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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION

ANDREZ MARQUEZ, on behalf of himself and
all others similarly situated, including but not to, Case No.
CLARISSA MOREJON, MORGAN HOWARD,
SOPHIA FELICIANO, JAMES BROMLEY and
JEFF BARR

Plaintiffs,

vs.

AMAZON.COM, INC.,

Defendant.

_____ /

COMPLAINT FOR DAMAGES

Plaintiff, ANDRES MARQUEZ, by her attorneys, ANTHONY J. RUSSO JR, P.A. and
PANZAVECCHIA & ASSOCIATES, PLLC., complaining of Defendant, sets forth and alleges as
follows upon information and belief:

1. Plaintiff commences the within class action against AMAZON.COM, INC. (hereinafter referred to as "AMAZON"), on behalf of herself and all others similarly situated, who had purchased a membership for "AMAZON Prime", which membership promised fast delivery services, for free. The purchases of such membership that are the subject of the within action were made from March 17, 2020 through and until the within action has been disposed.
2. At all times hereinafter mentioned, Plaintiff, ANDRES MARQUEZ, was and still is a resident of the Palm Beach County, Florida

FACTS

3. Plaintiff, ANDRES MARQUEZ, at all times hereinafter mentioned, is a resident of Palm

Beach County, Florida. Venue is properly placed in Palm Beach County, Florida, as Plaintiff is a resident of Palm Beach County; part of the events giving rise to the claims herein occurred in Palm Beach County; and the Defendant has used the laws within and conducted substantial business in Palm Beach County, specifically, promotions, marketing, distributions and sales of services in Palm Beach County. This Court has personal jurisdiction over the Defendant in this county.

4. Plaintiff ANDRES MARQUEZ is a resident of Palm Beach County, Florida and purchased an AMAZON Prime membership, for which he was damaged as a result of the action by Defendant, AMAZON, as set forth herein.
5. Plaintiff CLARISSA MOREJON is a resident of Palm Beach County, Florida and purchased an AMAZON Prime membership, for which she was damaged as a result of the action by Defendant, AMAZON, as set forth herein.
6. Plaintiff MORGAN HOWARD is a resident of Palm Beach County, Florida and purchased an AMAZON Prime membership, for which she was damaged as a result of the action by Defendant, AMAZON, as set forth herein.
7. Plaintiff SOPHIA FELICIANO is a resident of Palm Beach County, Florida and purchased an AMAZON Prime membership, for which she was damaged as a result of the action by Defendant, AMAZON, as set forth herein.
8. Plaintiff JAMES BROMLEY is a resident of Palm Beach County, Florida and purchased an AMAZON Prime membership, for which she was damaged as a result of the action by Defendant, AMAZON, as set forth herein.
9. Plaintiff JEFF BARR is a resident of Lake County, Florida, and purchased an AMAZON Prime membership, for which he was damaged as a result of the action by Defendant,

AMAZON, as set forth herein.

10. All of the named Plaintiffs as well as of the proposed class have purchases an AMAZON prime membership, for which they have been damaged as a result of the action by Defendant AMAZON as set forth herein.
11. AMAZON.COM, INC. is incorporated in Delaware, with headquarters in Seattle Washington and is known as one of the largest online retailers in the United States.
12. The actions by AMAZON, as referred to herein, were made by and through the conduct of AMAZON'S officers, agents, representatives, directors, and/or employees, who actively participated in the direction, control, management and transactions of AMAZON'S ordinary business.
13. The within class action as against the Defendant is based upon a membership/subscription service, which AMAZON sells to the general public, known as AMAZON Prime. Such service promises free and fast delivery on millions of products sold on the AMAZON website, by AMAZON itself and/or third-party sellers through the warehouses and distribution centers of AMAZON.
14. This action is based upon AMAZON'S unfair and deceptive trade practices with regard to the sale of and promises made within such AMAZON Prime memberships. The cost of such Prime membership is \$119.00 yearly or \$12.99 monthly, which is paid by the subscriber for the purpose of obtaining free and fast delivery by AMAZON. Products being sold by AMAZON or third-party sellers are kept at AMAZON'S distribution center, ready to be immediately shipped upon the placement of an order by an AMAZON Prime member.
15. AMAZON Prime is a subscription service for which customers of AMAZON pay a yearly or monthly fee, for certain benefits which are otherwise unavailable to AMAZON

members, including free one or two-day delivery of products, music and video streaming and other benefits. Prime is primarily purchased for the benefit of the fast and free shipping benefits associated with the subscription service. See, <https://chainstorage.com/technology/survey-amazon-prime>, which sets forth that a recent survey revealed 68% of AMAZON Prime customers use AMAZON Prime for fast and free shipping; that only 18% use Prime for delivery of Wholefoods products; and, that electronics are the most common item purchased on AMAZON Prime day.

