⁰ Business Insider reported that when its reporter clicked on the “End
 7 Membership” button, the first prompt said “don’t give up on movie night” and notified her of the
 8 number of days left until the next billing cycle.²¹ The complaint filed by the Electronic Privacy
 9 Information Center (EPIC) with the Attorney General of the District of Columbia reported similar
 10 prompts:²²



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25 ¹⁸ *Id.* at 6.

26 ¹⁹ *Id.* at 19.

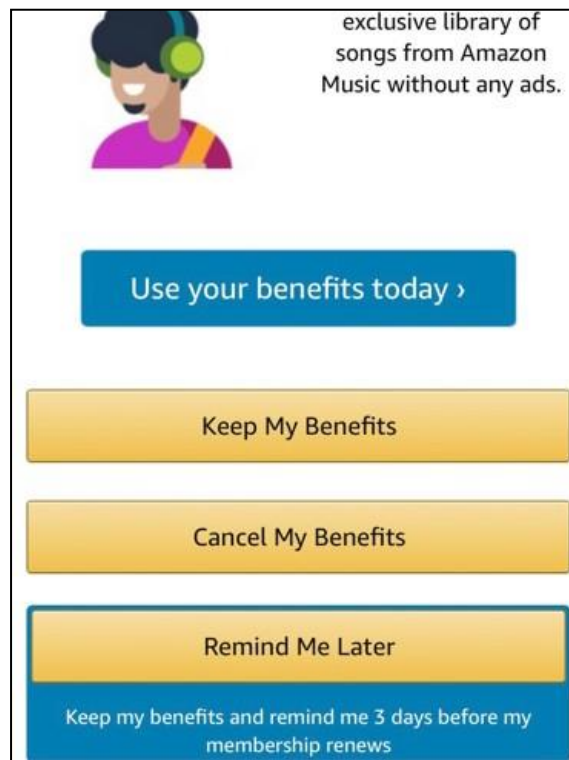
27 ²⁰ Emma Woollacott, *Amazon Prime Too Hard To Cancel, Consumer Watchdog Complains*, FORBES (Jan. 14, 2021), <https://www.forbes.com/sites/emmawoollacott/2021/01/14/amazon-prime-too-hard-to-cancel-consumer-watchdog-complains/>.

28 ²¹ Towey & Kim, *supra* note 9.

²² EPIC Complaint, figure H.

1 11. Amazon continues with further confirm-shaming and visual interferences to divert
 2 the Prime member from giving up his or her subscription.²³ For example, clicking on any of the
 3 warnings of lost benefits takes the user to a different Amazon page and stops the cancellation
 4 process.²⁴

5 12. If Prime members persist, after scrolling past the list of benefits that will be lost,
 6 they will be faced with multiple choices on the next page, along with further graphics and
 7 description of Prime membership benefits.²⁵



21 13. The first button, which is colored bright blue, states “Use your benefits today.”
 22 This is followed by three yellow buttons. The first yellow button, “Keep My Benefits,” cancels the
 23 process, meaning that the user stays subscribed to Amazon Prime. The second yellow button,
 24 “Cancel My benefits,” continues the process to unsubscribe. Here, Amazon creates uncertainty by
 25 changing the names of the buttons. On a previous page, the cancellation button was neutrally titled

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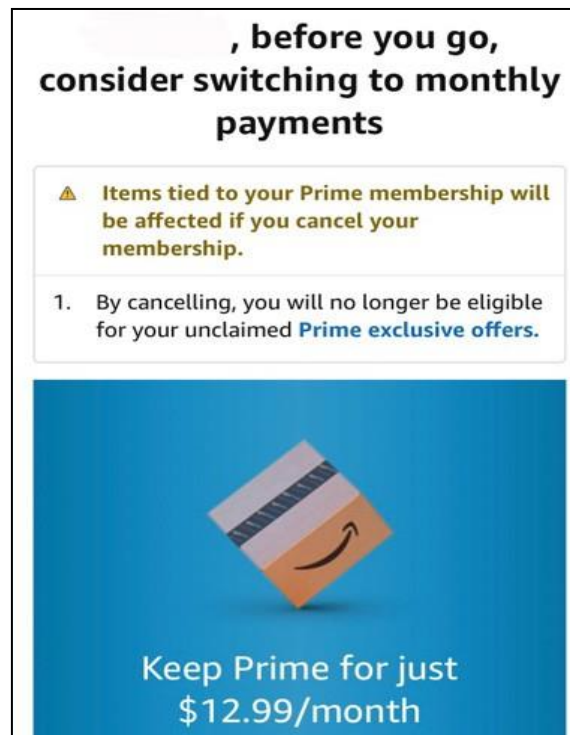
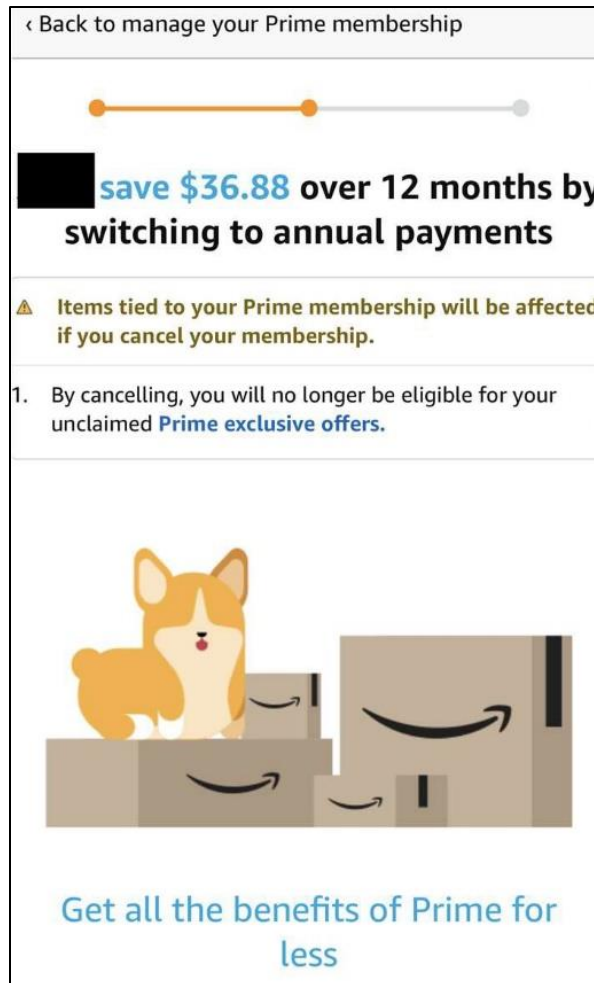
27 ²³Forbrukerrådet, *supra* note 13, at 21.

