THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ESTATE OF TONNY STOREY, individually and on behalf of all persons similarly situated, Plaintiff, v. AMAZON.COM SERVICES, LLC, Defendant.	No. 2:23-CV-01529-KKE PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT Jury Trial Requested

Plaintiff Estate of Tonny Storey, by counsel, on behalf of itself and all others similarly situated, alleges against Defendant Amazon.com Services, LLC ("Amazon" or "Defendant"), as follows:

I. NATURE OF CASE

1.1. This proposed class action is brought by Plaintiff to remedy Amazon's deceptive and unfair conduct in charging consumers additional shipping fees in exchange for the apparent promise of delivery during time windows specified and offered by Amazon and then failing to refund or credit those fees when Amazon fails to deliver during the time windows offered to and selected by consumers.

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1.2. Plaintiff alleges that Amazon has engaged in deceptive and unfair conduct in violation of the Washington Consumer Protection Act (CPA), RCW 19.86.090, by misleading consumers into believing that when they pay an additional shipping fee for delivery during a time window offered by Amazon it is promising delivery during the selected time window, by failing to disclose that despite the offer and the additional fee Amazon is not in fact promising delivery during that time window, and by failing to refund or credit the additional shipping fees when it does not deliver consumers' purchases within the selected time window.

1.3. When Amazon charges consumers an extra fee for delivery and asks them to select a specific time window for delivery, the consumers can reasonably expect that they will receive delivery during the specified time window. When Amazon fails to deliver during that window and fails to refund the additional shipping fees it collected, its failure should be remedied with an award of damages, which can easily be determined based on Amazon's own detailed records of transactions and deliveries. Plaintiff brings this action to obtain such relief for itself and for members of the Proposed Class defined below.

II. JURISDICTION AND VENUE

2.1. This Court has subject matter jurisdiction over this action under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d).

2.2. Venue is proper in this district because Defendant resides and transacts business in this district and a substantial part of the acts or omissions giving rise to the claims occurred in this district.

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2.3. Venue is also proper in this Court based on Amazon's Conditions of Use,[1] which provide in part: "Any dispute or claim relating in any way to your use of any Amazon Service will be adjudicated in the state or Federal courts in King County, Washington, and you consent to exclusive jurisdiction and venue in these courts."

III. PARTIES

3.1. Tonny Storey was a citizen and resident of the State of Indiana and at all relevant times resided in Westfield, Indiana. Mr. Storey filed this lawsuit on September 15, 2023. Mr. Storey passed away unexpectedly on May 21, 2024, and an estate was opened on behalf of Mr. Storey in the Hamilton County, Indiana Superior Court on May 31, 2024. Mr. Storey's claims in this case survive and became the property of his estate upon his death, and the court-appointed Personal Representative of the estate has elected to proceed with the claims. Pursuant to Fed. R. Civ. P. 25(a)(1), the Estate of Tonny Storey has filed herewith a Suggestion of Death of Mr. Storey, and will promptly file a Motion for Substitution well within the ninety days provided under the Rule.

3.2. Amazon.com Services, LLC is a Delaware Limited Liability Company registered in the State of Washington with a principal office located at 410 Terry Avenue North in Seattle, Washington.

IV. FACTUAL ALLEGATIONS

A. The Scope of Amazon's Business.

4.1. Amazon is the largest e-commerce market in the United States. It has more than 197 million monthly active users, and about 70% of American adults are Amazon Prime

[1] *See*, https://www.amazon.com/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM (visited June 26, 2023) ("Conditions of Use").

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members. An estimated 31% of U.S. adults spend between $50 and $100 per month on Amazon.[2]

4.2. Amazon has built its business reputation and business model in large part on providing fast, timely delivery of goods purchased on its website. When consumers purchase goods from Amazon, they reasonably expect that the goods will be delivered within the time frames specified by Amazon during the order process.

4.3. On average, Amazon makes more than 1.6 million deliveries per day, which is more than half a billion deliveries per year.[3] Even if Amazon collected an additional shipping fee of $2.99 and failed to deliver during the time window offered to and selected by consumers on only 1% of its annual shipments, the company would have improperly retained nearly $15 million per year of shipping fees.

B. Amazon's Apparent Offer of Delivery during Specified Time Windows for Payment of an Additional Shipping Fee.

4.4. During the checkout process for products ordered on its website, Amazon regularly offers consumers the option of paying an additional shipping fee to obtain "fastest delivery" during a specified time window on a specified day.

4.5. Delivery within specified time windows is valuable to consumers for a variety of reasons. For example, consumers may need to ensure that purchased goods are received in time for their intended use, may want to have someone home to receive the package, or may want to reduce the risk of potential theft (i.e., porch piracy) from having a package sit unattended for too long.

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[2] https://www.zippia.com/advice/amazon-statistics/#:~:text=Amazon%20research%20summary.&text=The%20Amazon%20app%20has%20over,members%20(148.6%20million%20people) (visited June 26, 2023).

[3] https://landingcube.com/amazon-statistics/#:~:text=How%20Many%20Orders%20Does%20Amazon,and%2018.5%20orders%20per%20second (visited June 26, 2023).

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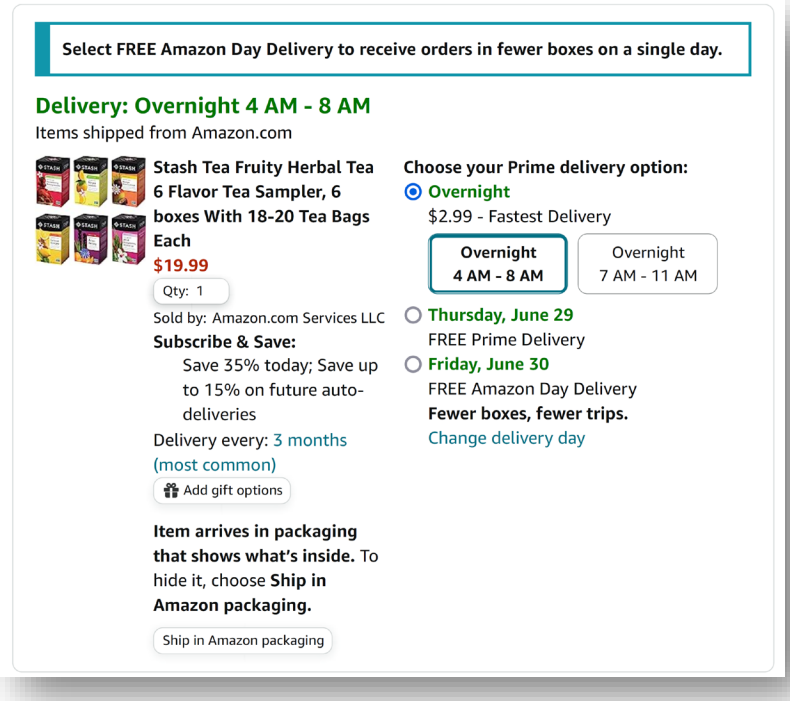
4.6. On March 27, 2023, Mr. Storey selected for purchase a product sold by Amazon identified as "Stash Tea Fruity Herbal Tea 6 Flavor Tea Sampler, 6 boxes With 18-20 Tea Bags Each" (the "Product"). The price of the Product was $19.99.

