

5 Thiago M. Coemo (pro hac vice forthcoming)
6 *thiago@wilshirelawfirm.com*
7 Jonas P. Mann (pro hac vice forthcoming)
8 *jmann@wilshirelawfirm.com*
9 Jennifer M. Leinbach (pro hac vice forthcoming)
10 *jleinbach@wilshirelawfirm.com*

11 **WILSHIRE LAW FIRM, PLC**
12 3055 Wilshire Blvd., 12th Floor
13 Los Angeles, California 90010
14 Telephone: (213) 381-9988
15 Facsimile: (213) 381-9989

16 *Attorneys for Plaintiffs*
17 *and Proposed Class Counsel*

18 **WESTERN DISTRICT OF WASHINGTON**
19 **UNITED STATES DISTRICT COURT**

20 PLAINTIFFS JOY PECZNICK and GIL KAUFMAN, individually and on behalf of all others similarly situated,
21 Plaintiffs,
22 vs.
23 AMAZON.COM, INC., a Delaware corporation,
24 Defendant.

25 Case No.:
26 **CLASS ACTION**
27 **COMPLAINT**
28 **DEMAND FOR JURY TRIAL**

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Defendant Amazon.com, Inc. (Amazon or Defendant) is a multinational technology company headquartered in Seattle, Washington. In addition to providing cloud computing, artificial intelligence and digital streaming services, it also holds a major influence over e-commerce.

2. Since its founding in 1994, Amazon has become the parent of numerous subsidiary companies. In 2017, Amazon acquired Whole Foods Market, Inc. (“Whole Foods”), a high-end supermarket chain for around \$13 billion. At the time, Whole Foods had over 400 stores.

3. On or around February 2018, Amazon began enabling Amazon Prime¹ members in various regions of the United States to order groceries from Whole Foods and have the groceries delivered for free with a minimum \$35 purchase.

4. Free Whole Foods delivery became a major selling point for Amazon when promoting its Amazon Prime membership. Indeed, the free Whole Foods two-hour delivery was considered “a key perk of their [Amazon’s] \$119-per-year Amazon Prime membership.”² During the coronavirus pandemic, Amazon’s free Whole Foods delivery became one of Prime’s most important features.

5. It is no surprise that Amazon Prime customers were devastated when, in 2021, Amazon pulled the rug out from its customers and began notifying Prime members that Whole Foods deliveries would no longer be free with a minimum \$35 purchase. By October 25, 2021, a \$9.95 fee was added to *every* Whole Foods delivery order placed via Amazon Prime.

6. When Amazon eliminated Prime’s free Whole Foods delivery program, however, the cost of a Prime membership was not reduced accordingly, nor was a partial refund offered.

¹ Amazon Prime is a paid subscription program that allows consumers to pay for a monthly or yearly subscription.

² <https://www.supermarketnews.com/online-retail/whole-foods-go-chainwide-new-grocery-delivery-fee>.

5
6 8. Plaintiff Joy Pecznick is a California citizen residing in La Crescenta-Montrose,
7 California. Since enrolling in Amazon Prime, Pecznick made use of Whole Food delivery
8 benefits promised to her as an Amazon Prime member. In particular, Pecznick has placed orders
9 with Whole Foods Market and used Amazon's previously free two-hour delivery service. This
10 was a particularly important Prime benefit for Pecznick because she had fractured her ankle in
11 2021, making it difficult to go grocery shopping in-store. As a result of Amazon instituting the
12 \$9.95 Whole Foods delivery fee on October 25, 2021, Pecznick has been deprived of her benefit
13 of the \$119 bargain.

14 9. Plaintiff Gil Kaufman is a California citizen residing in Torrance, California.
15 Since enrolling in Amazon Prime, Kaufman made use of Whole Food delivery benefits promised
16 to him as an Amazon Prime member. In particular, Kaufman had placed orders with Whole Foods
17 Market and used Amazon's previously free two-hour delivery service approximately every other
18 week. As a result of Amazon instituting the \$9.95 Whole Foods delivery fee on October 25, 2021,
19 Kaufman has been deprived of his benefit of the \$119 bargain.

20 10. Defendant Amazon.com, Inc. is a Delaware corporation with its principal place of
21 business in Seattle, Washington, in King County, and is a citizen of Washington State.

22 JURISDICTION AND VENUE

23 11. This Court has subject-matter jurisdiction pursuant to CAFA, 28 U.S.C. §1332(d),
24 because the amount in controversy exceeds the sum of \$5,000,000, exclusive of costs and
25 interests, there are more than 100 members in the proposed Class, and Defendant is a citizen of a
26 State different from that of at least one Class member.

27 12. The Court has personal jurisdiction over Defendant because Amazon is
28 headquartered in Washington and conducts substantial business activities in the state.

Whole Foods Acquisition

15. On August 27, 2017, Amazon and Whole Foods announced that Amazon's acquisition of Whole Foods Market would close on Monday August 28, 2017, and the two companies would "together pursue the vision of making Whole Foods Market's high-quality, natural and organic food affordable for everyone." According to Amazon, as a down payment on that vision, "Whole Foods Market will offer lower prices starting Monday [the date of closing] on a selection of best-selling grocery staples across its stores, with more to come." Amazon touted that its members "will receive special savings and in-store benefits."³

16. The media regarded the acquisition as a "deal that will instantly transform the company that pioneered online shopping into a merchant with physical outposts in hundreds of neighborhoods across the country."⁴

17. Consumers also lauded the acquisition. "Amazon could bring technology to all Whole Foods locations, or it could absorb Whole Foods into AmazonFresh. Either way, it's good for consumers like myself," said Di Wu, a New York resident in her early 30s who is a member of Amazon's Prime fast-shipping club and who shops at Whole Foods at least twice a week. "Amazon is known to drive down prices and make the shopping experience more efficient," Wu said."⁵

18. The market also responded positively (for Amazon) to the news. Amazon's stock price rose on this news while that of grocery retailers such as Kroger's, Ahold Delhaize (parent

³ <https://press.aboutamazon.com/news-releases/news-release-details/amazon-and-whole-foods-market-announce-acquisition-close-monday>.

⁴ <https://www.nytimes.com/2017/06/16/business/dealbook/amazon-whole-foods.html>.

⁵ <https://www.reuters.com/article/us-whole-foods-m-a-amazon/amazon-to-buy-whole-foods-for-13-7-billion-wielding-online-might-in-brick-and-mortar-world-idUSKBN1971QJ>.

5 retailers as well.
6 19. At the time of the Whole Foods acquisition, Prime members paid \$99 for their
7 memberships and were offered additional benefits (*i.e.*, special savings and in-store benefits) for
8 shopping at Whole Foods.

9 **Prime Members Offered Free Whole Foods Delivery**

10 20. On February 8, 2018, Amazon and Whole Foods Market announced the
11 introduction of free two-hour delivery from Whole Foods Market through Prime Now, with plans
12 to expand across the U.S. in 2018:

13 Starting today, Prime customers in neighborhoods of Austin, Cincinnati, Dallas
14 and Virginia Beach can shop through Prime Now for bestselling items including
15 fresh produce, high quality meat and seafood, everyday staples and other locally
16 sourced items from Whole Foods Market. Customers can start shopping from
17 Whole Foods Market selection at www.primenow.com or by using the Prime
18 Now app available on Android and iOS devices.

19 “We’re happy to bring our customers the convenience of free two-hour delivery
20 through Prime Now and access to thousands of natural and organic groceries and
21 locally sourced favorites,” said John Mackey, Whole Foods Market co-founder
22 and CEO. “Together, we have already lowered prices on many items, and this
23 offering makes Prime customers’ lives even easier.”

24 Prime customers can shop thousands of items across fresh and organic produce,
25 bakery, dairy, meat and seafood, floral and everyday staples from Whole Foods
26 Market available for free two-hour delivery. Select alcohol is also available for
27 delivery to customers. Prime members receive two-hour delivery for free and
28 ultra-fast delivery within one hour for \$7.99 on orders of \$35 or more.

Delivery from Whole Foods Market through Prime Now is available daily from
8 a.m. to 10 p.m. Customers can visit www.primenow.com or download the
Prime Now app to enter their zip code to see if they are in the delivery area.

6 <https://www2.deloitte.com/us/en/pages/consumer-business/articles/amazon-whole-foods-acquisition.html>.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.