28 ²⁴ *Id.* at 19.

²⁵ EPIC Complaint, figure I.

1 “End Membership,” but on this page the user must select “Cancel My Benefits” to proceed to
 2 cancellation. Changing the wording to “Cancel My Benefits” frames the option negatively and
 3 uses confirm-shaming to make the user feel like they will lose out if they continue the process to
 4 cancel the subscription.²⁶ The third yellow button, “Remind Me Later,” is highlighted as a default
 5 option, which further exploits the user’s bias towards the status quo: it does not require any action
 6 by the user and offers to provide a reminder three days before the membership renews.²⁷

7 14. After clicking the “Cancel My Benefits” button, the user is taken to a new page,
 8 where he or she is told how much money could be saved by switching to an annual membership
 9 (if currently a monthly subscriber) or is prompted to switch to a monthly subscription (if currently
 10 an annual subscriber):²⁸



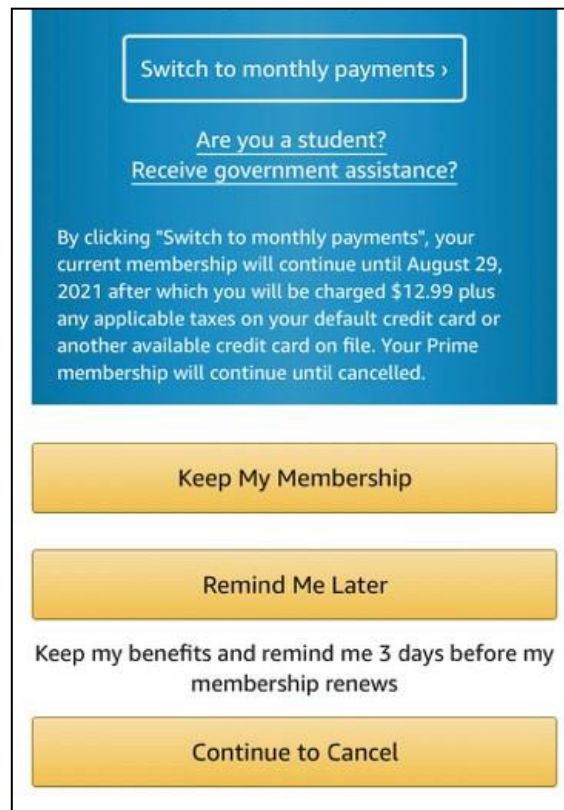
27 ²⁶ Forbrukerrådet, *supra* note 13, at 20.

28 ²⁷ *Id.* at 6.

²⁸ Forbrukerrådet, *supra* note 13, at 21; EPIC Complaint, figure J.

1 15. These pages include a yellow triangle with the accompanying warning that “Items
2 tied to your Prime membership will be affected if you cancel your membership.” It is not
3 immediately clear what benefits or items will be affected, and in what way, which is likely to
4 cause unease at the prospect of losing access to paid services (for example, purchased e-books or
5 movies). This warning is followed by another alert that “[b]y cancelling, you will no longer be
6 eligible for your unclaimed Prime exclusive offers,” along with more graphics, which the user
7 must scroll past to proceed to cancellation.