4.7. On the checkout page, Amazon asked Mr. Storey to "Choose your Prime Delivery Option" and offered him the option of paying an additional shipping fee for "fastest delivery" of the Product. Becuase Mr. Storey was an Amazon Prime member, the additional fee was $2.99. As part of this option, Amazon offered Mr. Storey the choice of two different delivery windows for his purchase, between 4:00 a.m. and 8:00 a.m. the following day and between 7 a.m. and 11:00 a.m. the following day. Mr. Tonney selected the 4:00 a.m. to 8:00 a.m. time window and paid the additional $2.99, for a total order price of $22.98.

4.8. An example of the checkout page presented to Mr. Storey for his purchase of the Product and selection of a delivery window follows:



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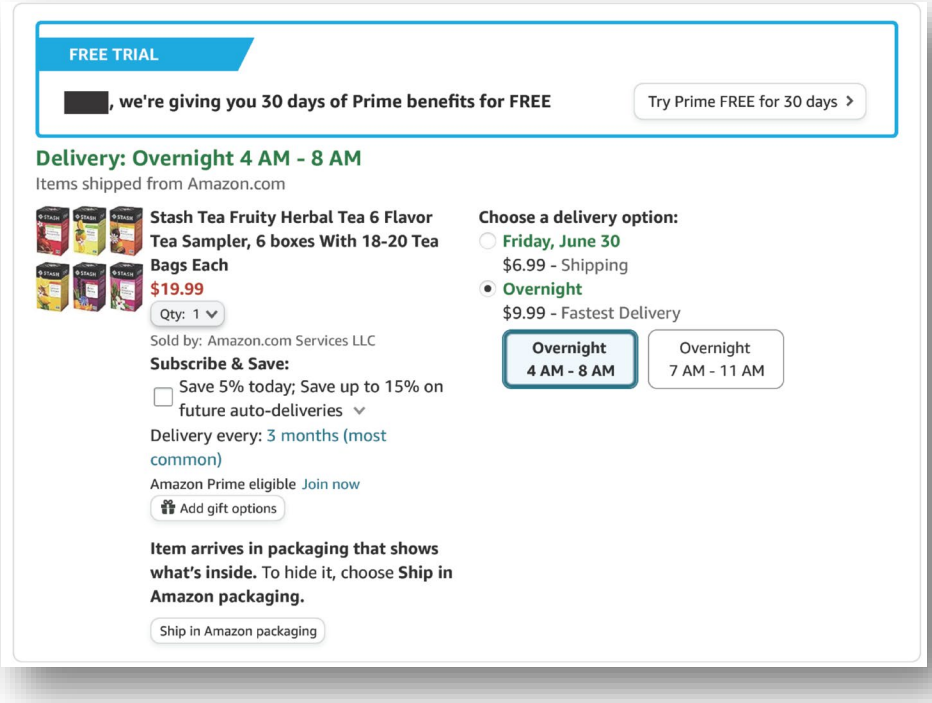
4.9. The checkout page omits any disclosure or indication that the offered and selected delivery window is a mere preference and is not a promised delivery window. The checkout page also omits any disclosure or indication that Amazon will retain the additional shipping fee even if it does not deliver the Product within the selected time window.

4.10. Mr. Storey's Mastercard associated with his Amazon account was charged $22.98 on the day of his order of the Product. The charge is identified in the transaction history of his Amazon account on March 27, 2023 under Order No. 114-5465983-8034654.

4.11. For Amazon customers who are not Amazon Prime members, the offered shipping fee for delivery of this Product during a specified time window was $9.99, for a total of $29.98. An example of the checkout page that Amazon would present to a Proposed Class member who is not a Prime member for purchase of the Product follows:



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4.12. As for Amazon Prime members, the checkout page for non-members omits any disclosure or indication that the offered and selected delivery window is a mere preference and is not a promised delivery window. The checkout page also omits any disclosure or indication that Amazon will retain the additional shipping fee even if it does not deliver the Product within the selected time window

4.13. In some instances, Amazon will offer consumers a choice between delivery windows on the same day as the purchase or on the following day, with the option of seeing and selecting "more delivery slots" if the consumer does not like the initially presented delivery windows, as in the following example:

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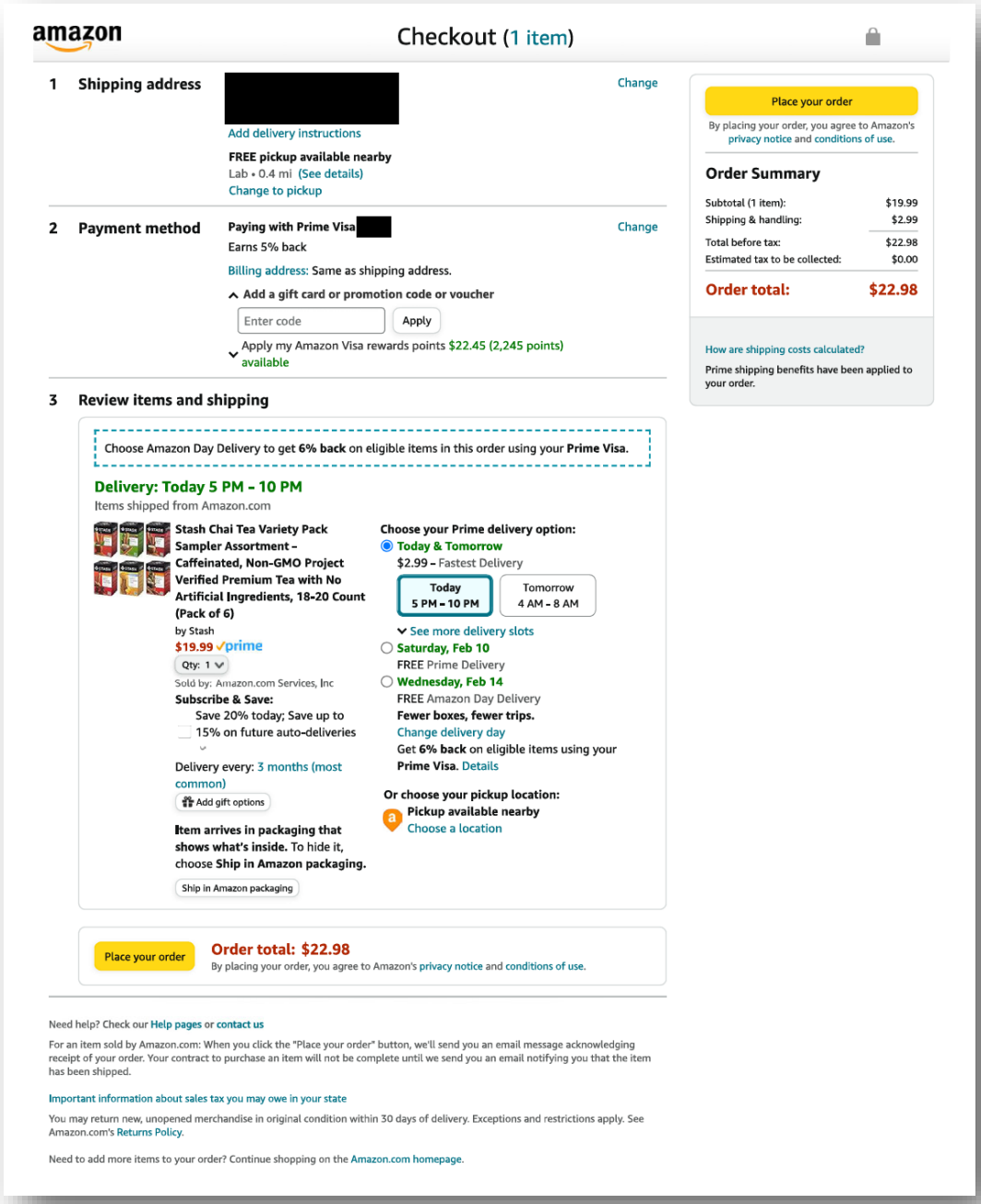

4.14. On information and belief, the checkout pages displayed above are form pages used by Amazon for all customers when offering faster delivery options and specific delivery windows in exchange for for payment of an additional shipping fee.

