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11
12 Attorneys for Defendant Amazon.com, Inc.

13
14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

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18 ANDREA FAGERSTROM and ALLEN
WISELEY, individually and on behalf
19 of all other similarly situated
Californians,

20 Plaintiffs,

21 vs.

22 AMAZON.COM, INC., a Delaware
23 Corporation, and DOES 1 through 50
inclusive,

24 Defendants.
25
26
27
28

} Case No. '15CV0096 L DHB

} **NOTICE OF REMOVAL**

} (San Diego Superior Court
No. 37-2014-00040303-CU-BT-CTL)

1 Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, defendant
2 Amazon.com, Inc. (“Amazon” or “Defendant”), removes to the United States
3 District Court for the Southern District of California the above-captioned lawsuit,
4 originally filed in the Superior Court of California for San Diego County as Case
5 No. 37-2014-00040303-CU-Bt-CTL.

6 Removal is proper on the following grounds:

7 **The Class Action Fairness Act**

8 1. Congress passed the Class Action Fairness Act (“CAFA”) in February
9 2005 to expand federal court jurisdiction over class actions. Congress intended
10 courts to read CAFA’s provisions broadly, with a strong preference that federal
11 courts hear interstate class actions, if properly removed. *See* S. Rep. No. 109-14, at
12 43 (2005). Congress passed CAFA with the intent “that the named plaintiff(s)
13 should bear the burden of demonstrating that a case should be remanded to state
14 court.” *Id.*; *see also* H. Rep. No. 108-144, at 37-39 (2003); H. Rep. No. 109-7
15 (2005).

16 2. Under CAFA, when the number of putative class members as defined
17 in the Complaint exceeds 100, this Court has original jurisdiction over “any civil
18 action in which the matter in controversy exceeds the sum or value of \$5,000,000,
19 exclusive of interests and costs, and is a class action in which ... any member of a
20 class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C.
21 § 1332(d)(2)(A).

22 3. This action satisfies all requirements for removal under CAFA. CAFA
23 permits a district court to decline jurisdiction of a properly-removed case only if it
24 satisfies the requirements of 28 U.S.C. § 1332(d)(3) or § 1332(d)(4). Neither
25 provision applies here.

26 **Removal Is Timely**

27 4. Plaintiffs filed this action on or about November 25, 2014.

28 5. Plaintiffs filed their First Amended Class Action Complaint (“FAC”)

1 on or about December 29, 2014.

2 6. Plaintiffs first served Defendant with a copy of the Class Action
3 Complaint on December 19, 2014. Plaintiffs served Defendant with a copy of the
4 First Amended Class Action Complaint on December 31, 2014. This notice of
5 removal is timely under 28 U.S.C. § 1446(b) because Defendant is filing the notice
6 of removal within thirty days after service. 28 U.S.C. § 1446(b)(1); *see also*
7 *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

8 **This Is a Proposed “Class Action”**

9 7. CAFA defines a “class action” as “any civil action filed under rule 23
10 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial
11 procedure authorizing an action to be brought by 1 or more representative persons
12 as a class action.” 28 U.S.C. § 1332(d)(1)(B). Plaintiffs bring this case as a
13 proposed class action, FAC ¶ 34, and seek to certify a class under California Civil
14 Procedure Code § 382, FAC ¶ 34. This action is therefore a proposed “class action”
15 under 28 U.S.C. § 1332(d)(1)(B).

16 **Plaintiffs Propose a Class of More than 100 Persons**

17 8. The First Amended Complaint asserts claims for alleged violations of
18 California Business and Profession Code §§ 17200 *et seq.* and 17500 *et seq.*, as well
19 as of California Civil Code § 1750 *et seq.*, on behalf of the following proposed
20 class:

21 All persons residing in California who within four (4) years of the
22 filing of this Complaint, according to Defendant’s records, purchased a
23 product for which Defendant advertised both a “list” price and its retail
price.

24 FAC ¶ 34.

25 Defendant denies the allegations in the First Amended Complaint, that
26 Defendant engaged in any of the alleged conduct, and that any California residents
27 were harmed as a result of any alleged conduct. For purposes of removal, however,
28 Defendant’s business records confirm that Plaintiffs’ allegations place at issue

1 substantially more than 100 “persons residing in California.”

2 9. Although Defendant will contest the propriety of class certification, for
3 the purposes of removal, Plaintiffs seek to proceed on behalf of a proposed class of
4 more than 100 persons. *See* 28 U.S.C. § 1332(d)(5)(B).

5 **The Amount in Controversy Exceeds \$5,000,000**

6 10. “The district courts shall have original jurisdiction of any civil action
7 in which the matter in controversy exceeds the sum or value of \$5,000,000,
8 exclusive of interests and costs.” 28 U.S.C. § 1332(d)(2). “In any class action, the
9 claims of the individual class members shall be aggregated to determine whether
10 the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of
11 interest and costs.” 28 U.S.C. § 1332(d)(6). “To remove a case from a state court
12 to a federal court, a defendant must file in the federal forum a notice of removal
13 ‘containing a short and plain statement of the grounds for removal.’” *Dart*
14 *Cherokee Basin Operating Co. v. Owens*, — U.S. —, 135 S. Ct. 547, 551, 553-54
15 (2014) (quoting 28 U.S.C. § 1446(a)). When a plaintiff fails to plead a specific
16 amount of damages and the amount in controversy is not facially apparent from the
17 complaint, the defendant “need include only a plausible allegation that the amount
18 in controversy exceeds the jurisdictional threshold.” *Id.* at 554. Defendant’s notice
19 of removal “need not contain evidentiary submissions.” *Id.* at 551. If the plaintiff
20 challenges Defendant’s allegations, Defendant need only meet a preponderance of
21 the evidence standard. *Id.* at 554.

22 11. Plaintiffs seek, among other relief, a ruling “directing Defendant to
23 allow its customers to return any products purchased on Defendant’s website, at
24 Defendant’s expense, which were subject [to] Defendant’s unlawful pricing policy,
25 within twelve (12) months of filing this FAC.” FAC, Pray [Sic] for Relief ¶ D
26 (emphasis added). Plaintiffs also seek “restitution of all shipping and handling fees
27 charged for products purchased from Amazon.com subject to Defendant’s unlawful
28 advertising.” *Id.* ¶ F. Plaintiffs seek this return and full refund (including shipping

1 and handling costs) on behalf of all putative class members, *i.e.*, all California
2 residents who purchased products for which “Defendant advertise[d] both a ‘list
3 price and its retail price” in the past four years *Id.* ¶ 34. Plaintiffs’ request for
4 relief seeks both monetary and injunctive relief. “In actions seeking declaratory or
5 injunctive relief, it is well established that the amount in controversy is measured by
6 the value of the object of the litigation.” *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 839
7 (9th Cir. 2002); *see also* 28 U.S.C. § 1446(c)(2)(A) (“the notice of removal may
8 assert the amount in controversy if the initial pleading seeks—(i) nonmonetary
9 relief.” “[T]he test for determining the amount in controversy is the pecuniary
10 result to either party which the judgment would directly produce.” *In re Ford
11 Motor Co./Citibank (S.D.), N.A.*, 264 F.3d 952, 958 (9th Cir. 2001). So, if “the
12 potential cost to the defendant of complying with the [judgment] exceeds [the
13 jurisdictional] amount, it ... represents the amount in controversy for jurisdictional
14 purposes.” *Id.*

15 12. Amazon’s business records show the aggregated cost of providing
16 refunds, including shipping and handling costs, for every product every California
17 resident purchased from Amazon.com in the last four years, would exceed
18 \$5,000,000. Thus, Plaintiffs’ First Amended Complaint places in controversy more
19 than \$5,000,000.

20 13. In addition to the relief described above, Plaintiffs seek attorneys’ fees
21 and costs. FAC, Pray [Sic] for Relief ¶ F. In determining the amount in
22 controversy, the Court should include the amount of attorneys’ fees Plaintiffs claim,
23 aggregated on a class-wide basis. *Chabner v. United of Omaha Life Ins. Co.*, 225
24 F.3d 1042, 1046 n.3 (9th Cir. 2000) (citing *Galt G/S v. JSS Scandinavia*, 142 F.3d
25 1150, 1156 (9th Cir. 1998)).

26 14. Because Plaintiff seeks (1) monetary and injunctive relief on behalf of
27 the proposed class that, standing alone, exceed \$5,000,000 in value; and (2)
28 attorney fees, Plaintiffs have placed more than \$5,000,000 in controversy.

Diversity Exists

1
2 15. Under 28 U.S.C. § 1332(d)(2)(A), a district court may assert
3 jurisdiction over a class action in which “any member of a class of plaintiffs is a
4 citizen of a State different from any defendant.” Amazon.com, Inc., is a Delaware
5 corporation headquartered in Seattle, Washington. For diversity purposes, Amazon
6 is thus a citizen of Delaware and Washington. 28 U.S.C. § 1332(c)(1); *Hertz Corp.*
7 *v. Friend*, 130 S. Ct. 1181, 1192 (2010). Plaintiffs are residents of San Diego,
8 California. FAC ¶¶ 12, 14. Plaintiffs seek certification of a class of California
9 residents. *Id.* ¶ 34.

10 16. Because Defendant and the named Plaintiffs and putative class
11 members are completely diverse, this case satisfies the diversity requirements of 28
12 U.S.C. § 1332(d)(2)(A).

The Exceptions to Jurisdiction Do Not Apply

13
14 17. The exceptions to jurisdiction set forth in 28 U.S.C. § 1332(d)(3) and
15 (d)(4) do not apply because Plaintiffs do not seek relief against a citizen of the State
16 of California, the state in which Plaintiffs originally filed this action.

Defendant Has Satisfied the Remaining Procedural Requirements

17
18 18. Copies of all documents filed in the San Diego County Superior Court
19 action, including all process, pleadings, and orders served on Defendant in this
20 action, are attached as Exhibit A, pursuant to 28 U.S.C. § 1446(a).

21 19. Promptly after filing this Notice of Removal, Defendant will give
22 written notice to Plaintiffs’ counsel and will file a copy of this Notice with the Clerk
23 of the San Diego County Superior Court, pursuant to 28 U.S.C. § 1446(d).

24 Therefore, Defendant removes this action from the Superior Court of the
25 State of California for San Diego County.

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DATED: January 16, 2015

DAVIS WRIGHT TREMAINE LLP
JAMES D. NGUYEN

By: /s/ James D. Nguyen
James D. Nguyen
Attorneys for Amazon.com, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2015, a copy of this *Notice of Removal* was served on plaintiffs' counsel as indicated below (and with contact information):

Hand Delivered via Messenger:

Jeffrey R. Krinsk, Esq. (SBN 109234)
jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
mlk@classactionlaw.com
William R. Restis, Esq. (SBN 246823)
wrr@classactionlaw.com
Trenton R. Kashima, Esq. (SBN 291405)
trk@classactionlaw.com
FINKELSTEIN & KRINSK LLP
501 West Broadway, Suite 1250
San Diego, CA 92101-3579

Telephone: (619) 238-1333
Facsimile: (619) 238-5425

DATED: January 16, 2015

DAVIS WRIGHT TREMAINE LLP
JAMES D. NGUYEN

By: /s/ James D. Nguyen
James D. Nguyen
Attorneys for Amazon.com, Inc.

Exhibit A



CORPORATION SERVICE COMPANY®

Notice of Service of Process

Transmittal Number: 13288007
Date Processed: 12/19/2014

Primary Contact: Ms. Lynn Radliff
Amazon.Com, Inc.
P.O. Box 81226
Seattle, WA 98108-1226

Copy of transmittal only provided to: Carolyn Roberts
Deserae Weitmann
Ronaldo Dizon
Dung Phan
Sally Kim
Joell Parks
Ms. Patti Quintero
Anne Tarpey
Lorraine Colby
Kerry Hall
Karen Curtis

Entity: Amazon.Com, Inc.
Entity ID Number 1662773

Entity Served: Amazon.Com, Inc.

Title of Action: Andrea Fagerstrom vs. Amazon.Com, Inc.

Document(s) Type: Summons/Complaint

Nature of Action: Class Action

Court/Agency: San Diego County Superior Court, California

Case/Reference No: 37-2014-00040303-CU-BT-CTL

Jurisdiction Served: Washington

Date Served on CSC: 12/19/2014

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Trenton R. Kashima
619-230-1333

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
CSC is SAS70 Type II certified for its Litigation Management System.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AMAZON.COM, INC.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ANDREA FAGERSTROM AND ALLEN WISELEY, individually and on behalf of all other similarly situated Californians

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/25/2014 at 01:32:23 PM

Clerk of the Superior Court
By Nora Zuazo, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): County of San Diego Superior Court
330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2014-00040303-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
FINKELSTEIN & KRINSK LLP, 501 W. Broadway, Ste. 1250, San Diego, CA 92101

DATE: 11/26/2014
(Fecha)

Clerk, by
(Secretario) _____


N. Zuazo

Deputy
(Adjunto) _____

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
AMAZON.COM, INC.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

**ANDREA FAGERSTROM AND ALLEN WISELEY, individually and
on behalf of all other similarly situated Californians**

SUM-100

**FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**

**ELECTRONICALLY FILED
Superior Court of California,
County of San Diego**

11/25/2014 at 01:32:23 PM

**Clerk of the Superior Court
By Nora Zuazo, Deputy Clerk**

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The name and address of the court is:
(El nombre y dirección de la corte es): **County of San Diego Superior Court**
330 West Broadway, San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2014-00040303-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
FINKELSTEIN & KRINSK LLP, 501 W. Broadway, Ste. 1250, San Diego, CA 92101

DATE: **11/28/2014**
(Fecha)

Clerk, by _____
(Secretario)

N. Zuazo

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): **AMAZON.COM, INC.**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

Page 1 of 1

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jeffrey R. Krinsk (SBN 109234); Trenton R. Kashima (SBN 291405) FINKELSTEIN & KRINSK LLP 501 W. Broadway, Suite 1250 San Diego, CA 92101 TELEPHONE NO.: 619-238-1333 FAX NO.: 619-238-5425 ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 11/25/2014 at 01:32:23 PM Clerk of the Superior Court By Nora Zuazo, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: CENTRAL DIVISION	
CASE NAME: FAGERSTROM, et al., v. AMAZON.COM, INC.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant. (Cal. Rules of Court, rule 3.402)
CASE NUMBER: 37-2014-00040303-CU-BT-CTL	JUDGE: DEPT: Judge Ronald S. Prager

Items 1-6 below must be completed (see instructions on page 2).

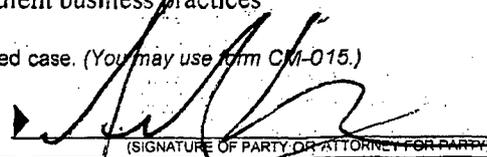
1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Unlawful, unfair, fraudulent business practices**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: November 24, 2014
 Trenton R. Kashima

(TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort	Contract	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403)
Auto (22)—Personal Injury/Property Damage/Wrongful Death	Breach of Contract/Warranty (06)	Antitrust/Trade Regulation (03)
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)	Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)	Construction Defect (10)
	Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)	Claims Involving Mass Tort (40)
	Negligent Breach of Contract/Warranty	Securities Litigation (28)
	Other Breach of Contract/Warranty	Environmental/Toxic Tort (30)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort	Collections (e.g., money owed, open book accounts) (09)	Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)
Asbestos (04)	Collection Case—Seller Plaintiff	Enforcement of Judgment
Asbestos Property Damage	Other Promissory Note/Collections Case	Enforcement of Judgment (20)
Asbestos Personal Injury/Wrongful Death	Insurance Coverage (not provisionally complex) (18)	Abstract of Judgment (Out of County)
Product Liability (not asbestos or toxic/environmental) (24)	Auto Subrogation	Confession of Judgment (non-domestic relations)
Medical Malpractice (45)	Other Coverage	Sister State Judgment
Medical Malpractice—Physicians & Surgeons	Other Contract (37)	Administrative Agency Award (not unpaid taxes)
Other Professional Health Care Malpractice	Contractual Fraud	Petition/Certification of Entry of Judgment on Unpaid Taxes
Other PI/PD/WD (23)	Other Contract Dispute	Other Enforcement of Judgment Case
Premises Liability (e.g., slip and fall)	Real Property	Miscellaneous Civil Complaint
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)	Eminent Domain/Inverse Condemnation (14)	RICO (27)
Intentional Infliction of Emotional Distress	Wrongful Eviction (33)	Other Complaint (not specified above) (42)
Negligent Infliction of Emotional Distress	Other Real Property (e.g., quiet title) (26)	Declaratory Relief Only
Other PI/PD/WD	Writ of Possession of Real Property	Injunctive Relief Only (non-harassment)
Non-PI/PD/WD (Other) Tort	Mortgage Foreclosure	Mechanics Lien
Business Tort/Unfair Business Practice (07)	Quiet Title	Other Commercial Complaint Case (non-tort/non-complex)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)	Other Real Property (not eminent domain, landlord/tenant, or foreclosure)	Other Civil Complaint (non-tort/non-complex)
Defamation (e.g., slander, libel) (13)	Unlawful Detainer	Miscellaneous Civil Petition
Fraud (16)	Commercial (31)	Partnership and Corporate Governance (21)
Intellectual Property (19)	Residential (32)	Other Petition (not specified above) (43)
Professional Negligence (25)	Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)	Civil Harassment
Legal Malpractice	Judicial Review	Workplace Violence
Other Professional Malpractice (not medical or legal)	Asset Forfeiture (05)	Elder/Dependent Adult Abuse
Other Non-PI/PD/WD Tort (35)	Petition Re: Arbitration Award (11)	Election Contest
Employment	Writ of Mandate (02)	Petition for Name Change
Wrongful Termination (36)	Writ—Administrative Mandamus	Petition for Relief From Late Claim
Other Employment (15)	Writ—Mandamus on Limited Court Case Matter	Other Civil Petition
	Writ—Other Limited Court Case	
	Review	
	Other Judicial Review (39)	
	Review of Health Officer Order	
	Notice of Appeal—Labor	
	Commissioner Appeals	

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and the Putative Class

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/25/2014 at 01:32:23 PM
Clerk of the Superior Court
By Nora Zuazo, Deputy Clerk

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 ANDREA FAGERSTROM and ALLEN
WISELEY, individually and on behalf of all
13 other similarly situated Californians

14 Plaintiff,

15 v.

16 AMAZON.COM, INC., a Delaware
Corporation, and DOES 1 through 50
17 inclusive,

18 Defendants.

Case No: 37-2014-00040303-CU-BT-CTL

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;
2. VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*
3. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNLAWFUL" BUSINESS PRACTICES;
4. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNFAIR" BUSINESS PRACTICES;
5. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "FRAUDULENT" BUSINESS PRACTICES;
6. DECLARATORY RELIEF, CAL. CIV. CODE § 1060.

JURY TRIAL DEMANDED

1 Andrea Fagerstrom and Allen Wiseley (collectively, the "Plaintiffs"), individually and on
2 behalf of all others similarly situated, based on the investigation of counsel as to the actions and
3 omissions of defendant herein, and by their own individual knowledge as to those averments
4 pertaining to named Plaintiffs own circumstances, hereby complains against defendant
5 Amazon.com, Inc. ("Defendant" or "Amazon") as follows:

6 I. INTRODUCTION

7 1. This consumer class action seeks to remedy Defendant's false advertising of
8 purported discounts on its website, Amazon.com, that violated California Statutes and are likely to
9 deceive reasonable consumers. California Business & Professional Code, Section 17501,
10 specifically states that:

11 No price shall be advertised as a former price of any advertised thing, unless the
12 alleged former price was the prevailing market price as above defined within three
13 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

14 Federal regulation 16 C.F.R. § 233.1(a) also speaks unfavorably regarding Defendant's business
15 practices:

16 One of the most commonly used forms of bargain advertising is to offer a reduction
17 from the advertiser's own former price for an article. If the former price is the
18 actual, bona fide price at which the article was offered to the public on a regular
19 basis for a reasonably substantial period of time, it provides a legitimate basis for
20 the advertising of a price comparison. Where the former price is genuine, the
21 bargain being advertised is a true one. If, on the other hand, the former price being
advertised is not bona fide but fictitious--for example, where an artificial, inflated
price was established for the purpose of enabling the subsequent offer of a large
reduction--the "bargain" being advertised is a false one; the purchaser is not
receiving the unusual value he expects. In such a case, the "reduced" price is, in
reality, probably just the seller's regular price.

22 This caused Plaintiffs to purchase products from Amazon.com they would not have purchased had
23 Defendant not engaged in false advertising, and pay shipping charges that could have been saved by
24 buying the same product in a retail store.

25 2. Defendant operates the immensely popular retail website, Amazon.com, a website
26 that allows consumers to purchase almost anything ranging from food to furniture online.
27 Consumers can purchase items from Amazon on their computer or mobile device, and such
28 products are delivered directly to the customer's home. As of last year (2013), Amazon.com hosted

1 1,510,000 customer accounts and realized in excess of \$44.5 billion dollars in sales revenue from
2 its North American operations. Due to the massive number of products and services Defendant
3 offers, and the number of customers who visit Amazon.com daily, Amazon is the largest Internet
4 based retailer in the United States.

5 3. Amazon's size and form does not immunize it from all normal competitive market
6 pressures. Amazon faces evolving (and often intense) competition from traditional brick-and-
7 mortar retail locations and various retail websites. Accordingly, Amazon has adopted a marketing
8 strategy for overcoming its competitors by not only presenting profuse selection and a high level of
9 convenience, but also reinforces the perception of attractive pricing. In fact, to strengthen the
10 perception of Amazon.com as a low price leader, Defendant carefully garners a reputation that its
11 internet-based business model allows it to consistently offer significantly lower prices than its
12 traditional competitors. Indeed, Amazon candidly states that "[w]e strive to offer our customers
13 the lowest prices possible through low everyday product pricing and shipping offers, and to
14 improve our operating efficiencies so that we can continue to lower prices for our customers."

15 4. Competitors adopting Amazon's business model, decreasing retail profit margins
16 and price matching guarantees have made it increasingly difficult for Amazon to deliver lower
17 prices than the prevailing market. Accordingly, Amazon increasingly has focused its efforts on
18 presenting itself as the unchallenged low price leader, even if the perception is not always accurate.

19 5. One particularly effective, but unlawful, marketing tool that Amazon uses to
20 underpin its low price reputation is Defendant's routine of conspicuously displaying the "savings"
21 that customers will realize by purchasing an item on its website. To impress on the consuming
22 public the purported superiority of Amazon's price model, Defendant advertises most of its
23 products in an uniform fashion: (1) first, Amazon displays the "list" pricing of an item on its
24 website, which is represented as the item's normal retail price with the typeface struck-through
25 (e.g. "List Price: \$329.00"); (2) second, the website displays Amazon's product price in contrasting
26 red font (e.g. "Price: \$299.00"); and (3) third, Amazon lists the amount "saved" by purchasing
27 from its website by highlighting the dollars saved with the percentage of cost savings represented
28 (e.g. "You Save: \$30.00 (9%)").

1 and Code of Civil Procedure §§ 382 and 410.10.

2 10. This Court has jurisdiction over Defendant because it conducts substantial business
3 within California.

4 11. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because
5 Plaintiff contracted with the Defendant and a substantial or significant portion of the conduct
6 complained of herein occurred and continues to occur within this County.

7 **III. PARTIES**

8 12. Plaintiff Andrea Fagerstrom is, and at all times relevant hereto was, a resident of
9 San Diego, California, and a citizen of California. On or about September 12, 2014, Fagerstrom
10 purchased a Vitamix Certified Reconditioned Standard Blender from Amazon.com. The blender
11 was "listed" on Amazon's website for \$329, but Amazon touted its price as \$299. Amazon
12 expressly represented to Fagerstrom, and the public at large, that she would save "\$30.00 (9%)" by
13 purchasing the product on its website. The representation was demonstrably false.

14 13. The discount touted by Amazon on Plaintiff's Vitamix Certified Reconditioned
15 Standard Blender was illusory because the genuine market price for the blender at the time was
16 really \$299, and not the list price displayed on Defendant's website. Indeed, other retailers, such as
17 Target.com, had the same blender for the same price. Even the manufacturer, Vitamix, sold the
18 same blender on its website for \$299 (and did so since at least February 9, 2014). Accordingly,
19 Amazon was disingenuous in representing that Fagerstrom, and the general public, was receiving a
20 substantial discount by purchasing her Vitamix blender of Amazon.com or that the "list" price was
21 \$329.

