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14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT Of CALIFORNIA**

16 CRAIG CROSBY and CHRISTOPHER
17 JOHNSON, on behalf of themselves and
18 others similarly situated,

19 Plaintiffs,

20 v.

21 AMAZON.COM INC.,

22 Defendant.

CASE NO. 2:20-cv-8003

CLASS ACTION COMPLAINT:

1. Violation of California’s False Advertising Law, California Business and Professions Code Section 17500 (“FAL”)
2. Violation of California Consumer Legal Remedies Act, California Civil Code Section 1750 (“CLRA”)
3. Violation of California’s Unfair Competition Law, California Business and Professions Code Section 17200 (“UCL”)
4. (In the alternative)
Violation of the Washington Consumer Protection Act, RCW Section 19.86.010

JURY TRIAL DEMANDED

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FOURTH CAUSE OF ACTION
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1 **I. INTRODUCTION**

2 1. Amazon deceives the public by falsely advertising, marketing, and selling
3 defective, fraudulent, and often dangerous lithium-ion 18650 battery cells and products
4 containing them.

5 2. Lithium-ion 18650 batteries are marketed and sold by Amazon to be used
6 in laptops, flashlights, cameras, lasers, measurement tools, children toys, battery packs,
7 hoverboards, e-cigarettes and other consumer devices.

8 3. Amazon makes numerous false representations about the characteristics of
9 the batteries. Amazon misrepresents the energy capacity of lithium-ion 18650 batteries
10 and safety features allegedly contained in the batteries. Amazon misrepresents the
11 existence of protective circuits and voltage cutoffs. Amazon misrepresents and fails to
12 adequately inform consumers of the overall defective, fraudulent, and dangerous
13 nature of the batteries.

14 4. Not only does Amazon unfairly, unlawfully, and deceptively hide the
15 truth about lithium-ion 18650 batteries, but they also continue to sell, market, and
16 advertise the batteries on their website despite knowledge that they are defective,
17 fraudulent, and dangerous.

18 5. Amazon's advertising, and information on its website, misled and induced
19 the public into purchasing the fraudulent batteries and/or products containing them, by
20 incorrectly leading the public to believe that the batteries had longer capacity or higher
21 output than they did, and possessed safety features they did not.

22 **II. JURISDICTION AND VENUE**

23 6. This Court has personal jurisdiction over Defendant because Amazon has
24 continuous and systematic contacts with and conducts substantial business in the State
25 of California, such that the exercise of jurisdiction does not offend traditional notions
26 of fair play and substantial justice. Amazon has purposefully availed itself of the
27 benefits of the California forum.

28

1 7. This Court has subject matter jurisdiction over this action pursuant to 28
2 U.S.C. §§ 1332 (a)(1) and 1332 (c)(1) because this dispute involves citizens of
3 different states and the matter in controversy exceeds the sum or value of \$75,000,
4 exclusive of interest and costs.

5 8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c)
6 because all of the events and transactions giving rise to this action took place in the
7 Central District of California. Venue is also proper in the Central District of California
8 as Plaintiffs reside in this district and Defendant Amazon maintains a place of business
9 in Camarillo, California.

10 **III. PARTIES**

11 **A. Plaintiffs**

12 9. Plaintiff CRAIG CROSBY resides in Camarillo, California. During the
13 Class period, Mr. Crosby purchased hundreds of fraudulent individual 18650 lithium-
14 ion battery cells and dozens of products containing fraudulent 18650 lithium-ion
15 battery cells from Amazon.com as the direct seller. Upon receipt of the products, Mr.
16 Crosby determined Amazon had made misrepresentations about the products and the
17 batteries.

18 10. Plaintiff CHRIS JOHNSON resides in Woodland Hills, California.
19 During the Class period, Mr. Johnson purchased fraudulent individual 18650 lithium-
20 ion battery cells and products containing fraudulent 18650 lithium-ion battery cells
21 from Amazon.com as the direct seller. Upon receipt of the products, Mr. Johnson
22 determined Amazon had made misrepresentations about the products and the batteries.

23 11. Absent award of the relief sought in this lawsuit, Plaintiffs Crosby and
24 Johnson and the public will continue to suffer harm. Plaintiffs as well as the public
25 generally in California continue to be at risk of future harm, as Amazon has refused to
26 change its practices related to the sale of fraudulent lithium-ion 18650 batteries and
27 continues to make false and misleading statements in connection with the sale of such
28

1 products. This continued violation of the law creates a risk of future and ongoing harm
2 to Plaintiffs and to the public.

3 **B. Defendant**

4 12. Defendant AMAZON.COM, INC. (“Amazon”) is a Washington state
5 corporation organized and existing, on information and belief, under the laws of the
6 State of Delaware, with its principal place of business at 410 Terry Avenue, Seattle,
7 WA 98109.

8 13. Amazon is responsible for the sale, marketing, and advertisement of the
9 lithium-ion 18650 batteries and products at issue in this case.

10 **IV. CLASS ACTION ALLEGATIONS**

11 14. Plaintiffs bring this class-action lawsuit on behalf of themselves and the
12 proposed members of the Class pursuant to Rule 23(b) of the Federal Rules of Civil
13 Procedure.

14 15. This action has been brought and may properly be maintained as a class
15 action against Defendant Amazon because there is a well-defined community of
16 interest in the litigation and the proposed Class is easily ascertainable.

17 16. Plaintiffs seek certification of the following Class:

18 “All persons in the state of California who purchased lithium-ion
19 18650 batteries or products containing lithium-ion 18650 batteries
from Amazon within the applicable statute of limitations.”

20 17. **Numerosity.** Plaintiffs do not know the exact number of Class members
21 but believe the Class comprises thousands of consumers in California. As such, the
22 Class is so numerous that joinder is impractical.

23 18. **Commonality and predominance.** Each of the proposed Class members,
24 are similarly situated to Plaintiffs with regard to their rights as purchasers of lithium-
25 ion batteries from Amazon.

26 19. There are common questions of law and fact that affect all Class
27 members. These questions predominate over questions that might affect individual
28 Class members. These common questions include, but are not limited to, the following:

- 1 A. Whether Amazon falsely advertised lithium-ion batteries to Plaintiffs;
- 2 B. Whether Amazon’s representations to Plaintiffs regarding the fraudulent
- 3 and dangerous nature of the batteries were objectively material;
- 4 C. Whether Amazon adequately disclosed and described to Plaintiffs the
- 5 fraudulent and dangerous nature of the lithium-ion batteries and the risks
- 6 associated with their use;
- 7 D. Whether Amazon’s representations and descriptions of the lithium-ion
- 8 batteries and the products containing them were deceptive;
- 9 E. Whether Amazon failed to disclose objectively material information to
- 10 Plaintiffs regarding the lithium-ion batteries;
- 11 F. Whether Amazon’s representations and omissions tend to deceive
- 12 consumers;
- 13 G. Whether Amazon’s conduct violated California state consumer protection
- 14 laws;
- 15 H. Whether Plaintiffs and the Class incurred a loss of money or property
- 16 within the meaning of the UCL due to Amazon’s conduct;
- 17 I. Whether Plaintiffs, the Class and the general public are entitled to public
- 18 injunctive relief due to Amazon’s conduct.

19 20. **Typicality.** Plaintiffs' claims are typical of Class members' claims.
20 Plaintiffs and Class members sustained injury as a direct result of Amazon’s practice
21 of selling, marketing and advertising fraudulent lithium-ion batteries. Thus, Plaintiffs
22 are similarly situated to the other members of the Class and are adequate
23 representatives of the Class.

24 21. **Adequacy.** Plaintiffs will fairly and adequately protect the Class
25 members’ interests. Plaintiffs and Class members have the same interests and Plaintiffs
26 have attorneys who are competent and experienced in the prosecution of class actions
27 and consumer protection cases.

28

1 22. ***Superiority.*** A class action is the superior method for fairly and efficiently
2 adjudicating this controversy for the following reasons:

- 3 A. The size of claims of the individual Class members are relatively small,
4 and few, if any, Class members could afford to seek legal redress for the
5 wrongs complained of;
- 6 B. Absent a class action, the Class members will likely not obtain redress of
7 their injuries and Defendant will retain the proceeds from the violations of
8 the laws cited herein;
- 9 C. This class action also provides the benefits of single adjudication and
10 supervision by a single court; and
- 11 D. Plaintiffs are unaware of any unusual difficulties in managing this class
12 action.

13 **V. AMAZON’S TERMS OF USE AGREEMENT AND ARBITRATION**
14 **CLAUSE**

15 23. Amazon’s Terms of Use Agreement contains an arbitration provision
16 (“Arbitration Clause”) which states that any dispute or claim will be resolved by
17 binding arbitration.

18 24. The Arbitration Clause states that “Any dispute or claim relating in any
19 way to your use of any Amazon Service, or to any products or services sold or
20 distributed by Amazon or through Amazon.com will be resolved by binding
21 arbitration, rather than in court...”