8 16. The next page reiterates the prompt to switch subscription types:²⁹

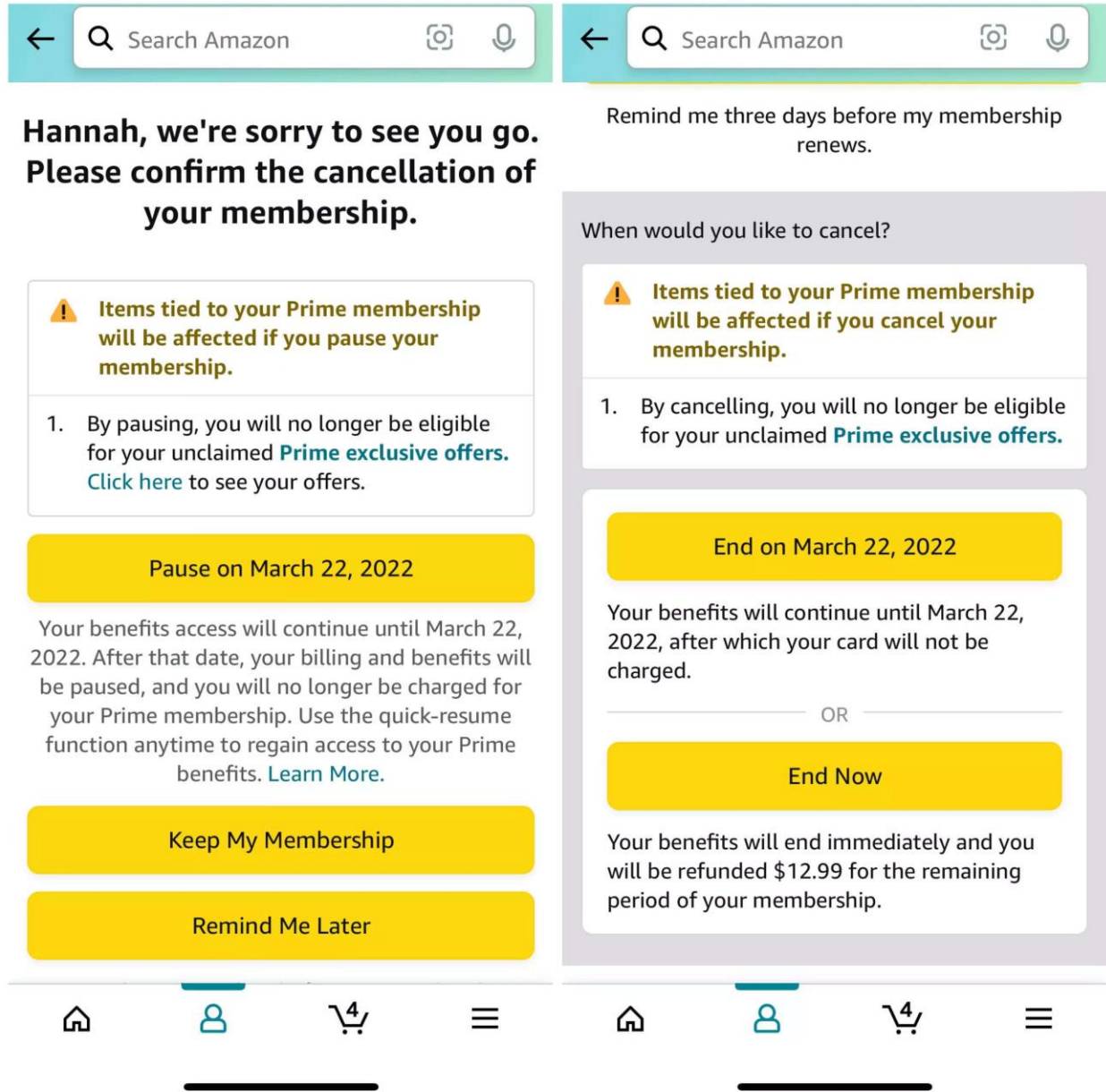


9 17. Like a previous page, it again offers three buttons to choose from, but this page
10 varies the language and presents the options in a slightly different order. The first two options,
11 “Keep My Membership” (no longer referring to the subscription as “Benefits”) and “Remind Me
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²⁹ EPIC complaint, figure K.

1 Later” divert the user from the cancellation process. Clicking on “Continue to Cancel,” the third
 2 button (on a previous page it was the second option) allows the user to continue the cancellation:

3 18. The last prompt asks users to confirm the cancellation of their membership:³⁰



23 19. Amazon again combines the vague warnings of lost benefits with the option of
 24 retaining the subscription or postponing the decision to a later date. The first three yellow buttons
 25 on the page offer to pause or keep the membership, or be reminded later, and further down the
 26 page are two final yellow buttons listing different options of when to cancel the membership.
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28 ³⁰ Towey & Kim, *supra* note 9.

1 Clicking on any of the warnings or the alternative means of managing the user’s membership (like
 2 pausing the membership) takes the user to a different Amazon page and stops the cancellation
 3 process.³¹

4 20. At this point in the procedure, the user has already confirmed multiple times the
 5 desire to cancel his or her Prime subscription. But unless the user clicks the “End Now” button on
 6 this final page, the user remains subscribed with Amazon Prime.