22 14. Plaintiff Allen Wisely is, and at all times relevant hereto was, a resident of San
23 Diego, California, and a citizen of California. On or about April 22, 2103, Wisely purchased a
24 Digital to Analog Audio Converter from Amazon.com. This Audio Converter was "listed" on
25 Amazon's website for \$59, but Amazon stated that its sellers could offer the item for \$21. Amazon
26 expressly represented to Wisely, and the public at large, that he would save \$48.00 or 64% by
27 purchasing the product on its website. The representation was also false.

28 15. The Amazon "list" price represented price at which the same Audio Converter was

1 first offered on Amazon.com in 2010. Amazon neither listed the Audio Converter on its website for
2 \$59 since 2010 nor does Amazon disclose that the list price is over four years old. Similar digital to
3 analog audio converters currently sell for substantially less than \$59 in the online retail market.
4 Nevertheless, Amazon maintains that Wisely, and the general public, are save more than 50% by
5 buying this product on their website.

6 16. Defendant Amazon.com, Inc. is a Delaware Corporation headquartered in Seattle,
7 Washington. Amazon is the largest online retailer in the United States. Amazon operates the
8 popular website, Amazon.com which allows both Amazon and its subsidiaries, as well as other
9 individuals, manufacturers, retailers and distributors, to sell their products online, directly to
10 consumers, including millions of individuals in California. As such, Amazon sells both products
11 from its own retail subsidiary, Amazon.com LLC, and products from other independent sellers who
12 have agreed to list their products on Amazon's website. Amazon does not have any physical retail
13 locations, however it does operate a number of distribution centers in California.

14 17. Amazon.com started as an online bookstore, but has diversified to now sell
15 numerous types of consumer goods, including DVDs, CDs, videos and MP3s, software, video
16 games, electronics, apparel, furniture, food, toys, appliances, clothing, and jewelry.

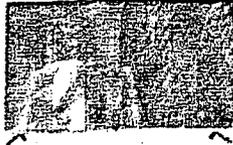
17 18. Plaintiffs do not know the true names of defendants DOES 1 through 50 inclusive,
18 and therefore sues them by those fictitious names. Plaintiffs are informed and believe, and on the
19 basis of that information and belief allege, that each of the doe defendants are in some manner
20 proximately responsible for the events and happenings alleged in this complaint and for Plaintiffs'
21 injuries, damages, restitution and equitable remedies prayed for herein.

22 **IV. SUBSTANTIVE ALLEGATIONS**

23 **A. Amazon's Advertising Practices**

24 19. Upon browsing for products on Amazon's website, a consumer can either search for
25 the specific product they wish to purchase or browse products grouped by category into
26 "departments" and numerous sub-categories (e.g., "Books & Audible," "Electronics and
27 Computers," etc). Regardless of which method is used, consumers are presented with pages of
28 "results" germane to their request. These "result pages" provide a picture of the products being sold

1 and a short description of multiple products fitting the description of the sought after product, so
 2 that a consumer might quickly find the item they wish to purchase.



6 See Size Options

7
8 **LG Electronics 55LB5900 55-Inch 1080p 120Hz LED TV**

9 ~~\$699.00~~ **\$679.00** Prime
 available Monday, Nov 3
 FREE Delivery

10 **More Buying Choices**
 \$670.89 new (1 offer)
 \$629.10 used (1 offer)
 delivered (QTY)



See Size Options

Samsung UN22F5000 22-Inch 1080p 60Hz Slim LED HDTV (2013 Model)

~~\$169.99~~ **\$167.99** Prime
 available Monday, Nov 3
 FREE Delivery

More Buying Choices
 \$164.97 new (1 offer)
 \$119.00 used (1 offer)
 delivered (QTY)



See Size Options

VIZIO E5004-B1 50-Inch 1080p HDTV

~~\$599.00~~ **\$548.00** Prime
 available Monday, Nov 3
 FREE Delivery

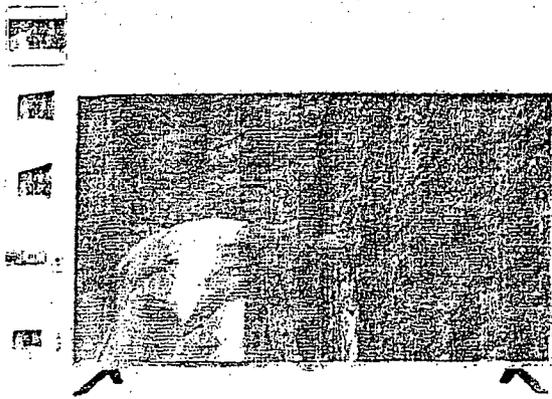
More Buying Choices
 \$510.99 new (1 offer)
 \$509.64 used (1 offer)
 delivered (QTY)

13 20. Amazon chooses to display only a limited amount of information on its results
 14 pages, *i.e.*, the information Defendant believes is most material to prospective customers. Among
 15 the most prominent of the information provided is the products' title, its availability, consumer
 16 reviews, and its price. It is clear by the font and space dedicated to each element that Amazon
 17 understands that its customers are highly influenced by the price of the product when deciding to
 18 purchase from its website.

19 21. Amazon not only includes its pricing for an item, but also the price charged by other
 20 sellers who have agreed to make their products available on Amazon. Both Amazon's price and the
 21 prices charged by its independent sellers for a given product are represented as a "discount" price
 22 relative to the "list" price. Thus, a reasonable consumer is provided the false impression that when
 23 purchasing products on Amazon, they receive a deal compared to other retailers and/or the Amazon
 24 normal pricing.

25 22. When a customer selects a product from the results page, they are directed to a web-
 26 page having more detailed information about that product. Effectively, the first and certainly the
 27 most prominently displayed information presented by Defendant on each product page is
 28 Amazon's discount pricing:

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LG Electronics 55LB5900 55-Inch 1080p 120Hz LED TV

by LG
★ ★ ★ ★ ★ 279 customer reviews | 44 answered questions

List Price: ~~\$999.99~~
Price: \$679.00 & FREE Shipping. Details
You Save: \$320.99 (32%)
Low Price Guarantee

In Stock.
Ships from and sold by Amazon.com.

Want it Saturday, Nov. 17? Order within 18 hrs 10 mins and choose Saturday Delivery at checkout. Details
Size: 55-Inch

47-Inch 50-Inch 55-Inch 60-Inch

Roll over image to zoom in

As noted above, Amazon.com acts uniformly to present a “list” pricing of an item for sale on its website. The “list” price, represented to be the item’s normal price, is followed by Amazon’s contrasting (lower) price in red lettering, the amount saved represented in total dollars, and a percentage of the “false” savings.

23. Because Amazon advertises the amount of the discount as both a total dollar number and as a percentage of the “list” price displayed, it behooves Amazon to make the “list” price as large as possible (to create the appearance of vast savings). Accordingly, when determining its “list” price, Defendant’s consistently uses the highest price at which a product has ever been “listed” regardless of when or where this product was ever listed for the indicated price. Consequently, Defendant regularly misinforms its consumers regarding the most material disclosure regarding their transaction: the price.

24. Defendant’s deceptive practices of displaying a list price which bears no relation to the prevailing market are a consistent part of Defendant’s memorialized business practices. Defendant’s “list” price is the highest manufacturer’s suggested retail price (“MSRP”) and, as such, an inaccurate representation of the market price of the subject item for a given time period for a particular location or the price at which the product was previously sold on Defendant’s website. Indeed, the MSRP is by definition only a suggestion directed at retailers and therefore not a reasonable basis to conclude it reflects the average price available within the market.

1 25. Defendant relies on the highest MSRP because it has no independent policy or
2 system to ensure that the “list” price reflects the prevailing market price at a given time. This is not
3 a simple oversight. Defendant resorts to the artificially inflated “list” prices which mislead the
4 general public about the true discount(s) available and maintains the illusion that Amazon pricing
5 is consistently lower than available through other sources. If Amazon actually included a valid
6 “list” price reflecting the immediate retail market price for a product, reasonable consumers would
7 learn that Amazon does not provide the deals it purports to offer.

8 26. Due to automatic price matching policies, and the invisible hand of the market, if
9 one retailer lowers its price, others must follow suit. Amazon and its competition are no exception.
10 For example, the LG Electronics 55LB5900 55-Inch 1080p LED TV listed on Amazon.com, as
11 depicted in the above screenshots, was also listed on Best Buy’s website, Walmart’s website, and
12 Newegg.com for the same price (if not less) as listed by Amazon during the same period.¹ Thus, no
13 basis for Defendant to assert that the customer is receiving a substantial discount, when the
14 customer is only paying Amazon the then prevailing market price.

15 27. Defendant’s illusory “discounts” are particularly misleading because consumers
16 often make purchasing decisions based on a reference price - that is, customers will often make
17 purchasing decision when they believe products to be less expensive than the perceived “normal”
18 price for a given item. By advertising “discounts” derived from inaccurate “list” pricing, Defendant
19 takes advantage of such well documented consumer behavior in order to influence consumers into
20 immediately purchasing an item. Additionally, Defendant’s practices mollifies consumers’
21 concerns about missing the “better deal”, and serves to discourage comparison shopping. Finally,
22 such discounts additionally create a false sense of urgency, contributing to the impression that a
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26 ¹ Both newegg.com and Best Buy offered the same television for the same price. Walmart
27 advertised the same TV for significantly less. See <http://www.bestbuy.com/site/lg-55-class-54-5-8-diag--led-1080p-120hz-hdtv/6053009.p?id=1219184625084&skuId=6053009>; <http://www.walmart.com/ip/LG-55LB5900-55-1080p-60Hz-Class-LED-HDTV/38378301>; and <http://www.newegg.com/Product/Product.aspx?Item=N82E16889005875>
28

1 consumer should act quickly or lose a significant savings.²

2 28. Defendant uses these ersatz illusory discounts to create the impression that online
3 retailers have efficiencies in their operations, can offer more competitive prices and are worth the
4 inconvenience of not purchasing the same product at a local retailer. Thus, Defendant's actions
5 harmed, and continue to harm, Plaintiffs, members of the Class, and market competitors.

6 **B. California False Advertising Law**

7 29. By marketing a product's "list" price at an artificially high level - a level that would
8 not be competitive in the current prevailing market or at a price for which it never intends to sell
9 the product - Defendant concocts a discount that does not exist. This method of advertising is
10 materially misleading to the average consumer, who is often swayed into purchasing a product by
11 the prospect of a large discount.

12 30. But, such practice is not novel or unique. Historically, unscrupulous retailers have
13 frequently used the same misleading tactic - overstating or manufacturing a "discount" to help sell
14 products instead of the competition. Accordingly, both California lawmakers and federal regulators
15 have each sought to prohibit the injurious conduct. California Business & Professional Code,
16 Section 17501, specifically states that:

17 No price shall be advertised as a former price of any advertised thing, unless the
18 alleged former price was the prevailing market price as above defined within
19 three months next immediately preceding the publication of the advertisement
or unless the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

20 (Emphasis added). The provision of Section 17501 differentiates subjective uncertainty from clear
21 illegality. The market price at the time of publication of such an advertisement is the price charged
22 in the locality where the advertisement is published. Accordingly, Defendant can only properly
23 include a "list" price for comparative purposes in its advertisements if (1) the prevailing market
24 price has been researched (in California) and the list price is the average retail market price within
25 the past three months, or (2) it advertises the date on which the published "list" price was in effect.

26
27 ² See generally, Grewal, Krishnan, Baker & Norm, "The Effect of Store Name, Brand Name
28 and Price Discounts On Consumers' Evaluations And Purchase Intentions" 74 Journal of Retailing
3, p. 331 (1998).

1 31. Based upon Defendant's written policies, the "list" price for an item is not
2 determined by Amazon referencing a "prevailing market price" within the prior three months. It
3 instead displays the highest MSRP. Amazon also does not state the date from which the "list" price
4 was derived. This allows Amazon to continue to influence sales by using a "list" price that is
5 woefully out-of-date, bearing no relation to the currently prevailing markets.

6 32. Defendant's practices are cited with disapproval by certain federal regulations
7 intended to protect consumers:

8 One of the most commonly used forms of bargain advertising is to offer a reduction
9 from the advertiser's own former price for an article. If the former price is the
10 actual, bona fide price at which the article was offered to the public on a regular
11 basis for a reasonably substantial period of time, it provides a legitimate basis for
12 the advertising of a price comparison. Where the former price is genuine, the
13 bargain being advertised is a true one. If, on the other hand, the former price being
14 advertised is not bona fide but fictitious--for example, where an artificial, inflated
15 price was established for the purpose of enabling the subsequent offer of a large
16 reduction--the "bargain" being advertised is a false one; the purchaser is not
17 receiving the unusual value he expects. In such a case, the "reduced" price is, in
18 reality, probably just the seller's regular price.

19 16 C.F.R. § 233.1(a).

20 33. The law thus confirms what is painfully apparent to a shopper: a business acts
21 improperly when it completely manufactures or exaggerates a discount intended to make products
22 appear more attractive.

23 **V. CLASS ALLEGATIONS**

24 34. Plaintiffs bring this action as a class action pursuant to (Cal. Civ. Proc. Code 382
25 for the following Classes of persons:

26 All persons residing in California who, within four (4) years of the filing of this
27 Complaint, according to Defendant's records, purchased a product for which
28 Defendant advertise both a "list" price and its retail price.

Excluded from the Class are all legal entities, Defendant herein and any person, firm, trust,
corporation, or other entity related to or affiliated with Defendant, any entities that purchased the
Class Products for resale, as well as any judge, justice or judicial officer presiding over this matter
and members of their immediate families and judicial staff.

35. Defendant maintains accurate records of all transactions occurring on its website,
including the name, mailing address, email and billing information of each of the Class members.

1 While the exact number of Class members is unknown to Plaintiffs at this time, Plaintiffs are
 2 informed and believes that there are hundreds of thousands of members in the proposed Class, if
 3 not more, and can be ascertained through discovery. The number of individuals who comprise the
 4 Class are so numerous that joinder of all such persons is impracticable and the disposition of their
 5 claims in a class action, rather than in individual actions, will benefit both the parties and the
 6 courts.

7 36. Defendant has acted with respect to the Class in a manner generally applicable to
 8 each Class member, making class-wide injunctive and declaratory relief proper.

9 37. There is a well-defined community of interest in the questions of law and fact
 10 involved in the action, which affect all Class members. Among the questions of law and fact
 11 common to the Class are, *inter alia*:

12 (a) Whether Defendant advertises its "discounted" products in a deceptive,
 13 false, or misleading manner;

14 (b) Whether Defendant's advertised "list" price is determined by averaging the
 15 price of said product in the prevailing market over the previous three months;

16 (c) Whether Defendant's advertised the date on which the "list" price of a
 17 product is determined if it is not calculated by the average over the previous three months;

18 (d) Whether Defendant's alleged business practices constitutes unfair methods
 19 of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. BUS.
 20 & PROF. CODE §§ 1770, *et seq.*, by making false or misleading statements of fact
 21 concerning reasons for, existence of, or amounts of price reductions.

22 (e) Whether Defendant's business practices, alleged herein, constitute
 23 misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17500-
 24 01.

25 (f) Whether Defendant's business practices, alleged herein, constitutes
 26 "unlawful," "unfair," or "fraudulent" business acts or practices under, *inter alia*, CAL. BUS.
 27 & PROF. CODE §§ 17200, including:

28 (i) Whether Defendant's advertisement of illusory discounts constitutes

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“unlawful” or “unfair” business practices by violating the public policies set out in CAL. CIV. CODE §§ 1770(a)(13), CAL. BUS. & PROF. CODE §§ 17500-01, 16 C.F.R. § 233.1, and other California and federal statutes and regulations;

(ii) Whether Defendant’s advertisement of illusory discounts is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers;

(iii) Whether Defendant’s advertisement of illusory discounts constitutes an “unfair” business practice because consumer injury outweighs any countervailing benefits to consumers or competition, and because such injury could not be reasonably avoided by consumers; and

(iv) Whether Defendant’s advertisement of illusory discounts constitutes a “fraudulent” business practice because members of the public are likely to be deceived;

(h) The nature and extent of equitable remedies, including restitution of shipping costs; and declaratory and injunctive relief to which Plaintiffs and the Class are entitled; and

(i) Whether Plaintiffs and the Class should be awarded attorneys’ fees and the costs of suit for Defendant’s violations of the UCL, FAL, and CLRA.

38. Plaintiffs’ claims are typical of the claims of the other members of the Class. All members of the Class have been and/or continue to be similarly affected by Defendant’s wrongful conduct as complained of herein, in violation of California law. Plaintiffs are unaware of any interests that conflict with or are antagonistic to the interests of the Class.

39. Plaintiffs will fairly and adequately protect the Class members’ interests and have retained counsel competent and experienced in consumer class action lawsuits and complex litigation. Plaintiffs and their counsel have the necessary financial resources to adequately and vigorously litigate this class action, and Plaintiffs are aware of their duties and responsibilities to the Class.

40. A class action is superior to all other available methods for the fair and efficient

1 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
 2 damages suffered by individual Class members may be relatively small, the expense and burden of
 3 individual litigation make it virtually impossible for Class members to individually redress the
 4 wrongs done to them. There will be no difficulty in managing this action as a class action.

5 41. Defendant has acted on grounds generally applicable to the entire Class with respect
 6 to the matters complained of herein, thereby making appropriate the relief sought herein with
 7 respect to the Class as a whole.

8 FIRST CAUSE OF ACTION

9 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* - 10 **Untrue, Misleading and Deceptive Advertising****

11 42. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
 12 paragraphs of this Complaint.

13 43. California Business and Professional Code, Section 17501, states that:

14 No price shall be advertised as a former price of any advertised thing, unless the
 15 alleged former price was the prevailing market price as above defined within three
 16 months next immediately preceding the publication of the advertisement or unless
 the date when the alleged former price did prevail is clearly, exactly and
 conspicuously stated in the advertisement.

17 For the purpose of Section 17501, the retail market price at the time of publication of such
 18 advertisement is the retail price in locality wherein the advertisement is published.

19 44. At all material times, Defendant engaged in a scheme of advertising that its products
 20 were subject to a discount when such discounts were illusory and did not reflect the "prevailing
 21 marketing price" of the item for a particular time period in a particular location or even the price at
 22 which the product was previously sold on Defendant's website.

23 45. At all material times, Defendant did not include the date on which its "list" price
 24 was established.

25 46. Defendant's advertisement of an inflated list price misrepresented and/or omitted
 26 the true nature of Defendant's pricing. Said advertisements were made to consumers located within
 27 the State of California, and come within the definition of advertising as contained in CAL. BUS. &
 28 PROF. CODE §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to

1 purchase products on Amazon.com and are statements disseminated by Defendant to Plaintiffs and
2 other members of the Class. In the exercise of reasonable care, Defendant should have known, that
3 the statements regarding its pricing were false, misleading, deceptive and violated California law.

4 47. Defendant has prepared and distributed within the State of California, *via* its retail
5 website, Amazon.com, that its products were subject to substantial discounts. Plaintiffs, necessarily
6 and reasonably relied on Defendant's statements regarding the pricing of its products, and all
7 members of the Class were exposed to such statements. Consumers, including Plaintiffs and
8 members of the Class, were among the intended targets of such representations.

9 48. The above acts of Defendant, in disseminating said misleading and deceptive
10 statements throughout the State of California, including Plaintiffs and members of the Class, were
11 and are likely to deceive reasonable consumers by obfuscating the true nature of Defendant's
12 discounts, thus were violations of CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

13 49. Plaintiffs and other members of the Class who purchased products from Defendant's
14 website suffered a substantial injury. Had Plaintiffs and members of the Class known that
15 Defendant's materials, advertisement and other inducements misrepresented and/or omitted the
16 true nature of Defendant's discounts, they would not have purchased products from Amazon.com,
17 or paid less for them.

18 50. Plaintiffs, on behalf of themselves and all other similarly situated California
19 consumers, and as appropriate, on behalf of the general public of the state of California, seek
20 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
21 directing Defendant to make corrective notices both on its website and in other appropriate media,
22 allowing Class members to return any products purchased on Defendant's website, at Defendant's
23 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
24 Defendant to price match any competitor's advertised price for the same product, refund of any
25 shipping and handling fees for any products purchased on Defendant's website subject to
26 Defendant's unlawful pricing policy, and any other relief deemed improper by the Court.
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SECOND CAUSE OF ACTION

**Violation of CAL. CIV. CODE §§ 1750, *et seq.*-
Misrepresentation of the Existence of a Discount**

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4 51. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
5 paragraphs of this Complaint.

6 52. Defendant sells “goods” and “services” as defined by California Civil Code §1761.

7 53. Defendant is a “person” as defined by California Civil Code §1761(c).

8 54. Plaintiffs and Class members are “consumers” within the meaning of California
9 Civil Code §1761(d) because they purchased the products from Amazon.com for personal, family
10 or household use.

11 55. The sale of the products to Plaintiffs and Class members *via* Defendant’s website is
12 a “transaction” as defined by California Civil Code §1761(e).

13 56. By misrepresenting the “list” price of its products, and thus any discounts derived
14 therefrom, Defendant made false or misleading statements of fact concerning reasons for, existence
15 of, or amounts of price reductions, in violation of California Civil Code §1770(a)(13).

16 57. Plaintiffs and Class members were harmed as a result of Defendant’s unfair
17 competition and deceptive acts and practices. Had Defendant disclosed the true nature of its
18 discounts, Plaintiffs and the Class would not be misled into purchasing products from Defendant’s
19 website, or, alternatively, paid less for them.

20 58. Plaintiffs, on behalf of themselves and all other similarly situated California
21 consumers, and as appropriate, on behalf of the general public of the state of California, seek
22 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
23 directing Defendant to make corrective notices both on its website and in other appropriate media,
24 allowing Class members to return any products purchased on Defendant’s website, at Defendant’s
25 expense, which were subject to Defendant’s unlawful pricing policy, or alternatively requiring
26 Defendant to price match any competitor’s advertised price for the same product, refund of any
27 shipping and handling fees for any products purchased on Defendant’s website subject to
28 Defendant’s unlawful pricing policy, and any other relief deemed proper by the Court.

THIRD CAUSE OF ACTION

**Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -
Unlawful Business Acts and Practices**

59. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

60. California Business and Professional Code, Section 17501, states:

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

61. Federal regulations also prohibit the use of deceive and illusory discounts:

One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious--for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction--the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

16 C.F.R. § 233.1(a).

62. California Civil Code §1770(a)(13) prohibits making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

63. The business practices alleged above are unlawful under California Business & Professional Code §§ 17500, *et seq.*, California Civil Code §1770(a)(13) and federal regulations, each of which forbids Defendant's untrue, fraudulent, deceptive, and/or misleading marketing and advertisements.

64. Plaintiffs and Class members were harmed as a result of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the true nature of their "discounts," Plaintiffs and the Class would not be misled into purchasing products from Defendant's website, or, alternatively, paid less for them.

65. Plaintiffs, on behalf of themselves and all other similarly situated California

1 consumers, and as appropriate, on behalf of the general public of the state of California, seek
2 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein;
3 directing Defendant to make corrective notices both on its website and in other appropriate media;
4 allowing Class members to return any products purchased on Defendant's website, at Defendant's
5 expense, which were subject to Defendant's unlawful pricing policy, or alternatively requiring
6 Defendant to price match any competitor's advertised price for the same product, refund of any
7 shipping and handling fees for any product purchased on Defendant's website subject to
8 Defendant's unlawful pricing policy, and any other relief deemed improper by the Court.

9 **FOURTH CAUSE OF ACTION**

10 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
11 **Unfair Business Acts and Practices**

12 66. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
13 paragraphs of this Complaint.

14 67. Plaintiffs and other members of the Class suffered a substantial injury by virtue of
15 Defendant's unlawful scheme of advertising that its products were subject to discounts when such
16 discounts were illusory and did not reflect the "prevailing marketing price" of the item during any
17 particular time period at a particular location or even the price at which the product was previously
18 sold on Defendant's website.

19 68. Defendant's actions alleged herein violate the laws and public policies of California
20 and the federal government as set out in preceding paragraphs of this Complaint.

21 69. There is no benefit to consumers or competition by allowing Defendant to
22 deceptively market and advertise nonexistent discounts in violation of California Law.

23 70. Plaintiffs and Class members who purchased products from Defendant's website
24 had no way of reasonably knowing that the "list" price was artificially inflated and did not reflect
25 the true nature of the discount offered on Defendant's products. Thus, Class members could not
26 have reasonably avoided the injury they suffered.

27 71. The gravity of the harm visited upon Plaintiffs and Class members outweighs any
28 legitimate justification, motive or reason for marketing and advertising discounted products in a

1 deceptive and misleading manner which violates California law. Accordingly, Defendant's actions
2 are immoral, unethical, unscrupulous and offend the established California public policies is
3 substantially injurious to Plaintiffs and members of the Class.