22 25. The Arbitration Clause contains a choice of law provision: “By using any
23 Amazon Service, you agree that the Federal Arbitration Act, applicable federal law,
24 and the laws of the state of Washington, without regard to principles of conflict of
25 laws, will govern these Conditions of Use and any dispute of any sort that might arise
26 between you and Amazon.”

27 ///

28 ///

1 26. The Arbitration Clause contains a class action ban: “any dispute
2 resolution proceedings will be conducted only on an individual basis and not in a class,
3 consolidated or representative action.”

4 27. To initiate arbitration, a letter must be sent requesting arbitration and
5 describing the claim to Amazon’s registered agent Corporation Service Company, 300
6 Deschutes Way SW, Suite 304, Tumwater, WA 98501.

7 28. On March 26, 2019, Plaintiff Craig Crosby served Amazon’s legal
8 department with a Notice to Cure letter via certified mail. Mr. Crosby notified Amazon
9 of fraudulent, defective, and dangerous lithium-ion batteries sold by Amazon on their
10 website. Mr. Crosby explained in detail Amazon’s scheme to profit from the sale of
11 these fraudulent 18650 lithium-ion batteries. He described violations of the Consumer
12 Legal Remedies Act, which continue to occur via sales on Amazon.com. Further, the
13 letter notified Amazon of the misleading, fraudulent, and deceptive promises, and
14 commitments made by the company regarding the fraudulent batteries, and how these
15 misleading statements threaten the health and safety of consumers.

16 29. Mr. Crosby notified Amazon they had thirty days from the letter to
17 correct, repair, or otherwise rectify the violations. Mr. Crosby requested, among other
18 things, that Amazon terminate all listings and cease the sale and marketing of lithium-
19 ion 18650 with a stated individual cell capacity of 4000 mAh or more. Amazon
20 ignored Mr. Crosby’s Notice to Cure letter.

21 30. On January 21, 2020, Casselman Law group, representing Mr. Crosby at
22 the time, sent a letter requesting the arbitration of his claims set forth in his Notice to
23 Cure letter. The letter was sent via certified mail to Amazon’s registered agent
24 Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA
25 98501. On February 14, 2020 corporate counsel for Amazon responded that they had
26 received Mr. Crosby’s January 21, 2020 letter and would review. However, Mr.
27 Crosby has yet to receive a response to his request for arbitration.

28 ///

1 31. On August 13, 2019, Plaintiff Chris Johnson served on Amazon a Notice
2 to Remedy and Cure their violations of California law via certified mail. Mr. Johnson
3 described in detail more than twenty-five specific products, deceptively advertised and
4 sold by Amazon, each of which contained fraudulent lithium-ion 18650 batteries. He
5 described how the lithium-ion 18650 batteries and products containing them, not only
6 fail to perform as advertised, but also pose a high risk of property damage, pain, injury,
7 disfigurement and/or death to consumers, facts well-known by Amazon.

8 32. Mr. Johnson notified Amazon they had thirty days from the letter to
9 rectify the violations and provide an acceptable remedy or cure. Mr. Johnson
10 requested, among other things, that Amazon cease and desist from making false and
11 fraudulent statements regarding lithium-ion 18650 batteries. Despite proof of delivery
12 of his Notice to Remedy and Cure, Amazon never responded to Mr. Johnson's letter,
13 nor did they stop selling fraudulent lithium-ion 18650 batteries.

14 33. The Arbitration Clause is unenforceable as to the claims contained in
15 Plaintiffs' Complaint and does not prohibit the Class members from receiving the
16 relief sought and owed.

17 34. Plaintiffs bring claims under the California Consumers Legal Remedies
18 Act, Cal. Civ. Code § 1750, *et seq.*; unfair competition law, Cal. Bus. & Prof. Code §
19 17500, *et seq.*; and false advertising law, Cal. Bus. & Prof. Code § 17500, *et seq.*

20 35. Amazon's Arbitration Clause is unenforceable as to Plaintiffs' claims
21 because Plaintiffs and Class members seek class-wide public injunctive relief under
22 these statutes.

23 36. Pre-dispute arbitration provisions aimed at public injunctive relief that
24 result in barring certain statutory claims for such relief are unenforceable. This applies
25 to relief sought under California CLRA, UCL, and false advertising law.

26 37. By stating that "any dispute resolution proceedings will be conducted only
27 on an individual basis and not in a class, consolidated or representative action,"
28 Amazon's Arbitration Clause prohibits Plaintiffs and Class members from pursuing

1 public injunction relief under the CLRA, UCL and false advertising law. It therefore
2 violates California public policy set forth in Civil Code § 3513 and *McGill v. Citibank,*
3 *N.A.*, 2 Cal.5th 945 (2017).

4 38. The Arbitration Clause is unenforceable because it bars the pursuit of
5 class claims and public injunctive relief and denies Plaintiffs the ability to assert public
6 injunctive relief in any forum.

7 **VI. AMAZON SELLS DANGEROUS LITHIUM ION 18650 BATTERIES BY**
8 **MISREPRESENTING THE NATURE OF THE PRODUCTS**

9 39. Amazon is engaged in a wide-ranging scheme to sell and profit from the
10 sale of fraudulent, dangerous, and defective lithium-ion 18650 batteries and products
11 containing them.

12 40. The volume of Amazon's sales and shipments of the fraudulent and
13 defective batteries to consumers in the United States and worldwide is substantial and
14 continues to grow.

15 41. Amazon benefits from the sale of fraudulent batteries and induces
16 consumers to purchase the batteries due to less expensive price points and claimed
17 higher capacity and/or safety features.

18 42. Amazon's false claims regarding the fraudulent batteries violate numerous
19 California laws.

20 43. Plaintiffs and the general public have been, and continue to be, exposed to
21 false information regarding the quality and dangerous nature of lithium-ion 18650
22 batteries sold by Amazon.

23 44. The experiences of Plaintiffs are typical of other California consumers,
24 who for years have been victims of Amazon's fraudulent scheme regarding the
25 batteries and/or the products containing them.

26 45. Consumers would not have purchased the batteries from Amazon, but for
27 the misleading and deceptive information put forward regarding their alleged quality,
28 capacity, and/or safety features.

1 46. Plaintiffs seek public injunctive relief on behalf of millions of other
2 California consumers. If successful, the lawsuit will benefit millions of consumers as
3 Amazon sells, markets, and advertises lithium-ion 18650 batteries throughout the
4 United States and worldwide.

5 **A. Background on Lithium Ion 18650 Batteries**

6 47. The majority of 18650 lithium-ion batteries Amazon sells, markets, and
7 advertises are defective, fraudulent, and dangerous lithium-ion 18650 batteries
8 throughout the United States and worldwide.

9 48. Over the past few years, the use of the lithium-ion 18650 batteries has
10 transitioned from primarily commercial applications to include substantial consumer
11 and residential use. The batteries are used in laptops, flashlights, cameras, lasers,
12 measurement tools, children toys, battery packs, hoverboards, e-cigarettes, and other
13 consumer devices.

14 49. A “battery” is a generic term for an electrochemical source of electricity,
15 which stores energy in a chemically bound form, and can convert this directly into
16 electric power. A battery may be either a single cell or multiple cells connected in
17 either series or parallel configurations.¹

18 50. The expression “lithium batteries” is a generic name for battery
19 technologies in which lithium ions play a part in the primary electrochemical discharge
20 and charge reactions. Lithium batteries are available both as primary batteries
21 (disposable batteries) and secondary batteries (rechargeable batteries).²

22 51. Individual 18650 cells are often incorrectly referred to as “batteries.” A
23 cell is an individual unit of power, and a battery is a collection of cells. “18650” is a
24

25 ¹ In Compliance Magazine, *The Future of Battery Technologies: A General Overview*
26 *& Focus on Lithium Ion*, (March 1, 2012), <https://incompliancemag.com/the-future-of-battery-technologies-a-general-overview-a-focus-on-lithium-ion/>

27 ² In Compliance Magazine, *The Future of Battery Technologies: A General Overview*
28 *& Focus on Lithium Ion*, (March 1, 2012), <https://incompliancemag.com/the-future-of-battery-technologies-a-general-overview-a-focus-on-lithium-ion/>

1 concatenation of the cell size, meaning 18mm x 65mm with a 0 on the end. 18650 cells
2 are lithium-ion cells or a lithium-ion polymer (“LiPO”) cell containing a polymer
3 electrolyte.

4 52. For the purpose of this complaint, the terms “battery,” “batteries,” or
5 “lithium-ion 18650 battery,” are used to refer to the 18650 lithium-ion cells at issue.

6 53. There are many differences between an authentic lithium-ion 18650
7 battery and a fraudulent one. A fraudulent lithium-ion battery can cause damage to
8 personal property, as well as physical injury. Amazon sells numerous fraudulent
9 lithium-ion 18650 batteries on their website, including these UltraFire batteries
10 pictured below with inflated capacities and lacking the claimed protection circuit.