7 21. The consumer group, EPIC, describes Amazon’s convoluted cancellation process
 8 as a misdirection designed to foster uncertainty about the choice to cancel Amazon Prime.³² EPIC
 9 submitted a joint letter with other consumer groups to request that the FTC investigate Amazon’s
 10 employment of dark patterns in the Amazon Prime subscription cancellation process, which the
 11 agency acted on.³³ As part of its investigation, the FTC subpoenaed 20 current and former Amazon
 12 employees and executives to testify, including Amazon founder Jeff Bezos and current Amazon
 13 CEO Andy Jassy.³⁴ As part of its probe, the FTC asked Amazon to identify its executives who use
 14 disappearing messaging apps to talk about things like Prime program enrollment and cancellation
 15 processes and to provide the agency a log of those messages.³⁵

16 22. At the same time as the FTC initiated proceedings in the United States, the EU
 17 Commission also launched a probe into Amazon’s conduct.³⁶ As part of its cooperation with
 18 European authorities, Amazon began modifying its Prime web interface last year, labelling the
 19 cancel button more clearly and shortening the explanatory text.³⁷ This past July, to comply fully
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21 ³¹ Forbrukerrådet, *supra* note 13, at 19.

22 ³² EPIC complaint ¶14.

23 ³³ EPIC, Press Release, *D.C. Attorney General Files Antitrust Suit Against Amazon* (May 25, 2021), available at
<https://epic.org/d-c-attorney-general-files-antitrust-suit-against-amazon/>

24 ³⁴ Marcy Gordon, *Amazon: FTC probe hounding Bezos, execs; subpoenas too broad*, AP WIRE, (Aug. 17, 2022)
<https://apnews.com/article/technology-amazoncom-inc-subpoenas-federal-trade-commission-5a2ab123f8b395b4bb19949c7a70ee90>; Eugene Kim & Katie Canales, *If Jeff Bezos or Amazon executives like CEO Andy Jassy used vanishing messages to discuss Prime, the FTC wants them handed over as it investigates the company’s sign-up tactics*, YAHOO! (Aug. 16, 2022), <https://www.yahoo.com/news/jeff-bezos-amazon-executives-ceo-203730883.html>.

26 ³⁵ Kim & Canales, *supra* note 37.

27 ³⁶ European Commission, Press Release, *Consumer protection: Amazon Prime changes its cancellation practices to comply with EU consumer rules* (July 1, 2022), https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4186.

28 ³⁷ *Id.*

1 with the agency, Amazon also eliminated distracting warnings that deterred consumers from
2 cancelling, so that European consumers can now cancel their Prime subscription within two
3 clicks, using a prominent and clear “cancel button.”³⁸ However, these changes apply only to
4 Prime members in Amazon’s European online marketplaces. Amazon’s dark patterns continue
5 unabated in the U.S.³⁹

6 II. JURISDICTION

7 23. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
8 of 2005, 28 U.S.C. § 1332(d) because at least one Class member is of diverse citizenship from
9 Amazon, there are more than 100 Class members nationwide, and the aggregated amount in
10 controversy exceeds \$5,000,000, exclusive of interest and costs.

11 24. Plaintiff is a resident of California, who is an Amazon Prime member. Amazon’s
12 conduct as discussed further herein harmed and injured Plaintiff financially.

13 25. This Court has personal jurisdiction over Amazon because Amazon is
14 headquartered in Washington State, does business in Washington, directly or through agents, and
15 has registered with the Washington Secretary of State, such that it has sufficient minimum contacts
16 with Washington.

17 III. VENUE

18 26. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because Amazon’s principal
19 place of business is in this judicial district, and a substantial part of the events giving rise to the
20 claims occurred in this judicial district.

21 27. There is also a venue provision, specifying this judicial district under the terms of
22 use for all Amazon customers.⁴⁰

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26 ³⁸ *Id.*

27 ³⁹ Natasha Lomas, *Amazon agrees to drop Prime cancellation ‘dark patterns’ in Europe*, TECHCRUNCH (July 1,
2022), <https://techcrunch.com/2022/07/01/amazon-ends-prime-cancellation-dark-patterns-europe/>.

28 ⁴⁰ Conditions of Use - Amazon Customer Service,
<https://www.amazon.com/gp/help/customer/display.html%3FnodeId%3DGLSBYFE9MGKKQXXM>

IV. PARTIES

A. Plaintiff

28. Thomas Dorobiala is a resident of Murrieta, California. He has been an Amazon Prime Member since March 28, 2020, when he started with a free trial. At the end of the free trial Amazon automatically charged him a subscription fee. Around February 2022, he decided to cancel his membership, when he heard that Amazon was raising the subscription fee for Amazon Prime. But when he attempted to cancel online, he found that the cancellation process required multiple steps (4-6 different things) and each time the information kept changing and “things kept popping up.” As a result, after following several steps, he became confused by the process and couldn’t cancel. He’s still an Amazon Prime member today and continues to pay subscription fees to Amazon.

B. Defendant Amazon

29. Amazon is the largest retailer in the United States and operates the largest electronic commerce (“e-commerce”) marketplace in the world. The number of Amazon’s Prime subscription members rivals Netflix subscribers.⁴¹ Amazon, a Delaware corporation, is registered with the Washington Secretary of State and has its principal headquarters in Seattle, Washington.