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4.15. Amazon issued three notices to Mr. Storey after he placed his order, confirming the price and delivery terms for his purchase of the Product. Amazon issued the following "Final Details for Order" notice at 4:09 p.m. Pacific Time (7:09 p.m. Eastern)[4] on March 27, 2023, that confirmed a "Shipping Speed" of "Rush Shipping" and the additional delivery charge of $2.99:

6/27/23, 4:09 PM Amazon.com - Order 114-5465983-8034654

amazon.com

Final Details for Order #114-5465983-8034654

Print this page for your records.

Order Placed: March 27, 2023
Amazon.com order number: 114-5465983-8034654
Order Total: $22.98

Shipped on March 27, 2023.

	Price	Items Ordered
18-20 Tea Bags	$19.99	1 of: *Stash Tea Fruity Herbal Tea 6 Flavor Tea Sampler, 6 boxes With ... Each*

Sold by: Amazon.com Services LLC
Supplied by: Other

Condition: New

Shipping Address:
[redacted]
WESTFIELD, IN 46074-4305
United States

Shipping Speed:
Rush Shipping

Payment information

Item(s) Subtotal: $19.99
Shipping & Handling: $2.99
Total before tax: $22.98
Estimated tax to be collected: $0.00
Grand Total: $22.98

Payment Method:
Debit Card | L

Billing addre
Tonny Storey
[redacted]
WESTFIELD, I

ast digits: [redacted]

ss
[redacted]
N 46074-4305
United States

Credit Card transactions

MasterCard ending in [redacted]: March 27, 2023:$22.98

4.16. On March 27, 2023 at 4:57 p.m. Pacific Time (7:57 p.m. Eastern) Amazon confirmed the order total of $22.98 and confirmed the selected delivery window:

[4] Amazon's notices are time-stamped in Pacific Time, the time zone of its headquarters in Seattle. Mr. Storey resided in the Eastern Time Zone.

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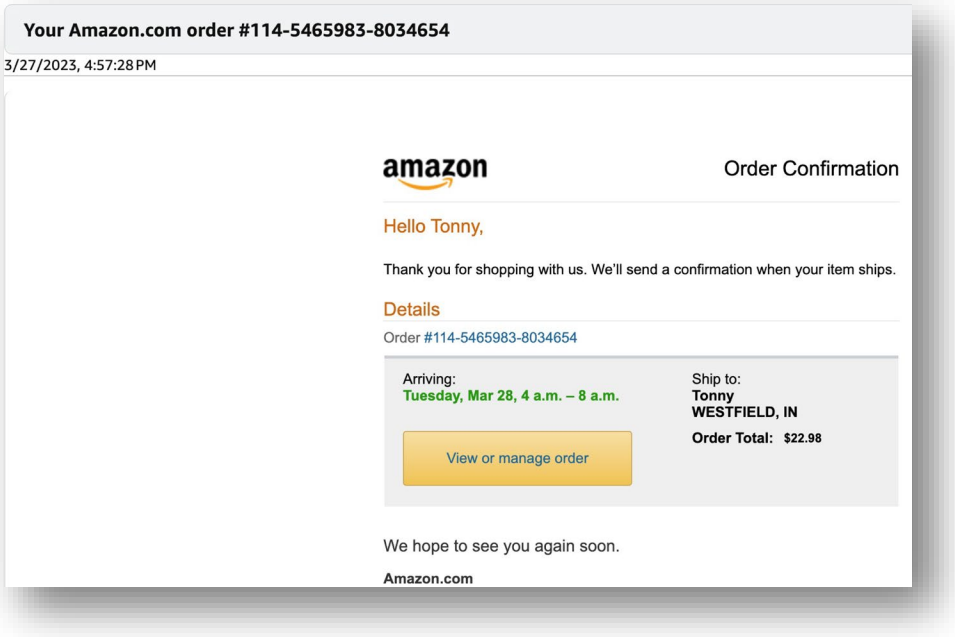

4.17. On March 27, 2023, at 6:58 p.m. Pacific Time (9:58 p.m. Eastern), Amazon confirmed the Product had shipped and "will arrive" during the designated window of 4:00 a.m. and 8:00 a.m.:

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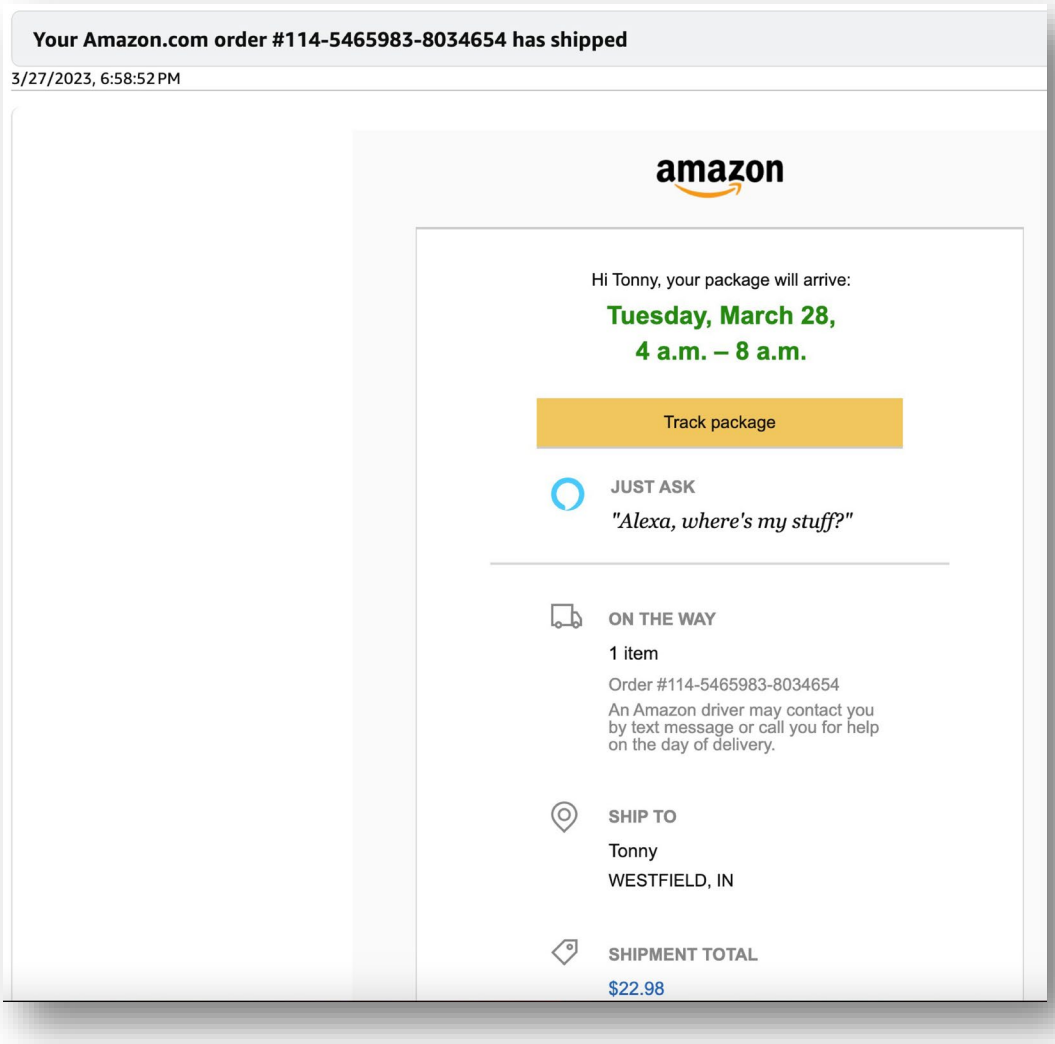

4.18. Like the checkout page, the order confirmation and the shipping confirmation omit any disclosure or indication that the delivery window is a mere preference by the consumer and is not promised. The order confirmation and the shipping confirmation also omit any disclosure or indication that Amazon will retain the additional shipping fee if it does not deliver the Product within the selected delivery window.