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15 54. Amazon lists the energy capacity of the battery being sold in milli-amp
16 hours (mAh).

17 55. Virtually all lithium-ion cells have a rated capacity measured in milliamp-
18 hours (mAh) or amp-hours (Ah). The higher the mAh capacity, the longer the battery
19 will discharge power in the same device.

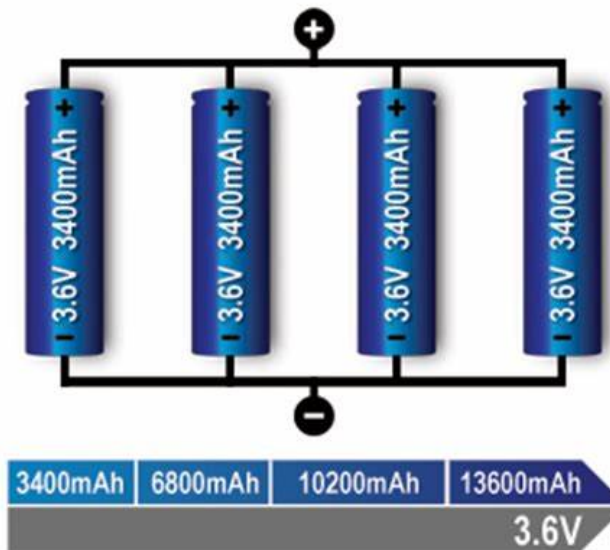
20 56. The capacity of authentic lithium-ion 18650 batteries sold by legitimate
21 manufacturers have capacities under 3800 mAh. It is commercially known that
22 legitimate individual lithium-ion 18650 batteries are limited to capacities under 3800
23 mAh, and Amazon is aware of this fact. The space inside the case of every authentic
24 lithium-ion 18650 battery is the same. Cell capacity is limited by the thickness and
25 density of the cathode and anode, and the electrolyte that can fit in the case, in addition
26 to electrode resistance and device requirements for efficient discharge.

27 57. Each battery also has a voltage. The nominal voltage for a single 18650
28 lithium-ion cell is 3.7 volts.

1 58. When several cells are arranged together in a single battery, either the
 2 voltage or the mAh of the battery can be modified for user requirements. When the
 3 cells are arranged in a “series,” the voltage increases with each additional cell, but the
 4 total mAh remains constant, capped at the capacity of an individual cell. In mixed
 5 capacity cell configurations, the lowest capacity cell will run out of energy first.



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 10 59. When the cells are combined in “parallel,” the mAh (capacity) increases,
 11 but the voltage remains constant at the nominal voltage during discharge,
 12 approximately 3.7V:



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 23 60. Practically, this means the highest powered legitimate commercially
 24 available 3600 mAh 18650 lithium ion single cell can provide 3.6 amps (or 3,600 mAh)
 25 at 3.7V for up to one hour. When arranged in a series, the voltage is a sum of the cells,
 26 the current is shared. When arranged in parallel, current is a sum of each cell’s
 27 capacity at the nominal voltage of a single cell in the circuit.

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1 61. Legitimate rechargeable batteries, especially those arranged in series or in
2 parallel, possess internal safety measures to minimize the risks inherent in lithium ion
3 batteries generally, and maximizing the life of the battery. These safety measures
4 include automatic shut off switches for batteries at both maximum and minimum
5 charge. These measures reduce the risks of malfunction, including of fire and
6 explosion while charging, discharging, or in the event of a short circuit.

7 62. Fraudulent rechargeable batteries do not possess proper, adequate, or
8 often any safety measures that are standard in legitimate products. The absence of
9 these measures makes the products dangerous to consumers and the public. Such
10 products have and continue to cause harm to Californians and Amazon customers
11 around the world.

12 63. Amazon is aware of the safety hazard fraudulent batteries pose to the
13 public and to its customers. Despite Amazon's claims that safety is its highest priority,
14 it ignores the risks of fraudulent batteries, choosing instead to keep listed, re-list, and
15 to deliberately select and use photos to attempt to obscure the fraudulent nature of the
16 products it sells. Amazon acts knowingly and with full knowledge of the harm and
17 risks it creates by selling and promoting fraudulent and dangerous batteries.

18 64. One of the ways Amazon dupes its consumers and continues to promote
19 and sell fraudulent and dangerous batteries is through its use of an Amazon Standard
20 Identification Number, or ASIN. Each product sold on Amazon.com is assigned an
21 ASIN. These are unique numbers, even where the same company is making and selling
22 the same product.

23 65. If a certain seller or product has too many negative reviews, the product
24 will be removed from the Amazon. However, the identical product can be put back up
25 on Amazon without any check or quality control being conducted by Amazon. And
26 when the same product is listed with a different ASIN, the prior reviews of the product
27 (good and bad) may be removed and disappear, meaning the purchaser of the current
28 ASIN version of the product will not be able to identify prior negative reviews of the

1 same product, despite Amazon having this information available. Amazon also has
2 removed or blocked negative reviews.

3 66. Lithium-ion 18650 batteries 3800 mAh and above are fraudulent.
4 Fraudulent batteries below 3800 mAh may also only have a fraction of their claimed
5 capacity.

6 67. An example of an authentic lithium-ion 18650 battery is the Panasonic
7 NCR18650BF industrial lithium ion battery. The capacity is 3350 mAh - the highest
8 capacity in Panasonic's product line.³ (See photo below.)



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14 68. Another example of an authentic lithium-ion 18650 battery is this Tenergy
15 3.7V 2600 mAh Lithium-Ion 18650 Flat Top Rechargeable Battery (MH48285), which
16 is UL Certified.⁴ (See photo below.)



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26 ³ The Counterfeit Report, *How to identify counterfeit Lithium Ion 18650 Batteries*,
27 (Edited May 31, 2020)

28 ⁴ The Counterfeit Report, *How to identify counterfeit Lithium Ion 18650 Batteries*,
(Edited: May 31, 2020)

1 **B. Amazon Falsely Advertises and Markets 18650 Lithium Ion Batteries**
2 **to Consumers**

3 69. Despite knowing that lithium-ion batteries have a maximum capacity of
4 under 3800 mAh, Amazon lists lithium-ion 18650 batteries for sale with capacities
5 ranging from 3800 mAh to 12000 mAh.

6 70. A search of Amazon.com reveals thousands of fraudulent lithium-ion
7 18650 batteries for sale. For example, Amazon markets, sells, and advertises the
8 following:



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15 71. These fraudulent lithium-ion 18650 batteries pictured above have a
16 claimed capacity of 9800mAh. When tested their capacity was only 800 mAh-1100
17 mAh.⁵

18 72. Plaintiffs have collected data on some of the fraudulent lithium-ion 18650
19 batteries and products containing the batteries purchased on Amazon in the last three
20 years. From January 1, 2017 to August 1, 2020, data revealed that 72,987 fraudulent
21 lithium-ion 18650 batteries and products with the batteries were reported sold by
22 Amazon, from a total of 153,013 fraudulent products identified.⁶ Plaintiff Craig
23 Crosby and Plaintiff Chris Johnson both purchased fraudulent batteries. This data
24 represents a fraction of the lithium-ion 18650 batteries sold by Amazon.

25
26 ⁵ The Counterfeit Report, Craig Crosby, *How to identify counterfeit Lithium Ion 18650*
27 *Batteries*, (Edited: May 31, 2020)

28 ⁶ The Counterfeit Report, Craig Crosby, *Data and Analytics Collected for Lithium Ion*
18650 Batteries Purchases

1 **C. Amazon Knows Energy Capacity And Battery Life Are Material To**
2 **Consumers And Misrepresents The Quality And Capacity Of**
3 **Fraudulent Lithium-Ion 18650 Batteries**

4 73. Amazon sells, markets, and advertises fraudulent batteries. Amazon does
5 not adequately inform consumers of fraudulent, defective, and dangerous batteries for
6 sale on their website.

7 74. Amazon's affirmative statements regarding alleged battery capacity,
8 lower price points, and safety features misled Plaintiffs and the public into purchasing
9 batteries that were fraudulent defective, and dangerous.

10 75. The energy capacity of a battery is one of the most important
11 characteristics a consumer looks at to decide which battery to purchase.

12 76. The stated capacity of 3800 mAh or above is an immediate indicator of a
13 fraudulent lithium-ion 18650 battery. Authentic lithium-ion 18650
14 batteries from legitimate manufacturers have capacities under 3800 mAh.⁷

15 77. Amazon offers and sells lithium-ion 18650 batteries with false and
16 exorbitant capacity claims that do not perform to their alleged capacity and pose a risk
17 of serious injury.

18 78. Lithium-ion 18650 batteries sold by Amazon are often listed with
19 capacities of 9800 mAh or higher, more than double the capacity of any authentic
20 18650 lithium-ion battery produced by a legitimate manufacturer.

21 79. Fraudulent and defective lithium-ion 18650 batteries sold by Amazon
22 have routinely been found to test at only a fraction of their advertised capacity.