V. STATEMENT OF FACTS

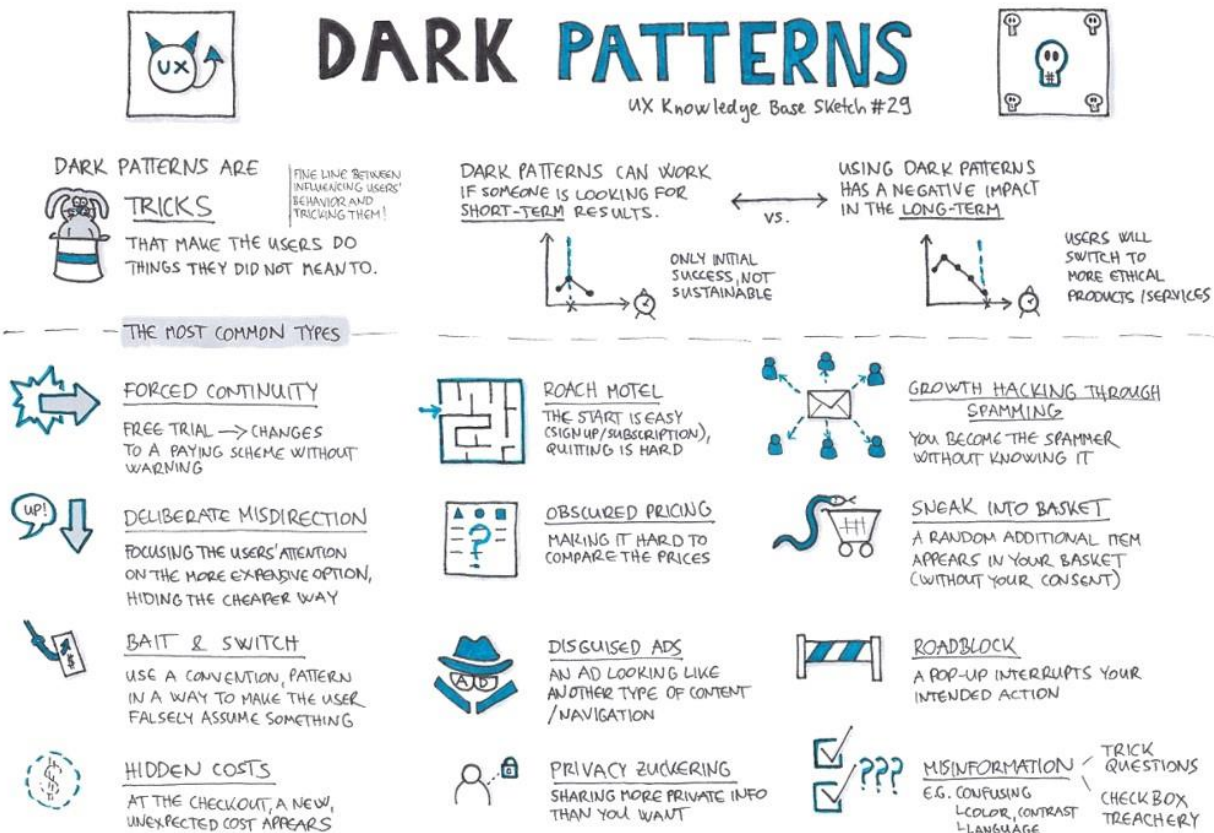
30. The term “dark patterns” as employed in this complaint is not a science fiction reference but a term of art from the field of user experience (“UX”). The International Organization for Standardization (ISO) defines “user experience” as a “person’s perceptions and responses that result from the use or anticipated use of a product, system or service.”⁴² Dark patterns in UX are “carefully designed misleading interfaces by UX design experts that trick the users into choosing

⁴¹ Parkev Tatevosian, *Netflix Versus Amazon Prime: The Race to 200 Million Subscribers*, THE MOTLEY FOOL (Oct. 17, 2020), <https://www.nasdaq.com/articles/netflix-versus-amazon-prime%3A-the-race-to-200-million-subscribers-2020-10-17>.

⁴² UIUX Trend, *User Experience (UX): Process and Methodology*, <https://uiuxtrend.com/user-experience-ux-process/> (last accessed Nov. 8, 2022).

paths that they didn't probably want to take, thus fulfilling the business objectives, completely ignoring the requirements and ethics of users."⁴³

31. The term was first coined by cognitive scientist Harry Brignull, who borrowed from existing UX terminology. In UX, designers refer to common, re-usable solutions to a problem as a "design pattern," and conversely to common mistakes to solutions as "anti-patterns."⁴⁴ The term "dark patterns" was intended to "communicate the unscrupulous nature" of the design "and also the fact that it can be shadowy and hard to pin down."⁴⁵ The following provide some examples of dark patterns:⁴⁶



⁴³ Joey Ricard, *UX Dark Patterns: The Dark Side Of The UX Design*, KLIZO SOLS. PVT. LTD. (Nov. 9, 2020), <https://klizos.com/ux-dark-patterns-the-dark-side-of-the-ux-design/>.