16. AMAZON makes claims that it provides the following benefits with the Prime Delivery service which is included with the AMAZON Prime membership:

Here are some Prime benefits included with your membership:

Delivery benefits

FREE Two-Day Delivery: Millions of items delivered fast and free.

FREE One-Day Delivery: Available on more than 10 million items with no minimum purchase.

FREE Same-Day Delivery: Available, in select areas, on over 3 million items for qualifying orders over \$35. Order in the morning, typically before noon, and get your items by 9 p.m.

FREE Ultrafast Grocery Delivery: Get free two-hour delivery on a wide selection of groceries, including meat, seafood, produce, snacks and household essentials. Check availability in your area.

Prescription delivery and savings: Enjoy fast, FREE Two-Day Delivery on prescriptions from Amazon Pharmacy, plus exclusive savings when paying without insurance.

FREE Release-Date Delivery: Be among the first to get new video games, books, music, movies and more. Choose Release-Date Delivery on qualified items and receive your package by 7 p.m. on that date.

FREE No-Rush Shipping: Don't need your Prime order right away? Select No-Rush Shipping and earn rewards for future purchases.

Key by Amazon: Get your packages securely delivered for free into your garage, home or vehicle with Key by Amazon. Check your eligibility.

For more information, go to Prime Delivery Benefits.

See, <https://www.amazon.com/primeinsider/about>.

17. Included within its AMAZON Prime membership and Delivery Services is grocery deliveries, as AMAZON acquired Whole Foods in June 2017, for \$13.7 billion cash.

18. Also included with its AMAZON Prime membership and Delivery Services is pharmacy

deliveries, as AMAZON acquired online pharmacy PillPack for a little under \$1 billion, rebranded and now known as PillPack by Amazon Pharmacy.

19. As a result of the global pandemic due to COVID-19 and the resultant stay-at-home orders governmentally issued, AMAZON suspended its Prime shipping services, for which it sent notice to all its third-party sellers and manufacturers, setting forth that they would be unable to ship their products to AMAZON'S distribution center, as AMAZON was "temporarily prioritizing household staples, medical supplies, and other high-demand products coming into our fulfillment centers so that we can more quickly receive, restock, and deliver these products to customers." AMAZON sent the following to sellers of products through AMAZON Prime's delivery service:

We are closely monitoring the developments of COVID-19 and its impact on our customers, selling partners and employees.

We are seeing increased online shopping, and as a result some products such as household staples and medical supplies are out of stock. With that in mind, we are temporarily prioritizing household staples, medical supplies, and other high-demand products coming into our fulfillment centers so that we can more quickly receive, restock, and deliver these products to customers.

For products other than these, we have temporarily disabled shipment creation. We are taking a similar approach with retail vendors.

This will be in effect today through April 5, 2020, and we will let you know once we resume regular operations. Shipments created before today will be received at fulfillment centers.

You can learn more about this on this Help page 2.8k. Please note that Selling Partner Support does not have further guidance.

We understand this is a change to your business, and we did not take that decision lightly. We are working around the clock to increase capacity and yesterday announced 595 that we are opening 100,000 new full-and part-time positions in our fulfillment centers across the US.

We appreciate your understanding as we prioritize the above products for our customers.

Thank you for your patience, and for participating in FBA.

See, <https://sellercentral.amazon.com/forums/t/temporarily-prioritizing-product-cs-coming-into-our-fulfillment-centers/592213?ots=1&slotNum=0&imprToken=3eb90866-42be-7f71-lef&tag=w050b-20&linkCode=w50>

20. AMAZON therefore suspended its Prime fast and free shipping services, provided to its members, solely focusing solely on AMAZON'S grocery and pharmacy sales and deliveries. This benefitted only one portion of its customers.
21. Further, despite AMAZON'S suspension of shipping for most products through AMAZON Prime, AMAZON nevertheless continued to sell and profit from the sales of products sold on its site; however the sellers of those products were required to ship the products from their facilities. This in turn increased shipping time and shipping costs for these products. Sellers lost businesses as they were unable to fulfill orders, due to not having a facility to process and ship orders from and had solely relied upon AMAZON for shipment of its products.
22. The only products permitted to be shipped to AMAZON'S fulfillment centers included baby products; household and health items; personal and beauty care products; groceries; scientific and industrial items; and pet supplies. See, www.junglescout.com/blog/amazon-sellers-coronavirus/
23. AMAZON suspended its Prime Delivery service for most products. AMAZON focused on profits from consumer grocery and pharmacy spending, as a result of the COVID-19 pandemic and solely satisfied new grocery and pharmacy customers so as to compete with major pharmacy and grocery chains.