4.19. On information and belief, the order confirmation and shipping confirmation notices shown above are standard forms that Amazon sends to all consumers who have paid

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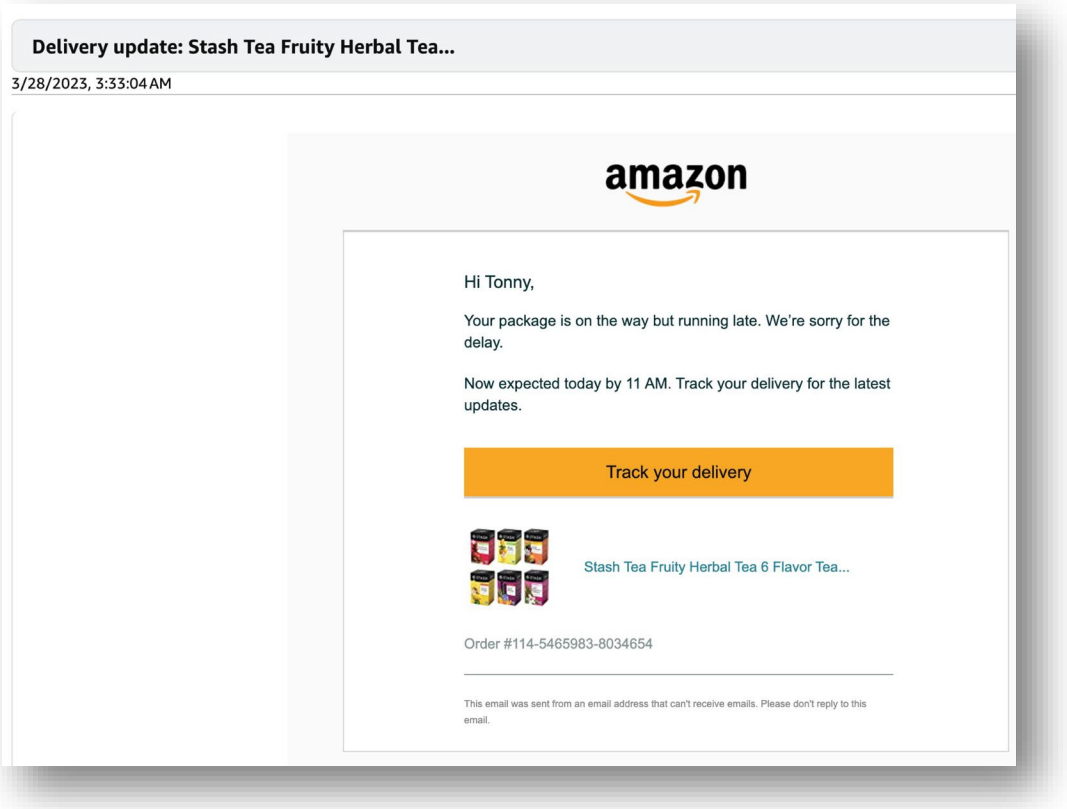
an additional shipping fee and selected a time window offered by Amazon for delivery of their purchases.

C. Amazon Failed to Meet the Selected Delivery Window for Mr. Storey's Order.

4.20. Amazon next sent Mr. Storey a "delivery update" on March 28, 2023 at 3:33 a.m. Pacific Time (7:33 a.m. Eastern), stating that the Product was "on the way but running late" and expected to be delivered by 11:00 a.m., well after the selected delivery window:



4.21. On March 28, 2023 at 10:01 a.m. Pacific Time (1:01 p.m. Eastern Time) Amazon issued a notice that the Product had been delivered, 5 hours after the selected delivery window:

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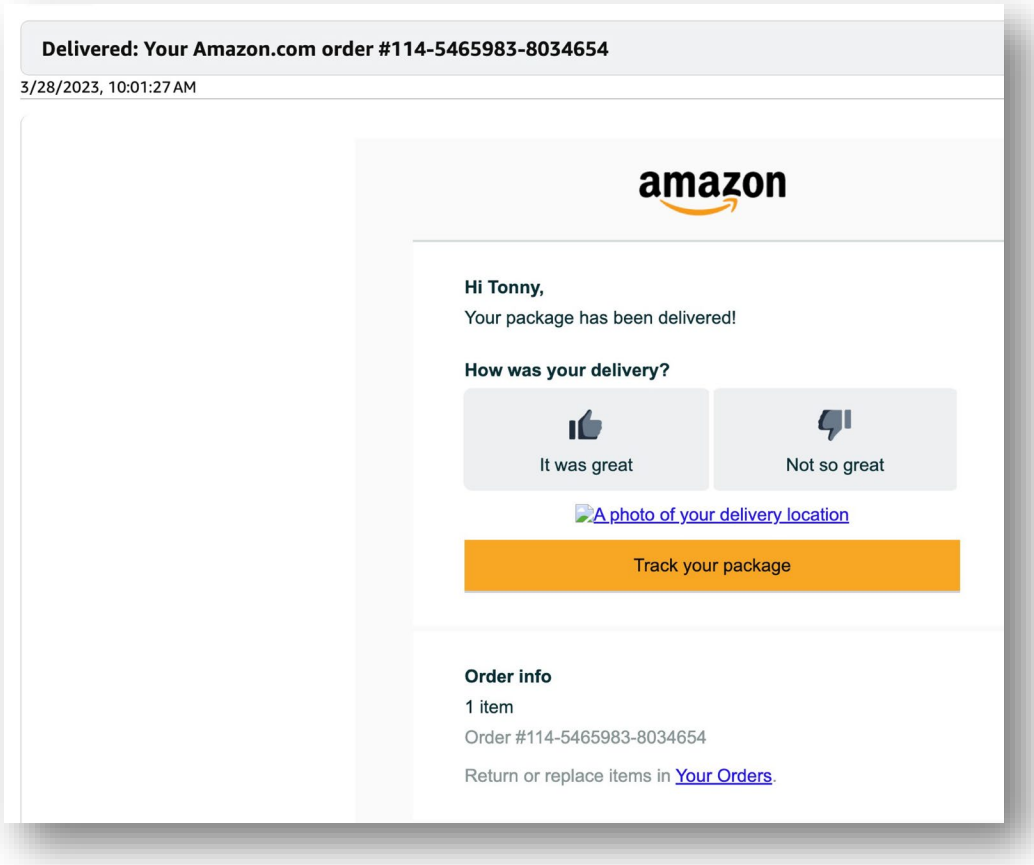

4.22. Amazon's own tracking history for its delivery of the Product, which displays events "in the local timezone," also confirms that a delay occurred and was acknowledged by Amazon, and that Amazon did not meet the delivery window offered by Amazon at checkout and selected and paid for by Mr. Storey:

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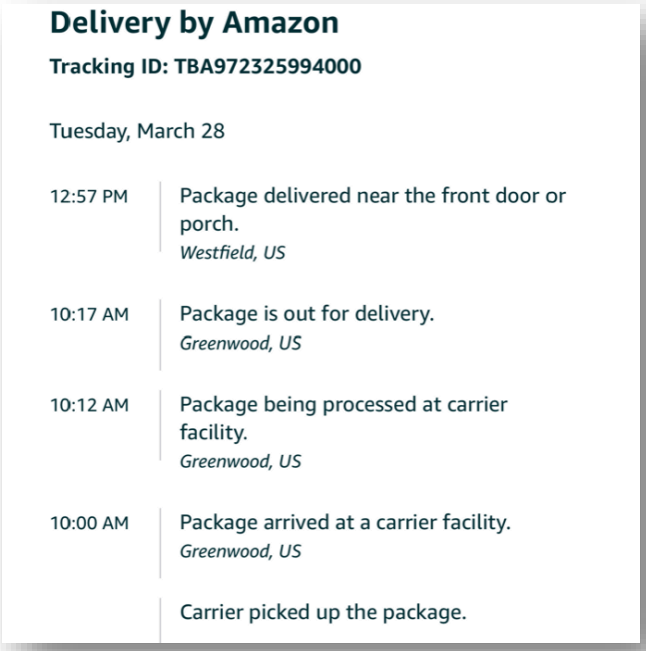
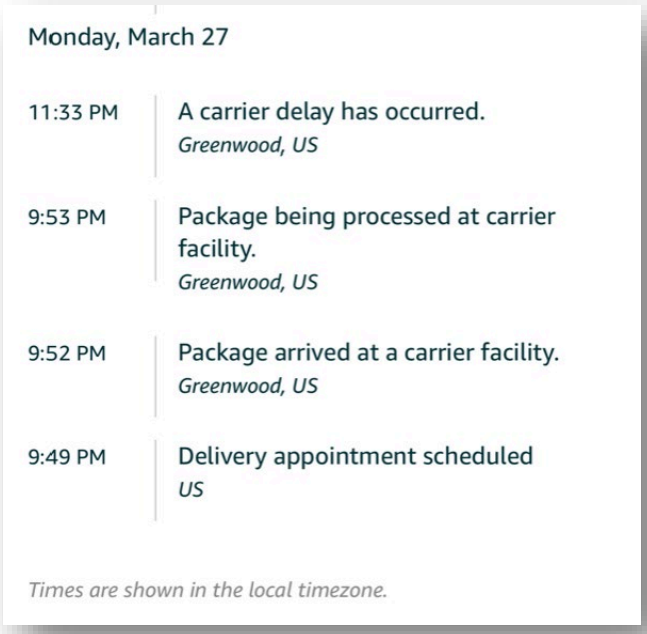


Delivery by Amazon

Tracking ID: TBA972325994000

Tuesday, March 28

12:57 PM	Package delivered near the front door or porch. *Westfield, US*
10:17 AM	Package is out for delivery. *Greenwood, US*
10:12 AM	Package being processed at carrier facility. *Greenwood, US*
10:00 AM	Package arrived at a carrier facility. *Greenwood, US*
	Carrier picked up the package.



Monday, March 27

11:33 PM	A carrier delay has occurred. *Greenwood, US*
9:53 PM	Package being processed at carrier facility. *Greenwood, US*
9:52 PM	Package arrived at a carrier facility. *Greenwood, US*
9:49 PM	Delivery appointment scheduled *US*

Times are shown in the local timezone.

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D. Amazon Does Not Refund or Credit Additional Shipping Fees when It Misses a Delivery Window.

4.23. Despite its failure to deliver Mr. Storey's Product during the specified delivery window, Amazon did not refund or credit the additional shipping fee paid by Mr. Storey.

4.24. On information and belief, Amazon does not refund or credit the additional shipping fees paid by consumers when it fails to deliver orders within the delivery windows offered by Amazon and selected by customers during checkout.

4.25. Neither the checkout window nor any subsequent communication to consumers includes any disclaimer or indication that the additional shipping fees are non-refundable if Amazon fails to meet the selected delivery window. They also omit any disclosure or indication that a consumer must affirmatively request such a refund or credit if it is available, or any information on how a consumer can request or obtain a refund or credit. Similarly, neither the delivery update nor the notice of delivery contain any information about refunds or how to request refunds for untimely deliveries.

4.26. Amazon does not provide any reasonable or adequate means for customers to request a refund of additional shipping fees if Amazon fails to meet a selected delivery window or any information on how a consumer can request or obtain a refund. Even if a consumer follows links on Amazon's website for requesting a refund for a missed "guaranteed" delivery, they are put into a confusing maze of hyperlinked pages without any readily identifiable or accesible form or method to submit a request for a refund.

4.27. For example, if a consumer clicks on on the "contact us" link on the Amazon "Guaranteed Delivery Terms and Conditions" webpage and selects "An Order I Placed", they reach the following webpage:

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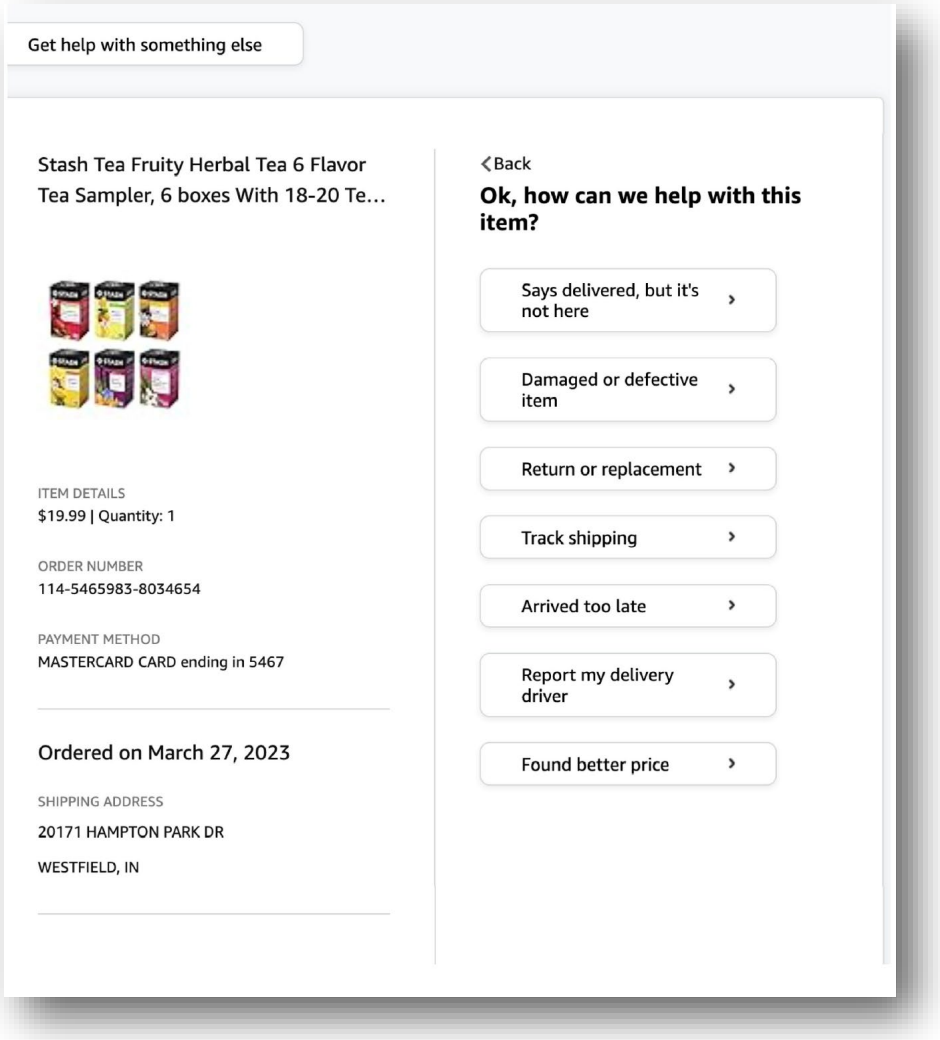