⁴⁴ Harry Brignull, *Bringing Dark Patterns to Light*, MEDIUM (June 6, 2021), <https://harrybr.medium.com/bringing-dark-patterns-to-light-d86f24224ebf>

⁴⁵ *Id.*

⁴⁶ Sarbasish Basu, *What is a dark pattern? How it benefits businesses - Some examples*, H2S MEDIA (Dec. 19, 2019), <https://www.how2shout.com/technology/what-is-a-dark-pattern-how-it-benefit-businesses-with-some-examples.html>.

32. Dark patterns themselves can be traced to the use of applied psychology and A/B testing in UX.⁴⁷ In the 1970s, behavioral science sought to understand irrational decisions and behaviors and discovered that cognitive biases guide all our thinking. The following provides examples of cognitive biases, including some that Amazon employs in its cancellation process:⁴⁸

PART 2 COGNITIVE BIASES
 DON'T FORGET: THESE ARE TENDENCIES! YOU CAN ALWAYS FIND EXCEPTIONS.
 UX Knowledge Base Sketch #36

DUNNING-KRUGER EFFECT
 INCOMPETENT PEOPLE OVERESTIMATE THEIR PERFORMANCE. HIGHLY COMPETENT UNDERESTIMATE IN COMPARISON WITH THEIR PEERS: "IF I PERFORMED WELL, THEY MUST HAVE PERFORMED WELL." (FALSE-CONSENSUS EFFECT)
 UX SOLUTION: GOOD ONBOARDING! E.G.: HEARTSTONE GAME TUTORIAL

INFORMATION BIAS
 THE TENDENCY TO SEARCH FOR ADDITIONAL INFORMATION EVEN IF THAT INFORMATION CAN'T AFFECT THE DECISION-MAKING PROCESS. (WE OVER-EVALUATE THE PERCEIVED USEFULNESS)
 DESIGN IMPLICATION: CREATE MEANINGFUL PRODUCT DESCRIPTIONS

LOSS AVERSION
 PEOPLE FEEL WORSE DUE TO LOSING SOMETHING THAN FEEL GOOD ABOUT EQUIVALENT GAINS.
 HOW TO DESIGN WITH THIS IN MIND? E.G. IF YOU WANT USERS TO SWITCH TO YOUR PRODUCT, PROVIDE A FREE TRIAL. (OR LET THEM TRY IT OUT WITHOUT CREATING AN ACCOUNT)

CONFIRMATION BIAS
 IN THIS CASE EVIDENCE IS COLLECTED/SELECTED/INTERPRETED IN A WAY THAT SUPPORTS A PREEXISTING HYPOTHESIS.
 WHAT CAN YOU DO AS A UX RESEARCHER?
 ↳ SURVEY, USER INTERVIEW: DON'T ASK: "LEADING QUESTIONS!" "ABOUT THE FUTURE, E.G. WOULD YOU BUY IT?"
 ↳ TRY TO DISPROVE YOUR HYPOTHESIS
 ↳ ASK SOMEONE IN YOUR TEAM TO QUESTION YOUR ASSUMPTIONS!

DISTINCTION BIAS
 A TENDENCY TO CONSIDER OPTIONS MORE DISTINCTIVE WHEN EVALUATING THEM SIMULTANEOUSLY (THAN ASSESSING THEM SEPARATELY). WE OVER-EXAMINE & OVERVALUE THE DIFFERENCES. (EVEN IF THESE ARE INCONSEQUENTIAL).
 AS A UX DESIGNER, THINK ABOUT THE USERS' CONTEXT: WHAT IS BETTER AT A CERTAIN POINT, SINGLE OR EVALUATION? • JOINT

NEGATIVITY BIAS
 NEGATIVE EXPERIENCES HAVE A BIGGER IMPACT ON OUR COGNITION THAN DO POSITIVE OR NEUTRAL ONES.
 DESIGN ADVICE:
 ↳ CONDUCT USABILITY TESTS!
 ↳ PAY ATTENTION TO UX WRITING—ESPECIALLY: ERROR MESSAGES
 ↳ HELP USERS RECOVER FROM ERRORS, THEN PROVIDE SOMETHING DELIGHTFUL!

33. Whereas the early behavioral research focused on understanding rather than intervention, later researchers, like Cass Sunstein and Richard Thaler, authors of the book *Nudge* made a policy argument that institutions should engineer “choice architectures” in a way that uses behavioral science for the benefit of those whom they serve.⁴⁹

34. Another step in the development is the use of A/B testing in UX. A/B testing is a quantitative research method that presents an audience with two variations of a design and then

⁴⁷ *Id.*

⁴⁸ Krisztina Szerovay, *Cognitive Bias—Part 2*, UX KNOWLEDGE BASE (Dec. 19, 2017), available at <https://uxknowledgebase.com/cognitive-bias-part-2-fab5b7717179>.

⁴⁹ Arvind Narayanan et al., *Dark Patterns: Past, Present, and Future. The evolution of tricky user interfaces*, 18 ACM QUEUE 67-91 (2002), available at <https://queue.acm.org/detail.cfm?id=3400901>.