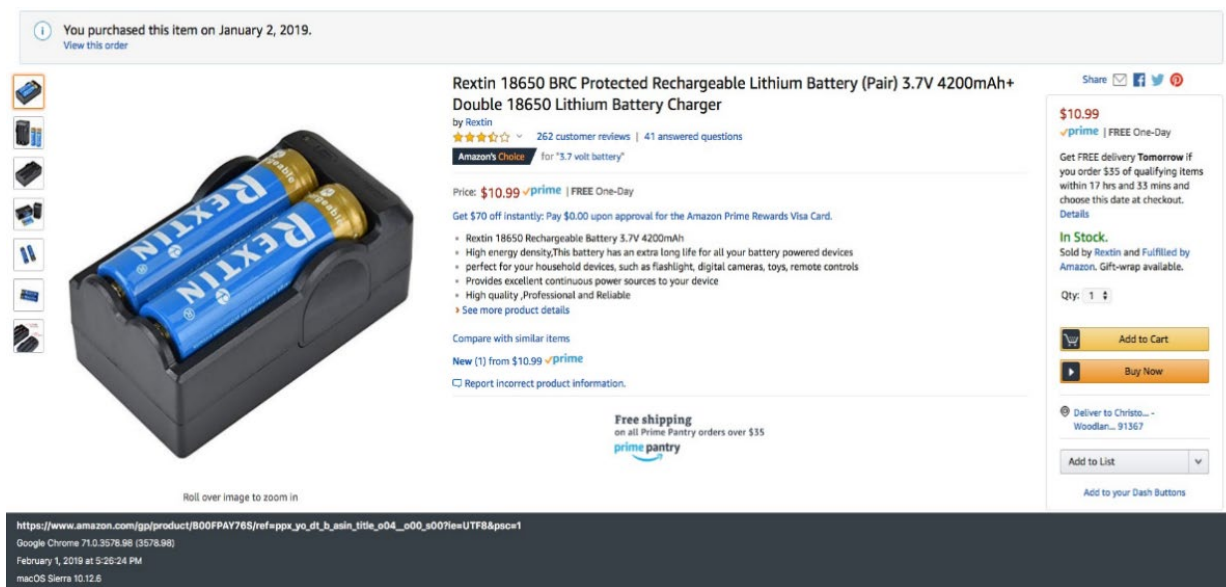
23 80. The makers of fraudulent batteries, like those sold by Amazon, understand
24 that if they advertise a higher capacity on battery labels, they can sell those batteries at
25 a higher price point.

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28 ⁷ The Counterfeit Report, Craig Crosby, *How to identify counterfeit Lithium Ion 18650 Batteries*, (Edited: May 31, 2020)

1 81. Consumers gravitate to the higher capacity batteries incorrectly believing
2 that they have the longest use. Unfortunately, many of these claims are
3 unsubstantiated, misleading, and/or completely fraudulent.

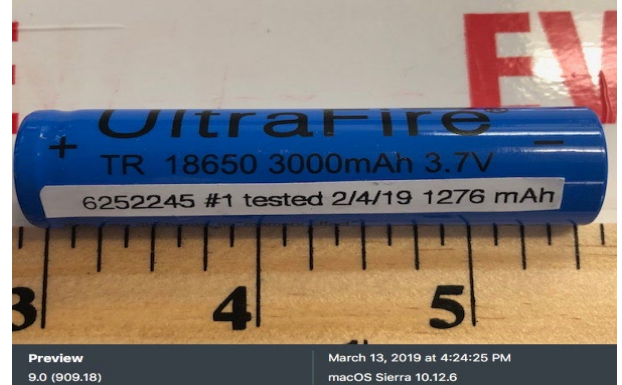
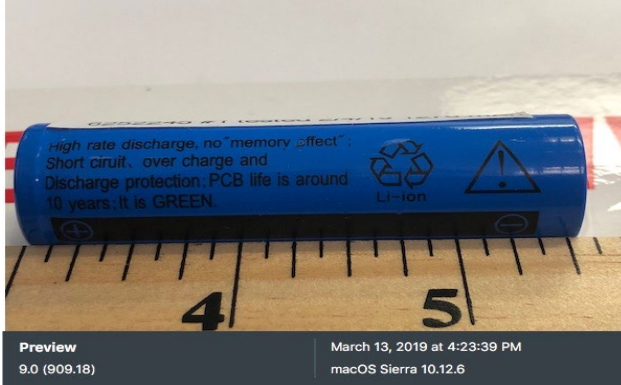
4 82. Lower price tags for higher capacity lithium-ion 18650 batteries induce
5 consumers to purchase fraudulent batteries because of their exaggerated capacity
6 claims and reduced prices.

7 83. Plaintiff Chris Johnson purchased a product sold by Amazon containing
8 fraudulent batteries, the “Rextin 18650 BRC Protected Rechargeable Lithium Battery
9 (Pair) 3.7V 4200mAh+ Double 18650 Lithium Battery Charger.” (See photo below.)
10 The product listing states that the batteries have features and characteristics of
11 authentic lithium-ion 18650 batteries and energy capacities of 4200 mAh. The listing
12 and battery label are false. Despite this falsity, the product bears the “Amazon’s
13 Choice” endorsement.




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24 84. The advertised capacity of the pictured batteries is 4200 mAh. However,
25 when tested the capacity was only 1615 mAh, just a fraction of the alleged capacity.
26 Amazon also falsely claims that the batteries contain the safety feature “BRC
27 protection circuit.” This battery does not contain the stated BRC safety measure. BRC
28 is a technique that can be used to control charging.

1 86. The following batteries “8PCS 3.7V Li-ion Rechargeable 18650 Battery
2 for Handheld Flashlights(NOT AA or AAA)” also sold by Amazon.com Services, Inc.
3 are also fraudulent and defective. (See photos below.)



11 ORDER PLACED January 4, 2019 ORDER # 112-7392907-6252245
[Order Details](#) | [Invoice](#)

12 **Delivered Jan 10, 2019**
Your package was delivered. It was handed directly to a resident.



13 **8PCS 3.7V Li-ion Rechargeable 18650 Battery for Handheld Flashlights(NOT AA or AAA)**
14 Sold by: Amazon.com Services, Inc
15 Return eligible through Feb 9, 2019
16 **\$15.18**
17 [Buy it again](#)

18 [Track package](#)

19 [Return items](#)

20 [Share gift receipt](#)

21 [Leave seller feedback](#)

22 [Write a product review](#)

23 [Archive order](#)

19 https://www.amazon.com/gp/your-account/order-history/ref=ppx_yo_dt_b_pagination_4_5?ie=UTF8&orderFilter=months-6&search=&startIndex=40
20 Google Chrome 71.0.3578.98 (3578.98)
February 1, 2019 at 11:56:39 AM
macOS Sierra 10.12.6

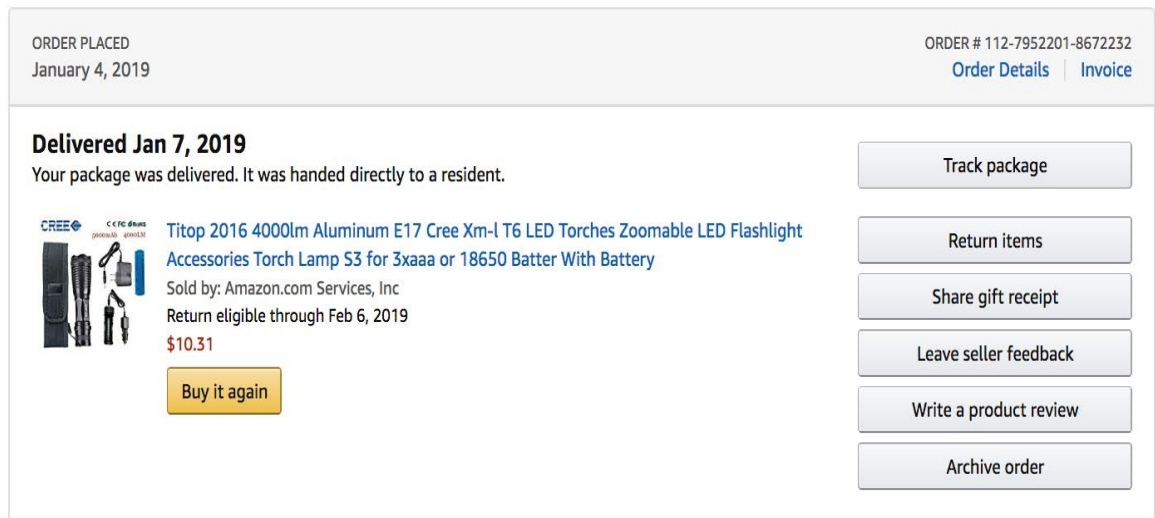
21 87. The batteries pictured are advertised as 5800 mAh capacity. However, the
22 label lists the capacity as only 3000 mAh. When tested the capacity was only 1276
23 mAh. Amazon also falsely claims that the batteries contain the safety feature “BRC
24 protection circuit,” when they do not.