4 72. The above acts of Defendant, in disseminating said misleading and deceptive
5 statements throughout the State of California to consumers, including Plaintiffs and members of the
6 Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and
7 amount of the nature and existence of product in violations of CAL. BUS. & PROF. CODE §§ 17500,
8 *et seq.*, and California Civil Code §1770(a)(13).

9 73. Plaintiffs and Class members were harmed and suffered actual damages as a result
10 of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the
11 true nature of their discounts, Plaintiffs and the Class would have purchased products from
12 Defendant's website, or, alternatively, paid significantly less for them.

13 74. Plaintiffs, on behalf of themselves and all other similarly situated California
14 consumers, and as appropriate, on behalf of the general public of the state of California, seeks
15 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
16 directing Defendant to make corrective notices both on its website and in other appropriate media,
17 allowing Class members to return any products purchased on Defendant's website, at Defendant's
18 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
19 Defendant to price match any competitor's advertised price for the same product, refund of any
20 shipping and handling fees for any purchased on Defendant's website subject to Defendant's
21 unlawful pricing policy and any other relief deemed improper by the Court.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
24 **Fraudulent Business Acts and Practices**

25 75. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
26 paragraphs of this Complaint.

27 76. Such acts of Defendant as described above constitute a fraudulent business practice
28 under CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

1 unenforceable.

2 **VI. PRAY FOR RELIEF**

3 WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

4 A. For an order declaring that this action is properly maintained as a class action and
5 appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs' counsel as Class
6 counsel;

7 B. For an order enjoining Defendant from continuing to engage in the unlawful and
8 unfair business acts and practices as alleged herein;

9 C. For an order directing Defendant to make corrective notices on its website and in
10 other appropriate publications.

11 D. For an order directing Defendant to allow its customers to return any products
12 purchased on Defendant's website, at Defendant's expense, which were subject Defendant's
13 unlawful pricing policy, within twelve (12) months of filing this complaint.

14 E. For an order requiring Defendant to price match any competitor's advertised price
15 for the same product purchased from Amazon.com, which were subject Defendant's unlawful
16 pricing policy, within twelve (12) months of filing this complaint;

17 F. For restitution of all shipping and handling fees charged for products purchased
18 from Amazon.com subject to Defendant's unlawful advertising;

19 F. For an order awarding attorneys' fees and costs of suit, including experts witness
20 fees as permitted by law; and

21 G. Such other and further relief as this Court may deem just and proper.

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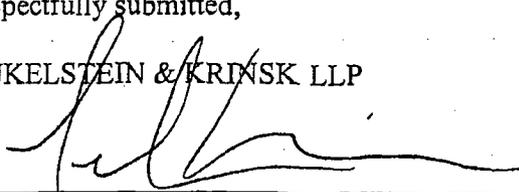
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VII. JURY TRIAL

Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

By: 

Trenton R. Kashima, Esq.

Jeffrey R. Krinsk, Esq.
Mark L. Knutson, Esq.
William R. Restis, Esq.

Attorneys for Plaintiff
and the Class

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7071	
PLAINTIFF(S) / PETITIONER(S): Andrea Fagerstrom et.al.	
DEFENDANT(S) / RESPONDENT(S): Amazon.Com Inc	
ANDREA FAGERSTROM VS AMAZON.COM INC [E-FILE]	
NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE	CASE NUMBER: 37-2014-00040303-CU-BT-CTL

CASE ASSIGNMENT

Judge: Ronald S. Prager

Department: C-71

COMPLAINT/PETITION FILED: 11/25/2014

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	05/01/2015	01:00 pm	C-71	Ronald S. Prager

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

MANDATORY eFILE: Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at www.onelegal.com. Refer to General Order 051414 at www.sdcourt.ca.gov for guidelines and procedures.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 W Broadway MAILING ADDRESS: 330 W Broadway CITY AND ZIP CODE: San Diego CA 92101-3827 BRANCH NAME: Central	<i>FOR COURT USE ONLY</i>
Short Title: Andrea Fagerstrom vs Amazon.com Inc [E-FILE]	
NOTICE OF CONFIRMATION OF ELECTRONIC FILING	CASE NUMBER: 37-2014-00040303-CU-BT-CTL

San Diego Superior Court has reviewed the electronic filing described below. The fee assessed for processing and the filing status of each submitted document are also shown below.

Electronic Filing Summary Data

Electronically Submitted By: Trenton Kashima
 On Behalf of: Allen Wiseley, Andrea Fagerstrom
 Transaction Number: 199922
 Court Received Date: 11/25/2014
 Filed Date: 11/25/2014
 Filed Time: 01:32 PM
 Fee Amount Assessed: \$1,435.00
 Case Number: 37-2014-00040303-CU-BT-CTL
 Case Title: Andrea Fagerstrom vs Amazon.com Inc [E-FILE]
 Location: Central
 Case Type: Business Tort
 Case Category: Civil - Unlimited
 Jurisdictional Amount: > 25000

Status

Accepted
 Accepted
 Accepted

Documents Electronically Filed/Received

Complaint
 Civil Case Cover Sheet
 Original Summons

CASE TITLE: Andrea Fagerstrom vs Amazon.com Inc [E-FILE]

CASE NUMBER: 37-2014-00040303-CU-BT-CTL

Comments

Clerk's Comments:

Events Scheduled

Hearing(s)		Date	Time	Location	Department
Civil Case Management Conference		05/01/2015	01:00 PM	Central	C-71

Electronic Filing Service Provider Information

Service Provider: OneLegal
Email: support@onelegal.com
Contact Person: Customer Support
Phone: (800) 938-8815

Notice to Filer

Pursuant to California Rules of Court ("CRC"), rules 2.250 et seq., Code of Civil Procedure section 1010.6, and San Diego Superior Court General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, this case has been designated as a Mandatory eFile case.

All future documents submitted to the court on this case must be filed electronically. **The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.**

A party may request to be excused from mandatory electronic filing requirements. This request must be in writing and may be made by ex parte application to the judge or department to whom the case is assigned.

Documents for cases ordered to mandatory eFiling can only be filed through the court's electronic service provider (the "Provider"). See www.onelegal.com, for information on how to file electronically.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION

CASE NUMBER: 37-2014-00040303-CU-BT-CTL CASE TITLE:

Andrea Fagerstrom vs Amazon.com Inc [E-FILE]

NOTICE: All plaintiffs/cross-complainants in a general civil case are required to serve a copy of the following three forms on each defendant/cross-defendant, together with the complaint/cross-complaint:

- (1) this Alternative Dispute Resolution (ADR) Information form (SDSC form #CIV-730),
- (2) the Stipulation to Use Alternative Dispute Resolution (ADR) form (SDSC form #CIV-359), and
- (3) the Notice of Case Assignment form (SDSC form #CIV-721).

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts, community organizations, and private providers offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. The San Diego Superior Court expects that litigants will utilize some form of ADR as a mechanism for case settlement before trial, and it may be beneficial to do this early in the case.

Below is some information about the potential advantages and disadvantages of ADR, the most common types of ADR, and how to find a local ADR program or neutral. A form for agreeing to use ADR is attached (SDSC form #CIV-359).

Potential Advantages and Disadvantages of ADR

ADR may have a variety of advantages or disadvantages over a trial, depending on the type of ADR process used and the particular case:

Potential Advantages

- Saves time
- Saves money
- Gives parties more control over the dispute resolution process and outcome
- Preserves or improves relationships

Potential Disadvantages

- May take more time and money if ADR does not resolve the dispute
- Procedures to learn about the other side's case (discovery), jury trial, appeal, and other court protections may be limited or unavailable

Most Common Types of ADR

You can read more information about these ADR processes and watch videos that demonstrate them on the court's ADR webpage at <http://www.sdcourt.ca.gov/adr>.

Mediation: A neutral person called a "mediator" helps the parties communicate in an effective and constructive manner so they can try to settle their dispute. The mediator does not decide the outcome, but helps the parties to do so. Mediation is usually confidential, and may be particularly useful when parties want or need to have an ongoing relationship, such as in disputes between family members, neighbors, co-workers, or business partners, or when parties want to discuss non-legal concerns or creative resolutions that could not be ordered at a trial.

Settlement Conference: A judge or another neutral person called a "settlement officer" helps the parties to understand the strengths and weaknesses of their case and to discuss settlement. The judge or settlement officer does not make a decision in the case but helps the parties to negotiate a settlement. Settlement conferences may be particularly helpful when the parties have very different ideas about the likely outcome of a trial and would like an experienced neutral to help guide them toward a resolution.

Arbitration: A neutral person called an "arbitrator" considers arguments and evidence presented by each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are usually relaxed. If the parties agree to binding arbitration, they waive their right to a trial and agree to accept the arbitrator's decision as final. With nonbinding arbitration, any party may reject the arbitrator's decision and request a trial. Arbitration may be appropriate when the parties want another person to decide the outcome of their dispute but would like to avoid the formality, time, and expense of a trial.

Other ADR Processes: There are several other types of ADR which are not offered through the court but which may be obtained privately, including neutral evaluation, conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR processes. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute. Be sure to learn about the rules of any ADR program and the qualifications of any neutral you are considering, and about their fees.

Local ADR Programs for Civil Cases

Mediation: The San Diego Superior Court maintains a Civil Mediation Panel of approved mediators who have met certain minimum qualifications and have agreed to charge \$150 per hour for each of the first two (2) hours of mediation and their regular hourly rate thereafter in court-referred mediations.

On-line mediator search and selection: Go to the court's ADR webpage at www.sdcourt.ca.gov/adr and click on the "Mediator Search" to review individual mediator profiles containing detailed information about each mediator including their dispute resolution training, relevant experience, ADR specialty, education and employment history, mediation style, and fees and to submit an on-line Mediator Selection Form (SDSC form #CIV-005). The Civil Mediation Panel List, the Available Mediator List, individual Mediator Profiles, and Mediator Selection Form (CIV-005) can also be printed from the court's ADR webpage and are available at the Mediation Program Office or Civil Business Office at each court location.

Settlement Conference: The judge may order your case to a mandatory settlement conference, or voluntary settlement conferences may be requested from the court if the parties certify that: (1) settlement negotiations between the parties have been pursued, demands and offers have been tendered in good faith, and resolution has failed; (2) a judicially supervised settlement conference presents a substantial opportunity for settlement; and (3) the case has developed to a point where all parties are legally and factually prepared to present the issues for settlement consideration and further discovery for settlement purposes is not required. Refer to SDSC Local Rule 2.2.1 for more information. To schedule a settlement conference, contact the department to which your case is assigned.

Arbitration: The San Diego Superior Court maintains a panel of approved judicial arbitrators who have practiced law for a minimum of five years and who have a certain amount of trial and/or arbitration experience. Refer to SDSC Local Rules Division II, Chapter III and Code Civ. Proc. § 1141.10 et seq or contact the Arbitration Program Office at (619) 450-7300 for more information.

More information about court-connected ADR: Visit the court's ADR webpage at www.sdcourt.ca.gov/adr or contact the court's Mediation/Arbitration Office at (619) 450-7300.

Dispute Resolution Programs Act (DRPA) funded ADR Programs: The following community dispute resolution programs are funded under DRPA (Bus. and Prof. Code §§ 465 et seq.):

- In Central, East, and South San Diego County, contact the National Conflict Resolution Center (NCRC) at www.ncrconline.com or (619) 238-2400.
- In North San Diego County, contact North County Lifeline, Inc. at www.nclifeline.org or (760) 726-4900.

Private ADR: To find a private ADR program or neutral, search the Internet, your local telephone or business directory, or legal newspaper for dispute resolution, mediation, settlement, or arbitration services.

Legal Representation and Advice

To participate effectively in ADR, it is generally important to understand your legal rights and responsibilities and the likely outcomes if you went to trial. ADR neutrals are not allowed to represent or to give legal advice to the participants in the ADR process. If you do not already have an attorney, the California State Bar or your local County Bar Association can assist you in finding an attorney. Information about obtaining free and low cost legal assistance is also available on the California courts website at www.courtinfo.ca.gov/selfhelp/lowcost.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY, STATE, & ZIP CODE: San Diego, CA 92101-3827 BRANCH NAME: Central	FOR COURT USE ONLY
PLAINTIFF(S): Andrea Fagerstrom et.al.	
DEFENDANT(S): Amazon.Com Inc	
SHORT TITLE: ANDREA FAGERSTROM VS AMAZON.COM INC [E-FILE]	
STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR)	CASE NUMBER: 37-2014-00040303-CU-BT-CTL

Judge: Ronald S. Prager

Department: C-71

The parties and their attorneys stipulate that the matter is at issue and the claims in this action shall be submitted to the following alternative dispute resolution (ADR) process. Selection of any of these options will not delay any case management timelines.

- | | |
|---|--|
| <input type="checkbox"/> Mediation (court-connected) | <input type="checkbox"/> Non-binding private arbitration |
| <input type="checkbox"/> Mediation (private) | <input type="checkbox"/> Binding private arbitration |
| <input type="checkbox"/> Voluntary settlement conference (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 15 days before trial) |
| <input type="checkbox"/> Neutral evaluation (private) | <input type="checkbox"/> Non-binding judicial arbitration (discovery until 30 days before trial) |
| <input type="checkbox"/> Other (specify e.g., private mini-trial, private judge, etc.): _____ | |

It is also stipulated that the following shall serve as arbitrator, mediator or other neutral: (Name) _____

Alternate neutral (for court Civil Mediation Program and arbitration only): _____

Date: _____

Date: _____

Name of Plaintiff _____

Name of Defendant _____

Signature _____

Signature _____

Name of Plaintiff's Attorney _____

Name of Defendant's Attorney _____

Signature _____

Signature _____

If there are more parties and/or attorneys, please attach additional completed and fully executed sheets.

It is the duty of the parties to notify the court of any settlement pursuant to Cal. Rules of Court, rule 3.1385. Upon notification of the settlement, the court will place this matter on a 45-day dismissal calendar.

No new parties may be added without leave of court.

IT IS SO ORDERED.

Dated: 11/26/2014

 JUDGE OF THE SUPERIOR COURT

ELECTRONIC FILING REQUIREMENTS OF THE
SAN DIEGO SUPERIOR COURT – CIVIL DIVISION

These requirements are issued pursuant to California Rules of Court ("CRC", rules 2.250 et seq., Code of Civil Procedure § 1010.6, and San Diego Superior Court General Order: In Re Procedures Regarding Electronic Filing.

Effective November 1, 2013, document that are determined to be unacceptable for eFiling by the Court due to eFiling system restrictions or for failure to comply with these requirements will be rejected subject to being allowed to be filed nunc pro tunc to the original submittal date upon ex-parte application to the court and upon good cause shown.

It is the duty of the plaintiff (and cross-complainant) to serve a copy of the General Order of the Presiding Department, Order No. **010214-24A**, and Electronic Filing Requirements of the San Diego Superior Court with the complaint (and cross-complaint).

PERMISSIVE eFILING

Effective March 4, 2013, documents **may be filed electronically** in non-mandated civil cases in the Central Division where either: (1) the case is first initiated on or after March 4, 2013; or (2) the case is already pending as of March 4, 2013 and has been imaged by the court. **Effective June 30, 2014**, documents **may be filed electronically** in non-mandated civil cases in the North County Division where either: (1) the case is first initiated on or after June 30, 2014; or (2) the case is already pending as of June 29, 2014 and has been imaged by the court.

MANDATORY eFILING

The case types that shall be subject to mandatory eFiling are: civil class actions; consolidated and coordinated actions where all cases involved are imaged cases; and actions that are provisionally complex under CRC 3.40 – 3.403 (as set forth in the Civil Case Cover Sheet, Judicial Council form CM-010 – including Construction Defect actions). "Complex cases" included in mandatory eFiling include Antitrust/Trade Regulation, Mass Tort, Environmental/Toxic Tort, and Securities Litigation cases, as well as insurance coverage claims arising from these case types.

Effective **June 2, 2014** Construction Defect and other cases, currently being electronically filed through File&Serve Xpress (fka LexisNexis File&Serve), must be electronically filed through the court's Electronic Filing and Service Provider, One Legal. Documents electronically filed in Construction Defect and other cases prior to **June 2, 2014** will be maintained in the File&Serve Xpress system and can be viewed via a File&Serve Xpress subscription or on the Court's internal CD/JCCP Document viewer kiosk located in the Civil Business Office, Room 225 of the Hall of Justice (2nd floor).

For cases of the type subject to mandatory eFiling that are initiated on or after March 4, 2013, all documents **must be filed electronically**, subject to the exceptions set forth below. All documents electronically filed in a mandatory eFile Construction Defect / JCCP case must be electronically served on all parties in the case pursuant to CRC 2.251(c).

The court will maintain and make available an official electronic service list in Construction Defect / JCCP cases through One Legal. This is the service list that the court will use to serve documents on the parties. (See CRC 2.251(d).) It is the responsibility of the parties to provide One Legal their correct contact information for the service list in each eFiled case in which they are involved no later than July 7, 2014.

New parties who enter a case must provide One Legal with their electronic service address for that case within 7 days of joining the case. All parties must notify One Legal of any changes to that address, within 7 days of the change, should a change occur during the pendency of the action. (See CRC 2.251(f)(1).) Failure to keep the official list updated may result in the court being unable to provide notice to a non-complying party of upcoming hearings, orders, and other proceedings.

For cases of the type subject to mandatory eFiling that are already pending as of March 3, 2013, and provided that the case has been imaged by the court, all documents filed on or after March 4, 2013 **must be filed electronically**, subject to the exceptions set forth below.

A party may request to be excused from mandatory electronic filing and/or service requirements. This request must be in writing and may be made by ex-parte application to the judge or department to whom the case is assigned. The clerk will not accept or file any documents in paper form that are required to be filed electronically, absent a court order allowing the filing.

Self-represented litigants are not required to eFile or electronically serve documents in a mandatory eFile case; however, they may eFile and electronically serve documents if they choose to do so and/or are otherwise ordered to eFile and/or electronically serve documents by the court.

REQUIREMENTS FOR ALL eFILERS

eFile documents can only be filed through the court's Electronic Filing and Service Provider (the "Provider"). See www.onelegal.com.

eFilers must comply with CRC 2.250 – 2.261. Also, all documents electronically filed must be in a text searchable format, i.e., OCR. The court is unable to accept documents that do not comply with these requirements, or documents that include but are not limited to: digitized signatures, fillable forms, or a negative image.

eFilers are required to enter all parties listed on the document being filed, if the party is not already a part of the case. (If the filer is submitting a new complaint, ALL parties must be entered.) If all parties are not entered, the transaction will be rejected.

Documents that contain exhibits must be bookmarked, as set forth on the Provider's site. Documents not so bookmarked are subject to rejection. Moving papers with exhibits that are not bookmarked will be rejected. (See CRC 3.1110(f) with bookmarking being the substitute for plastic tabs in electronically filed documents.)

Exhibits to be considered via a Notice of Lodgment shall not be attached to the electronically filed Notice of Lodgment; instead, the submitting party must provide the assigned department with hard copies of the exhibits with a copy of the Notice of Lodgment that includes the eFiling Transaction ID # noted in the upper right hand corner.

All documents must be uploaded as individual documents within the same transaction, unless filing a Motion. [Example: A Request to Waive Court Fees must be uploaded separately from the document to which it applies, i.e. complaint, answer or other responsive pleading, motion, etc...] If filing a notice of motion, all documents can be scanned and uploaded as one document under a filing that most closely captures the type of motion. All filings and exhibits within these filings must be bookmarked.

Unless otherwise required by law, per CRC 1.20(b) only the last four digits of a social security or financial account number may be reflected in court case filings. Exclusion or redaction is the responsibility of the filer, not the clerk, CRC 1.20(b)(3). Failure to comply with this requirement may result in monetary sanctions, CRC 2.30(b).

Proposed filings, such as proposed court orders and amended complaints, should be submitted as an exhibit and then re-submitted as a separate and new eFiling transaction after the Court has ruled on the matter to which the proposed document applies. See also CRC 3.1312.

Any document filed electronically shall be considered as filed with the Clerk of the Superior Court when it is first transmitted to the vendor and the transmission is completed, except that any document filed on a day that the court is not open for business, or after 5:00 p.m. (Pacific Time) on a day the court is open for business, **shall be deemed to have been filed on the next court day.**

Electronically filed documents must be correctly named and/or categorized by Document Type. The lead document must also be designated appropriately, as the lead document determines how the transaction will be prioritized in the work queue. Failure to correctly name the document and/or designate the lead document appropriately may result in a detrimental delay in processing of the transaction.

Please be advised that you must schedule a motion hearing date directly with the Independent Calendar Department. A motion filed without an appointment, even when a conformed copy of the filing is provided by the court, is not scheduled and the hearing will not occur.

If a hearing is set within 2 court days of the time documents are electronically filed, litigant(s) must provide hard copies of the documents to the court. Transaction ID numbers must be noted on the documents to the extent it is feasible to do so. Hard copies for Ex Parte hearings must be delivered directly to the department on or before 12 Noon the court day immediately preceding the hearing date.

An original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document, pursuant to CRC 2.257.

DOCUMENTS INELIGIBLE FOR ELECTRONIC FILING

The following documents are **not eligible for eFiling** in cases subject to either mandatory or permissive filing, and shall be filed in paper form:

- Safe at Home Name Change Petitions
- Civil Harassment TRO / RO
- Workplace Violence TRO / RO
- Elder Abuse TRO / RO
- Transitional Housing Program Misconduct TRO / RO
- School Violence Prevention TRO / RO
- Out-of-State Commission Subpoena
- Undertaking / Surety Bonds
- Request for Payment of Trust Funds
- Notice of Appeal of Labor Commissioner
- Abstracts
- Warrants
- Settlement Conference Briefs (to be lodged)
- Confidential documents lodged conditionally under seal
- Interpleader actions pursuant to CC §2924j

The following documents **may be filed in paper form**, unless the court expressly directs otherwise:

- Documents filed under seal or provisionally under seal pursuant to CRC 2.551 (although the motion to file under seal itself must be electronically filed)
- Exhibits to declarations that are real objects, i.e. construction materials, core samples, etc. or other documents, i.e. plans, manuals, etc., which otherwise may not be comprehensibly viewed in an electronic format may be filed in paper form

DOCUMENTS DISPLAYED ON THE PUBLIC-FACING REGISTER OF ACTIONS

Any documents submitted for eFiling (and accepted) will be filed and displayed on the San Diego Superior Court's public-facing Register of Actions with the exception of the following documents:

- CASp Inspection Report
- Confidential Cover Sheet False Claims Action
- Confidential Statement of Debtor's Social Security Number
- Financial Statement
- Request for Accommodations by Persons with Disabilities and Court's Response
- Defendant/Respondent Information for Order Appointing Attorney Under Service Members Civil Relief Act
- Request to Waive Court Fees
- Request to Waive Additional Court Fees

Documents not included in the list above, that are intended to be kept confidential, should NOT be eFiled with the court.

F I L E D
Clerk of the Superior Court

MAY 14 2014

By: ELAINE SABLAN, Deputy

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**THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

**IN RE PROCEDURES REGARDING
ELECTRONIC FILING**

**GENERAL ORDER OF THE
PRESIDING DEPARTMENT
ORDER NO. 051414**

THIS COURT FINDS AND ORDERS AS FOLLOWS:

On August 1, 2011, the San Diego Superior Court ("court") began an Electronic Filing and Imaging Pilot Program ("Program") designed to reduce paper filings and storage, facilitate electronic access to civil court files and, in Phase Two, allow remote electronic filing ("E-File" or "E-Filing") of papers in civil cases. The ultimate goal of the Program is to create a paperless or electronic file in all civil cases, as well as in other case categories.

Phase One of the Program, described in General Order: *In re Procedures Regarding Electronically Imaged Court Records, Electronic Filing, and Access to Electronic Court Records*, involved the court's scanning of papers in newly filed cases in designated divisions and departments (the "Imaging Project"). Phase Two of the Program involved the implementation of electronic filing by counsel and parties through the court's E-File Service Provider, One Legal. Electronic filing under Phase Two of the Program was limited to the Central Civil Division only and it excluded Probate and

1 Construction Defect Cases. Electronic filing under Phase Three of the Program
2 expanded electronic filing to include permissive electronic filing in Probate cases.
3 Electronic Filing under Phase Four of the Program expanded electronic filing to include
4 **mandatory** E-Filing in Construction Defect Cases in the Central Division through the
5 court's E-File Service Provider. Effective **June 2, 2014**, mandatory electronic filing
6 through the court E-File Service Provider, One Legal, will be required for all
7 Construction Defect Cases, including those currently being filed through File&Serve
8 Xpress (fka LexisNexis File&Serve). As of **5:01 p.m. on May 30, 2014**, no documents
9 will be allowed to be filed through File&Serve Xpress.