24. As a result of the shipment being suspended for most products from AMAZON'S fulfillment centers, AMAZON Prime's fast and free shipping was not being provided to its customers. Customers noticed slow and unavailable shipping for most items sold on AMAZON and requested refunds or credits for the Prime services.
25. As a result of such suspension and unfair practices by AMAZON, Plaintiffs have been damaged, in that they were unable to use the AMAZON Prime free and fast shipping services for which they had subscribed, being completely unaware that AMAZON could unilaterally suspend such free and fast delivery services, at any given moment, without refund or credit of the subscription fees paid for by its Prime members during such suspension, for the purpose of concentrating solely on grocery and pharmacy deliveries. News media outlets reported that AMAZON was not providing the Prime free and fast delivery but that it continued to charge for the service and failed to provide refunds or credits. See, www.chicago.cbslocal.com/2020/05/04/amazon-prime-members and www.wcpo.com/money/consumer/dont-waste-your-money.
26. In response thereto, AMAZON made a statement that it would not provide a refund or credit to its Prime members. Nonetheless, 118 million people were paying for AMAZON Prime during the COVID-19 pandemic. See, www.grow-acorns.com/amazon-prime-during-coronavirus. Thus, AMAZON misappropriated approximately \$1.18 billion dollars in membership fees from its Prime membership customers, (based upon a rounded down figure of \$10 per month subscription fee). A refund to a mere 25% of Prime customers, for one month of the subscription fee (based on a rounded down figure of \$10), amounts to \$295 million dollars.
27. In and around May 12, 2020, AMAZON resumed shipment of all items to its fulfillment

centers and the Prime Delivery began to resume normal activity. See, www.marketplacepulse.com/articles/amazon-recovers-from-essentials-only.

28. AMAZON Prime customers essentially lost two months of Prime benefits, resulting in damages, while AMAZON benefitted by an increase in demand for food and pharmaceutical product sales and delivery services, without providing refunds to their Prime customers. AMAZON has refused to provide a credit or refund to its prime members.
29. AMAZON failed to disclose to its customers and the public, prior to or at the time of subscription to the Prime membership, that it may at any given time and for any reason, suspend its free and fast delivery services (the sole purpose of such Prime subscription/membership).
30. AMAZON failed to disclose to its customers and the public, that it may suspend such Prime shipping services for the purpose of focusing on higher margin sales and customers; higher volume orders; or for its sole advantage of being able to compete with other businesses, including pharmacy and grocery delivery businesses.
31. AMAZON failed to disclose the lack of a refund or full or partial credit during a period of time in which a suspension of AMAZON Prime's fast and free shipping will take effect.
32. AMAZON failed to provide free and fast shipping as it was contractually required to do so pursuant to the Prime membership agreement.
33. Had Plaintiffs herein known that AMAZON could suspend Prime services, and not provide a credit for the period of suspension, Plaintiffs would not have subscribed the Prime membership and paid the corresponding fees associated with such subscription. AMAZON has not and does not intend to provide a credit or refund of the Prime membership fees during the prior of time it suspended Prime benefits.

34. As a result of the aforementioned, the Plaintiff, ANDRES MARQUEZ, on behalf of herself and all others similarly situated, seeks full monetary compensation for the pro-rata purchase price of Amazon Prime, during which fast and free shipping was suspended; injunctive relief, requiring AMAZON to stop sales of Prime memberships until proper, correct disclosures are made; and attorneys fees and costs for the commencement and prosecution of the within action, and any value obtained for the public or class member who may be absent; together, with such other and further relief as this Court deems just, proper and equitable.
35. As a result of the foregoing, Plaintiffs seek damages in excess of \$1,000,000, excluding interest and costs.
36. The within matter is a class action lawsuit with the proposed class being not less than 100.