25 **D. Amazon Knows The Batteries Are Not What They Are Claimed To**
26 **Be In Its Advertisements And Product Descriptions**

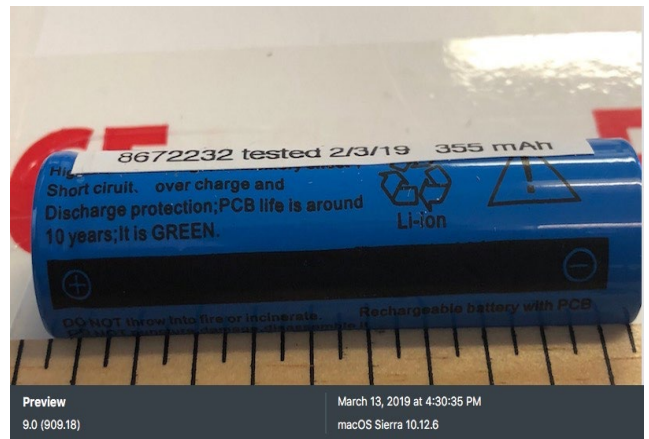
27 88. There are numerous one-star negative reviews for these batteries. Amazon
28 customer Ford Mersereau stated on February 5, 2018: “False advertisement and

1 description. This item was not described right and they are they size that is described!!!
2 I want to return these and get my money back!!!!!! They are not the right size
3 advertised and they are too big for what I need. This is false advertisement and I want
4 my money back!!!!

5 89. Another fraudulent product sold by Amazon and purchased by Mr.
6 Johnson is, "Titop 2016 4000lm Aluminum E17 Cree Xm-l T6 LED Torches
7 Zoomable LED Flashlight Accessories Torch Lamp S3 for 3xaaa or 18650 Batter With
8 Battery." (See photos below.)



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90. Amazon makes numerous false claims about the product, including that the battery has a capacity of 5000 mAh, when it tested at only 355 mAh. The batteries

1 also fail to include safety features like the “MSDS quality report” (material safety data
2 sheet showing properties and safety tests for 18650 battery.). Amazon also falsely
3 claims that the flashlight provides 4000 Lumen LED bulbs with a lifespan of up to
4 100,000 hours.

5 91. In January and February 2019, Plaintiff Craig Crosby purchased four
6 products from Amazon containing fraudulent lithium-ion 18650 batteries. He
7 conducted energy tests of the batteries and determined that Amazon misrepresented the
8 capacity of *all* the batteries. Amazon also made several other misrepresentations,
9 including that the products contained authentic CREE LEDs, were waterproof, or
10 contained protection circuits, and voltage cutoffs. (See chart below)

<u>Product Purchased by Craig Crosby</u>	<u>Purchase Date</u>	<u>Price</u>	<u>Advertised Capacity</u>	<u>Other False Statements/Indicators</u>	<u>Actual Capacity</u>
HeCloud 4 x 3.7V Li-ion 6000mAh 18650 Battery Rechargeable Batteries with 2c Dual Charger for Outdoor LED Flashlight	January 14, 2019	Amazon Direct Seller: \$12.08 before tax and shipping	Four 18650 lithium-ion rechargeable batteries with 6000mAh capacity	Claimed “Environmentally friendly” Spelling and grammar errors on the Garberiel branded batteries Weight less than typical authentic 18650 battery	All four batteries tested at 1307mAh capacity or less - 21% of their published capacity
Led Headlamp, AstaaCity Brightest 8000 Lumen Flashlight, Rechargeable 18650 Headlight Flashlights Waterproof Hard Hat Light, Best Head Lights for Camping Running Hiking	January 14, 2019	Amazon Direct Seller: \$19.07 before tax and shipping	Two rechargeable 18650 lithium-ion batteries with 9800mAh capacity	Classified product as “Used: Like New” Spelling and grammar errors on the GTF branded batteries Weight less than typical authentic 18650 battery Box claims product contains CREE LEDs: 1 CREE T6 + 2 CREE T6 (CREE LEDs clearly fake)	The two batteries tested at 1213mAh and 1135mAh capacity – 12% of their published capacity
8PCS 3.7V Li-ion Rechargeable 18650 Battery for Handheld Flashlights(NOT AA or AAA)	January 19, 2019	Amazon Direct Seller: \$14.73 before tax and shipping	Eight 18650 lithium-ion batteries with 5000mAh capacity	Instead of product listed- received incorrect UltraFire batteries labeled as 3000mAh	Four of the eight batteries tested at capacity of 1204mAh or less – about

				Weight less than typical authentic 18650 battery	60% less than published capacity
Brightest and Best LED Headlamp 10000 Lumen flashlight-IMPROVED LED, Rechargeable 18650 headlight flashlights Waterproof Hard Hat Light, Bright Head Lights, Running or Camping headlamps	February 1, 2019	Amazon Direct Seller: \$18.65 before tax and shipping	Two 18650 lithium-ion rechargeable batteries with 5000mAh capacity	Classified as “Used: Like New” and “BRIGHTEST headlamp you have ever used!” Claim: “Environmental Friendly (sic)” and “Short-circuit and overcurrent,Protection (sic)” Spelling and grammar errors on the batteries Weight less than typical authentic 18650 battery Box claims product contains CREE LEDs: 1 CREE T6 (white light) + 1 CREE XPE (blue light) (CREE LEDs clearly fake)	Two batteries tested at 480 mAh and 591 mAh – 11% or less of their published capacity.

92. From January to June 2019, Plaintiff Chris Johnson purchased twenty-five products from Amazon containing fraudulent lithium-ion 18650 batteries. Upon receipt of the products. Mr. Johnson discovered that Amazon had made numerous false and fraudulent statements regarding the products.

93. Plaintiffs’ experiences are not isolated incidents. Rather, many other Amazon customers have purchased fraudulent batteries or products containing fraudulent batteries from Amazon.com.

94. For example, Amazon sold on their website a “Waterproof 12000 Lumen 5 Led Headlamp XML t6=4QS Head Lamp Powerful Led Headlight, 18650 Rechargeable Batteries, Car Charger, Wall Charger and USB Cable.” Amazon advertised that the headlamp came with two 18650 lithium-ion batteries, with a claimed capacity of 5000 mAh per battery. Despite this, 24% of the 325 reviews for the product were negative and left one-star reviews.

1 95. Amazon customer ILPAPPAS, left a one-star review for the product on
2 September 14, 2018: “Hazardous and defective product. This is a defective product. It
3 does not work and creates a safety hazard. I had it on the floor of my back seat of our
4 car and got on fire! This is fire hazardous product and should be pulled of the market
5 till they fix the problem.”

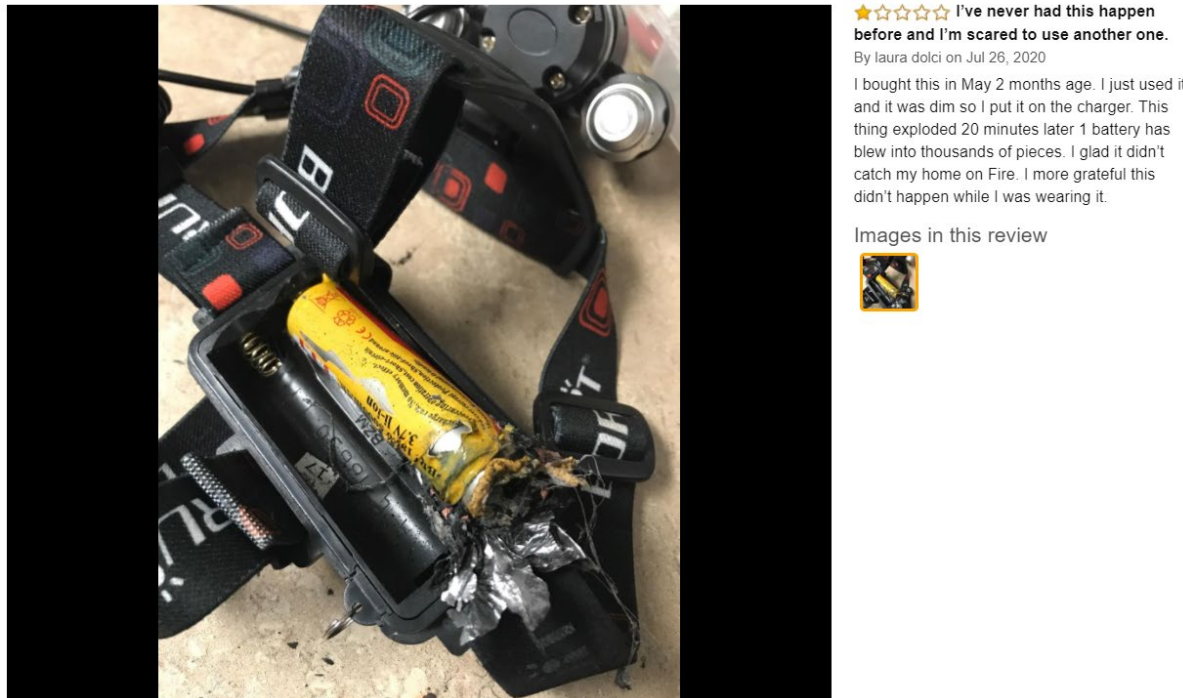
6 96. On July 1, 2018, Amazon customer Mike B. also left a 1-star review for
7 the product: “Batteries run dead to fast like 30 mins. Batteries maybe rechargeable but
8 they died way too quick.”