10 Phase Five of the program expands electronic filing to include permissive E-
11 Filing in Civil cases in the North County Division through the court's E-File Service
12 Provider effective June 30, 2014. This General Order relates to Phase Five, and
13 supplements General Orders: *In re Procedures Regarding Electronically Imaged Court*
14 *Records, Electronic Filing, and Access to Electronic Court Records*. Further information
15 on these initiatives can be found on the court's website at www.sdcourt.ca.gov.

16 Filing and service of documents by electronic means is governed by Code of Civil
17 Procedure section 1010.6 and California Rules of Court ("CRC"), rules 2.250 et seq.
18 and CRC 2.30. In addition, the San Diego Superior Court's specific requirements for E-
19 filing are available on the court's website at www.sdcourt.ca.gov. Litigants and
20 attorneys electronically filing documents must comply with all applicable rules and
21 requirements.

22 **GENERAL E-FILING REQUIREMENTS:**

23 Documents can only be electronically filed through the court's electronic service
24 provider (the "Provider"). E-file Provider information is available on the court's website.

25 Any document filed electronically shall be considered as filed with the Clerk of
26 the Superior Court when it is first transmitted to the Provider and the transmission is
27 completed, except that any document filed on a day that the court is not open for
28 business, or after 5:00 p.m. (Pacific Time) on a day the court is open for business, shall

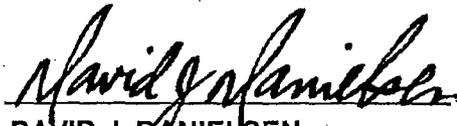
1 be deemed to have been filed on the next court day.

2 Additional and more specific information on electronic filing can be found on the
3 court's website.

4 This Order shall expire on December 31, 2014, unless otherwise ordered by this
5 court.

6 IT IS SO ORDERED.

7
8 Dated: May 14, 2014


9 DAVID J. DANIELSEN
10 PRESIDING JUDGE
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CORPORATION SERVICE COMPANY®

Notice of Service of Process

Transmittal Number: 13321532
Date Processed: 12/31/2014

Primary Contact: Ms. Lynn Radliff
Amazon.Com, Inc.
P.O. Box 81226
Seattle, WA 98108-1226

Copy of transmittal only provided to: Carolyn Roberts
Deserae Weitmann
Ronaldo Dizon
Dung Phan
Sally Kim
Joell Parks
Ms. Patti Quintero
Anne Tarpey
Lorraine Colby
Kerry Hall
Karen Curtis

Entity: Amazon.Com, Inc.
Entity ID Number 1662773

Entity Served: Amazon.Com, Inc.

Title of Action: Andrea Fagerstrom vs. Amazon.Com, Inc.

Document(s) Type: Amended Complaint/Petition

Nature of Action: Class Action

Court/Agency: San Diego County Superior Court, California

Case/Reference No: 34-2014-00040303-CU-BT-CTL

Jurisdiction Served: Washington

Date Served on CSC: 12/31/2014

Answer or Appearance Due: Other/NA

Originally Served On: CSC

How Served: Personal Service

Sender Information: Trenton R. Kashima
619-238-1333

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC
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Attorneys for Plaintiff
and the Putative Class

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO**

ANDREA FAGERSTROM and ALLEN
WISELEY, individually and on behalf of all
other similarly situated Californians

Plaintiff,

v.

AMAZON.COM, INC., a Delaware
Corporation, and DOES 1 through 50
inclusive,

Defendants.

Case No: 37-2014-00040303-CU-BT-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;
2. VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*
3. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNLAWFUL" BUSINESS PRACTICES;
4. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNFAIR" BUSINESS PRACTICES;
5. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "FRAUDULENT" BUSINESS PRACTICES;
6. NEGLIGENT MISREPRESENTATION; and
7. DECLARATORY RELIEF, CAL. CIV. CODE § 1060.

JURY TRIAL DEMANDED

1 Andrea Fagerstrom and Allen Wiseley ("Plaintiffs"), individually and on behalf of all
2 others similarly situated, based on the investigation of counsel as to the actions and omissions of
3 defendant herein, and by their own individual knowledge as to those averments pertaining to
4 named Plaintiffs' own circumstances, hereby submits this First Amended Complaint (FAC) against
5 defendant Amazon.com, Inc ("Defendant" or "Amazon"):

6 I. INTRODUCTION

7 1. This consumer class action seeks to remedy Defendant's false advertising of
8 purported discounts on its website, Amazon.com, that violated California Statutes and are likely to
9 deceive reasonable consumers. California Business & Professional Code, Section 17501,
10 specifically states that:

11 No price shall be advertised as a former price of any advertised thing, unless the
12 alleged former price was the prevailing market price as above defined within three
13 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

14 Federal regulation 16 C.F.R. § 233.1(a) also speaks disfavorably regarding Defendant's business
15 practices:

16 One of the most commonly used forms of bargain advertising is to offer a reduction
17 from the advertiser's own former price for an article. If the former price is the actual,
18 bona fide price at which the article was offered to the public on a regular basis for a
19 reasonably substantial period of time, it provides a legitimate basis for the
20 advertising of a price comparison. Where the former price is genuine, the bargain
21 being advertised is a true one. If, on the other hand, the former price being
advertised is not bona fide but fictitious--for example, where an artificial, inflated
price was established for the purpose of enabling the subsequent offer of a large
reduction--the "bargain" being advertised is a false one; the purchaser is not
receiving the unusual value he expects. In such a case, the "reduced" price is, in
reality, probably just the seller's regular price.

22 This caused Plaintiffs to purchase products from Amazon.com they would not have purchased had
23 Defendant not engaged in false advertising, and pay shipping charges that could have been saved by
24 buying the same product in a retail store.

25 2. Defendant operates the immensely popular retail website, Amazon.com, a website
26 which allows consumers to purchase almost anything ranging from food to furniture online.
27 Consumers can purchase items from Amazon on their computer or mobile device, and such
28 products are delivered directly to the customer's home. As of last year (2013), Amazon.com hosted

1 1,510,000 customer accounts and realized in excess of \$44.5 billion dollars in sales revenue from
2 its North American operations. Due to the massive number of products and services Defendant
3 offers, and the number of customers who visit Amazon.com daily, Amazon is the largest Internet
4 based retailer in the United States.

5 3. Amazon's size and form does not immunize it from all normal competitive market
6 pressures. Amazon faces evolving (and often intense) competition from traditional brick-and-
7 mortar retail locations and various retail websites. Accordingly, Amazon has adopted a marketing
8 strategy for overcoming its competitors by not only presenting profuse selection and a high level of
9 convenience, but also reinforces the perception of attractive pricing. In fact, to strengthen the
10 perception of Amazon.com as a low price leader, Defendant carefully garners a reputation that its
11 internet-based business model allows it to consistently offer significantly lower prices than its
12 traditional competitors. Indeed, Amazon candidly states that "[w]e strive to offer our customers
13 the lowest prices possible through low everyday product pricing and shipping offers, and to
14 improve our operating efficiencies so that we can continue to lower prices for our customers."

15 4. Competitors adopting Amazon's business model, decreasing retail profit margins
16 and price matching guarantees have made it increasingly difficult for Amazon to deliver lower
17 prices than the prevailing market. Accordingly, Amazon increasingly has focused its efforts on
18 presenting itself as the unchallenged low price leader, even if the perception is not always accurate.

19 5. One particularly effective, but unlawful, marketing tool that Amazon uses to
20 underpin its low price reputation is Defendant's routine of conspicuously displaying the "savings"
21 that customers will realize by purchasing an item on its website. To impress on the consuming
22 public the purported superiority of Amazon's price model, Defendant advertises most of its
23 products in an uniform fashion: (1) first, Amazon displays the "list" pricing of an item on its
24 website, which is represented as the item's normal retail price with the typeface struck-through
25 (e.g. "List Price: \$329.00"); (2) second, the website displays Amazon's product price in contrasting
26 red font (e.g. "Price: \$299.00"); and (3) third, Amazon lists the amount "saved" by purchasing
27 from its website by highlighting the dollars saved with the percentage of cost savings represented
28 (e.g. "You Save: \$30.00 (9%)").

1 6. The amount of savings advertised by Amazon is illusory and/or grossly overstated.
2 This is because the “list” price used to calculate the quantum of reported “savings” is not the
3 prevailing marketing price of obtaining the same product from one of Amazon’s competitors or the
4 price charged by Amazon for the subject item in the normal course of its business. Rather, the
5 “list” price is the highest price the product has ever been listed for, regardless of when that price
6 was advertised. Simply stated, Defendant cherry-picks the highest price it can find for the item and
7 uses it to create a significant price discrepancy and the impression of considerable savings for its
8 customers.

9 7. The reality is that the Amazon price is no different than the price of competitors,
10 and no discount is provided over Amazon.com’s everyday pricing. Its customers are not realizing
11 the savings portrayed or expected by purchasing these advertised “discounted” products from
12 Amazon. In fact, if all other factors are equal, a customer may incur higher costs by purchasing a
13 product through Amazon.com (due to shipping and handling fees), costs not incurred when
14 shopping at traditional brick-and-mortar retailers. Additionally, had Plaintiffs and members of the
15 Class known that the discounts on Amazon.com were illusory as overstated and manipulative, they
16 would not have purchased their products from Amazon and/or purchased them elsewhere.

17 8. Amazon’s business practice is a *per se* violation of the California False Advertising
18 Law (“FAL”), CAL. BUS. & PROF. CODE § 17501. If a retailer advertises price reductions, the FAL
19 requires a retailer to determine the “list” price based on data for the prevailing market price
20 retrieved for over the immediately prior three months (or, alternatively state the date on which the
21 list price was established). Additionally, Defendant’s conduct also violates the California
22 Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE §§ 1770, *et seq.*, and California Unfair
23 Competition Law (“UCL”), CAL. BUS. & PROF. CODE §§ 17000, *et seq.* Plaintiff thus seeks
24 restitution, injunctive, declaratory, and other equitable relief as may be deemed proper by the
25 Court.

26 ///

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28 ///

1 expressly represented to Wisely, and the public at large, that they would save \$48.00 or 64% by
2 purchasing the product on its website. The representation was also false.

3 15. The Amazon "list" price represented price at which the same Audio Converter was
4 first offered on Amazon.com in 2010. Amazon neither listed the Audio Converter on its website for
5 \$59 since 2010 nor does Amazon disclose that the list price is over four years old. Similar digital to
6 analog audio converters currently sell for substantially less than \$59 in the online retail market.
7 Nevertheless, Amazon maintains that Wisely, and the general public, are save more than 50% by
8 buying this product on their website.

9 16. Defendant Amazon.com, Inc. is a Delaware Corporation headquartered in Seattle,
10 Washington. Amazon is the largest online retailer in the United States. Amazon operates the
11 popular website, Amazon.com which allows both Amazon and its subsidiaries, as well as other
12 individuals, manufacturers, retailers and distributors, to sell their products online, directly to
13 consumers, including millions of individuals in California. As such, Amazon sells both products
14 from its own retail subsidiary, Amazon.com LLC, and products from other independent sellers who
15 have agreed to list their products on Amazon's website. Amazon does not have any physical retail
16 locations, however it does operate a number of distribution centers in California.

17 17. Amazon.com started as an online bookstore, but has diversified to now sell
18 numerous types of consumer goods, including DVDs, CDs, videos and MP3s, software, video
19 games, electronics, apparel, furniture, food, toys, appliances, clothing, and jewelry.

20 18. Plaintiffs do not know the true names of defendants DOES 1 through 50 inclusive,
21 and therefore sues them by those fictitious names. Plaintiffs are informed and believe, and on the
22 basis of that information and belief allege, that each of the doe defendants are in some manner
23 proximately responsible for the events and happenings alleged in this FAC and for Plaintiffs'
24 injuries, damages, restitution and equitable remedies prayed for herein.

25 **IV. SUBSTANTIVE ALLEGATIONS**

26 **A. Amazon's Advertising Practices**

27 19. Upon browsing for products on Amazon's website, a consumer can either search for
28 the specific product they wish to purchase or browse products grouped by category into

1 “departments” and numerous sub-categories (e.g., “Books & Audible,” “Electronics and
 2 Computers,” etc). Regardless of which method is used, consumers are presented with pages of
 3 “results” germane to their request. These “result pages” provide a picture of the products being sold
 4 and a short description of multiple products fitting the description of the sought after product, so
 5 that a consumer might quickly find the item they wish to purchase.



9

10 See Size Options	See Size Options	See Size Options
11 LG Electronics 55LB8900 55-Inch 1080p 120Hz LED TV	Samsung UN22P5000 22-Inch 1080p 60Hz Slim LED HDTV (2013 Model)	VIZIO E6001-S1 60-Inch 1080p HDTV
12 \$899.00 \$679.00 <i>Prime</i> Get it by Monday, Nov 3 FREE Shipping	\$236.00 \$167.99 <i>Prime</i> Get it by Monday, Nov 3 FREE Shipping	\$599.99 \$548.00 <i>Prime</i> Get it by Monday, Nov 3 FREE Shipping
13 More Buying Choices \$670.89 new (5 offers) \$620.10 used (11 offers)	13 More Buying Choices \$164.97 new (3 offers) \$149.00 used (6 offers)	13 More Buying Choices \$510.99 new (23 offers) \$400.64 used (22 offers)
14 (27)	14 (22)	14 (27)

15 20. Amazon chooses to display only a limited amount of information on its results
 16 pages, *i.e.*, the information Defendant believes is most material to prospective customers. Among
 17 the most prominent of the information provided is the products’ title, its availability, consumer
 18 reviews, and its price. It is clear by the font and space dedicated to each element that Amazon
 19 understands that its customers are highly influenced by the price of the product when deciding to
 20 purchase from its website.

21 21. Amazon not only includes its pricing for an item, but also the price charged by other
 22 sellers who have agreed to make their products available on Amazon. Both Amazon’s price and the
 23 prices charged by its independent sellers for a given product are represented as a “discount” price
 24 relative to the “list” price. Thus, a reasonable consumer is provided the false impression that when
 25 purchasing products on Amazon, they receive a deal compared to other retailers and/or the Amazon
 26 normal pricing.

27 22. When a customer selects a product from the results page, they are directed to a web-
 28

1 page having more detailed information about that product. Effectively, the first and certainly the
 2 most prominently displayed information presented by Defendant on each product page is
 3 Amazon's discount pricing:

4      

5 **LG Electronics 55LB5900 55-Inch 1080p**
 6 **120Hz LED TV**
 7 by LG
 8  279 customer reviews | 44 answered questions

9 List Price: ~~\$999.99~~
 Price: **\$679.00 & FREE Shipping.** Details
 You Save: **\$320.99 (32%)**
 Low Price Guarantee

10 In Stock.
 Ships from and sold by Amazon.com.

11 **Want It Saturday, Nov. 1? Order within 18 hrs 10 mins and choose**
Saturday Delivery at checkout. Details
 Size: 55-Inch

12

13 Roll over image to zoom in

14 As noted above, Amazon.com acts uniformly to present a “list” pricing of an item for sale on its
 15 website. The “list” price, represented to be the item’s normal price, is followed by Amazon’s
 16 contrasting (lower) price in red lettering, the amount saved represented in total dollars, and a
 17 percentage of the “false” savings.

18 23. As Amazon advertises the amount of the discount as both a total dollar number and
 19 as a percentage of the “list” price displayed, it behooves Amazon to make the “list” price as large
 20 as possible (to create the appearance of vast savings). Accordingly, when determining its “list”
 21 price, Defendant’s consistently uses the highest price at which a product has ever been “listed”
 22 regardless of when or where this product was ever listed for the indicated price. Consequently,
 23 Defendant regularly misinforms its consumers regarding the most material disclosure regarding
 24 their transaction: the price.

25 24. Defendant’s deceptive practices of displaying a list price which bears no relation to
 26 the prevailing market are a consistent part of Defendant’s memorialized business practices.
 27 Defendant’s “list” price is the highest manufacturer’s suggested retail price (“MSRP”) and, as
 28 such, an inaccurate representation of the market price of the subject item for a given time period for

1 a particular location or the price at which the product was previously sold on Defendant's website.
2 Indeed, the MSRP is by definition only a suggestion directed at retailers and therefore not a
3 reasonable basis to conclude it reflects the average price available within the market.

4 25. Defendant relies on the highest MSRP because it has no independent policy or
5 system to ensure that the "list" price reflects the prevailing market price at a given time. This is not
6 a simple oversight. Defendant resorts to the artificially inflated "list" prices which mislead the
7 general public about the true discount(s) available and maintains the illusion that Amazon pricing
8 is consistently lower than available through other sources. If Amazon actually included a valid
9 "list" price reflecting the immediate retail market price for a product, reasonable consumers would
10 learn that Amazon does not provide the deals it purports to offer.

11 26. Due to automatic price matching policies, and the invisible hand of the market, if
12 one retailer lowers its price, others must follow suit. Amazon and its competition are no exception.
13 For example, the LG Electronics 55LB5900 55-Inch 1080p LED TV listed on Amazon.com, as
14 depicted in the above screenshots, was also listed on Best Buy's website, Walmart's website, and
15 Newegg.com for the same price (if not less) as listed by Amazon during the same period.¹ Thus, no
16 basis for Defendant to assert that the customer is receiving a substantial discount, when the
17 customer is only paying Amazon the then prevailing market price.

18 27. Defendant's illusory "discounts" are particularly misleading because consumers
19 often make purchasing decisions based on a reference price - that is, customers will often make
20 purchasing decision when they believe products to be less expensive than the perceived "normal"
21 price for a given item. By advertising "discounts" derived from inaccurate "list" pricing, Defendant
22 takes advantage of such well documented consumer behavior in order to influence consumers into
23 immediately purchasing an item. Additionally, Defendant's practices mollifies consumers'
24 concerns about missing the "better deal", and serves to discourage comparison shopping. Finally,
25

26 ¹ Both newegg.com and Best Buy offered the same television for the same price. Walmart
27 advertised the same TV for significantly less. See <http://www.bestbuy.com/site/lg-55-class-54-5-8-diag--led-1080p-120hz-hdtv/6053009.p?id=1219184625084&skuId=6053009>; <http://www.walmart.com/ip/LG-55LB5900-55-1080p-60Hz-Class-LED-HDTV/38378301>; and <http://www.newegg.com/Product/Product.aspx?Item=N82E16889005875>
28

1 such discounts additionally create a false sense of urgency, contributing to the impression that a
2 consumer should act quickly or lose a significant savings.²

3 28. Defendant uses these ersatz illusory discounts to create the impression that online
4 retailers have efficiencies in their operations, can offer more competitive prices and are worth the
5 inconvenience of purchasing the same product at a local retailer. Thus, Defendant's actions
6 harmed, and continue to harm, Plaintiff, members of the Class, and market competitors.

7 **B. California False Advertising Law**

8 29. By marketing a product's "list" price at an artificially high level - a level which
9 would not be competitive in the current prevailing market or a price at which it never intends to sell
10 the product - Defendant concocts a discount that does not exist. This method of advertising is
11 materially misleading to the average consumer, who is often swayed into purchasing a product by
12 the prospect of a large discount.

13 30. But, such practice is not novel or unique. Historically, unscrupulous retailers have
14 frequently used the same misleading tactic - overstating or manufacturing a "discount" to help sell
15 products instead of the competition. Accordingly, both California lawmakers and federal regulators
16 have each sought to prohibit the injurious conduct. California Business & Professional Code,
17 Section 17501, specifically states that:

18 No price shall be advertised as a former price of any advertised thing, unless the
19 alleged former price was the prevailing market price as above defined within
20 three months next immediately preceding the publication of the advertisement
or unless the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

21 (Emphasis added). The provision of Section 17501 differentiates subjective uncertainty from clear
22 illegality. The market price at the time of publication of such an advertisement is the price charged
23 in the locality where the advertisement is published. Accordingly, Defendant can only properly
24 include a "list" price for comparative purposes in its advertisements if (1) the prevailing market
25 price has been researched (in California) and the list price is the average retail market price within
26

27 ² See generally, Grewal, Krishnan, Baker & Norm, "The Effect of Store Name, Brand Name
28 and Price Discounts On Consumers' Evaluations And Purchase Intentions" 74 Journal of Retailing
3, p. 331 (1998).

1 the past three months, or (2) it advertises the date on which the published "list" price was in effect.

2 31. Based upon Defendant's written policies, the "list" price for an item is not
3 determined by Amazon referencing a "prevailing market price" within the prior three months. It
4 instead displays the highest MSRP. Amazon also does not state the date from which the "list" price
5 was derived. This allows Amazon to continue to influence sales by using a "list" price that is
6 woefully out-of-date, bearing no relation to the currently prevailing markets.

7 32. Defendant's practices are cited with disapproval by certain federal regulations
8 intended to protect consumers:

9 One of the most commonly used forms of bargain advertising is to offer a reduction
10 from the advertiser's own former price for an article. If the former price is the actual,
11 bona fide price at which the article was offered to the public on a regular basis for a
12 reasonably substantial period of time, it provides a legitimate basis for the
13 advertising of a price comparison. Where the former price is genuine, the bargain
14 being advertised is a true one. If, on the other hand, the former price being
15 advertised is not bona fide but fictitious--for example, where an artificial, inflated
16 price was established for the purpose of enabling the subsequent offer of a large
17 reduction--the "bargain" being advertised is a false one; the purchaser is not
18 receiving the unusual value he expects. In such a case, the "reduced" price is, in
19 reality, probably just the seller's regular price.

20 16 C.F.R. § 233.1(a).

21 33. The law thus confirms what is painfully apparent to a shopper: a business acts
22 improperly when it completely manufactures or exaggerates a discount intended to have products
23 appear more attractive.

24 V. CLASS ALLEGATIONS

25 34. Plaintiff bring this action as a class action pursuant to (Cal. Civ. Proc. Code 382 for
26 the following Classes of persons:

27 All persons residing in California who within four (4) years of the filing of this
28 Complaint, according to Defendant's records, purchased a product for which
29 Defendant advertise both a "list" price and its retail price.

30 Excluded from the Class are all legal entities, Defendant herein and any person, firm, trust,
31 corporation, or other entity related to or affiliated with Defendant, any entities that purchased the
32 Class Products for resale, Amazon Prime Members, as well as any judge, justice or judicial officer
33 presiding over this matter and members of their immediate families and judicial staff.

34 35. Defendant maintains accurate records of all transactions occurring on its website,

1 including the name, mailing address, email and billing information of each of the Class members.
2 While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed
3 and believes that there are hundreds of thousands of members in the proposed Class, if not more,
4 and can be ascertained through discovery. The number of individuals who comprise the Class are
5 so numerous that joinder of all such persons is impracticable and the disposition of their claims in a
6 class action, rather than in individual actions, will benefit both the parties and the courts.

7 36. Defendant has acted with respect to the Class in a manner generally applicable to
8 each Class member, making class-wide injunctive and declaratory relief proper.

9 37. There is a well-defined community of interest in the questions of law and fact
10 involved in the action, which affect all Class members. Among the questions of law and fact
11 common to the Class are, *inter alia*:

12 (a) Whether Defendant advertises its "discounted" products in a deceptive,
13 false, or misleading manner;

14 (b) Whether Defendant's advertised "list" price is determined by averaging the
15 price of said product in the prevailing market over the previous three months;

16 (c) Whether Defendant's advertised the date on which the "list" price of a
17 product is determined if it is not calculated by the average over the previous three months;

18 (d) Whether Defendant's alleged business practices constitutes unfair methods
19 of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. BUS.
20 & PROF. CODE §§ 1770, *et seq.*, by making false or misleading statements of fact
21 concerning reasons for, existence of, or amounts of price reductions.

22 (e) Whether Defendant's business practices, alleged herein, constitutes
23 misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17500-
24 01.

25 (f) Whether Defendant's business practices, alleged herein, constitutes
26 "unlawful," "unfair," or "fraudulent" business acts or practices under, *inter alia*, CAL. BUS.
27 & PROF. CODE §§ 17200, including:

28 (i) Whether Defendant's advertisement of illusory discounts constitutes

1 “unlawful” or “unfair” business practices by violating the public policies set out in
2 CAL. CIV. CODE §§ 1770(a)(13), CAL. BUS. & PROF. CODE §§ 17500-01, 16 C.F.R. §
3 233.1, and other California and federal statutes and regulations;

4 (ii) Whether Defendant’s advertisement of illusory discounts is
5 immoral, unethical, oppressive, unscrupulous or substantially injurious to
6 consumers;

7 (iii) Whether Defendant’s advertisement of illusory discounts constitutes
8 an “unfair” business practice because consumer injury outweighs any countervailing
9 benefits to consumers or competition, and because such injury could not be
10 reasonably avoided by consumers; and

11 (iv) Whether Defendant’s advertisement of illusory discounts constitutes
12 a “fraudulent” business practice because members of the public are likely to be
13 deceived;

14 (h) The nature and extent of equitable remedies, including restitution of
15 shipping costs; and declaratory and injunctive relief to which Plaintiff and the Class are
16 entitled; and

17 (i) Whether Plaintiff and the Class should be awarded attorneys’ fees and the
18 costs of suit for Defendant’s violations of the UCL, FAL, and CLRA.