CLASS ACTION ALLEGATIONS

37. Plaintiff, ANDRES MARQUEZ, commences the within action pursuant to Florida Rules of Civil Procedure 1.220, on behalf of herself and all persons and/or entities, who are residents of the State of Florida, who purchased AMAZON Prime memberships for the purpose of obtaining fast and free shipping and delivery services, for the period of time commencing March 17, 2020, to date of final disposition of the within pending matter, and/or such class or subclass as the Court deems appropriate, (hereinafter referred to as the NY Class)
38. This action is also being commenced by Plaintiff, ANDRES MARQUEZ, pursuant to Florida Rules of Civil Procedure 1.220, on behalf of the nationwide class, covering the following Counts delineated below, with the exception of Count I which is applicable only to the State of Florida class, including all persons and entities residing in the United States,

who purchased an AMAZON Prime membership, for fast and free shipping and delivery services, during the period of time commencing March 17, 2020 through the time the within matter is disposed, and/or such class or subclass as this Court deems appropriate, (hereinafter referred to as The Nationwide Class).

39. The right to amend the definition of the aforementioned classes should discovery proceedings and investigation reveal said classes should be modified, is hereby reserved by Plaintiff.
40. Plaintiff additionally reserves the right to establish additional sub-classes.
41. The within matter satisfies the requirements of Florida Rules of Civil Procedure 1.220, for class actions. The shared interests of both the Florida and Nationwide Classes, and the disposition of the claims herein asserted by such members in one single action would provide benefit to all parties as well as this Court. Joinder of the thousands of class members, of both the Florida and Nationwide Classes, would be impracticable. The claims asserted by Plaintiff are typical of the claims of the members of the classes whom Plaintiff, ANDRES MARQUEZ, seeks to represent, as Plaintiff and the class members were damaged as a result of Defendant, AMAZON'S unfair practices and breach of contract.
42. Plaintiff, ANDRES MARQUEZ, will allow for a fair and adequate representation and protection of interests of each member of both classes. Plaintiff, ANDRES MARQUEZ, has no adverse interests to the members of the classes and will vigorously prosecute the within action.
43. A class action is superior to all other available methods of fair and efficient adjudication of the claims being asserted in the within Complaint as per Florida Rules of Civil Procedure 1.220 as the expense and burden of individually litigating the issues herein would not be

economically feasible for each Class member to redress their claims other than through a class action; separate individual actions by each member of the Classes would result in thousands of suits; and without a class action being commenced, justice would not be served and AMAZON would continue to obtain benefits of its unfair practices and wrongdoings.

44. Common questions of law and fact for each member of the aforementioned classes, predominate over those questions affecting each individual class member.
45. Common questions of fact included, but are not limited to: whether the practices by AMAZON with respect to selling free and fast shipping services, and thereafter failing to provide such services, without refund or credits issued to the Prime members, was improper and in violation of the Florida Rules of Civil Procedure 1.220; whether AMAZON engaged in unfair, deceptive, unlawful, misleading business practices; whether AMAZON'S conduct constituted consumer fraud, deceptive trade practices or other unlawful acts; whether AMAZON made negligent misrepresentations; whether AMAZON as unjustly enriched; and whether the Plaintiffs and class members would be entitled to costs of commencing the within lawsuit, interest and attorneys' fees.
46. Alternatively, the within action is certifiable pursuant to Florida Rules of Civil Procedure 1.220 provisions, as AMAZON acted or refused to act on the grounds applicable to the classes, making injunctive or declaratory relief appropriate, with respect to the classes, and requiring such relief be extended to each class member on a mandatory basis, class-wide.
47. Plaintiff, ANDRES MARQUEZ, is unaware of any difficulties that could potentially be encountered in managing this litigation and thereby preclude maintenance of the within class action.

COUNT I

Violation of Florida Deceptive and Unfair Trade Practices Act (FDUPTA) Florida Statutes 501.201

48. Plaintiff hereby repeats and reiterates the allegations set forth in each and every paragraph in this Complaint.
49. The within claims are commenced by Plaintiff, ANDRES MARQUEZ, on behalf of herself as well as all other similarly situated persons and entities residing in Florida who purchased an AMAZON Prime membership, which provided fast and free shipping services from March 17, 2020 until the final disposition of the within action.
50. Plaintiff and each member of the Florida Class is a consumer, purchaser or other person who is entitled to the consumer protections under the Laws of the State of Florida.
51. **Florida Deceptive and Unfair Trade Practices Act (FDUPTA)**, was enacted to provide protection to consumers against deceptive, unfair, fraudulent and unconscionable trade and business practices and false advertising.
52. The AMAZON Prime Delivery services AMAZON marketed and sold, constitutes the services to which Florida Statutes 501.201 applies.
53. AMAZON violated Florida Statutes 501.201, in that it failed to provide the contracted services which it was obligated to provide and further, failed to provide credits or refunds to its customers during the service suspension period.
54. AMAZON violated Florida Statutes 501.201, by failing to disclose its deceptive business practices.