9 97. As of August 28, 2020, Amazon was still listing thousands of the
10 dangerous and falsely advertised batteries on its site, including those that Amazon
11 knows pose safety risks. For example, the following product is available for sale by
12 Amazon: LED Headlamp 20000 Lumen flashlight - Rechargeable 18650 headlight (see
13 [https://www.amazon.com/flashlight-Rechargeable-headlight-flashlights-
14 Waterproof/dp/B07Y6KF9BM?th=1](https://www.amazon.com/flashlight-Rechargeable-headlight-flashlights-Waterproof/dp/B07Y6KF9BM?th=1), last visited August 28, 2020). Amazon lists the
15 describes the product as having 5000 mAh and 4.2V. Neither is true.

16 -Lamp base: CREE, high power T6 LED. With a lifespan of up to 100,000 hours or more, no need to consider replacing the cap for the whole life.
17 -Waterproof switch and charge design.(Waterproof for rainy day not for in water,thanks for your kindly understanding) Adjustable headband.
18 -4 Modes: 1 light/2 light/3 light/strobe, you can choose the suitable light.
19 -Power by: 2 x 18650 battery (included).
-Battery Type: 18650 rechargeable battery
-Capacity: 5000mAh
-Voltage: 4.2V
-Indicator light: Red light (charging), Green light (charging finished)

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1 98. And the product is for sale despite Amazon knowing it is a safety hazard.
2 On July 26, 2020, Amazon user Laura Dolci posted the following review and photo of
3 the product:



15 99. The headlamp and rechargeable batteries exploded and nearly started a
16 fire. Fortunately, Ms. Dolci does not appear to have been significantly injured, though
17 that appears to be a function of luck, not any actions or safety measures taken by
18 Amazon. Relief in this action is necessary in order to prevent Amazon from continuing
19 its ongoing practice of selling mislabeled, falsely described, and dangerous products to
20 the public.

21 **E. Fraudulent Lithium-Ion 18650 Batteries Have Led To Numerous**
22 **Fires, Explosions, And Injuries**

23 100. The capacity claims of these batteries are not only exaggerated and
24 fraudulent, but consumers also risk purchasing a battery that could cause fire,
25 explosion, serious injury, or even death.

26 101. Amazon sells, markets and advertises fraudulent lithium-ion 18650
27 batteries accompanied with misleading and dangerous claims of safety protections,
28 including but not limited to, “short-circuit protection,” “overcharge and under-charge

1 protection,” “high and low voltage cutoff,” “venting,” and “new” in the product listing,
2 and/or on the individual item and accompanying chargers. These claims of protection
3 are deceptive, false, and misleading. Absent any or all of these protective features,
4 18650 batteries pose substantial risk of explosion, fire and death.

5 102. When Plaintiff Craig Crosby purchased four products from Amazon.com
6 containing fraudulent lithium-ion 18650 batteries, he also determined that Amazon
7 misrepresented safety characteristics of the batteries. Amazon falsely represented that
8 the batteries possessed “short-circuit and over current protection” and “short circuit,
9 over charge and discharge protection.” However, tests conducted by Mr. Crosby
10 revealed the batteries did not contain *any* of the safety features advertised.

11 103. Without these safety protective features, lithium-ion 18650 batteries pose
12 a much higher risk of causing explosion, fire, serious injury, or even death to
13 consumers.

14 104. Fraudulent and defective lithium-ion 18650 batteries have been identified
15 as the cause in a number of fires, injuries, and deaths.

16 105. The Federal Aviation Administration has reported hundreds of incidents
17 of smoke, fire, extreme heat, or explosions involving lithium-ion or unknown batteries
18 in flight cargo or passenger baggage.⁸

19 106. As of January 22, 2020, 268 air and airport incidents involving lithium-
20 ion batteries carried as cargo or baggage have been recorded since January 23, 2006.⁹

21 107. A large number of lithium-ion-battery incidents go unreported and no one
22 agency is responsible for tracking them. However, the U.S. Fire Administration

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24 ⁸ The Atlantic, Alana Semuels, *When Your Amazon Purchase Explodes, Shoddily made*
25 *lithium-ion batteries can cause serious injury and even death. How do they keep*
ending up in consumers’ hands? (April 30, 2019)

26 ⁹ FAA Office of Security and Hazardous Materials Safety, *EVENTS WITH SMOKE,*
27 *FIRE, EXTREME HEAT OR EXPLOSION INVOLVING LITHIUM BATTERIES,*
28 https://www.faa.gov/hazmat/resources/lithium_batteries/media/Battery_incident_chart.pdf (last accessed August 29, 2020).

1 declared the batteries the “root cause” of at least 195 separate fires and explosions
2 from 2009 to 2017.¹⁰

3 108. Additionally, there were forty-nine recalls of high-energy-density
4 batteries from 2012 to 2017, according to the Consumer Product Safety Commission,
5 concerning more than four million devices, including mobile phones, scooters, power
6 tools, and laptops.¹¹

7 109. As of 2017, the U.S. Consumer Product Safety Commission has
8 announced numerous recalls of self-balancing scooters and hoverboards in the United
9 States due to lithium-ion battery packs in the self-balancing scooters/hoverboards
10 catching fire, destroying bedrooms and even entire homes, resulting in millions of
11 dollars in property damage.¹²

12 110. On February 22, 2018, the U.S. Consumer Product Safety Commission
13 notified a variety of manufacturers, importers, distributors and retailers, including
14 Amazon, of the reports from forty-four states regarding 283 fires or overheating of
15 lithium-ion power hoverboards, resulting in fifteen burn injuries, seven smoke
16 inhalation injuries, and more than nine million dollars in property damage, including
17 the destruction of six homes and two automobiles.¹³

18 111. On March 13, 2018, Amazon recalled 260,000 lithium-ion powered
19 AmazonBasics Portable Power Banks, based upon fifty-three reports of overheating
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21 _____
22 ¹⁰ The Atlantic, Alana Semuels, *When Your Amazon Purchase Explodes, Shoddily*
23 *made lithium-ion batteries can cause serious injury and even death. How do they keep*
ending up in consumers’ hands? (April 30, 2019).

24 ¹¹ US Consumer Product Safety Commission, Douglas Lee Division of Electrical
25 Engineering and Fire Sciences Directorate for Engineering Sciences, *Status Report on*
High Energy Density Batteries Project (Feb. 12, 2018).

26 ¹² US Consumer Product Safety Commission, Recall List,
<https://www.cpsc.gov/Recalls>

27 ¹³ US Consumer Product Safety Commission Robert S. Kaye Letter,
28 https://www.cpsc.gov/s3fs-public/Hoverboard-Letter_Kaye_signed_2.22.18.pdf (Feb.
22, 2018)

1 and four reports of property damage, including fire and smoke damage.¹⁴

2 AmazonBasics is a brand owned and sold exclusively by Amazon.

3 112. On August 10, 2018, Amazon notified Amazon sellers via internal email
4 and notifications with Amazon SellerCentral that listings for cylindrical lithium-ion
5 batteries, in sizes 14500, 16340, 18650, 20700, 21700 and 26650 would be removed
6 from Amazon, and sellers would no longer be able to sell them. By August 9, 2018
7 Amazon had also placed 18650 cylindrical lithium-ion batteries on its list of prohibited
8 listings.

9 113. Fraudulent and defective lithium-ion batteries contained in vape pens and
10 e-cigarettes have also lead to numerous consumer injuries. A number of these incidents
11 were caused by batteries purchased from Amazon.

12 114. For example, in 2016, Nicholas Jones from New York purchased lithium-
13 ion 18650 batteries from Amazon. Nicholas Jones bought a HP replacement battery on
14 Amazon for around \$15. A few days later, he heard a gun like sound and the lithium-
15 ion battery in his laptop began to burn him and then set his sofa on fire. Nicholas Jones
16 suffered a first-degree chemical burn from the battery, and his computer and floors
17 were also destroyed by the fire.

18 115. Kyle Melon also purchased lithium-ion 18650 batteries for his electronic
19 cigarette from Amazon on April 3, 2016. On May 14, 2017, Kyle Melone had the two
20 batteries stored in his right pocket when the batteries exploded, setting his shorts and
21 legs on fire. He suffered serious injury as a result and was in the intensive care unit for
22 3 days.