1 measures which actions they take (or do not take) in response to each variant.⁵⁰ UX designers use
2 this method to determine which design or content performs best with the intended user base.⁵¹

3 35. Unscrupulous UX designers subverted the intent of the researchers who discovered
4 cognitive biases by using these principles in ways that undermined consumers' autonomy and
5 informed choice, and they used A/B testing to turn behavioral insights into strikingly effective user
6 interfaces that deceived consumers in ways that were more profitable to the company applying
7 them.⁵² Dark patterns increase a company's ability to extract revenue from its users by nudging or
8 tricking consumers to spending more than they otherwise would, yield more personal information,
9 or see more ads.⁵³

10 36. A combination of dark patterns has a compounding effect, which will increase the
11 impact of each dark pattern and exacerbate the harm they present to the consumer.⁵⁴ Amazon uses
12 a combination of dark patterns to decrease the likelihood that its Prime subscribers will make it all
13 the way to the final confirmation of cancellation. For example, Amazon employs misdirection,
14 which is when "the design purposefully focuses your attention on one thing in order to distract
15 your attention from another."⁵⁵ Brightly colored buttons offering alternatives to cancelling and
16 whimsical graphics to depict the value remaining with Prime are not intended to streamline the
17 process of cancellation, but to confuse and distract the Prime member and keep him or her from
18 quitting the subscription.

19 37. Amazon also uses confirm-shaming, where the "option to decline is worded in such
20 a way as to shame the user into compliance."⁵⁶ For example, vague warnings about the loss of
21 benefits associated with cancelling Prime membership relies on the cognitive bias of loss aversion,
22

23
24 ⁵⁰ UXPin, *A/B Testing in UX Design: When and Why It's Worth It*, <https://www.uxpin.com/studio/blog/ab-testing-in-ux-design-when-and-why/> (last accessed Nov. 8, 2022).

25 ⁵¹ *Id.*

26 ⁵² Narayanan *et al.*, *supra* note 52.

27 ⁵³ *Id.*

28 ⁵⁴ FTC, Staff Report, *Bringing Dark Patterns to Light* at 2 (Sept. 2022), available at https://www.ftc.gov/system/files/ftc_gov/pdf/P214800%20Dark%20Patterns%20Report%209.14.2022%20-%20FINAL.pdf at 2.

⁵⁵ *Types of deceptive design*, <https://www.deceptive.design/types> (last accessed Nov. 8, 2022).

⁵⁶ *Id.*

1 where a person’s aversion to giving something up is greater than the utility associated with
2 acquiring it.⁵⁷

3 38. More generally, Prime membership fits the roach motel dark pattern, where “you
4 get into a situation very easily, but then you find it is hard to get out of it (e.g., a premium
5 subscription).”⁵⁸ Signing up for Prime is very easy, whereas cancellation is very burdensome.

6 39. Amazon knows how to simplify the process. It has done so in Europe, but it does
7 not want to give up the advantages of its captive Prime members, so despite the ongoing
8 investigation by the FTC into Amazon’s practices, Amazon continues to this day to employ dark
9 patterns to nudge or trick its Prime members into remaining with Prime.

10 40. Plaintiff and class members have been harmed by Amazon’s deception. Through
11 willfully deceptive practices Amazon tricks Prime members into paying more subscription fees
12 than they intended.

13 **VI. CLASS ACTION ALLEGATIONS**

14 41. Plaintiff brings this action on behalf of himself, and as a class action under the
15 Federal Rules of Civil Procedure (“Rules”), specifically Rules 23(a) and (b)(3), seeking damages
16 pursuant to federal law on behalf of the members of the following Class:

17 All persons who enrolled in Amazon Prime in the United States and
18 attempted on or after November 9, 2018, to cancel their Prime
19 membership online by clicking at least two pages in the cancellation
20 process and who incurred a membership fee after failing to cancel
21 their membership for that period, for which Amazon did not
22 reimburse them.

21 Excluded from the Class are Amazon and its officers, directors,
22 management, employees, subsidiaries, or affiliates. Also excluded
23 from the Class are the district judge or magistrate judge to whom
24 this case is assigned, as well as those judges’ immediate family
25 members, judicial officers and their personnel, and all governmental
26 entities.

24 42. The identities of all Class members are readily identifiable from information and
25 records maintained by Amazon.

27 _____
⁵⁷ Forbrukerrådet, *supra* note 13, at 19.

28 ⁵⁸ *Types of deceptive design*, *supra* note 55.

1 43. **Numerosity:** Members of the Class are so numerous that joinder is impracticable.
2 Plaintiff believes that there are hundreds of thousands, if not millions, of Class members;
3 ~~geographically dispersed throughout each of the asserted state classes~~, such that joinder of all class
4 members is impracticable.

5 44. **Typicality:** Plaintiff’s claims are typical of the claims of the other Class members.
6 The factual and legal bases of Amazon’s liability are the same and resulted in injury to Plaintiff
7 and all other members of the proposed Class.