COUNT II

Breach of Contract, Florida and Nationwide Classes

55. Plaintiff hereby repeats and reiterates the allegations set forth in each and every paragraph

in this Complaint.

56. AMAZON agreed to provide free and fast shipping services, in return for the purchase of a subscription to AMAZON Prime.

57. Plaintiff, and each member of the class, paid for the AMAZON Prime membership, expecting AMAZON would provide the promised free and fast shipping.

58. AMAZON failed to provide the promised free and fast shipping.

59. Plaintiff, and each member of the class, suffered damages amounting to the pro-rata amount paid for AMAZON Prime, during the time in which such free and fast shipping service was suspended.

COUNT III

Negligent Misrepresentation, Florida and Nationwide Classes

60. Plaintiff hereby repeats and reiterates the allegations set forth in each and every paragraph in this Complaint.

61. AMAZON, directly or through its agents and employees, made false representations, concealments, and nondisclosures to Plaintiff and each member of the class.

62. AMAZON represented that AMAZON Prime members would get free and fast shipping services on more than 10 million products sold on its site.

63. AMAZON failed to disclose that it could, at any time, unilaterally suspend such free and fast shipping, to focus on deliveries to grocery and pharmaceutical customers to the detriment of customers of all other products.

64. When purchasing the Prime membership, Plaintiff and all class members, properly relied upon AMAZON'S representations when subscribing to and purchasing the Prime membership.

65. AMAZON was negligent and careless in failing to disclosure material facts as aforementioned.
66. AMAZON knew or should have known that its representations were not true, when making such misrepresentations and omissions.
67. AMAZON intended to make misrepresentations so as to induce Plaintiff and each class member's reliance.
68. Plaintiff and each class member relied upon AMAZON'S misrepresentations and nondisclosures when subscribing to and purchasing the Prime membership, which reliance was reasonable foreseeable and justified.

COUNT IV

Unjust Enrichment, Florida Class and Nationwide Class

69. Plaintiff hereby repeats and reiterates the allegations set forth in each and every paragraph in this Complaint.
70. AMAZON has been unjustly enriched as a result of its wrongful acts and omissions, at Plaintiffs and each class members expense; Plaintiff and each class member was therefore unjustly deprived of time and value of money paid to AMAZON.
71. For AMAZON to retain the profits, benefits and other compensation obtained via deceptive, misleading, unjust and unlawful conduct, would be unconscionable and inequitable.
72. Plaintiff, and each class member seeks restitution from AMAZON and an Order from the Court removing all benefits, profits and compensation obtained by AMAZON from its wrongdoing.

RELIEF SOUGHT

73. Plaintiff and each class member seeks the following relief:

- a. Certification of the Florida and Nationwide Classes, as requested herein and certifying the Plaintiff, ANDRES MARQUEZ, as the representative of each class, appointing Plaintiff's counsel as counsel for each class;
- b. Ordering AMAZON be financially responsible for notifying the members of each class of its misrepresentations and omissions;
- c. Awarding Plaintiff and each class member compensatory damages, in the amount proved at the trial of this matter;
- d. Awarding restitution and disgorgement of AMAZON'S revenues to Plaintiff and each class member;
- e. Awarding declaratory and injunctive relief, including, enjoining AMAZON from continuation of unlawful practices and directing AMAZON identify victims of the alleged conduct and provide restitution and disgorgement of all money AMAZON acquired by its wrongdoing and unlawful conduct;
- f. Award of punitive damages to Plaintiff and each class member;
- g. Order directing AMAZON cease selling AMAZON Prime memberships or correct the deceptive behavior;
- h. Award of interest on the money unlawfully obtained by AMAZON from the date of the collection of such money to the date of judgment being entered in the within action;
- i. Award of attorneys' fees, expenses and costs incurred in the commencement and prosecution of this action and expenses incurred prior to the commencement of this action; and,

j. Any such other and further relief, as this Court deems just, proper and equitable.

DEMAND FOR JURY TRIAL

Plaintiff, ANDRES MARQUEZ, on behalf of herself and all others similarly situated in the Florida and Nationwide Classes, hereby demands a trial by jury on all issues so triable as of right by jury.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been e-filed with the Clerk of the above-named Court this 19th day of January 2021.

ANTHONY J. RUSSO JR., P.A.

d/b/a THE RUSSO FIRM

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