23 116. In 2016, David Jarrett suffered first, second, and third degree burns after a
24 portable phone containing lithium-ion batteries purchased from Amazon combusted in
25 his pocket.

26 ¹⁴ US Consumer Product Safety Commission, “Amazon Recalls Portable Power Banks
27 Due to Fire and Chemical Burn Hazards (Recall Alert),”
28 [https://www.cpsc.gov/Recalls/2018/amazon-recalls-portable-power-banks-due-to-fire-
and-chemical-burn-hazards-recall-alert](https://www.cpsc.gov/Recalls/2018/amazon-recalls-portable-power-banks-due-to-fire-and-chemical-burn-hazards-recall-alert) (March 13, 2018)

1 117. Dane Meyer also purchased a lithium-ion 18V 4000mAh 72Wh Snap On
2 Battery from Amazon. On May 3, 2019, the battery started a fire at his house. His
3 garage was destroyed, as a well as other personal property, causing damage in excess
4 of \$75,000.

5 118. More recently, a Virgin Atlantic flight from JFK Airport to Heathrow was
6 diverted on July 4, 2019, due to a fire in a passenger seatback pocket. A preliminary
7 investigation of the fire revealed that a lithium-ion rechargeable smartphone charger
8 lead to the seatback fire.

9 119. On July 25, 2019 in Jackson Hole, Wyoming a headlamp containing
10 lithium-ion batteries caught fire while it was charging on the front seat of a pickup
11 truck. The lithium-ion headlamp caught fire and exploded, destroying the truck, an
12 adjacent RV, and igniting a small grass fire nearby.

13 120. Additionally, on July 29, 2019 in Redding, California an overcharged
14 lithium-ion battery was left on a garage bench and caused \$200,000 worth of property
15 damage to the home and garage.

16 121. Despite knowledge of the dangers of lithium-ion 18650 batteries, Amazon
17 continues to permit and even encourage the sale the batteries.

18 122. Amazon has asserted for many years that it maintains a Product Safety
19 Team, otherwise known as Hazardous Materials, HazMat or Dangerous Products
20 Team. The Team is in charge of monitoring and investigating product safety problems.
21 In 2015, Amazon's Product Safety Team investigated fires and explosions linked to
22 rechargeable lithium ion batteries contained in hoverboards. As a result, the Product
23 Safety Team elected to remove all hoverboard listings from Amazon.com and sent
24 email alerts to consumers that had purchased the hoverboards. Yet, the email alert
25 failed to mention to consumers the risk of fire or explosion associated with the lithium-
26 ion batteries, or the fact that Amazon had removed all hoverboard listings from their
27 website.

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1 123. Consumers are spending money on fraudulent and defective batteries in
2 which the capacity of the batteries has been grossly overstated, and the dangers
3 understated. The batteries are not covered by warranty and present significant safety
4 issues to consumers.

5 124. The claims made by Amazon regarding the lithium-ion 18650 batteries
6 and products containing the batteries are completely untrustworthy, fraudulent, and
7 misleading.

8 125. Plaintiffs and the general public cannot spot a defective or fraudulent
9 18650 lithium-ion battery from an authentic one. As a result, the lives of Plaintiffs and
10 the general public are in danger.

11 **F. Amazon Knows The Lithium-Ion 18650 Batteries Are Dangerous And**
12 **Fraudulent, Yet Continues To Sell, Advertise, And Market Them**

13 126. Amazon has participated in an intentional scheme to deceive and mislead
14 Plaintiffs and consumers, knowing full well that 18650 lithium-ion batteries with a
15 capacity of 3800 mAh or higher, and even some with capacities under 3800 mAh are
16 fraudulent, defective, and dangerous.

17 127. Amazon is well aware that the lithium-ion batteries sold, marketed, and
18 advertised on Amazon.com are fraudulent, defective, and dangerous. Despite actual
19 and constructive knowledge of the dangers posed by the fraudulent batteries, Amazon
20 continues to sell and promote them.

21 128. On March 26, 2019, Plaintiff Craig Crosby sent a Notice to Cure letter to
22 Amazon's legal department via certified mail. Mr. Crosby notified Amazon of
23 fraudulent, defective, and dangerous lithium-ion batteries sold by Amazon on their
24 website. Mr. Crosby explained in detail Amazon's scheme to profit from the sale of
25 these fraudulent lithium-ion 18650 batteries. He described violations of the Consumer
26 Legal Remedies Act, which continue to occur via sales on Amazon.com. Further, the
27 letter notified Amazon of the misleading, fraudulent, and deceptive promises, and
28

1 commitments made by the company regarding the fraudulent batteries, and how these
2 misleading statements threatened the health and safety of consumers.

3 129. Mr. Crosby told Amazon they had thirty days from the letter to correct,
4 repair, or otherwise rectify the violations. Mr. Crosby requested, among other things,
5 that Amazon terminate all listings and cease the sale and marketing of lithium-ion
6 18650 batteries with a stated individual cell capacity of 4000 mAh or more. Amazon
7 ignored Mr. Crosby's Notice to Cure letter.

8 130. On January 21, 2020 Casselman Law group, representing Mr. Crosby at
9 the time, sent a letter requesting the arbitration of his claims set forth in the Notice to
10 Cure letter. The letter was sent via certified mail to Amazon's registered agent
11 Corporation Service Company, 300 Deschutes Way SW, Suite 304, Tumwater, WA
12 98501. On February 14, 2020 corporate counsel for Amazon responded that they had
13 received the January 21, 2020 letter requesting arbitration and would review. However,
14 Mr. Crosby has yet to receive a response to his request for arbitration.

15 131. On August 13, 2019, Plaintiff Chris Johnson served on Amazon a Notice
16 to Remedy and Cure their violations of California law via certified mail. Mr. Johnson
17 described in detail more than twenty-five specific products, deceptively advertised and
18 sold by Amazon, each of which contained fraudulent lithium-ion 18650 batteries. He
19 described how the batteries and products containing them, not only fail to perform as
20 advertised, but also pose a high risk of property damage, pain, injury, disfigurement
21 and/or death to consumers, facts well-known by Amazon.

22 132. Mr. Johnson notified Amazon they had thirty days from the letter to
23 rectify the violations and provide an acceptable remedy or cure. Mr. Johnson
24 requested, among other things, that Amazon cease and desist from making false and
25 fraudulent statements regarding lithium-ion 18650 batteries. Despite proof of delivery
26 of his Notice to Remedy and Cure, Amazon never responded to Mr. Johnson's letter,
27 nor did they stop selling the fraudulent lithium-ion 18650 batteries.

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1 133. Amazon has further knowledge of the fraudulent, defective, and
2 dangerous nature of the batteries due to thousands of negative reviews and feedback
3 from customers on their website who have purchased the fraudulent batteries.

4 134. There are numerous negative reviews for Amazon product “4X 5800mAh
5 Li-ion 18650 3.7V Rechargeable Battery + 2X Smart Charger.” On April 5, 2018,
6 Larry Anderson left a one-star review and stated that: “Terrible – Batteries Only
7 Charge to 1/10th of Advertised Capacity. 1 of the 4 batteries does not charge properly.
8 That bad battery drains faster than it charges causing it to never get to the full charged
9 state. The other 3 batteries don’t even come close to 5800mAh capacity. After
10 charging, discharging, batteries a 2nd time, 1 battery holds 418mAh, the 2nd battery
11 holds 729mAh, and the 3rd battery holds 686 mAh. Each battery capacity is about
12 1/10th of the advertised 5800mAh. Shame on me for not reading the reviews before
13 purchasing these batteries. I was definitely charge to much for batteries that don’t
14 charge enough!”

15 135. There are several negative and one-star reviews for Amazon product
16 “Rextin 18650 BRC Protected Rechargeable Lithium Battery (Pair) 3.7V 4200mAh+
17 Double 18650 Lithium Battery Charger.” For example, on December 17, 2018,
18 Amazon customer Greg left a one-star review and stated: “Careful!!!! My son
19 accidentally put in charger in wrong direction. The charger was not plugged in yet the
20 pack smoked and melted. Luckily, we noticed prior to house burning down.”

21 136. On May 30, 2019, Craig Crosby left a review for 18650 lithium-ion
22 batteries for sale on Amazon.com, stating that: “Legitimate 18650 batteries have
23 capacities under 3800mAh. Fraudulent batteries have an explosion and fire risk. This is
24 a SCAM. Shame on you Amazon for allowing dangerous and potentially deadly
25 products despite repeated warnings and your own policy prohibiting them.”

26 137. Further, on December 16, 2019 another negative review was left for
27 lithium-ion batteries sold by Amazon: “These are fraudulent batteries - a scam.
28 Legitimate 18650 batteries are limited to a capacity under 3800mAh. Fraudulent

1 batteries have an explosion and fire risk. These dangerous and potentially deadly
2 9800mAh 18650 batteries are a scam.”