19 38. Plaintiff’s claims are typical of the claims of the other members of the Class. All
20 members of the Class have been and/or continue to be similarly affected by Defendant’s wrongful
21 conduct as complained of herein, in violation of California law. Plaintiff is unaware of any
22 interests that conflict with or are antagonistic to the interests of the Class.

23 39. Plaintiffs will fairly and adequately protect the Class members’ interests and have
24 retained counsel competent and experienced in consumer class action lawsuits and complex
25 litigation. Plaintiffs and their counsel have the necessary financial resources to adequately and
26 vigorously litigate this class action, and Plaintiffs are aware of their duties and responsibilities to
27 the Class.

28 40. A class action is superior to all other available methods for the fair and efficient

1 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
2 damages suffered by individual Class members may be relatively small, the expense and burden of
3 individual litigation make it virtually impossible for Class members to individually redress the
4 wrongs done to them. There will be no difficulty in managing this action as a class action.

5 41. Defendant has acted on grounds generally applicable to the entire Class with respect
6 to the matters complained of herein, thereby making appropriate the relief sought herein with
7 respect to the Class as a whole.

8 **FIRST CAUSE OF ACTION**

9 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -
10 *Untrue, Misleading and Deceptive Advertising***

11 42. Plaintiff hereby incorporates by reference the allegations contained in the preceding
12 paragraphs of this FAC.

13 43. California Business and Professional Code, Section 17501, states that:

14 No price shall be advertised as a former price of any advertised thing, unless the
15 alleged former price was the prevailing market price as above defined within three
16 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

17 For the purpose of Section 17501, the retail market price at the time of publication of such
18 advertisement is the retail price in locality wherein the advertisement is published.

19 44. At all material times, Defendant engaged in a scheme of advertising that its products
20 were subject to a discount when such discounts were illusory and did not reflect the “prevailing
21 marketing price” of the item for a particular time period in a particular location or even the price at
22 which the product was previously sold on Defendant’s website.

23 45. At all material times, Defendant did not include the date on which its “list” price
24 was established.

25 46. Defendant’s advertisement of an inflated list price misrepresented and/or omitted
26 the true nature of Defendant’s pricing. Said advertisements were made to consumers located within
27 the State of California, and come within the definition of advertising as contained in CAL. BUS. &
28 PROF. CODE §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to

1 purchase products on Amazon.com and are statements disseminated by Defendant to Plaintiff and
2 other members of the Class. In the exercise of reasonable care, Defendant should have known, that
3 the statements regarding its pricing were false, misleading, deceptive and violated California law.

4 47. Defendant has prepared and distributed within the State of California, *via* its retail
5 website, Amazon.com, that its products were subject to substantial discounts. Plaintiffs, necessarily
6 and reasonably relied on Defendant's statements regarding the pricing of its products, and all
7 members of the Class were exposed to such statements. Consumers, including Plaintiffs and
8 members of the Class, were among the intended targets of such representations.

9 48. The above acts of Defendant, in disseminating said misleading and deceptive
10 statements throughout the State of California, including Plaintiffs and members of the Class, were
11 and are likely to deceive reasonable consumers by obfuscating the true nature of Defendant's
12 discounts, thus were violations of CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

13 49. Plaintiffs and other members of the Class who purchased products from Defendant's
14 website suffered a substantial injury. Had Plaintiffs and members of the Class known that
15 Defendant's materials, advertisement and other inducements misrepresented and/or omitted the
16 true nature of Defendant's discounts; they would not have purchased products from Amazon.com,
17 or paid less for them.

18 50. Plaintiffs, on behalf of themselves and all other similarly situated California
19 consumers, and as appropriate, on behalf of the general public of the state of California, also seek
20 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
21 directing Defendant to make corrective notices both on its website and in other appropriate media,
22 allowing Class members to return any products purchased on Defendant's website, at Defendant's
23 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
24 Defendant to price match any competitor's advertised price for the same product, refund of any
25 shipping and handling fees for any products purchased on Defendant's website subject to
26 Defendant's unlawful pricing policy, and any other relief deemed improper by the Court.

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SECOND CAUSE OF ACTION

**Violation of CAL. CIV. CODE §§ 1750, *et seq.*-
Misrepresentation of the Existence of a Discount**

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4 51. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
5 paragraphs of this FAC.

6 52. Defendant sells "goods" and "services" as defined by California Civil Code §1761.

7 53. Defendant is a "person" as defined by California Civil Code §1761(c).

8 54. Plaintiffs and Class members are "consumers" within the meaning of California
9 Civil Code §1761(d) because they purchased the products from Amazon.com for personal, family
10 or household use.

11 55. The sale of the products to Plaintiff and Class members *via* Defendant's website is a
12 "transaction" as defined by California Civil Code §1761(e).

13 56. By misrepresenting the "list" price of its products, and thus any discounts derived
14 therefrom, Defendant made false or misleading statements of fact concerning reasons for, existence
15 of, or amounts of price reductions, in violation of California Civil Code §1770(a)(13).

16 57. Plaintiffs and Class members were harmed as a result of Defendant's unfair
17 competition and deceptive acts and practices. Had Defendant disclosed the true nature of their
18 discounts, Plaintiffs and the Class would not be misled into purchasing products from Defendant's
19 website, or, alternatively, paid less for them.

20 58. Defendant has failed to respond to Plaintiffs' CLRA notice within 30 days of
21 service of the notice, thus Plaintiffs seek all available damages under the CLRA for all violations
22 complained of herein, including, but not limited to, statutory damages, punitive damages,
23 attorneys' fees and costs and any other relief that the Court deems proper.

24 59. Plaintiffs, on behalf of themselves and all other similarly situated California
25 consumers, and as appropriate, on behalf of the general public of the state of California, seek
26 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
27 directing Defendant to make corrective notices both on its website and in other appropriate media,
28 allowing Class members to return any products purchased on Defendant's website, at Defendant's

1 expense, which were subject to Defendant's unlawful pricing policy, or alternatively requiring
2 Defendant to price match any competitor's advertised price for the same product, refund of any
3 shipping and handling fees for any products purchased on Defendant's website subject to
4 Defendant's unlawful pricing policy, and any other relief deemed proper by the Court.

5 **THIRD CAUSE OF ACTION**

6 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
7 **Unlawful Business Acts and Practices**

8 60. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
9 paragraphs of this FAC.

10 61. California Business and Professional Code, Section 17501, states:

11 No price shall be advertised as a former price of any advertised thing, unless the
12 alleged former price was the prevailing market price as above defined within three
13 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

14 62. Federal regulations also prohibit the use of deceive and illusory discounts:

15 One of the most commonly used forms of bargain advertising is to offer a reduction
16 from the advertiser's own former price for an article. If the former price is the actual,
17 bona fide price at which the article was offered to the public on a regular basis for a
18 reasonably substantial period of time, it provides a legitimate basis for the
19 advertising of a price comparison. Where the former price is genuine, the bargain
20 being advertised is a true one. If, on the other hand, the former price being
advertised is not bona fide but fictitious--for example, where an artificial, inflated
price was established for the purpose of enabling the subsequent offer of a large
reduction--the "bargain" being advertised is a false one; the purchaser is not
receiving the unusual value he expects. In such a case, the "reduced" price is, in
reality, probably just the seller's regular price.

21 16 C.F.R. § 233.1(a).

22 63. California Civil Code §1770(a)(13) prohibits making false or misleading statements
23 of fact concerning reasons for, existence of, or amounts of price reductions.

24 64. The business practices alleged above are unlawful under California Business &
25 Professional Code §§ 17500, *et seq.*, California Civil Code §1770(a)(13) and federal regulations,
26 each of which forbids Defendant's untrue, fraudulent, deceptive, and/or misleading marketing and
27 advertisements.

28 65. Plaintiffs and Class members were harmed as a result of Defendant's unfair

1 competition and deceptive acts and practices. Had Defendant disclosed the true nature of their
2 "discounts," Plaintiffs and the Class would not be misled into purchasing products from
3 Defendant's website, or, alternatively, paid less for them.

4 66. Plaintiffs, on behalf of themselves and all other similarly situated California
5 consumers, and as appropriate, on behalf of the general public of the state of California, seek
6 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
7 directing Defendant to make corrective notices both on its website and in other appropriate media,
8 allowing Class members to return any products purchased on Defendant's website, at Defendant's
9 expense, which were subject to Defendant's unlawful pricing policy, or alternatively requiring
10 Defendant to price match any competitor's advertised price for the same product, refund of any
11 shipping and handling fees for any product purchased on Defendant's website subject to
12 Defendant's unlawful pricing policy, and any other relief deemed improper by the Court.

13 **FOURTH CAUSE OF ACTION**

14 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
15 **Unfair Business Acts and Practices**

16 67. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
17 paragraphs of this FAC.

18 68. Plaintiffs and other members of the Class suffered a substantial injury by virtue of
19 Defendant's unlawful scheme of advertising that its products were subject to a discount when such
20 discounts were illusory and did not reflect the "prevailing marketing price" of the item during any
21 particular time period at a particular location or even the price at which the product was previously
22 sold on Defendant's website.

23 69. Defendant's actions alleged herein violate the laws and public policies of California
24 and the federal government as set out in preceding paragraphs of this FAC.

25 70. There is no benefit to consumers or competition by allowing Defendant to
26 deceptively market and advertise nonexistent discounts in violation of California Law.

27 71. Plaintiffs and Class members who purchased products from Defendant's website
28 had no way of reasonably knowing that the "list" price was artificially inflated and did not reflect

1 the true nature of the discount offered on Defendant's products. Thus, Class members could not
2 have reasonably avoided the injury they suffered.

3 72. The gravity of the harm visited upon Plaintiffs and Class members outweighs any
4 legitimate justification, motive or reason for marketing and advertising discounted products in a
5 deceptive and misleading manner which violates California law. Accordingly, Defendant's actions
6 are immoral, unethical, unscrupulous and offend the established California public policies is
7 substantially injurious to Plaintiffs and members of the Class.

8 73. The above acts of Defendant, in disseminating said misleading and deceptive
9 statements throughout the State of California to consumers, including Plaintiffs and members of the
10 Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and
11 amount of the nature and existence of product in violations of CAL. BUS. & PROF. CODE §§ 17500,
12 *et seq.*, and California Civil Code §1770(a)(13).

13 74. Plaintiffs and Class members were harmed and suffered actual damages as a result
14 of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the
15 true nature of their discounts, Plaintiffs and the Class would have purchased products from
16 Defendant's website, or, alternatively, paid significantly less for them.

17 75. Plaintiffs, on behalf of themselves and all other similarly situated California
18 consumers, and as appropriate, on behalf of the general public of the state of California, seeks
19 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
20 directing Defendant to make corrective notices both on its website and in other appropriate media,
21 allowing Class members to return any products purchased on Defendant's website, at Defendant's
22 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
23 Defendant to price match any competitor's advertised price for the same product, refund of any
24 shipping and handling fees for any purchased on Defendant's website subject to Defendant's
25 unlawful pricing policy and any other relief deemed improper by the Court.

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FIFTH CAUSE OF ACTION

**Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -
Fraudulent Business Acts and Practices**

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4 76. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
5 paragraphs of this FAC.

6 77. Such acts of Defendant as described above constitute a fraudulent business practice
7 under CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

8 78. As more fully described above, Defendant misleadingly markets and advertises its
9 products as discounted from a "list" price, when such discounts are illusory and/or overstated.
10 Defendant's misleading marketing and advertisements are likely to, and do, deceive reasonable
11 consumers. Indeed, Plaintiffs and other members of the Class were unquestionably deceived about
12 the nature of Defendant's pricing, as Defendant prominently displayed its products as discounted
13 on its website which consumers must use to purchase Amazon's offerings.

14 79. Defendant's misleading and deceptive practices caused Plaintiffs and other
15 members of the Class to purchase the products and/or pay more than they would have otherwise
16 had they known the true nature of Defendant's advertisements.

17 80. Plaintiffs and Class members were harmed as a result of Defendant's unfair
18 competition and deceptive acts and practices.

19 81. Plaintiffs, on behalf of themselves and all other similarly situated California
20 consumers, and as appropriate, on behalf of the general public of the state of California, seeks
21 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
22 directing Defendant to make corrective notices both on its website and in other appropriate media,
23 allowing Class members to return any products purchased on Defendant's website, at Defendant's
24 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
25 Defendant to price match any competitor's advertised price for the same product, refund of any
26 shipping and handling fees for any purchased on Defendant's website subject to Defendant's
27 unlawful pricing policy and any other relief deemed improper by the Court.

28

1 **SIXTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 82. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
4 paragraphs of this FAC.

5 83. Defendant represented to Plaintiffs and members of the Class that products sold on
6 its website, Amazon.com, were discounted from a "list" price. However, had Defendant exercised
7 even a minimal amount of diligence, it would have found that the "list" prices advertised on its
8 website did not reflect the price at which the corresponding product had been recently sold, either
9 by the Defendant (or its affiliated partners) or in the relevant market. Additionally, Defendant
10 failed to regularly update its "list" prices to accurately reflect periodic changes in the relevant
11 market. Accordingly, any purported discounts calculated from Defendant's "list" price were
12 overstated or illusory and Defendant had no reasonable grounds for making any claims regarding
13 its discounted pricing.

14 84. Under California law, CAL. BUS. & PROF. CODE § 17501, Defendant is required to
15 determine whether its "list" prices accurately reflect the relevant market price for an item
16 advertised on its website within the past six months or, alternatively, inform its customers on which
17 date the "list" price was established. Had Defendant complied with this statutory duty, Amazon
18 would not have made representations regarding its "discount" pricing and/or reasonably known that
19 such pricing was false and misleading - in violation of California law.

20 85. The price of a product, and the existence of any discounts thereon, is material
21 representation on which Plaintiff and members of the Class reasonably relied. Each Amazon.com
22 customer is exposed to Defendant's negligent pricing policy.

23 86. Plaintiffs and members of the Class were harmed by Defendant's negligent
24 misrepresentation regarding the nature of Defendant's purported discounts and such
25 misrepresentations were a substantial factor in causing Plaintiff's and members of the Class's
26 harm.

27 ///

28 ///

SEVENTH CAUSE OF ACTION

Declaratory Relief, Cal. Civ. Code § 1060

87. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this FAC.

88. Pursuant to California Civil Code, Section 1060, Plaintiffs and the Class are entitled to have this Court declare their rights and legal relations under Defendant's Conditions of Use.

89. Accordingly, Plaintiffs on behalf of the Class pray for a declaration that Defendant's Conditions of Use represented an illusory and/or unconscionable contract and is unenforceable.

VI. PRAY FOR RELIEF

WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

A. For an order declaring that this action is properly maintained as a class action and appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs' counsel as Class counsel;

B. For an order enjoining Defendant from continuing to engage in the unlawful and unfair business acts and practices as alleged herein;

C. For an order directing Defendant to make corrective notices on its website and in other appropriate publications.

D. For an order directing Defendant to allow its customers to return any products purchased on Defendant's website, at Defendant's expense, which were subject Defendant's unlawful pricing policy, within twelve (12) months of filing this FAC.

E. For an order requiring Defendant to price match any competitor's advertised price for the same product purchased from Amazon.com, which were subject Defendant's unlawful pricing policy, within twelve (12) months of filing this FAC;

F. For restitution of all shipping and handling fees charged for products purchased from Amazon.com subject to Defendant's unlawful advertising;

F. For an order awarding attorneys' fees and costs of suit, including experts' witness fees as permitted by law; and

G. Such other and further relief as this Court may deem just and proper.

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VII. JURY TRIAL

Plaintiffs demand a trial by jury for all of the claims asserted in this First Amended Complaint so triable.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP



Dated: December 29, 2014

Trenton R. Kashima, Esq.

Jeffrey R. Krinsk, Esq.
Mark L. Knutson, Esq.
William R. Restis, Esq.

Attorneys for Plaintiff
and the Class

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County of San Diego
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8 Attorneys for Plaintiff
and the Putative Class

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 ANDREA FAGERSTROM and ALLEN
WISELEY, individually and on behalf of all
13 other similarly situated Californians

14 Plaintiff,

15 v.

16 AMAZON.COM, INC., a Delaware
Corporation, and DOES 1 through 50
17 inclusive,

18 Defendants.

Case No: 37-2014-00040303-CU-BT-CTL

PROOF OF SERVICE

JURY TRIAL DEMANDED

JEFFREY R. KRINSK, ESQ. (SBN 109234)
FINKELSTEIN & KRINSK, LLP
501 WEST BROADWAY, SUITE 1250
SAN DIEGO CA 92101
619-238-1333
Attorney for : PLAINTIFF

Ref. No. : 0716627-01
Atty. File No.: 7607.01

SUPERIOR COURT OF CA., COUNTY OF SAN DIEGO
CENTRAL DIVISION-HALL OF JUSTICE JUDICIAL DISTRICT

PLAINTIFF : ANDREA FAGERSTROM, ET AL. Case No.: 37-2014-00040303-CU-BT-CTL
DEFENDANT : AMAZON.COM, INC., A DELAWARE CORPORATION **PROOF OF SERVICE**

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the FIRST AMENDED COMPLAINT
3. a. Party served : AMAZON.COM, INC., A DELAWARE CORPORATION
C/O CORPORATION SERVICE COMPANY - CSC
b. Person served : CYNTHIA JONES, PROCESS SPECIALIST
(AUTHORIZED AGENT FOR SERVICE)
4. Address where the party was served 300 DESCHUTES WAY SW SUITE 304
TUMWATER, WA 98051 (Business)
5. I served the party
a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on December 31, 2014 (2) at: 01:41 PM
6. Witness fees were not demanded and were not paid.
7. **Person who served papers**
a. GEORGE HANDEL
b. KNOX ATTORNEY SERVICE
2250 FOURTH AVENUE
SAN DIEGO, CA 92101
c. 619-233-9700
d. Fee for service: \$164.75
e. I am:
(3) a registered California process server
(i) an independent contractor
(ii) Registration No.: 152
(iii) County: San Diego

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: January 7, 2015

Signature: _____
SEE ATTACHED NOTARIZED AFFIDAVIT
GEORGE HANDEL

Affidavit of Process Server

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

(NAME OF COURT)

ANDREA FAGERSTROM, et al. vs AMAZON.COM, INC.

37-2014-00040303-CU-BT-CTL

PLAINTIFF/PETITIONER

DEFENDANT/RESPONDENT

CASE NUMBER

I GEORGE HANDEL, being first duly sworn, depose and say: that I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to perform said service.

Service: I served AMAZON.COM, INC./AUTHORIZED AGENT: CORPORATION SERVICE COMPANY-CSC
NAME OF PERSON / ENTIT BEING SERVED

with (list documents) FIRST AMENDED COMPLAINT

by leaving with CYNTHIA JONES CUSTOMER SERVICE ASSOCIATE At
NAME RELATIONSHIP

Residence _____
ADDRESS CITY / STATE
 Business 300 DESCHUTES WAY SOUTHWEST SUITE 304 TUMWATER/WA 98051
ADDRESS CIT / STATE

On DECEMBER 31, 2014 AT 1:41PM
DATE TIME

Inquired if subject was a member of the U.S. Military and was informed they are not.

Thereafter copies of the documents were mailed by prepaid, first class mail on _____
DATE
from _____
CITY STATE ZIP

Manner of Service:

- Personal:** By personally delivering copies to the person being served.
- Substituted at Residence:** By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household over the age of _____ and explaining the general nature of the papers.
- Substituted at Business:** By leaving, during office hours, copies at the office of the person/entity being served with the person apparently in charge thereof.
- Posting:** By posting copies in a conspicuous manner to the front door of the person/entity being served.

Non-Service: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

- Unknown at Address
- Moved, Left no Forwarding
- Service Cancelled by Litigant
- Unable to Serve in Timely Fashion
- Address Does Not Exist
- Other _____

Service Attempts: Service was attempted on: (1) _____ (2) _____
DATE TIME DATE TIME
(3) _____ (4) _____ (5) _____
DATE TIME DATE TIME

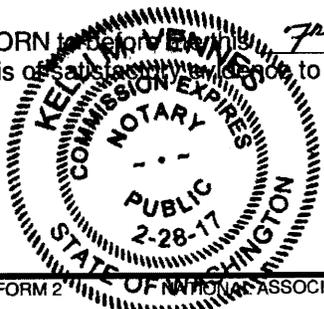
Description: Age _____ Sex _____ Race _____ Height _____ Weight _____ Hair _____ Beard _____ Glasses _____

George Handel
SIGNATURE OF PROCESS SERVER

SUBSCRIBED AND SWORN to before me on this 7th day of January, 2015, by George Handel
Proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Keen M. Weare
SIGNATURE OF NOTARY PUBLIC

NOTARY PUBLIC for the state of WA



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

ANDREA FAGERSTROM and ALLEN WISELEY, individually and on behalf of all other similarly situated Californians

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jeffrey R. Krinsk, Mark L. Knutson, William R. Restis, Trenton R. Kashima, FINKELSTEIN & KRINSK LLP, 501 West Broadway, Suite 1250, San Diego, CA 92101-3579 Phone: (619) 238-1333

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) James D. Nguyen, Davis Wright Tremaine LLP, 865 S. Figueroa St., Suite 2400, Los Angeles, CA 90017-2566 Phone: (213) 633-6800

15CV0096 L DHB

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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, 6 Multidistrict Litigation

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

Brief description of cause: Proposed Class Action under Cal. Bus. & Prof. Code 17500 et seq. and 17200 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,001.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/16/2015 SIGNATURE OF ATTORNEY OF RECORD s/ James D. Nguyen, CA Bar No. 179370

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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2 jrk@classactionlaw.com
Mark L. Knutson, Esq. (SBN 131770)
3 mlk@classactionlaw.com
William R. Restis, Esq. (SBN 246823)
4 wrrestis@classactionlaw.com
Trenton R. Kashima, Esq. (SBN 291405)
5 trk@classactionlaw.com
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6 San Diego, California 92101-3579
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7 Facsimile: (619) 238-5425

8 Attorneys for Plaintiff
and the Putative Class

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County of San Diego
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Clerk of the Superior Court
By Nora Zuazo, Deputy Clerk

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 ANDREA FAGERSTROM and ALLEN
WISELEY, individually and on behalf of all
13 other similarly situated Californians

14 Plaintiff,

15 v.

16 AMAZON.COM, INC., a Delaware
Corporation, and DOES 1 through 50
17 inclusive,

18 Defendants.

Case No: 37-2014-00040303-CU-BT-CTL

CLASS ACTION COMPLAINT FOR:

1. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;
2. VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*
3. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNLAWFUL" BUSINESS PRACTICES;
4. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "UNFAIR" BUSINESS PRACTICES;
5. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR "FRAUDULENT" BUSINESS PRACTICES;
6. DECLARATORY RELIEF, CAL. CIV. CODE § 1060.

JURY TRIAL DEMANDED

1 Andrea Fagerstrom and Allen Wiseley (collectively, the “Plaintiffs”), individually and on
2 behalf of all others similarly situated, based on the investigation of counsel as to the actions and
3 omissions of defendant herein, and by their own individual knowledge as to those averments
4 pertaining to named Plaintiffs own circumstances, hereby complains against defendant
5 Amazon.com, Inc. (“Defendant” or “Amazon”) as follows:

6 **I. INTRODUCTION**

7 1. This consumer class action seeks to remedy Defendant’s false advertising of
8 purported discounts on its website, Amazon.com, that violated California Statutes and are likely to
9 deceive reasonable consumers. California Business & Professional Code, Section 17501,
10 specifically states that:

11 No price shall be advertised as a former price of any advertised thing, unless the
12 alleged former price was the prevailing market price as above defined within three
13 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

14 Federal regulation 16 C.F.R. § 233.1(a) also speaks unfavorably regarding Defendant’s business
15 practices:

16 One of the most commonly used forms of bargain advertising is to offer a reduction
17 from the advertiser’s own former price for an article. If the former price is the
18 actual, bona fide price at which the article was offered to the public on a regular
19 basis for a reasonably substantial period of time, it provides a legitimate basis for
20 the advertising of a price comparison. Where the former price is genuine, the
21 bargain being advertised is a true one. If, on the other hand, the former price being
advertised is not bona fide but fictitious--for example, where an artificial, inflated
price was established for the purpose of enabling the subsequent offer of a large
reduction--the “bargain” being advertised is a false one; the purchaser is not
receiving the unusual value he expects. In such a case, the “reduced” price is, in
reality, probably just the seller’s regular price.

22 This caused Plaintiffs to purchase products from Amazon.com they would not have purchased had
23 Defendant not engaged in false advertising, and pay shipping charges that could have been saved by
24 buying the same product in a retail store.

25 2. Defendant operates the immensely popular retail website, Amazon.com, a website
26 that allows consumers to purchase almost anything ranging from food to furniture online.
27 Consumers can purchase items from Amazon on their computer or mobile device, and such
28 products are delivered directly to the customer’s home. As of last year (2013), Amazon.com hosted

1 1,510,000 customer accounts and realized in excess of \$44.5 billion dollars in sales revenue from
2 its North American operations. Due to the massive number of products and services Defendant
3 offers, and the number of customers who visit Amazon.com daily, Amazon is the largest Internet
4 based retailer in the United States.

5 3. Amazon's size and form does not immunize it from all normal competitive market
6 pressures. Amazon faces evolving (and often intense) competition from traditional brick-and-
7 mortar retail locations and various retail websites. Accordingly, Amazon has adopted a marketing
8 strategy for overcoming its competitors by not only presenting profuse selection and a high level of
9 convenience, but also reinforces the perception of attractive pricing. In fact, to strengthen the
10 perception of Amazon.com as a low price leader, Defendant carefully garners a reputation that its
11 internet-based business model allows it to consistently offer significantly lower prices than its
12 traditional competitors. Indeed, Amazon is candidly states that "[w]e strive to offer our customers
13 the lowest prices possible through low everyday product pricing and shipping offers, and to
14 improve our operating efficiencies so that we can continue to lower prices for our customers."

15 4. Competitors adopting Amazon's business model, decreasing retail profit margins
16 and price matching guarantees have made it increasingly difficult for Amazon to deliver lower
17 prices than the prevailing market. Accordingly, Amazon increasingly has focused its efforts on
18 presenting itself as the unchallenged low price leader, even if the perception is not always accurate.

19 5. One particularly effective, but unlawful, marketing tool that Amazon uses to
20 underpin its low price reputation is Defendant's routine of conspicuously displaying the "savings"
21 that customers will realize by purchasing an item on its website. To impress on the consuming
22 public the purported superiority of Amazon's price model, Defendant advertises most of its
23 products in a uniform fashion: (1) first, Amazon displays the "list" pricing of an item on its
24 website, which is represented as the item's normal retail price with the typeface struck-through
25 (e.g. "List Price: \$329.00"); (2) second, the website displays Amazon's product price in contrasting
26 red font (e.g. "Price: \$299.00"); and (3) third, Amazon lists the amount "saved" by purchasing
27 from its website by highlighting the dollars saved with the percentage of cost savings represented
28 (e.g. "You Save: \$30.00 (9%)").

1 and Code of Civil Procedure §§ 382 and 410.10.

2 10. This Court has jurisdiction over Defendant because it conducts substantial business
3 within California.

4 11. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because
5 Plaintiff contracted with the Defendant and a substantial or significant portion of the conduct
6 complained of herein occurred and continues to occur within this County.

7 **III. PARTIES**

8 12. Plaintiff Andrea Fagerstrom is, and at all times relevant hereto was, a resident of
9 San Diego, California, and a citizen of California. On or about September 12, 2014, Fagerstrom
10 purchased a Vitamix Certified Reconditioned Standard Blender from Amazon.com. The blender
11 was “listed” on Amazon’s website for \$329, but Amazon touted its price as \$299. Amazon
12 expressly represented to Fagerstrom, and the public at large, that she would save “\$30.00 (9%)” by
13 purchasing the product on its website. The representation was demonstrably false.

14 13. The discount touted by Amazon on Plaintiff’s Vitamix Certified Reconditioned
15 Standard Blender was illusory because the genuine market price for the blender at the time was
16 really \$299, and not the list price displayed on Defendant’s website. Indeed, other retailers, such as
17 Target.com, had the same blender for the same price. Even the manufacturer, Vitamix, sold the
18 same blender on its website for \$299 (and did so since at least February 9, 2014). Accordingly,
19 Amazon was disingenuous in representing that Fagerstrom, and the general public, was receiving a
20 substantial discount by purchasing her Vitamix blender of Amazon.com or that the “list” price was
21 \$329.

22 14. Plaintiff Allen Wisely is, and at all times relevant hereto was, a resident of San
23 Diego, California, and a citizen of California. On or about April 22, 2103, Wisely purchased a
24 Digital to Analog Audio Converter from Amazon.com. This Audio Converter was “listed” on
25 Amazon’s website for \$59, but Amazon stated that its sellers could offer the item for \$21. Amazon
26 expressly represented to Wisely, and the public at large, that he would save \$48.00 or 64% by
27 purchasing the product on its website. The representation was also false.

28 15. The Amazon “list” price represented price at which the same Audio Converter was

1 first offered on Amazon.com in 2010. Amazon neither listed the Audio Converter on its website for
2 \$59 since 2010 nor does Amazon disclose that the list price is over four years old. Similar digital to
3 analog audio converters currently sell for substantially less than \$59 in the online retail market.
4 Nevertheless, Amazon maintains that Wisely, and the general public, are save more than 50% by
5 buying this product on their website.

6 16. Defendant Amazon.com, Inc. is a Delaware Corporation headquartered in Seattle,
7 Washington. Amazon is the largest online retailer in the United States. Amazon operates the
8 popular website, Amazon.com which allows both Amazon and its subsidiaries, as well as other
9 individuals, manufacturers, retailers and distributors, to sell their products online, directly to
10 consumers, including millions of individuals in California. As such, Amazon sells both products
11 from its own retail subsidiary, Amazon.com LLC, and products from other independent sellers who
12 have agreed to list their products on Amazon's website. Amazon does not have any physical retail
13 locations, however it does operate a number of distribution centers in California.

14 17. Amazon.com started as an online bookstore, but has diversified to now sell
15 numerous types of consumer goods, including DVDs, CDs, videos and MP3s, software, video
16 games, electronics, apparel, furniture, food, toys, appliances, clothing, and jewelry.

17 18. Plaintiffs do not know the true names of defendants DOES 1 through 50 inclusive,
18 and therefore sues them by those fictitious names. Plaintiffs are informed and believe, and on the
19 basis of that information and belief allege, that each of the doe defendants are in some manner
20 proximately responsible for the events and happenings alleged in this complaint and for Plaintiffs'
21 injuries, damages, restitution and equitable remedies prayed for herein.

22 **IV. SUBSTANTIVE ALLEGATIONS**

23 **A. Amazon's Advertising Practices**

24 19. Upon browsing for products on Amazon's website, a consumer can either search for
25 the specific product they wish to purchase or browse products grouped by category into
26 "departments" and numerous sub-categories (e.g., "Books & Audible," "Electronics and
27 Computers," etc). Regardless of which method is used, consumers are presented with pages of
28 "results" germane to their request. These "result pages" provide a picture of the products being sold

1 and a short description of multiple products fitting the description of the sought after product, so
2 that a consumer might quickly find the item they wish to purchase.

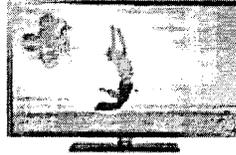


3
4
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6 See Size Options

7
8 **LG Electronics 55LB5900 55-Inch 1080p 120Hz LED TV**

9 ~~\$800.00~~ **\$679.00** /Prime
10 ~~Free~~ **Monday, Nov 3**
11 ~~FREE Shipping~~

12 **More Buying Choices**
13 **\$670.89** new (10 offers)
14 **\$629.10** used (1 offer)
15 ~~Available in:~~ (279)



6 See Size Options

7
8 **Samsung UN22F5000 22-Inch 1080p 60Hz Slim LED HDTV (2013 Model)**

9 ~~\$200.00~~ **\$167.99** /Prime
10 ~~Free~~ **Monday, Nov 3**
11 ~~FREE Shipping~~

12 **More Buying Choices**
13 **\$164.97** new (10 offers)
14 **\$149.00** used (6 offers)
15 ~~Available in:~~ (925)



6 See Size Options

7
8 **VIZIO E5001-B1 50-Inch 1080p HDTV**

9 ~~\$600.00~~ **\$548.00** /Prime
10 ~~Free~~ **Monday, Nov 3**
11 ~~FREE Shipping~~

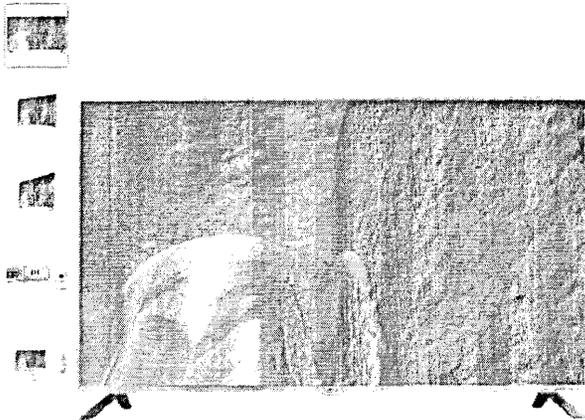
12 **More Buying Choices**
13 **\$510.99** new (10 offers)
14 **\$509.64** used (1 offer)
15 ~~Available in:~~ (673)

13 20. Amazon chooses to display only a limited amount of information on its results
14 pages, *i.e.*, the information Defendant believes is most material to prospective customers. Among
15 the most prominent of the information provided is the products' title, its availability, consumer
16 reviews, and its price. It is clear by the font and space dedicated to each element that Amazon
17 understands that its customers are highly influenced by the price of the product when deciding to
18 purchase from its website.

19 21. Amazon not only includes its pricing for an item, but also the price charged by other
20 sellers who have agreed to make their products available on Amazon. Both Amazon's price and the
21 prices charged by its independent sellers for a given product are represented as a "discount" price
22 relative to the "list" price. Thus, a reasonable consumer is provided the false impression that when
23 purchasing products on Amazon, they receive a deal compared to other retailers and/or the Amazon
24 normal pricing.

25 22. When a customer selects a product from the results page, they are directed to a web-
26 page having more detailed information about that product. Effectively, the first and certainly the
27 most prominently displayed information presented by Defendant on each product page is
28 Amazon's discount pricing:

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LG Electronics 55LB5900 55-Inch 1080p 120Hz LED TV

by LG

279 customer reviews | 44 answered questions

List Price: ~~\$999.99~~

Price: **\$679.00 & FREE Shipping**. Details

You Save **\$320.99 (32%)**

Low Price Guarantee

In Stock.

Ships from and sold by Amazon.com.

Want it Saturday, Nov. 1? Order within 18 hrs 10 mins and choose **Saturday Delivery** at checkout. Details

Size: **55-Inch**

47-Inch

50-Inch

55-Inch

60-Inch

Roll over image to zoom in

As noted above, Amazon.com acts uniformly to present a “list” pricing of an item for sale on its website. The “list” price, represented to be the item’s normal price, is followed by Amazon’s contrasting (lower) price in red lettering, the amount saved represented in total dollars, and a percentage of the “false” savings.

23. Because Amazon advertises the amount of the discount as both a total dollar number and as a percentage of the “list” price displayed, it behooves Amazon to make the “list” price as large as possible (to create the appearance of vast savings). Accordingly, when determining its “list” price, Defendant’s consistently uses the highest price at which a product has ever been “listed” regardless of when or where this product was ever listed for the indicated price. Consequently, Defendant regularly misinforms its consumers regarding the most material disclosure regarding their transaction: the price.

24. Defendant’s deceptive practices of displaying a list price which bears no relation to the prevailing market are a consistent part of Defendant’s memorialized business practices. Defendant’s “list” price is the highest manufacturer’s suggested retail price (“MSRP”) and, as such, an inaccurate representation of the market price of the subject item for a given time period for a particular location or the price at which the product was previously sold on Defendant’s website. Indeed, the MSRP is by definition only a suggestion directed at retailers and therefore not a reasonable basis to conclude it reflects the average price available within the market.

1 25. Defendant relies on the highest MSRP because it has no independent policy or
2 system to ensure that the “list” price reflects the prevailing market price at a given time. This is not
3 a simple oversight. Defendant resorts to the artificially inflated “list” prices which mislead the
4 general public about the true discount(s) available and maintains the illusion that Amazon pricing
5 is consistently lower than available through other sources. If Amazon actually included a valid
6 “list” price reflecting the immediate retail market price for a product, reasonable consumers would
7 learn that Amazon does not provide the deals it purports to offer.

8 26. Due to automatic price matching policies, and the invisible hand of the market, if
9 one retailer lowers its price, others must follow suit. Amazon and its competition are no exception.
10 For example, the LG Electronics 55LB5900 55-Inch 1080p LED TV listed on Amazon.com, as
11 depicted in the above screenshots, was also listed on Best Buy’s website, Walmart’s website, and
12 Newegg.com for the same price (if not less) as listed by Amazon during the same period.¹ Thus, no
13 basis for Defendant to assert that the customer is receiving a substantial discount, when the
14 customer is only paying Amazon the then prevailing market price.

15 27. Defendant’s illusory “discounts” are particularly misleading because consumers
16 often make purchasing decisions based on a reference price - that is, customers will often make
17 purchasing decision when they believe products to be less expensive than the perceived “normal”
18 price for a given item. By advertising “discounts” derived from inaccurate “list” pricing, Defendant
19 takes advantage of such well documented consumer behavior in order to influence consumers into
20 immediately purchasing an item. Additionally, Defendant’s practices mollifies consumers’
21 concerns about missing the “better deal”, and serves to discourage comparison shopping. Finally,
22 such discounts additionally create a false sense of urgency, contributing to the impression that a
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26 ¹ Both newegg.com and Best Buy offered the same television for the same price. Walmart
27 advertised the same TV for significantly less. See <http://www.bestbuy.com/site/lg-55-class-54-5-8-diag--led-1080p-120hz-hdtv/6053009.p?id=1219184625084&skuId=6053009>; <http://www.walmart.com/ip/LG-55LB5900-55-1080p-60Hz-Class-LED-HDTV/38378301>; and <http://www.newegg.com/Product/Product.aspx?Item=N82E16889005875>
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1 consumer should act quickly or lose a significant savings.²

2 28. Defendant uses these ersatz illusory discounts to create the impression that online
3 retailers have efficiencies in their operations, can offer more competitive prices and are worth the
4 inconvenience of not purchasing the same product at a local retailer. Thus, Defendant's actions
5 harmed, and continue to harm, Plaintiffs, members of the Class, and market competitors.

6 **B. California False Advertising Law**

7 29. By marketing a product's "list" price at an artificially high level - a level that would
8 not be competitive in the current prevailing market or at a price for which it never intends to sell
9 the product - Defendant concocts a discount that does not exist. This method of advertising is
10 materially misleading to the average consumer, who is often swayed into purchasing a product by
11 the prospect of a large discount.

12 30. But, such practice is not novel or unique. Historically, unscrupulous retailers have
13 frequently used the same misleading tactic - overstating or manufacturing a "discount" to help sell
14 products instead of the competition. Accordingly, both California lawmakers and federal regulators
15 have each sought to prohibit the injurious conduct. California Business & Professional Code,
16 Section 17501, specifically states that:

17 No price shall be advertised as a former price of any advertised thing, unless the
18 alleged former price was the prevailing market price as above defined within
19 three months next immediately preceding the publication of the advertisement
or unless the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

20 (Emphasis added). The provision of Section 17501 differentiates subjective uncertainty from clear
21 illegality. The market price at the time of publication of such an advertisement is the price charged
22 in the locality where the advertisement is published. Accordingly, Defendant can only properly
23 include a "list" price for comparative purposes in its advertisements if (1) the prevailing market
24 price has been researched (in California) and the list price is the average retail market price within
25 the past three months, or (2) it advertises the date on which the published "list" price was in effect.

26
27 ² See generally, Grewal, Krishnan, Baker & Norm, "The Effect of Store Name, Brand Name
28 and Price Discounts On Consumers' Evaluations And Purchase Intentions" 74 Journal of Retailing
3, p. 331 (1998).

1 While the exact number of Class members is unknown to Plaintiffs at this time, Plaintiffs are
2 informed and believes that there are hundreds of thousands of members in the proposed Class, if
3 not more, and can be ascertained through discovery. The number of individuals who comprise the
4 Class are so numerous that joinder of all such persons is impracticable and the disposition of their
5 claims in a class action, rather than in individual actions, will benefit both the parties and the
6 courts.

7 36. Defendant has acted with respect to the Class in a manner generally applicable to
8 each Class member, making class-wide injunctive and declaratory relief proper.

9 37. There is a well-defined community of interest in the questions of law and fact
10 involved in the action, which affect all Class members. Among the questions of law and fact
11 common to the Class are, *inter alia*:

12 (a) Whether Defendant advertises its “discounted” products in a deceptive,
13 false, or misleading manner;

14 (b) Whether Defendant’s advertised “list” price is determined by averaging the
15 price of said product in the prevailing market over the previous three months;

16 (c) Whether Defendant’s advertised the date on which the “list” price of a
17 product is determined if it is not calculated by the average over the previous three months;

18 (d) Whether Defendant’s alleged business practices constitutes unfair methods
19 of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. BUS.
20 & PROF. CODE §§ 1770, *et seq.*, by making false or misleading statements of fact
21 concerning reasons for, existence of, or amounts of price reductions.

22 (e) Whether Defendant’s business practices, alleged herein, constitute
23 misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17500-
24 01.

25 (f) Whether Defendant’s business practices, alleged herein, constitutes
26 “unlawful,” “unfair,” or “fraudulent” business acts or practices under, *inter alia*, CAL. BUS.
27 & PROF. CODE §§ 17200, including:

28 (i) Whether Defendant’s advertisement of illusory discounts constitutes

1 “unlawful” or “unfair” business practices by violating the public policies set out in
2 CAL. CIV. CODE §§ 1770(a)(13), CAL. BUS. & PROF. CODE §§ 17500-01, 16 C.F.R. §
3 233.1, and other California and federal statutes and regulations;

4 (ii) Whether Defendant’s advertisement of illusory discounts is
5 immoral, unethical, oppressive, unscrupulous or substantially injurious to
6 consumers;

7 (iii) Whether Defendant’s advertisement of illusory discounts constitutes
8 an “unfair” business practice because consumer injury outweighs any countervailing
9 benefits to consumers or competition, and because such injury could not be
10 reasonably avoided by consumers; and

11 (iv) Whether Defendant’s advertisement of illusory discounts constitutes
12 a “fraudulent” business practice because members of the public are likely to be
13 deceived;

14 (h) The nature and extent of equitable remedies, including restitution of
15 shipping costs; and declaratory and injunctive relief to which Plaintiffs and the Class are
16 entitled; and

17 (i) Whether Plaintiffs and the Class should be awarded attorneys’ fees and the
18 costs of suit for Defendant’s violations of the UCL, FAL, and CLRA.

19 38. Plaintiffs’ claims are typical of the claims of the other members of the Class. All
20 members of the Class have been and/or continue to be similarly affected by Defendant’s wrongful
21 conduct as complained of herein, in violation of California law. Plaintiffs are unaware of any
22 interests that conflict with or are antagonistic to the interests of the Class.

23 39. Plaintiffs will fairly and adequately protect the Class members’ interests and have
24 retained counsel competent and experienced in consumer class action lawsuits and complex
25 litigation. Plaintiffs and their counsel have the necessary financial resources to adequately and
26 vigorously litigate this class action, and Plaintiffs are aware of their duties and responsibilities to
27 the Class.

28 40. A class action is superior to all other available methods for the fair and efficient

1 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
2 damages suffered by individual Class members may be relatively small, the expense and burden of
3 individual litigation make it virtually impossible for Class members to individually redress the
4 wrongs done to them. There will be no difficulty in managing this action as a class action.

5 41. Defendant has acted on grounds generally applicable to the entire Class with respect
6 to the matters complained of herein, thereby making appropriate the relief sought herein with
7 respect to the Class as a whole.

8 **FIRST CAUSE OF ACTION**

9 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -**
10 **Untrue, Misleading and Deceptive Advertising**

11 42. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
12 paragraphs of this Complaint.

13 43. California Business and Professional Code, Section 17501, states that:

14 No price shall be advertised as a former price of any advertised thing, unless the
15 alleged former price was the prevailing market price as above defined within three
16 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

17 For the purpose of Section 17501, the retail market price at the time of publication of such
18 advertisement is the retail price in locality wherein the advertisement is published.

19 44. At all material times, Defendant engaged in a scheme of advertising that its products
20 were subject to a discount when such discounts were illusory and did not reflect the “prevailing
21 marketing price” of the item for a particular time period in a particular location or even the price at
22 which the product was previously sold on Defendant’s website.

23 45. At all material times, Defendant did not include the date on which its “list” price
24 was established.

25 46. Defendant’s advertisement of an inflated list price misrepresented and/or omitted
26 the true nature of Defendant’s pricing. Said advertisements were made to consumers located within
27 the State of California, and come within the definition of advertising as contained in CAL. BUS. &
28 PROF. CODE §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to

1 purchase products on Amazon.com and are statements disseminated by Defendant to Plaintiffs and
2 other members of the Class. In the exercise of reasonable care, Defendant should have known, that
3 the statements regarding its pricing were false, misleading, deceptive and violated California law.

4 47. Defendant has prepared and distributed within the State of California, *via* its retail
5 website, Amazon.com, that its products were subject to substantial discounts. Plaintiffs, necessarily
6 and reasonably relied on Defendant's statements regarding the pricing of its products, and all
7 members of the Class were exposed to such statements. Consumers, including Plaintiffs and
8 members of the Class, were among the intended targets of such representations.

9 48. The above acts of Defendant, in disseminating said misleading and deceptive
10 statements throughout the State of California, including Plaintiffs and members of the Class, were
11 and are likely to deceive reasonable consumers by obfuscating the true nature of Defendant's
12 discounts, thus were violations of CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

13 49. Plaintiffs and other members of the Class who purchased products from Defendant's
14 website suffered a substantial injury. Had Plaintiffs and members of the Class known that
15 Defendant's materials, advertisement and other inducements misrepresented and/or omitted the
16 true nature of Defendant's discounts, they would not have purchased products from Amazon.com,
17 or paid less for them.

18 50. Plaintiffs, on behalf of themselves and all other similarly situated California
19 consumers, and as appropriate, on behalf of the general public of the state of California, seek
20 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
21 directing Defendant to make corrective notices both on its website and in other appropriate media,
22 allowing Class members to return any products purchased on Defendant's website, at Defendant's
23 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
24 Defendant to price match any competitor's advertised price for the same product, refund of any
25 shipping and handling fees for any products purchased on Defendant's website subject to
26 Defendant's unlawful pricing policy, and any other relief deemed improper by the Court.

SECOND CAUSE OF ACTION

**Violation of CAL. CIV. CODE §§ 1750, *et seq.*-
Misrepresentation of the Existence of a Discount**

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4 51. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
5 paragraphs of this Complaint.

6 52. Defendant sells “goods” and “services” as defined by California Civil Code §1761.

7 53. Defendant is a “person” as defined by California Civil Code §1761(c).

8 54. Plaintiffs and Class members are “consumers” within the meaning of California
9 Civil Code §1761(d) because they purchased the products from Amazon.com for personal, family
10 or household use.

11 55. The sale of the products to Plaintiffs and Class members *via* Defendant’s website is
12 a “transaction” as defined by California Civil Code §1761(e).

13 56. By misrepresenting the “list” price of its products, and thus any discounts derived
14 therefrom, Defendant made false or misleading statements of fact concerning reasons for, existence
15 of, or amounts of price reductions, in violation of California Civil Code §1770(a)(13).

16 57. Plaintiffs and Class members were harmed as a result of Defendant’s unfair
17 competition and deceptive acts and practices. Had Defendant disclosed the true nature of its
18 discounts, Plaintiffs and the Class would not be misled into purchasing products from Defendant’s
19 website, or, alternatively, paid less for them.

20 58. Plaintiffs, on behalf of themselves and all other similarly situated California
21 consumers, and as appropriate, on behalf of the general public of the state of California, seek
22 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
23 directing Defendant to make corrective notices both on its website and in other appropriate media,
24 allowing Class members to return any products purchased on Defendant’s website, at Defendant’s
25 expense, which were subject to Defendant’s unlawful pricing policy, or alternatively requiring
26 Defendant to price match any competitor’s advertised price for the same product, refund of any
27 shipping and handling fees for any products purchased on Defendant’s website subject to
28 Defendant’s unlawful pricing policy, and any other relief deemed proper by the Court.

THIRD CAUSE OF ACTION

**Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -
Unlawful Business Acts and Practices**

59. Plaintiffs hereby incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

60. California Business and Professional Code, Section 17501, states:

No price shall be advertised as a former price of any advertised thing, unless the alleged former price was the prevailing market price as above defined within three months next immediately preceding the publication of the advertisement or unless the date when the alleged former price did prevail is clearly, exactly and conspicuously stated in the advertisement.

61. Federal regulations also prohibit the use of deceive and illusory discounts:

One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious--for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction--the "bargain" being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the "reduced" price is, in reality, probably just the seller's regular price.

16 C.F.R. § 233.1(a).

62. California Civil Code §1770(a)(13) prohibits making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions.

63. The business practices alleged above are unlawful under California Business & Professional Code §§ 17500, *et seq.*, California Civil Code §1770(a)(13) and federal regulations, each of which forbids Defendant's untrue, fraudulent, deceptive, and/or misleading marketing and advertisements.

64. Plaintiffs and Class members were harmed as a result of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the true nature of their "discounts," Plaintiffs and the Class would not be misled into purchasing products from Defendant's website, or, alternatively, paid less for them.

65. Plaintiffs, on behalf of themselves and all other similarly situated California

1 consumers, and as appropriate, on behalf of the general public of the state of California, seek
2 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
3 directing Defendant to make corrective notices both on its website and in other appropriate media,
4 allowing Class members to return any products purchased on Defendant's website, at Defendant's
5 expense, which were subject to Defendant's unlawful pricing policy, or alternatively requiring
6 Defendant to price match any competitor's advertised price for the same product, refund of any
7 shipping and handling fees for any product purchased on Defendant's website subject to
8 Defendant's unlawful pricing policy, and any other relief deemed improper by the Court.

9 **FOURTH CAUSE OF ACTION**

10 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
11 **Unfair Business Acts and Practices**

12 66. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
13 paragraphs of this Complaint.

14 67. Plaintiffs and other members of the Class suffered a substantial injury by virtue of
15 Defendant's unlawful scheme of advertising that its products were subject to discounts when such
16 discounts were illusory and did not reflect the "prevailing marketing price" of the item during any
17 particular time period at a particular location or even the price at which the product was previously
18 sold on Defendant's website.

19 68. Defendant's actions alleged herein violate the laws and public policies of California
20 and the federal government as set out in preceding paragraphs of this Complaint.

21 69. There is no benefit to consumers or competition by allowing Defendant to
22 deceptively market and advertise nonexistent discounts in violation of California Law.

23 70. Plaintiffs and Class members who purchased products from Defendant's website
24 had no way of reasonably knowing that the "list" price was artificially inflated and did not reflect
25 the true nature of the discount offered on Defendant's products. Thus, Class members could not
26 have reasonably avoided the injury they suffered.

27 71. The gravity of the harm visited upon Plaintiffs and Class members outweighs any
28 legitimate justification, motive or reason for marketing and advertising discounted products in a

1 deceptive and misleading manner which violates California law. Accordingly, Defendant's actions
2 are immoral, unethical, unscrupulous and offend the established California public policies is
3 substantially injurious to Plaintiffs and members of the Class.

4 72. The above acts of Defendant, in disseminating said misleading and deceptive
5 statements throughout the State of California to consumers, including Plaintiffs and members of the
6 Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and
7 amount of the nature and existence of product in violations of CAL. BUS. & PROF. CODE §§ 17500,
8 *et seq.*, and California Civil Code §1770(a)(13).

9 73. Plaintiffs and Class members were harmed and suffered actual damages as a result
10 of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the
11 true nature of their discounts, Plaintiffs and the Class would have purchased products from
12 Defendant's website, or, alternatively, paid significantly less for them.

13 74. Plaintiffs, on behalf of themselves and all other similarly situated California
14 consumers, and as appropriate, on behalf of the general public of the state of California, seeks
15 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
16 directing Defendant to make corrective notices both on its website and in other appropriate media,
17 allowing Class members to return any products purchased on Defendant's website, at Defendant's
18 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
19 Defendant to price match any competitor's advertised price for the same product, refund of any
20 shipping and handling fees for any purchased on Defendant's website subject to Defendant's
21 unlawful pricing policy and any other relief deemed improper by the Court.

22 **FIFTH CAUSE OF ACTION**

23 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
24 **Fraudulent Business Acts and Practices**

25 75. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
26 paragraphs of this Complaint.

27 76. Such acts of Defendant as described above constitute a fraudulent business practice
28 under CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

1 unenforceable.

2 **VI. PRAY FOR RELIEF**

3 WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

4 A. For an order declaring that this action is properly maintained as a class action and
5 appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs' counsel as Class
6 counsel;

7 B. For an order enjoining Defendant from continuing to engage in the unlawful and
8 unfair business acts and practices as alleged herein;

9 C. For an order directing Defendant to make corrective notices on its website and in
10 other appropriate publications.

11 D. For an order directing Defendant to allow its customers to return any products
12 purchased on Defendant's website, at Defendant's expense, which were subject Defendant's
13 unlawful pricing policy, within twelve (12) months of filing this complaint.

14 E. For an order requiring Defendant to price match any competitor's advertised price
15 for the same product purchased from Amazon.com, which were subject Defendant's unlawful
16 pricing policy, within twelve (12) months of filing this complaint;

17 F. For restitution of all shipping and handling fees charged for products purchased
18 from Amazon.com subject to Defendant's unlawful advertising;

19 F. For an order awarding attorneys' fees and costs of suit, including experts witness
20 fees as permitted by law; and

21 G. Such other and further relief as this Court may deem just and proper.

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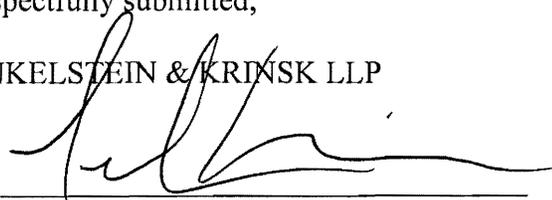
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VII. JURY TRIAL

Plaintiffs demand a trial by jury for all of the claims asserted in this Complaint so triable.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP

By: 

Trenton R. Kashima, Esq.

Jeffrey R. Krinsk, Esq.

Mark L. Knutson, Esq.

William R. Restis, Esq.

Attorneys for Plaintiff
and the Class

Dated: November 25, 2014

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County of San Diego
12/29/2014 at 04:24:00 PM
Clerk of the Superior Court
By Melissa Reyes, Deputy Clerk

8 Attorneys for Plaintiff
and the Putative Class

9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF SAN DIEGO**

12 ANDREA FAGERSTROM and ALLEN
WISELEY, individually and on behalf of all
13 other similarly situated Californians

14 Plaintiff,

15 v.

16 AMAZON.COM, INC., a Delaware
Corporation, and DOES 1 through 50
17 inclusive,

18 Defendants.

Case No: 37-2014-00040303-CU-BT-CTL

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17500, *et seq.*;
2. VIOLATION OF CAL. CIV. CODE §§ 1750, *et seq.*
3. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR “UNLAWFUL” BUSINESS PRACTICES;
4. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR “UNFAIR” BUSINESS PRACTICES;
5. VIOLATION OF CAL. BUS. & PROF. CODE §§ 17200, *et seq.* FOR “FRAUDULENT” BUSINESS PRACTICES;
6. NEGLIGENT MISREPRESENTATION; and
7. DECLARATORY RELIEF, CAL. CIV. CODE § 1060.

JURY TRIAL DEMANDED

1 Andrea Fagerstrom and Allen Wiseley (“Plaintiffs”), individually and on behalf of all
2 others similarly situated, based on the investigation of counsel as to the actions and omissions of
3 defendant herein, and by their own individual knowledge as to those averments pertaining to
4 named Plaintiffs’ own circumstances, hereby submits this First Amended Complaint (FAC) against
5 defendant Amazon.com, Inc (“Defendant” or “Amazon”):

6 **I. INTRODUCTION**

7 1. This consumer class action seeks to remedy Defendant’s false advertising of
8 purported discounts on its website, Amazon.com, that violated California Statutes and are likely to
9 deceive reasonable consumers. California Business & Professional Code, Section 17501,
10 specifically states that:

11 No price shall be advertised as a former price of any advertised thing, unless the
12 alleged former price was the prevailing market price as above defined within three
13 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

14 Federal regulation 16 C.F.R. § 233.1(a) also speaks unfavorably regarding Defendant’s business
15 practices:

16 One of the most commonly used forms of bargain advertising is to offer a reduction
17 from the advertiser's own former price for an article. If the former price is the actual,
18 bona fide price at which the article was offered to the public on a regular basis for a
19 reasonably substantial period of time, it provides a legitimate basis for the
20 advertising of a price comparison. Where the former price is genuine, the bargain
21 being advertised is a true one. If, on the other hand, the former price being
advertised is not bona fide but fictitious--for example, where an artificial, inflated
price was established for the purpose of enabling the subsequent offer of a large
reduction--the “bargain” being advertised is a false one; the purchaser is not
receiving the unusual value he expects. In such a case, the “reduced” price is, in
reality, probably just the seller's regular price.

22 This caused Plaintiffs to purchase products from Amazon.com they would not have purchased had
23 Defendant not engaged in false advertising, and pay shipping charges that could have been saved by
24 buying the same product in a retail store.

25 2. Defendant operates the immensely popular retail website, Amazon.com, a website
26 which allows consumers to purchase almost anything ranging from food to furniture online.
27 Consumers can purchase items from Amazon on their computer or mobile device, and such
28 products are delivered directly to the customer’s home. As of last year (2013), Amazon.com hosted

1 1,510,000 customer accounts and realized in excess of \$44.5 billion dollars in sales revenue from
2 its North American operations. Due to the massive number of products and services Defendant
3 offers, and the number of customers who visit Amazon.com daily, Amazon is the largest Internet
4 based retailer in the United States.

5 3. Amazon's size and form does not immunize it from all normal competitive market
6 pressures. Amazon faces evolving (and often intense) competition from traditional brick-and-
7 mortar retail locations and various retail websites. Accordingly, Amazon has adopted a marketing
8 strategy for overcoming its competitors by not only presenting profuse selection and a high level of
9 convenience, but also reinforces the perception of attractive pricing. In fact, to strengthen the
10 perception of Amazon.com as a low price leader, Defendant carefully garners a reputation that its
11 internet-based business model allows it to consistently offer significantly lower prices than its
12 traditional competitors. Indeed, Amazon candidly states that "[w]e strive to offer our customers
13 the lowest prices possible through low everyday product pricing and shipping offers, and to
14 improve our operating efficiencies so that we can continue to lower prices for our customers."

15 4. Competitors adopting Amazon's business model, decreasing retail profit margins
16 and price matching guarantees have made it increasingly difficult for Amazon to deliver lower
17 prices than the prevailing market. Accordingly, Amazon increasingly has focused its efforts on
18 presenting itself as the unchallenged low price leader, even if the perception is not always accurate.

19 5. One particularly effective, but unlawful, marketing tool that Amazon uses to
20 underpin its low price reputation is Defendant's routine of conspicuously displaying the "savings"
21 that customers will realize by purchasing an item on its website. To impress on the consuming
22 public the purported superiority of Amazon's price model, Defendant advertises most of its
23 products in a uniform fashion: (1) first, Amazon displays the "list" pricing of an item on its
24 website, which is represented as the item's normal retail price with the typeface struck-through
25 (*e.g.* "List Price: ~~\$329.00~~"); (2) second, the website displays Amazon's product price in contrasting
26 red font (*e.g.* "Price: **\$299.00**"); and (3) third, Amazon lists the amount "saved" by purchasing
27 from its website by highlighting the dollars saved with the percentage of cost savings represented
28 (*e.g.* "You Save: **\$30.00 (9%)**").

1 6. The amount of savings advertised by Amazon is illusory and/or grossly overstated.
2 This is because the “list” price used to calculate the quantum of reported “savings” is not the
3 prevailing marketing price of obtaining the same product from one of Amazon’s competitors or the
4 price charged by Amazon for the subject item in the normal course of its business. Rather, the
5 “list” price is the highest price the product has ever been listed for, regardless of when that price
6 was advertised. Simply stated, Defendant cherry-picks the highest price it can find for the item and
7 uses it to create a significant price discrepancy and the impression of considerable savings for its
8 customers.

9 7. The reality is that the Amazon price is no different than the price of competitors,
10 and no discount is provided over Amazon.com’s everyday pricing. Its customers are not realizing
11 the savings portrayed or expected by purchasing these advertised “discounted” products from
12 Amazon. In fact, if all other factors are equal, a customer may incur higher costs by purchasing a
13 product through Amazon.com (due to shipping and handling fees), costs not incurred when
14 shopping at traditional brick-and-mortar retailers. Additionally, had Plaintiffs and members of the
15 Class known that the discounts on Amazon.com were illusory as overstated and manipulative, they
16 would not have purchased their products from Amazon and/or purchased them elsewhere.

17 8. Amazon’s business practice is a *per se* violation of the California False Advertising
18 Law (“FAL”), CAL. BUS. & PROF. CODE § 17501. If a retailer advertises price reductions, the FAL
19 requires a retailer to determine the “list” price based on data for the prevailing market price
20 retrieved for over the immediately prior three months (or, alternatively state the date on which the
21 list price was established). Additionally, Defendant’s conduct also violates the California
22 Consumer Legal Remedies Act (“CLRA”), CAL. CIV. CODE §§ 1770, *et seq.*, and California Unfair
23 Competition Law (“UCL”), CAL. BUS. & PROF. CODE §§ 17000, *et seq.* Plaintiff thus seeks
24 restitution, injunctive, declaratory, and other equitable relief as may be deemed proper by the
25 Court.

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1 **II. JURISDICTION AND VENUE**

2 9. This Court has jurisdiction over this action pursuant to Article 6, § 10 of the
3 California Constitution, California Business & Professions Code § 17203, Civil Code § 1780(d)
4 and Code of Civil Procedure §§ 382 and 410.10.

5 10. This Court has jurisdiction over Defendant because it is registered to conduct, and
6 does conduct, substantial business within California.

7 11. Venue is proper in this Court pursuant to Code of Civil Procedure § 395 because
8 Plaintiff contracted with the Defendant and a substantial or significant portion of the conduct
9 complained of herein occurred and continues to occur within this County.

10 **III. PARTIES**

11 12. Plaintiff Andrea Fagerstrom is, and at all times relevant hereto was, a resident of
12 San Diego, California, and a citizen of California. On or about September 12, 2014, Fagerstrom
13 purchased a Vitamix Certified Reconditioned Standard Blender from Amazon.com. The blender
14 was “listed” on Amazon’s website for \$329, but Amazon touted its price as \$299. Amazon
15 expressly represented to Fagerstrom, and the public at large, that they would save “\$30.00 (9%)”
16 by purchasing the product on its website. The representation was demonstrably false.

17 13. The discount touted by Amazon on Plaintiff’s Vitamix Certified Reconditioned
18 Standard Blender was illusory because the genuine market price for the blender at the time was
19 really \$299, and not the list price displayed on Defendant’s website. Indeed, other retailers, such as
20 Target.com, had the same blender for the same price. Even the manufacturer, Vitamix, sold the
21 same blender on its website for \$299 (and did so since at least February 9, 2014). Accordingly,
22 Amazon was disingenuous in representing that Fagerstrom, and the general public, was receiving a
23 substantial discount by purchasing her Vitamix blender of Amazon.com or that the “list” price was
24 \$329.

25 14. Plaintiff Allen Wisely is, and at all times relevant hereto was, a resident of San
26 Diego, California, and a citizen of California. On or about April 22, 2103, Wisely purchased a
27 Digital to Analog Audio Converter from Amazon.com. This Audio Converter was “listed” on
28 Amazon’s website for \$59, but Amazon stated that its sellers could offer the item for \$21. Amazon

1 expressly represented to Wisely, and the public at large, that they would save \$48.00 or 64% by
2 purchasing the product on its website. The representation was also false.

3 15. The Amazon “list” price represented price at which the same Audio Converter was
4 first offered on Amazon.com in 2010. Amazon neither listed the Audio Converter on its website for
5 \$59 since 2010 nor does Amazon disclose that the list price is over four years old. Similar digital to
6 analog audio converters currently sell for substantially less than \$59 in the online retail market.
7 Nevertheless, Amazon maintains that Wisely, and the general public, are save more than 50% by
8 buying this product on their website.

9 16. Defendant Amazon.com, Inc. is a Delaware Corporation headquartered in Seattle,
10 Washington. Amazon is the largest online retailer in the United States. Amazon operates the
11 popular website, Amazon.com which allows both Amazon and its subsidiaries, as well as other
12 individuals, manufacturers, retailers and distributors, to sell their products online, directly to
13 consumers, including millions of individuals in California. As such, Amazon sells both products
14 from its own retail subsidiary, Amazon.com LLC, and products from other independent sellers who
15 have agreed to list their products on Amazon’s website. Amazon does not have any physical retail
16 locations, however it does operate a number of distribution centers in California.

17 17. Amazon.com started as an online bookstore, but has diversified to now sell
18 numerous types of consumer goods, including DVDs, CDs, videos and MP3s, software, video
19 games, electronics, apparel, furniture, food, toys, appliances, clothing, and jewelry.

20 18. Plaintiffs do not know the true names of defendants DOES 1 through 50 inclusive,
21 and therefore sues them by those fictitious names. Plaintiffs are informed and believe, and on the
22 basis of that information and belief allege, that each of the doe defendants are in some manner
23 proximately responsible for the events and happenings alleged in this FAC and for Plaintiffs'
24 injuries, damages, restitution and equitable remedies prayed for herein.

25 **IV. SUBSTANTIVE ALLEGATIONS**

26 **A. Amazon’s Advertising Practices**

27 19. Upon browsing for products on Amazon’s website, a consumer can either search for
28 the specific product they wish to purchase or browse products grouped by category into

1 “departments” and numerous sub-categories (e.g., “Books & Audible,” “Electronics and
 2 Computers,” etc). Regardless of which method is used, consumers are presented with pages of
 3 “results” germane to their request. These “result pages” provide a picture of the products being sold
 4 and a short description of multiple products fitting the description of the sought after product, so
 5 that a consumer might quickly find the item they wish to purchase.



15 20. Amazon chooses to display only a limited amount of information on its results
 16 pages, *i.e.*, the information Defendant believes is most material to prospective customers. Among
 17 the most prominent of the information provided is the products’ title, its availability, consumer
 18 reviews, and its price. It is clear by the font and space dedicated to each element that Amazon
 19 understands that its customers are highly influenced by the price of the product when deciding to
 20 purchase from its website.

21 21. Amazon not only includes its pricing for an item, but also the price charged by other
 22 sellers who have agreed to make their products available on Amazon. Both Amazon’s price and the
 23 prices charged by its independent sellers for a given product are represented as a “discount” price
 24 relative to the “list” price. Thus, a reasonable consumer is provided the false impression that when
 25 purchasing products on Amazon, they receive a deal compared to other retailers and/or the Amazon
 26 normal pricing.

27 22. When a customer selects a product from the results page, they are directed to a web-
 28

1 page having more detailed information about that product. Effectively, the first and certainly the
 2 most prominently displayed information presented by Defendant on each product page is
 3 Amazon’s discount pricing:

4      

5 **LG Electronics 55LB5900 55-Inch 1080p**
 6 **120Hz LED TV**
 7 by LG
 8 ★★★★★ 279 customer reviews | 44 answered questions

9 List Price: ~~\$999.99~~
 10 Price: **\$679.00** & **FREE Shipping**. [Details](#)
 11 You Save: **\$320.99 (32%)**
 12 [Low Price Guarantee](#)

13 **In Stock.**
 14 Ships from and sold by Amazon.com.

15 **Want it Saturday, Nov. 1?** Order within **18 hrs 10 mins** and choose
 16 **Saturday Delivery** at checkout. [Details](#)
 17 Size: **55-Inch**

18

19 Roll over image to zoom in

14 As noted above, Amazon.com acts uniformly to present a “list” pricing of an item for sale on its
 15 website. The “list” price, represented to be the item’s normal price, is followed by Amazon’s
 16 contrasting (lower) price in red lettering, the amount saved represented in total dollars, and a
 17 percentage of the “false” savings.

18 23. As Amazon advertises the amount of the discount as both a total dollar number and
 19 as a percentage of the “list” price displayed, it behooves Amazon to make the “list” price as large
 20 as possible (to create the appearance of vast savings). Accordingly, when determining its “list”
 21 price, Defendant’s consistently uses the highest price at which a product has ever been “listed”
 22 regardless of when or where this product was ever listed for the indicated price. Consequently,
 23 Defendant regularly misinforms its consumers regarding the most material disclosure regarding
 24 their transaction: the price.

25 24. Defendant’s deceptive practices of displaying a list price which bears no relation to
 26 the prevailing market are a consistent part of Defendant’s memorialized business practices.
 27 Defendant’s “list” price is the highest manufacturer’s suggested retail price (“MSRP”) and, as
 28 such, an inaccurate representation of the market price of the subject item for a given time period for

1 a particular location or the price at which the product was previously sold on Defendant's website.
2 Indeed, the MSRP is by definition only a suggestion directed at retailers and therefore not a
3 reasonable basis to conclude it reflects the average price available within the market.

4 25. Defendant relies on the highest MSRP because it has no independent policy or
5 system to ensure that the "list" price reflects the prevailing market price at a given time. This is not
6 a simple oversight. Defendant resorts to the artificially inflated "list" prices which mislead the
7 general public about the true discount(s) available and maintains the illusion that Amazon pricing
8 is consistently lower than available through other sources. If Amazon actually included a valid
9 "list" price reflecting the immediate retail market price for a product, reasonable consumers would
10 learn that Amazon does not provide the deals it purports to offer.

11 26. Due to automatic price matching policies, and the invisible hand of the market, if
12 one retailer lowers its price, others must follow suit. Amazon and its competition are no exception.
13 For example, the LG Electronics 55LB5900 55-Inch 1080p LED TV listed on Amazon.com, as
14 depicted in the above screenshots, was also listed on Best Buy's website, Walmart's website, and
15 Newegg.com for the same price (if not less) as listed by Amazon during the same period.¹ Thus, no
16 basis for Defendant to assert that the customer is receiving a substantial discount, when the
17 customer is only paying Amazon the then prevailing market price.

18 27. Defendant's illusory "discounts" are particularly misleading because consumers
19 often make purchasing decisions based on a reference price - that is, customers will often make
20 purchasing decision when they believe products to be less expensive than the perceived "normal"
21 price for a given item. By advertising "discounts" derived from inaccurate "list" pricing, Defendant
22 takes advantage of such well documented consumer behavior in order to influence consumers into
23 immediately purchasing an item. Additionally, Defendant's practices mollifies consumers'
24 concerns about missing the "better deal", and serves to discourage comparison shopping. Finally,
25

26 ¹ Both newegg.com and Best Buy offered the same television for the same price. Walmart
27 advertised the same TV for significantly less. See <http://www.bestbuy.com/site/lg-55-class-54-5-8-diag--led-1080p-120hz-hdtv/6053009.p?id=1219184625084&skuId=6053009>; <http://www.walmart.com/ip/LG-55LB5900-55-1080p-60Hz-Class-LED-HDTV/38378301>; and <http://www.newegg.com/Product/Product.aspx?Item=N82E16889005875>
28

1 such discounts additionally create a false sense of urgency, contributing to the impression that a
2 consumer should act quickly or lose a significant savings.²

3 28. Defendant uses these ersatz illusory discounts to create the impression that online
4 retailers have efficiencies in their operations, can offer more competitive prices and are worth the
5 inconvenience of purchasing the same product at a local retailer. Thus, Defendant's actions
6 harmed, and continue to harm, Plaintiff, members of the Class, and market competitors.

7 **B. California False Advertising Law**

8 29. By marketing a product's "list" price at an artificially high level - a level which
9 would not be competitive in the current prevailing market or a price at which it never intends to sell
10 the product - Defendant concocts a discount that does not exist. This method of advertising is
11 materially misleading to the average consumer, who is often swayed into purchasing a product by
12 the prospect of a large discount.

13 30. But, such practice is not novel or unique. Historically, unscrupulous retailers have
14 frequently used the same misleading tactic - overstating or manufacturing a "discount" to help sell
15 products instead of the competition. Accordingly, both California lawmakers and federal regulators
16 have each sought to prohibit the injurious conduct. California Business & Professional Code,
17 Section 17501, specifically states that:

18 No price shall be advertised as a former price of any advertised thing, unless the
19 **alleged former price was the prevailing market price as above defined within**
20 **three months next immediately preceding the publication of the advertisement**
or unless the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

21 (Emphasis added). The provision of Section 17501 differentiates subjective uncertainty from clear
22 illegality. The market price at the time of publication of such an advertisement is the price charged
23 in the locality where the advertisement is published. Accordingly, Defendant can only properly
24 include a "list" price for comparative purposes in its advertisements if (1) the prevailing market
25 price has been researched (in California) and the list price is the average retail market price within

26 _____
27 ² See generally, Grewal, Krishnan, Baker & Norm, "The Effect of Store Name, Brand Name
28 and Price Discounts On Consumers' Evaluations And Purchase Intentions" 74 Journal of Retailing
3, p. 331 (1998).

1 the past three months, or (2) it advertises the date on which the published “list” price was in effect.

2 31. Based upon Defendant’s written policies, the “list” price for an item is not
3 determined by Amazon referencing a “prevailing market price” within the prior three months. It
4 instead displays the highest MSRP. Amazon also does not state the date from which the “list” price
5 was derived. This allows Amazon to continue to influence sales by using a “list” price that is
6 woefully out-of-date, bearing no relation to the currently prevailing markets.

7 32. Defendant’s practices are cited with disapproval by certain federal regulations
8 intended to protect consumers:

9 One of the most commonly used forms of bargain advertising is to offer a reduction
10 from the advertiser's own former price for an article. If the former price is the actual,
11 bona fide price at which the article was offered to the public on a regular basis for a
12 reasonably substantial period of time, it provides a legitimate basis for the
13 advertising of a price comparison. Where the former price is genuine, the bargain
14 being advertised is a true one. If, on the other hand, the former price being
15 advertised is not bona fide but fictitious--for example, where an artificial, inflated
16 price was established for the purpose of enabling the subsequent offer of a large
17 reduction--the “bargain” being advertised is a false one; the purchaser is not
18 receiving the unusual value he expects. In such a case, the “reduced” price is, in
19 reality, probably just the seller's regular price.

20 16 C.F.R. § 233.1(a).

21 33. The law thus confirms what is painfully apparent to a shopper: a business acts
22 improperly when it completely manufactures or exaggerates a discount intended to have products
23 appear more attractive.

24 V. CLASS ALLEGATIONS

25 34. Plaintiff bring this action as a class action pursuant to (Cal. Civ. Proc. Code 382 for
26 the following Classes of persons:

27 All persons residing in California who within four (4) years of the filing of this
28 Complaint, according to Defendant’s records, purchased a product for which
29 Defendant advertise both a “list” price and its retail price.

30 Excluded from the Class are all legal entities, Defendant herein and any person, firm, trust,
31 corporation, or other entity related to or affiliated with Defendant, any entities that purchased the
32 Class Products for resale, Amazon Prime Members, as well as any judge, justice or judicial officer
33 presiding over this matter and members of their immediate families and judicial staff.

34 35. Defendant maintains accurate records of all transactions occurring on its website,

1 including the name, mailing address, email and billing information of each of the Class members.
2 While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed
3 and believes that there are hundreds of thousands of members in the proposed Class, if not more,
4 and can be ascertained through discovery. The number of individuals who comprise the Class are
5 so numerous that joinder of all such persons is impracticable and the disposition of their claims in a
6 class action, rather than in individual actions, will benefit both the parties and the courts.

7 36. Defendant has acted with respect to the Class in a manner generally applicable to
8 each Class member, making class-wide injunctive and declaratory relief proper.

9 37. There is a well-defined community of interest in the questions of law and fact
10 involved in the action, which affect all Class members. Among the questions of law and fact
11 common to the Class are, *inter alia*:

12 (a) Whether Defendant advertises its “discounted” products in a deceptive,
13 false, or misleading manner;

14 (b) Whether Defendant’s advertised “list” price is determined by averaging the
15 price of said product in the prevailing market over the previous three months;

16 (c) Whether Defendant’s advertised the date on which the “list” price of a
17 product is determined if it is not calculated by the average over the previous three months;

18 (d) Whether Defendant’s alleged business practices constitutes unfair methods
19 of competition and unfair or deceptive acts or practices in violation of, *inter alia*, CAL. BUS.
20 & PROF. CODE §§ 1770, *et seq.*, by making false or misleading statements of fact
21 concerning reasons for, existence of, or amounts of price reductions.

22 (e) Whether Defendant’s business practices, alleged herein, constitutes
23 misleading and deceptive advertising under, *inter alia*, CAL. BUS. & PROF. CODE §§ 17500-
24 01.

25 (f) Whether Defendant’s business practices, alleged herein, constitutes
26 “unlawful,” “unfair,” or “fraudulent” business acts or practices under, *inter alia*, CAL. BUS.
27 & PROF. CODE §§ 17200, including:

28 (i) Whether Defendant’s advertisement of illusory discounts constitutes

1 “unlawful” or “unfair” business practices by violating the public policies set out in
2 CAL. CIV. CODE §§ 1770(a)(13), CAL. BUS. & PROF. CODE §§ 17500-01, 16 C.F.R. §
3 233.1, and other California and federal statutes and regulations;

4 (ii) Whether Defendant’s advertisement of illusory discounts is
5 immoral, unethical, oppressive, unscrupulous or substantially injurious to
6 consumers;

7 (iii) Whether Defendant’s advertisement of illusory discounts constitutes
8 an “unfair” business practice because consumer injury outweighs any countervailing
9 benefits to consumers or competition, and because such injury could not be
10 reasonably avoided by consumers; and

11 (iv) Whether Defendant’s advertisement of illusory discounts constitutes
12 a “fraudulent” business practice because members of the public are likely to be
13 deceived;

14 (h) The nature and extent of equitable remedies, including restitution of
15 shipping costs; and declaratory and injunctive relief to which Plaintiff and the Class are
16 entitled; and

17 (i) Whether Plaintiff and the Class should be awarded attorneys’ fees and the
18 costs of suit for Defendant’s violations of the UCL, FAL, and CLRA.

19 38. Plaintiff’s claims are typical of the claims of the other members of the Class. All
20 members of the Class have been and/or continue to be similarly affected by Defendant’s wrongful
21 conduct as complained of herein, in violation of California law. Plaintiff is unaware of any
22 interests that conflict with or are antagonistic to the interests of the Class.

23 39. Plaintiffs will fairly and adequately protect the Class members’ interests and have
24 retained counsel competent and experienced in consumer class action lawsuits and complex
25 litigation. Plaintiffs and their counsel have the necessary financial resources to adequately and
26 vigorously litigate this class action, and Plaintiffs are aware of their duties and responsibilities to
27 the Class.

28 40. A class action is superior to all other available methods for the fair and efficient

1 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
2 damages suffered by individual Class members may be relatively small, the expense and burden of
3 individual litigation make it virtually impossible for Class members to individually redress the
4 wrongs done to them. There will be no difficulty in managing this action as a class action.

5 41. Defendant has acted on grounds generally applicable to the entire Class with respect
6 to the matters complained of herein, thereby making appropriate the relief sought herein with
7 respect to the Class as a whole.

8 **FIRST CAUSE OF ACTION**

9 **Violation of CAL. BUS. & PROF. CODE §§ 17500, *et seq.* -**
10 **Untrue, Misleading and Deceptive Advertising**

11 42. Plaintiff hereby incorporates by reference the allegations contained in the preceding
12 paragraphs of this FAC.

13 43. California Business and Professional Code, Section 17501, states that:

14 No price shall be advertised as a former price of any advertised thing, unless the
15 alleged former price was the prevailing market price as above defined within three
16 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

17 For the purpose of Section 17501, the retail market price at the time of publication of such
18 advertisement is the retail price in locality wherein the advertisement is published.

19 44. At all material times, Defendant engaged in a scheme of advertising that its products
20 were subject to a discount when such discounts were illusory and did not reflect the “prevailing
21 marketing price” of the item for a particular time period in a particular location or even the price at
22 which the product was previously sold on Defendant’s website.

23 45. At all material times, Defendant did not include the date on which its “list” price
24 was established.

25 46. Defendant’s advertisement of an inflated list price misrepresented and/or omitted
26 the true nature of Defendant’s pricing. Said advertisements were made to consumers located within
27 the State of California, and come within the definition of advertising as contained in CAL. BUS. &
28 PROF. CODE §§ 17500, *et seq.*, in that such promotional materials were intended as inducements to

1 purchase products on Amazon.com and are statements disseminated by Defendant to Plaintiff and
2 other members of the Class. In the exercise of reasonable care, Defendant should have known, that
3 the statements regarding its pricing were false, misleading, deceptive and violated California law.

4 47. Defendant has prepared and distributed within the State of California, *via* its retail
5 website, Amazon.com, that its products were subject to substantial discounts. Plaintiffs, necessarily
6 and reasonably relied on Defendant's statements regarding the pricing of its products, and all
7 members of the Class were exposed to such statements. Consumers, including Plaintiffs and
8 members of the Class, were among the intended targets of such representations.

9 48. The above acts of Defendant, in disseminating said misleading and deceptive
10 statements throughout the State of California, including Plaintiffs and members of the Class, were
11 and are likely to deceive reasonable consumers by obfuscating the true nature of Defendant's
12 discounts, thus were violations of CAL. BUS. & PROF. CODE §§ 17500, *et seq.*

13 49. Plaintiffs and other members of the Class who purchased products from Defendant's
14 website suffered a substantial injury. Had Plaintiffs and members of the Class known that
15 Defendant's materials, advertisement and other inducements misrepresented and/or omitted the
16 true nature of Defendant's discounts; they would not have purchased products from Amazon.com,
17 or paid less for them.

18 50. Plaintiffs, on behalf of themselves and all other similarly situated California
19 consumers, and as appropriate, on behalf of the general public of the state of California, also seek
20 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
21 directing Defendant to make corrective notices both on its website and in other appropriate media,
22 allowing Class members to return any products purchased on Defendant's website, at Defendant's
23 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
24 Defendant to price match any competitor's advertised price for the same product, refund of any
25 shipping and handling fees for any products purchased on Defendant's website subject to
26 Defendant's unlawful pricing policy, and any other relief deemed improper by the Court.

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28 ///

SECOND CAUSE OF ACTION

**Violation of CAL. CIV. CODE §§ 1750, *et seq.*-
Misrepresentation of the Existence of a Discount**

1
2
3
4 51. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
5 paragraphs of this FAC.

6 52. Defendant sells “goods” and “services” as defined by California Civil Code §1761.

7 53. Defendant is a "person" as defined by California Civil Code §1761(c).

8 54. Plaintiffs and Class members are "consumers" within the meaning of California
9 Civil Code §1761(d) because they purchased the products from Amazon.com for personal, family
10 or household use.

11 55. The sale of the products to Plaintiff and Class members *via* Defendant’s website is a
12 “transaction” as defined by California Civil Code §1761(e).

13 56. By misrepresenting the “list” price of its products, and thus any discounts derived
14 therefrom, Defendant made false or misleading statements of fact concerning reasons for, existence
15 of, or amounts of price reductions, in violation of California Civil Code §1770(a)(13).

16 57. Plaintiffs and Class members were harmed as a result of Defendant’s unfair
17 competition and deceptive acts and practices. Had Defendant disclosed the true nature of their
18 discounts, Plaintiffs and the Class would not be misled into purchasing products from Defendant’s
19 website, or, alternatively, paid less for them.

20 58. Defendant has failed to respond to Plaintiffs’ CLRA notice within 30 days of
21 service of the notice, thus Plaintiffs seek all available damages under the CLRA for all violations
22 complained of herein, including, but not limited to, statutory damages, punitive damages,
23 attorneys’ fees and costs and any other relief that the Court deems proper.

24 59. Plaintiffs, on behalf of themselves and all other similarly situated California
25 consumers, and as appropriate, on behalf of the general public of the state of California, seek
26 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
27 directing Defendant to make corrective notices both on its website and in other appropriate media,
28 allowing Class members to return any products purchased on Defendant’s website, at Defendant’s

1 expense, which were subject to Defendant's unlawful pricing policy, or alternatively requiring
2 Defendant to price match any competitor's advertised price for the same product, refund of any
3 shipping and handling fees for any products purchased on Defendant's website subject to
4 Defendant's unlawful pricing policy, and any other relief deemed proper by the Court.

5 **THIRD CAUSE OF ACTION**

6 **Violation of CAL. BUS. & PROF. CODE §§ 17200, et seq. -**
7 **Unlawful Business Acts and Practices**

8 60. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
9 paragraphs of this FAC.

10 61. California Business and Professional Code, Section 17501, states:

11 No price shall be advertised as a former price of any advertised thing, unless the
12 alleged former price was the prevailing market price as above defined within three
13 months next immediately preceding the publication of the advertisement or unless
the date when the alleged former price did prevail is clearly, exactly and
conspicuously stated in the advertisement.

14 62. Federal regulations also prohibit the use of deceive and illusory discounts:

15 One of the most commonly used forms of bargain advertising is to offer a reduction
16 from the advertiser's own former price for an article. If the former price is the actual,
17 bona fide price at which the article was offered to the public on a regular basis for a
18 reasonably substantial period of time, it provides a legitimate basis for the
19 advertising of a price comparison. Where the former price is genuine, the bargain
20 being advertised is a true one. If, on the other hand, the former price being
advertised is not bona fide but fictitious--for example, where an artificial, inflated
price was established for the purpose of enabling the subsequent offer of a large
reduction--the "bargain" being advertised is a false one; the purchaser is not
receiving the unusual value he expects. In such a case, the "reduced" price is, in
reality, probably just the seller's regular price.

21 16 C.F.R. § 233.1(a).

22 63. California Civil Code §1770(a)(13) prohibits making false or misleading statements
23 of fact concerning reasons for, existence of, or amounts of price reductions.

24 64. The business practices alleged above are unlawful under California Business &
25 Professional Code §§ 17500, et seq., California Civil Code §1770(a)(13) and federal regulations,
26 each of which forbids Defendant's untrue, fraudulent, deceptive, and/or misleading marketing and
27 advertisements.

28 65. Plaintiffs and Class members were harmed as a result of Defendant's unfair

1 competition and deceptive acts and practices. Had Defendant disclosed the true nature of their
2 “discounts,” Plaintiffs and the Class would not be misled into purchasing products from
3 Defendant’s website, or, alternatively, paid less for them.

4 66. Plaintiffs, on behalf of themselves and all other similarly situated California
5 consumers, and as appropriate, on behalf of the general public of the state of California, seek
6 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
7 directing Defendant to make corrective notices both on its website and in other appropriate media,
8 allowing Class members to return any products purchased on Defendant’s website, at Defendant’s
9 expense, which were subject to Defendant’s unlawful pricing policy, or alternatively requiring
10 Defendant to price match any competitor’s advertised price for the same product, refund of any
11 shipping and handling fees for any product purchased on Defendant’s website subject to
12 Defendant’s unlawful pricing policy, and any other relief deemed improper by the Court.

13 **FOURTH CAUSE OF ACTION**

14 **Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -**
15 **Unfair Business Acts and Practices**

16 67. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
17 paragraphs of this FAC.

18 68. Plaintiffs and other members of the Class suffered a substantial injury by virtue of
19 Defendant’s unlawful scheme of advertising that its products were subject to a discount when such
20 discounts were illusory and did not reflect the “prevailing marketing price” of the item during any
21 particular time period at a particular location or even the price at which the product was previously
22 sold on Defendant’s website.

23 69. Defendant’s actions alleged herein violate the laws and public policies of California
24 and the federal government as set out in preceding paragraphs of this FAC.

25 70. There is no benefit to consumers or competition by allowing Defendant to
26 deceptively market and advertise nonexistent discounts in violation of California Law.

27 71. Plaintiffs and Class members who purchased products from Defendant’s website
28 had no way of reasonably knowing that the “list” price was artificially inflated and did not reflect

1 the true nature of the discount offered on Defendant's products. Thus, Class members could not
2 have reasonably avoided the injury they suffered.

3 72. The gravity of the harm visited upon Plaintiffs and Class members outweighs any
4 legitimate justification, motive or reason for marketing and advertising discounted products in a
5 deceptive and misleading manner which violates California law. Accordingly, Defendant's actions
6 are immoral, unethical, unscrupulous and offend the established California public policies is
7 substantially injurious to Plaintiffs and members of the Class.

8 73. The above acts of Defendant, in disseminating said misleading and deceptive
9 statements throughout the State of California to consumers, including Plaintiffs and members of the
10 Class, were and are likely to deceive reasonable consumers by obfuscating the true nature and
11 amount of the nature and existence of product in violations of CAL. BUS. & PROF. CODE §§ 17500,
12 *et seq.*, and California Civil Code §1770(a)(13).

13 74. Plaintiffs and Class members were harmed and suffered actual damages as a result
14 of Defendant's unfair competition and deceptive acts and practices. Had Defendant disclosed the
15 true nature of their discounts, Plaintiffs and the Class would have purchased products from
16 Defendant's website, or, alternatively, paid significantly less for them.

17 75. Plaintiffs, on behalf of themselves and all other similarly situated California
18 consumers, and as appropriate, on behalf of the general public of the state of California, seeks
19 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
20 directing Defendant to make corrective notices both on its website and in other appropriate media,
21 allowing Class members to return any products purchased on Defendant's website, at Defendant's
22 expense, which were subject to Defendant's unlawful pricing policy or alternatively requiring
23 Defendant to price match any competitor's advertised price for the same product, refund of any
24 shipping and handling fees for any purchased on Defendant's website subject to Defendant's
25 unlawful pricing policy and any other relief deemed improper by the Court.

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FIFTH CAUSE OF ACTION

**Violation of CAL. BUS. & PROF. CODE §§ 17200, *et seq.* -
Fraudulent Business Acts and Practices**

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4 76. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
5 paragraphs of this FAC.

6 77. Such acts of Defendant as described above constitute a fraudulent business practice
7 under CAL. BUS. & PROF. CODE §§ 17200, *et seq.*

8 78. As more fully described above, Defendant misleadingly markets and advertises its
9 products as discounted from a “list” price, when such discounts are illusory and/or overstated.
10 Defendant’s misleading marketing and advertisements are likely to, and do, deceive reasonable
11 consumers. Indeed, Plaintiffs and other members of the Class were unquestionably deceived about
12 the nature of Defendant’s pricing, as Defendant prominently displayed its products as discounted
13 on its website which consumers must use to purchase Amazon’s offerings.

14 79. Defendant’s misleading and deceptive practices caused Plaintiffs and other
15 members of the Class to purchase the products and/or pay more than they would have otherwise
16 had they known the true nature of Defendant’s advertisements.

17 80. Plaintiffs and Class members were harmed as a result of Defendant’s unfair
18 competition and deceptive acts and practices.

19 81. Plaintiffs, on behalf of themselves and all other similarly situated California
20 consumers, and as appropriate, on behalf of the general public of the state of California, seeks
21 injunctive relief prohibiting Defendant from continuing the unlawful practices alleged herein,
22 directing Defendant to make corrective notices both on its website and in other appropriate media,
23 allowing Class members to return any products purchased on Defendant’s website, at Defendant’s
24 expense, which were subject to Defendant’s unlawful pricing policy or alternatively requiring
25 Defendant to price match any competitor’s advertised price for the same product, refund of any
26 shipping and handling fees for any purchased on Defendant’s website subject to Defendant’s
27 unlawful pricing policy and any other relief deemed improper by the Court.

1 **SIXTH CAUSE OF ACTION**

2 **Negligent Misrepresentation**

3 82. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
4 paragraphs of this FAC.

5 83. Defendant represented to Plaintiffs and members of the Class that products sold on
6 its website, Amazon.com, were discounted from a “list” price. However, had Defendant exercised
7 even a minimal amount of diligence, it would have found that the “list” prices advertised on its
8 website did not reflect the price at which the corresponding product had been recently sold, either
9 by the Defendant (or its affiliated partners) or in the relevant market. Additionally, Defendant
10 failed to regularly update its “list” prices to accurately reflect periodic changes in the relevant
11 market. Accordingly, any purported discounts calculated from Defendant’s “list” price were
12 overstated or illusory and Defendant had no reasonable grounds for making any claims regarding
13 its discounted pricing.

14 84. Under California law, CAL. BUS. & PROF. CODE § 17501, Defendant is required to
15 determine whether its “list” prices accurately reflect the relevant market price for an item
16 advertised on its website within the past six months or, alternatively, inform its customers on which
17 date the “list” price was established. Had Defendant complied with this statutory duty, Amazon
18 would not have made representations regarding its “discount” pricing and/or reasonably known that
19 such pricing was false and misleading - in violation of California law.

20 85. The price of a product, and the existence of any discounts thereon, is material
21 representation on which Plaintiff and members of the Class reasonably relied. Each Amazon.com
22 customer is exposed to Defendant’s negligent pricing policy.

23 86. Plaintiffs and members of the Class were harmed by Defendant’s negligent
24 misrepresentation regarding the nature of Defendant’s purported discounts and such
25 misrepresentations were a substantial factor in causing Plaintiff’s and members of the Class’s
26 harm.

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1 **SEVENTH CAUSE OF ACTION**

2 **Declaratory Relief, Cal. Civ. Code § 1060**

3 87. Plaintiffs hereby incorporate by reference the allegations contained in the preceding
4 paragraphs of this FAC.

5 88. Pursuant to California Civil Code, Section 1060, Plaintiffs and the Class are entitled
6 to have this Court declare their rights and legal relations under Defendant's Conditions of Use.

7 89. Accordingly, Plaintiffs on behalf of the Class pray for a declaration that Defendant's
8 Conditions of Use represented an illusory and/or unconscionable contract and is unenforceable.

9 **VI. PRAY FOR RELIEF**

10 WHEREFORE, Plaintiffs and the Class pray for relief and judgment as follows:

11 A. For an order declaring that this action is properly maintained as a class action and
12 appointing Plaintiffs as representatives for the Class, and appointing Plaintiffs' counsel as Class
13 counsel;

14 B. For an order enjoining Defendant from continuing to engage in the unlawful and
15 unfair business acts and practices as alleged herein;

16 C. For an order directing Defendant to make corrective notices on its website and in
17 other appropriate publications.

18 D. For an order directing Defendant to allow its customers to return any products
19 purchased on Defendant's website, at Defendant's expense, which were subject Defendant's
20 unlawful pricing policy, within twelve (12) months of filing this FAC.

21 E. For an order requiring Defendant to price match any competitor's advertised price
22 for the same product purchased from Amazon.com, which were subject Defendant's unlawful
23 pricing policy, within twelve (12) months of filing this FAC;

24 F. For restitution of all shipping and handling fees charged for products purchased
25 from Amazon.com subject to Defendant's unlawful advertising;

26 F. For an order awarding attorneys' fees and costs of suit, including experts' witness
27 fees as permitted by law; and

28 G. Such other and further relief as this Court may deem just and proper.

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VII. JURY TRIAL

Plaintiffs demand a trial by jury for all of the claims asserted in this First Amended Complaint so triable.

Respectfully submitted,

FINKELSTEIN & KRINSK LLP



Dated: December 29, 2014

Trenton R. Kashima, Esq.

Jeffrey R. Krinsk, Esq.
Mark L. Knutson, Esq.
William R. Restis, Esq.

Attorneys for Plaintiff
and the Class

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

AMAZON.COM, INC.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ANDREA FAGERSTROM AND ALLEN WISELEY, individually and on behalf of all other similarly situated Californians

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/25/2014 at 01:32:23 PM

Clerk of the Superior Court
By N6ra Zuazo, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **AVISO!** Lo han demandado. Si no responde dentro de 30 d1as, la corte puede decidir en su contra sin escuchar su versi6n. Lea la informaci6n a continuaci6n.

Tiene 30 D1AS DE CALENDARIO despu6s de que le entreguen esta citaci6n y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telef6nica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y m1s informaci6n en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda m1s cerca. Si no puede pagar la cuota de presentaci6n, pida al secretario de la corte que le d6 un formulario de exenci6n de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podr1 quitar su sueldo, dinero y bienes sin m1s advertencia.

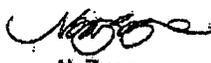
Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisi6n a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poni6ndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperaci6n de \$10,000 o m1s de valor recibida mediante un acuerdo o una concesi6n de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y direcci6n de la corte es): County of San Diego Superior Court
330 West Broadway, San Diego, CA 92101.

CASE NUMBER:
(N6mero del Caso):
37-2014-00040303-CU-BT-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la direcci6n y el n6mero de tel6fono del abogado del demandante, o del demandante que no tiene abogado, es):
FINKELSTEIN & KRINSK LLP, 501 W. Broadway, Ste. 1250, San Diego, CA 92101

DATE: 11/28/2014
(Fecha)

Clerk, by  Deputy
(Secretario) N. Zuazo (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citaci6n use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **AMAZON.COM, INC.**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):