4.28. If they then click on the "Arrived Too Late" button, they reach the following webpage:

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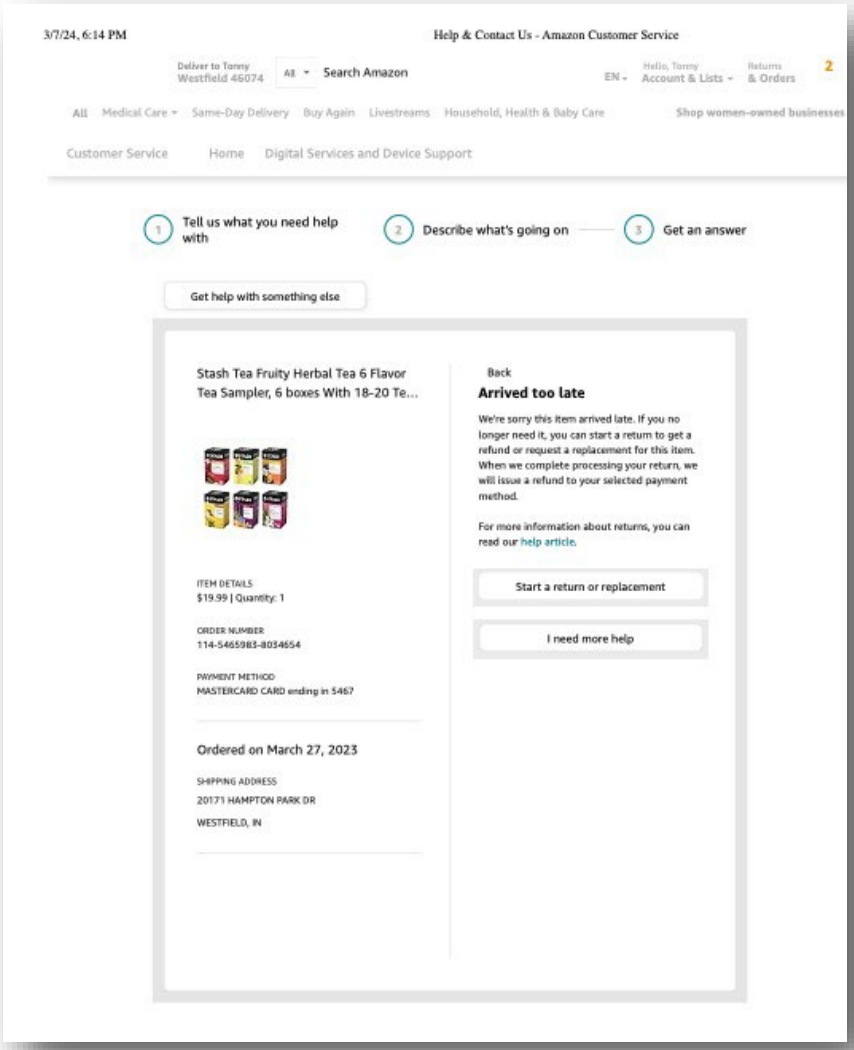

4.29. If they then click on the "I need more help button," they reach the following webpage:

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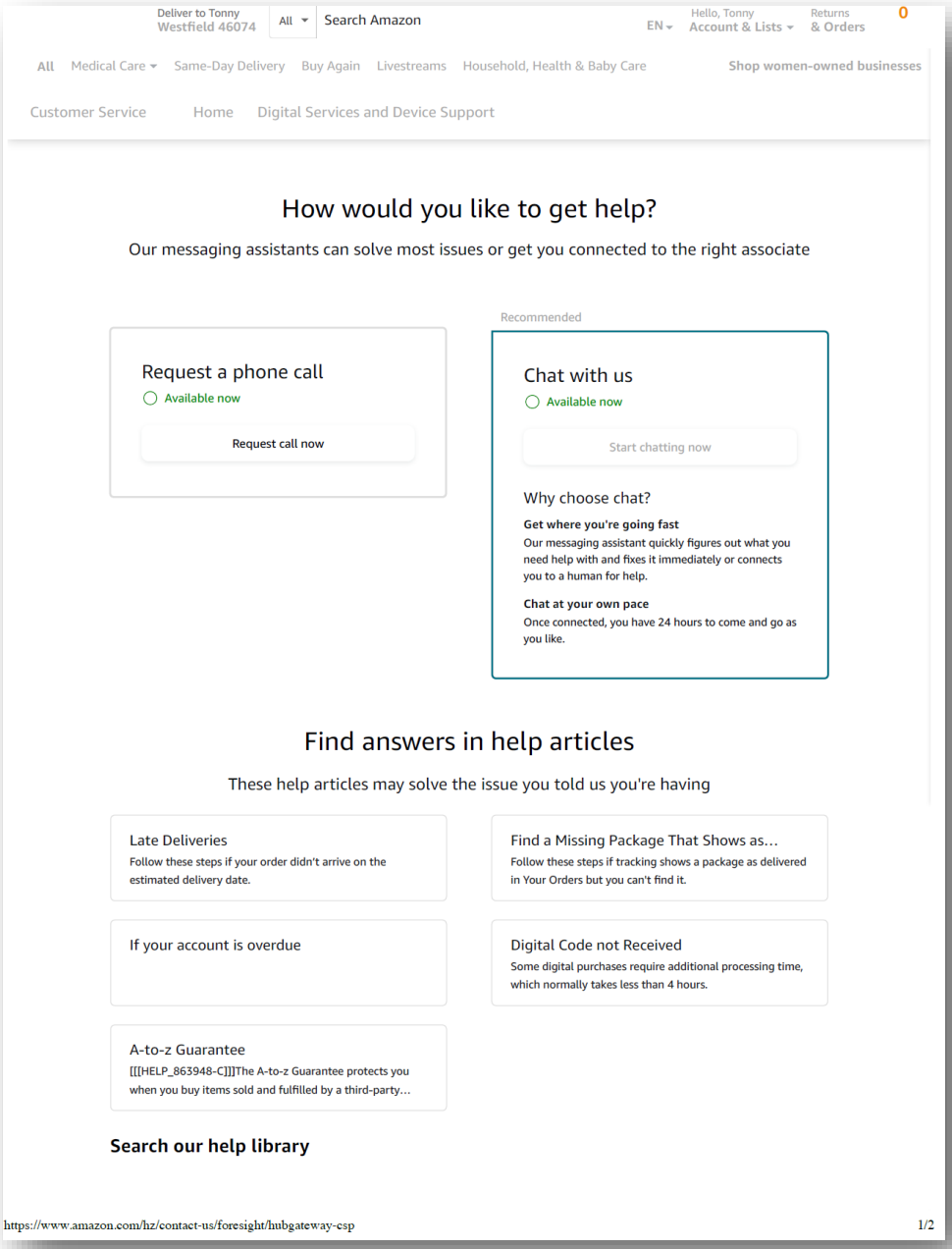