8 45. **Adequate representation:** Plaintiff will represent and protect the interests of the
9 proposed Class both fairly and adequately. ~~They have~~ Plaintiff has retained counsel competent and
10 experienced in complex class-action litigation. Plaintiff has no interests that are antagonistic to
11 those of the proposed Class, and his interests do not conflict with the interests of the proposed
12 Class members he seeks to represent.

13 46. **Commonality:** Questions of law and fact common to the members of the Class
14 predominate over questions that may affect only individual Class members because Amazon has
15 acted on grounds generally applicable to the Class and because Class members share a common
16 injury. Thus, determining damages with respect to the Class as a whole is appropriate. The
17 common applicability of the relevant facts to claims of Plaintiff and the proposed Class are inherent
18 in Amazon’s wrongful conduct because the financial injuries incurred by Plaintiff and each
19 member of the proposed Class arose from the same unfair and deceptive conduct alleged herein.

20 47. There are common questions of law and fact specific to the Class that predominate
21 over any questions affecting individual members, including:

- 22 a. Whether Amazon’s cancellation process is likely to mislead a reasonable consumer;
- 23 b. Whether Amazon intentionally designed its cancellation policy to deceive
24 consumers by creating unreasonable obstacles to completing the cancellation
25 process;
- 26 c. Whether Plaintiff and Class members have been damaged by Amazon’s conduct;
27 and
- 28 d. Whether Plaintiff and the other Class members are entitled to damages and other
monetary relief and, if so, in what amount.

1 53. Amazon engaged in unfair or deceptive acts or practices through the conduct
2 described herein by employing dark patterns to confuse or frustrate Plaintiff and members of the
3 Class to nudge or trick them into continuing their Prime subscriptions despite their intention of
4 quitting the service. Amazon's online Prime cancellation subscription process requires a user to
5 navigate a complicated and manipulative interface that employs skewed wording, confusing
6 choices, and repeated nudging. The tactics used in this process are deceptive because they tend to
7 mislead users who wish to terminate their Prime subscriptions by steering consumers away from
8 their intended outcome.

9 54. While attempting to cancel an Amazon Prime subscription online, a user cannot
10 reasonably avoid Amazon's use of dark patterns and manipulative interface design. Amazon's acts
11 and practices had the capacity to deceive a substantial portion of the public and did in fact deceive
12 reasonable consumers, including Plaintiff, by confusing or manipulating them, directing them
13 away from the cancellation process, or frustrating their resolve to quit the subscription.

14 55. Amazon intentionally and knowingly misled Plaintiff and Class members. Amazon
15 created and implemented its Project Iliad precisely to deceive members of the public, and
16 Amazon's own internal documents confirm that it succeeded, *e.g.*, by reducing cancellations by as
17 much as 17% at one point in 2017.

18 56. Plaintiff and Class members have suffered an injury in fact, including the
19 payment of subscription fees.

20 57. Amazon employed dark patterns to hinder Plaintiff and Class members from
21 ending their Prime subscriptions. But for Amazon's unfair and deceptive practices, Plaintiff and
22 Class members would have cancelled their Prime memberships (or would have cancelled earlier)
23 and would not have incurred additional subscription fees.

24 58. Amazon continues to employ its dark patterns in the cancellation process. Plaintiff
25 seeks to enjoin further unfair and fraudulent acts or practices by Amazon, recover damages and
26 obtain all other relief allowed under Wash. Rev. Code § 19.86.010.

27 **JURY TRIAL DEMANDED**

28 59. Plaintiff hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Amazon as follows:

- A. The Court determine that this action may be maintained as a class action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiff as a Class Representative and his counsel of record as Class Counsel, and direct that notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once certified;
- B. An order enjoining Amazon’s use of dark patterns in the Amazon Prime cancellation process and ordering Amazon to simplify its cancellation process as it has done in Europe;
- C. Actual damages in an amount to be determined at trial;
- D. Treble damages pursuant to Wash. Rev. Code § 19.86.090;
- E. An order requiring Amazon to pay both pre- and post-judgment interest on any amounts awarded; and
- F. Such other or further relief as may be appropriate.

DATED this 9th day of November, 2022. Respectfully submitted,

HAGENS BERMAN SOBOL SHAPIRO LLP

By: /s/ Steve W. Berman

Steve Berman (WSB # 12536)

By: /s/ Barbara Mahoney

Barbara Mahoney (WSB# 31845)

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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THOMAS DOROBIALA

(b) County of Residence of First Listed Plaintiff Riverside Cty. (Cal.) (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Hagens Berman Sobol Shapiro LLP 1301 Second Ave., Ste. 2000, Seattle, WA 98101 (206) 623-7292

DEFENDANTS

Amazon.com, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship options: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. § 1332(d)

Brief description of cause: Violation of the Washington Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000+ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/09/2022 SIGNATURE OF ATTORNEY OF RECORD s/ Steve W. Berman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

THOMAS DOROBIALA

Plaintiff(s)

v.

AMAZON.COM, INC.

Defendant(s)

Civil Action No. 2:22-cv-01600

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Amazon.com, Inc.
c/o Corporation Service Company
300 Deschutes Way SW, Suite 208 MC-CSC1
Tumwater, WA 98501

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1301 Second Avenue, Suite 2000
Seattle, WA 98101

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: