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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

SHERRI PETTIS, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC., and WHOLE FOODS  
MARKET, INC.,

Defendants.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Sherris Pettis (“Plaintiff”), on behalf of herself and all others similarly situated, by her undersigned attorneys, against Amazon.com and Whole Foods Market, Inc., (collectively “Defendants”), alleges the following based upon personal knowledge as to herself and her own actions, and, as to all other matters, allege, upon information and belief and investigation of her counsel, as follows:

**I. INTRODUCTION**

1. This action seeks to recover damages and injunctive relief for Defendants’ continuing failure to disclose to consumers that certain Whole Foods herbs and spices, sold under its trade name of “365 By Whole Foods Market,” including Defendants’ Basil, Cumin, and Ground Ginger (the “Products”), contain (or risk containing) lead, arsenic, and cadmium (“Heavy Metals”).

1 2. A November 2021 report by Consumer Reports states that the offending herbs  
2 and spices, including the Products, “had high enough levels of arsenic, lead, and cadmium  
3 combined, on average, to pose a health concern for children when regularly consumed in  
4 typical servicing sizes. Most raise concern for adults, too.”

5 3. Heavy Metals in foods pose a serious safety risk to consumers because they can  
6 cause cancer and serious and often irreversible damage to brain development as well as other  
7 serious health problems.

8 4. As described more fully below, consumers who purchase the Products are  
9 injured by Defendants’ acts and omissions concerning the presence (or risk) of Heavy Metals.  
10 No reasonable consumer would know, or have reason to know, that the Products contain (or  
11 risk containing) Heavy Metals. Worse, as companies across the industry have adopted methods  
12 to limit heavy metals in their herbs and spices, Defendants have stood idly by with a reckless  
13 disregard for their consumers’ health and well-being. As such, Plaintiff seek relief in this action  
14 individually and as a class action on behalf of all purchasers of the Products.

15 **II. PARTIES**

16 **Plaintiff**

17 5. Plaintiff Sherri Pettis is a resident and citizen of the State of Pennsylvania,  
18 residing in Pittsburgh, Pennsylvania. Plaintiff Pettis began purchasing the 365 by Whole Foods  
19 Market Ground Ginger in or about 2018 from a Whole Foods retail location in Pittsburgh,  
20 Pennsylvania. Her most recent purchase was in 2021 for \$3.49 from that location.

21 6. Prior to purchasing the Product, Plaintiff Pettis saw and relied upon the  
22 packaging of the Product. Plaintiff Pettis believed she was purchasing quality and healthy  
23 spices that did not contain (or have a risk of containing) Heavy Metals. Had Defendants  
24 disclosed on the label that the Product contained (or risked containing) unsafe toxic Heavy  
25 Metals, Ms. Pettis would have been aware of that fact and would not have purchased the  
26 Product or would have paid less for it.

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1 7. Ms. Pettis continues to desire to purchase the Product from Defendants.  
2 However, Ms. Pettis is unable to determine if the Product is actually safe. Ms. Pettis  
3 understands that the composition of the Product may change over time. But as long as  
4 Defendant continues to market its Product as safe, she will be unable to make informed  
5 decisions about whether to purchase Defendant's Product and will be unable to evaluate the  
6 different prices between Defendant's Product and competitor's products. Ms. Pettis is further  
7 likely to be repeatedly misled by Defendant's conduct, unless and until Defendant is compelled  
8 to ensure that the Product marketed, labeled, packaged and sold as a quality and healthy spice  
9 is, in fact, a safe and healthy spice.

10 **Defendants**

11 8. Defendant Amazon.com, Inc. is a Delaware corporation with its corporate  
12 headquarters and principal place of business located in Seattle, Washington. In 2017,  
13 Defendant Amazon.com acquired Defendant Whole Foods for \$13.7 billion.<sup>1</sup>

14 9. Defendant Whole Foods is a Delaware corporation with its headquarters and  
15 principal place of business at 525 N Lamar Blvd, Austin, TX 78703. Defendant manufactures,  
16 markets, and sells herbs and spices under the Whole Foods 365 brand name throughout the  
17 United States. During the relevant period, Defendant controlled the manufacture, design,  
18 testing, packaging, labeling, marketing, advertising, promotion, distribution, and sales of its  
19 Products. Defendant therefore had complete control over how to label its Products as to their  
20 contents. The Products are sold at Whole Foods brick and mortar locations, online, and on  
21 Amazon.com.

22 **III. JURISDICTION AND VENUE**

23 10. This Court has subject matter jurisdiction over this action pursuant to the Class  
24 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 ("CAFA"), which, *inter alia*, amends 28

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<sup>1</sup>See <https://slate.com/business/2021/06/why-amazon-bought-whole-foods-groceries-online.html#:~:text=In%202017%2C%20Amazon%20entered%20the,purchase%20was%20a%20cataclysmic%20event> (last accessed July 21, 2022).  
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1 U.S.C. § 1332, at subsection (d), conferring federal jurisdiction over class actions where, as here:  
2 (a) there are 100 or more members in the proposed classes; (b) some members of the proposed  
3 classes have a different citizenship from Defendant; and (c) the claims of the proposed class  
4 members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28  
5 U.S.C. § 1332(d)(2) and (6).

6 11. This Court has personal jurisdiction over Defendants because Defendant  
7 Amazon.com, the parent company of Defendant Whole Foods, maintains its principal place of  
8 business in this District.

9 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant  
10 Amazon.com is headquartered and has its principal place of business in this District, a  
11 substantial part of the conduct giving rise to Plaintiff's claims occurred in this District, and  
12 Defendant conducts substantial business in this District.

13 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial  
14 part of the events or omissions giving rise to these claims occurred in, were directed to and/or  
15 emanated from this District. Defendant Amazon.com resides within this judicial district and a  
16 substantial part of the events giving rise to the claims alleged herein occurred within this  
17 judicial district.

#### 18 IV. FACTUAL ALLEGATIONS

##### 19 A. Lead, Arsenic, and Cadmium Are Toxic

20 14. Lead, arsenic, and cadmium are heavy metals. As described more fully below,  
21 the harmful effects of heavy metals are well-documented, particularly on children. Exposure  
22 puts children at risk for lowered IQ, behavioral problems (such as attention deficit hyperactivity  
23 disorder), type 2 diabetes, and cancer, among other health issues. Heavy metals also pose risks  
24 to adults. Even modest amounts of heavy metals can increase the risk of cancer, cognitive and  
25 reproductive problems, and other adverse conditions. As such, it is important to limit exposure.

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1           15.     “No amount of lead is known to be safe.”<sup>2</sup> Exposure to lead may cause anemia,  
2 weakness, and kidney and brain damage.<sup>3</sup> Lead can affect almost every organ and system in the  
3 body. Lead accumulates in the body over time, and can lead to health risks and toxicity,  
4 including inhibiting neurological function, anemia, kidney damage, seizures, and in extreme  
5 cases, coma and death. Lead can also cross the fetal barrier during pregnancy, exposing the  
6 mother and developing fetus to serious risks, including reduced growth and premature birth.  
7 Lead exposure is also harmful to adults as more than 90 percent of the total body burden of  
8 lead is accumulated in the bones, where it is stored. Lead in bones may be released into the  
9 blood, re-exposing organ systems long after the original exposure.<sup>4</sup>

10           16.     Arsenic is also dangerous to humans. “Arsenic is ranked first among toxicants  
11 posing a significant potential threat to human health based on known or suspected toxicity.”<sup>5</sup>  
12 Long term exposure is linked to cardiovascular disease. Arsenic can also cause bladder, lung,  
13 liver, and skin cancer, strokes, and diabetes. Recent studies have suggested that arsenic may  
14 cause IQ deficits in children and may be harmful to fetal development as “even low  
15 concentrations of arsenic impair neurological function[.]”<sup>6</sup> There is “essentially no safe level” of  
16 arsenic.<sup>7</sup>

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21 <sup>2</sup> See <https://www.npr.org/sections/thetwo-way/2016/08/13/489825051/lead-levels-below-epa-limits-can-still-impact-your-health> (last accessed August 8, 2022).

22 <sup>3</sup> Centers for Disease Control and Prevention, “Health Problems Caused by Lead,” *The National Institute for Occupational Safety and Health (NIOSH)*,  
23 <https://www.cdc.gov/niosh/topics/lead/health.html#:~:text=Exposure%20to%20high%20levels%20of,a%20developing%20baby's%20nervous%20system> (last accessed August 8, 2022).

24 <sup>4</sup> State of New York Department of Health, “Lead Exposure in Adults: A Guide for Health Care Providers,”  
25 <https://www.health.ny.gov/publications/2584.pdf> (last accessed August 8, 2022).

26 <sup>5</sup> Christina R. Tyler and Andrea M. Allan, “The Effects of Arsenic Exposure on Neurological and Cognitive Dysfunction in Human and Rodent Studies: A Review,” *Curr Environ Health Rep.* 2014; 1(2): 132-147,  
27 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4026128/> (last accessed August 8, 2022).

<sup>6</sup> *Id.*

<sup>7</sup> See <https://publicintegrity.org/environment/what-to-do-if-your-drinking-water-contains-arsenic/> (last accessed August 8, 2022).

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