4.30. If they then click on the "Late Deliveries" button they reach the following help page:

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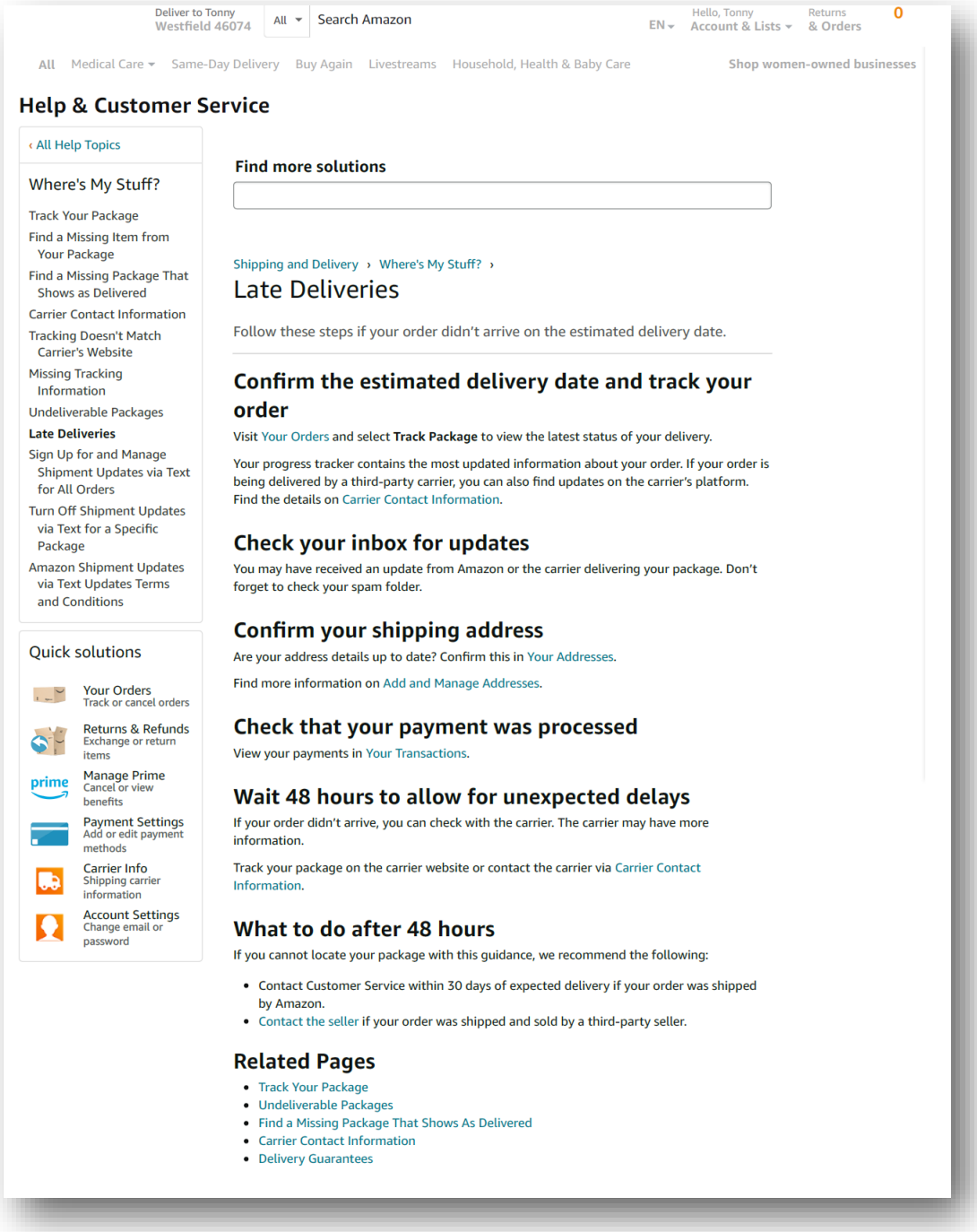

4.31. Notably, none of these webpages provide any information on refunds of shipping fees for late deliveries much less a means or information on how to request a refund of shipping fees for an untimely delivery.

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V. CLASS ALLEGATIONS

5.1. Plaintiff brings this action on behalf of itself and as a class action under Federal Rule of Civil Procedure 23(a) and (b)(3), seeking relief on behalf of the following class ("Proposed Class"):

> All persons and entities who purchased a product on the Amazon online retail platform who paid an additional shipping fee for delivery by Amazon during a selected time window, whose product was not delivered during that time window, and who was not provided a refund or credit of the additional shipping fees by Amazon.

5.2. The Proposed Class is believed to include thousands or millions of Amazon customers and is so numerous that joinder is impracticable.

5.3. The claims of the Plaintiff are typical of the claims of members of the Proposed Class.

5.4. There are questions of law and fact common to the Proposed Class that predominate over any individual issues. Those common issues include, but are not limited to:

a. Whether Amazon engaged in deceptive or unfair acts and practices in trade or commerce in violation of the Washington CPA, RCW 19.86 *et seq.* in its design and use of its checkout pages and order and shipping confirmation notices, as described in paragraphs 4.1 through 4.31 above and as alleged in paragraphs 6.1 through 6.16 below;

b. Whether Amazon's checkout pages and order and shipping confirmation notices, as described in paragraphs 4.1 through 4.31 above, have the capacity to mislead reasonable consumers and deceive a substantial portion of the public into believing they are paying additional shipping fees for delivery during specified time windows, as alleged in paragraphs 6.1 through 6.16 below;

c. Whether Amazon engaged in deceptive or unfair acts and practices in violation of the CPA by offering specified delivery times on its checkout pages in exchange for payment of an additional shipping fee without disclosing that it would not issue refunds or credits if the delivery time was not met;

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d. Whether Amazon engaged in an unfair or deceptive practice in trade or commerce in violation of the CPA by failing to refund or credit additional shipping fees paid by consumers when it failed to deliver their orders during a specified time window offered by Amazon and selected by the consumer;

e. Whether Amazon engaged in an unfair or deceptive practice in trade or commerce in violation of the CPA by shifting the burden to consumers to request a refund of additional shipping fees when Amazon fails to meet an offered and selected delivery window;

f. Whether Amazon engaged in an unfair or deceptive practice in trade or commerce in violation of the CPA by shifting the burden to consumers to request a refund of additional shipping fees and then failing to provide consumers with a readily accessible and identifiable means to request a refund; and

g. The amount by which the Plaintiff and members of the Proposed Class were injured by Amazon's unfair and deceptive acts and practices and violations of the CPA.

5.5. The commonality of the foregoing questions of fact and law, and others that may arise in this litigation, is further supported by the choice of Applicable Law in Amazon's Conditions of Use: "By using any Amazon Service, you agree that applicable federal law, and the laws of the state of Washington, without regard to principles of conflict of laws, will govern these Conditions of Use and any dispute of any sort that might arise between you and Amazon."

5.6. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently and without duplication of effort and expense that numerous, separate individual actions, or repetitive litigation, would entail.

5.7. The Proposed Class is readily definable and is one for which all relevant information exists in Amazon's records.

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5.8. Class treatment will permit the adjudication of claims by many Proposed Class members who otherwise could not afford to litigate the claims alleged herein.

5.9. This class action presents no difficulties of management that would preclude its maintenance as a class action, since all aspects of the claims by the Plaintiff and Proposed Class members can be determined by data in the possession of Amazon.

5.10. Plaintiff will fairly and adequately protect the interests of the Proposed Class members. Plaintiff has no interests adverse to the interests of absent Proposed Class members and has retained competent counsel with extensive experience in class action litigation.

VI. LEGAL CLAIMS

A. Violation of The Washington Consumer Protection Act

6.1. Plaintiff incorporates the above allegations.

6.2. The ability to select a specific time window for delivery of goods has value to ordinary consumers.

6.3. On information and belief, Amazon offers consumers the ability to select specfic time windows for delivery on the checkout pages for their orders in order to induce consumers to pay additional shipping fees or higher shipping fees than they would otherwise pay.

6.4. Amazon's checkout pages, as described above, have the capacity to mislead reasonable consumers and deceive a substantial portion of the public into believing that when they pay additional shipping fees, they are paying for delivery during a specified time window. Amazon's checkout pages do this by: inviting consumers to "Choose [a][your Prime] delivery option" and prominently designating and offering specific time windows for delivery as an integral part of options involving payment of additional shipping fees; asking consumers to

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select a specific time window for delivery as an integral part of their choice of a delivery option and payment of additional shipping fees; building on Amazon's business model and reputation for fast, timely delivery; playing to consumers' desire for delivery during a known and specified time frame; and omitting any disclaimer or indication that delivery during the time windows specified and offered by Amazon and selected by the consumer is a mere preference and not a promised time of delivery.

6.5. Amazon's order confirmation and shipping confirmation messages, as described above, alone and in conjunction with the checkout pages, also have the capacity to mislead reasonable consumers and deceive a substantial portion of the public into believing that when they pay additional shipping fees, they are paying for delivery during a specified time window. Such messages alone and together with the checkout pages do so by: prominently repeating the time window specified and offered by Amazon and selected by the consumer; stating that the orders are "arriving" or "will arrive" during that time window; and omitting any disclaimer or indication that delivery during the time windows specified and offered by Amazon and selected by the consumer is a mere preference and not a promised time of delivery.

6.6. The net impression created by the checkout page and order and shipping confirmation messages is that the consumer is paying for and Amazon is promising delivery during the time windows designated and offered by Amazon and selected by the consumer in exchange for the consumer's payment of an additional shipping fee.

6.7. The capacity of the checkout page and order and shipping confirmation notices to mislead an ordinary consumer is not eliminated or cured by Amazon's conditions of use link at the bottom of the checkout page. Among other reasons, ordinary consumers typically do not

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read the terms of use associated with on-line purchases, an ordinary consumer is not likely to notice the small print linking to the conditions of use at the bottom of the checkout page, and the linked conditions of use say nothing about shipping and delivery or shipping and delivery fees. Further, the conditions of use say that Amazon's "representations" about its services include those "specified in writing," which an ordinary consumer would understand to include the delivery times included on the checkout page and repeated on the order and shipping confirmation notices. Finally, an ordinary consumer would have no reason to read the conditions of use here in any event where the deal presented by the checkout page, and reinforced by the confirmation notices, appears simple and straightforward: payment of an additional shipping fee in exchange for delivery during a designated time window. Amazon's "Delivery Guarantees" and "Guaranteed Delivery Terms and Conditions" promise consumers they will receive a refund of additional shipping fees, subject to limited exceptions, if their orders are not delivered by the Guaranteed Delivery dates and times. However, Amazon fails to issue such refunds when due. Therefore, Amazon's publication of this promise in the "Delivery Guarantees" and "Guaranteed Delivery Terms and Conditions" constitutes a deceptive act or practice occurring in trade or commerce within the meaning of the Washington Consumer Protection Act ("CPA"), RCW 19.86 et seq.

6.8. Amazon's failure to issue refunds of additional shipping fees when it fails to meet the Guaranteed Delivery dates and times further constitutes an unfair or deceptive act or practice occurring in trade or commerce within the meaning of the CPA.

6.9. In addition and in the alternative, Amazon engaged in an unfair or deceptive practice in trade or commerce in violation of the CPA by allowing or encouraging consumers to pay an extra shipping fee in exchange for specified delivery dates or times on its checkout

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pages without disclosing that delivery during the specified time window is not "guaranteed" within the meaning or for purposes of its "Delivery Guarantees," "Guaranteed Delivery Terms and Conditions" or other Conditions of Use.

6.10. Amazon also has engaged in an unfair or deceptive act or practice in trade or commerce in violation of the CPA by failing to refund or credit additional shipping fees when it fails to meet the offered and selected time windows for delivery, and by offering specified delivery times on its checkout pages in exchange for payment of an extra shipping fee without disclosing that it will not issue refunds if the specified delivery time is not met.

6.11. Amazon's failure to refund or credit additional shipping fees when it fails to meet the offered and selected time windows for delivery has the capacity to mislead reasonable consumers and deceive a substantial portion of the public because a reasonable consumer would believe that Amazon will refund or credit the fee when it has not provided the service (delivery during the offered and selected time window) that the consumer has ostensibly paid for.

6.12. Amazon's failure to refund or credit additional shipping fees under these circumstances is also unfair within the meaning of the CPA because Amazon has induced consumers to pay additional shipping fees with the apparent promise of delivery during a specified time window and it is unfair for Amazon to retain those fees when it has failed to fulfill its end of the apparent bargain.

6.13. To the extent that Amazon will provide a refund or credit of additional shipping fees for an untimely delivery only if the the consumer affirmatively requests one, its practice of shifting the burden onto the consumer also constitutes an unfair or deceptive practice in trade or commerce in violation of the CPA. This shifting of the burden to consumers is unfair

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and unnecessary because Amazon knows from its own tracking and records when it has missed a selected delivery window. Further, Amazon does not disclose the need to affirmatively request a refund on the checkout pages, order and shipping confirmation notices, delivery updates and delivery notices, or anywhere else.

6.14. In addition, Amazon does not provide consumers with a readily accessible and identifiable means to request a refund even if one is available upon request, and instead, at best, directs them into a confusing maze of hyperlinked pages that do not include a form or similar avenue to request a refund. This failure also constitutes an unfair or deceptive practice in trade or commerce in violation of the CPA.

6.15. Amazon's unfair or deceptive acts or practices affect the public interest and have caused injury to Plaintiff and the Proposed Class.

6.16. Amazon's acts and omissions as described above constitute a violation of Washington's CPA giving rise to claims for relief under RCW 19.86.090.

VII. REQUEST FOR RELIEF

7.1. WHEREFORE, Plaintiff and the Proposed Class demand judgment against the Defendant as follows:

a. For an order certifying this lawsuit as a class action under Federal Rule of Civil Procedure 23(a) and (b)(3), designating Plaintiff as Class representative, and appointing Plaintiff's counsel as counsel for the Class;

b. For an award of actual and treble damages pursuant to the Washington Consumer Protection Act, RCW 19.86.090;

c. For an award of prejudgment interest on the refunds and damages owed;

d. For an award of reasonable attorneys' fees and expenses, as provided by law; and

e. For all other just and proper relief.

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VIII. JURY TRIAL DEMAND

8.1. Plaintiff hereby demands a trial by jury of all eligible issues.

DATED this 8th day of July, 2024.

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s/ Adam J. Berger
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Counsel for Plaintiff Tonny Storey and the Estate of Tonny Storey

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day July, 2024, the foregoing document was filed with the Clerk of the Court via the Court's electronic filing system, which will provide electronic mail notice to all counsel of record.

DATED: July 8, 2024, at Vashon, Washington.

s/Mary Dardeau
Mary Dardeau, Paralegal
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