3 138. On March 26, 2020, another review was left regarding fraudulent
4 batteries: “These are fraudulent 9900mAh 18650 batteries – it’s a SCAM. Legitimate
5 18650 batteries are limited to capacities under 3800mAh. Fraudulent batteries have an
6 explosion and fire risk. These dangerous and potentially deadly 9900mAh 18650
7 batteries are a scam.”

8 139. Amazon is also on notice due to previous lawsuits filed against them for
9 injuries caused by fraudulent and defective batteries sold on their website.

10 140. Allstate Insurance sued Amazon in U.S. District Court in New Jersey,
11 alleging that a battery bought from Amazon caused “extensive” damage to a home,
12 which required the insurance company to make “significant payments” to the insured.
13 The case was eventually dismissed, but both State Farm and General Insurance
14 Company of America are currently suing Amazon due to fires they say were caused by
15 lithium-ion batteries purchased on Amazon.com.¹⁵

16 141. In *Carpenter, et al. v. Amazon.com, Inc.*, Case No. 3:17-cv-03221,
17 USDC, Northern District of California (June 5, 2017), Plaintiffs brought claims against
18 Amazon for injuries caused by a hoverboard that burst into flames. Amazon sold the
19 hoverboard to Plaintiffs with substandard and cheaply manufactured lithium-ion
20 batteries that were prone to combustion.

21 142. Amazon was also sued for a mislabeled and fraudulent battery that caused
22 a fire in a Minnesota man’s garage. *Farm Bureau Property & Casualty Insurance*
23 *Company a/s/o Dane Meyer v. Amazon.com, Inc.*, Case No. 0:20-cv-00756-WMW-
24 TNL (March 19, 2020). The fire was started when the battery combusted in the corner
25 of the garage. The battery caught fire when it was used with an incompatible charger,

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27 ¹⁵ The Atlantic, Alana Semuels, *When Your Amazon Purchase Explodes, Shoddily*
28 *made lithium-ion batteries can cause serious injury and even death. How do they keep*
ending up in consumers’ hands? (April 30, 2019)

1 even though the charger was listed as “compatible” in the product listing on
2 Amazon.com. As a result of the fire, Plaintiff Dane Meyer’s garage was destroyed as
3 well as contents of the garage, other personal property and additional areas of his
4 residence. He also required medical services in excess of \$75,000.00.

5 143. Despite this knowledge, Amazon has been reluctant to take down the
6 defective, fraudulent, and dangerous products and batteries even after being alerted to
7 the problem.

8 144. Amazon has even encouraged the sale of lithium-ion batteries on their
9 website and developing their own brand of lithium-ion powered products, like
10 AmazonBasics power banks. Further, many of the products containing defective and
11 fraudulent lithium-ion batteries are sold directly by Amazon Warehouse Deals, Inc., a
12 wholly-owned subsidiary of Amazon.

13 145. Each year, the volume and type of lithium-ion 18650 batteries for sale on
14 Amazon.com increases, with Amazon obtaining substantial profits and commissions.

15 146. Absent the entry of a public injunction, Amazon will continue to market,
16 sell, and advertise fraudulent lithium-ion 18650 batteries to the detriment of Plaintiffs
17 and the general public.

18 **VII. CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**

20 **(Violation of California’s False Advertising Law “FAL,” California Business and**
21 **Professions Code Section 17500, *et seq.*)**

22 **(On behalf of Plaintiffs and the Class)**

23 147. Plaintiffs repeat and reallege paragraphs 1-144 as if fully set forth herein.

24 148. Plaintiffs bring this action on behalf of themselves and those similarly
25 situated under California’s False Advertising Law, California Civil Code § 17500 *et*
26 *seq.* (“FAL”) for public injunctive relief.

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1 149. Cal. Bus. & Prof. Code § 17500 provides:

2 It is unlawful for any...corporation...with intent...to dispose of...personal
3 property...to induce the public to enter into any obligation relating thereto,
4 to make or disseminate or cause to be made or disseminated...from this
5 state before the public in any state, in any newspaper or other publication,
6 or any advertising device, or by public outcry or proclamation, or in any
7 other manner or means whatever, including over the Internet, any
8 statement...which is untrue or misleading, and which is known, or which
9 by the exercise of reasonable care should be known, to be untrue or
10 misleading...”

11 150. Amazon is a “corporation” under California Business and Professions
12 Code § 17500.

13 151. Amazon has committed acts of untrue and misleading advertising, under
14 California Business and Professions Code § 17500, by engaging in the acts and
15 practices described herein with the intent and/or the effect of inducing consumers to
16 purchase fraudulent lithium-ion batteries and/or products containing them.

17 152. Amazon falsely advertised to Plaintiffs and the general public that
18 lithium-ion 18650 batteries had a longer battery life and/or safety features, when
19 Amazon knew these claims were false.

20 153. Amazon also falsely advertised to Plaintiffs and the general public that the
21 products contained authentic CREE LEDs, were waterproof, or included protection
22 circuits and voltage cutoffs.

23 154. Amazon deceived Plaintiffs and the general public by omitting or hiding
24 information regarding the fraudulent, defective, and dangerous nature of the lithium-
25 ion 18650 batteries in its statements to Plaintiffs and other consumers, in its
26 advertising and website, and by falsely implying and/or stating that the batteries had
27 characteristics that they did not.

28 155. Amazon misled consumers by making untrue and misleading statements
and failing to disclose what is required under the Code as alleged above.

156. Amazon's misrepresentations and omissions deceive or tend to deceive the
general public.

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1 157. The misrepresentations and omissions by Amazon alleged herein were the
2 type of representations and omissions that are regularly considered to be material, i.e. a
3 reasonable person would attach importance to them and would be induced to act on the
4 information in making purchase decisions.

5 158. Plaintiffs reasonably relied on Amazon’s false advertising in purchasing
6 the fraudulent and defective lithium-ion 18650 batteries and/or products containing the
7 batteries.

8 159. Unless restrained by this Court, Amazon will continue to engage in unfair,
9 deceptive, and unlawful conduct, as alleged above, in violation of California Business
10 and Professions Code § 17500 *et seq.*, harming Plaintiffs and the general public.

11 160. As a result of the foregoing, Plaintiffs and the general public are entitled
12 to permanent injunctive relief.

13 161. The balance of the equities favors the entry of permanent injunctive relief
14 against Amazon. The general public will be irreparably harmed absent the entry of
15 permanent injunctive relief against Amazon. The general public lacks an adequate
16 remedy at law, especially given Amazon’s unilateral imposition of binding arbitration
17 agreements on its consumers, preventing meaningful litigation over individual
18 fraudulent product sales. An injunction against Amazon is in the public interest.
19 Amazon’s unlawful behavior is likely to reoccur absent the entry of an injunction.

20 **SECOND CAUSE OF ACTION**

21 **(Violation of California’s Consumer Legal Remedies Act “CLRA,”**

22 **Section 1750, *et seq.*)**

23 **(On behalf of Plaintiffs and the Class)**

24 162. Plaintiffs repeat and reallege paragraphs 1-144 as if fully set forth herein.

25 163. Plaintiffs bring this action on behalf of themselves and those similarly
26 situated under the Consumer Legal Remedies Act, California Civil Code § 1750 *et*
27 *seq.* (“CLRA”) for public injunctive relief.

28 ///

1 164. Plaintiffs and each member of the proposed Class are “consumers,” as
2 defined by California Civil Code § 1761(d).

3 165. Amazon is a “person,” as defined by California Civil Code § 1761(c).

4 166. The lithium-ion 18650 batteries and products containing them sold,
5 marketed, and advertised by Amazon are “goods” as defined by California Civil Code
6 § 1761(a).

7 167. Plaintiffs' purchases of Amazon’s lithium-ion 18650 batteries or products
8 containing the batteries constitute “transactions,” as defined by California Civil Code §
9 1761(e).

10 168. Amazon misled and continues to mislead, Plaintiffs and the general public
11 to believe that lithium-ion 18650 batteries had certain characteristics or qualities, when
12 Amazon knows this information to be untrue.

13 169. Amazon misled, and continues to mislead, Plaintiffs and the general
14 public by promising that the lithium-ion 18650 batteries have longer lasting battery
15 capacity and/or safety features, when in fact Amazon knows this information is false.

16 170. Amazon also misled, and continues to mislead, Plaintiffs and the general
17 public by promising and advertising that Amazon products contain authentic CREE
18 LEDs, when in fact Amazon knows this information is false.

19 171. Amazon also misled, and continues to mislead, Plaintiffs and the general
20 public by promising and advertising that Amazon products are waterproof, and/or
21 contain protection circuits and voltage cutoffs when they do not.

22 172. Amazon intentionally deceived Plaintiffs and the general public by
23 advertising and promising that lithium-ion 18650 batteries had longer lasting battery
24 capacity and/or safety features, when Amazon knew this information was false and the
25 batteries actually posed significant dangers to Plaintiffs and consumers.

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1 173. Amazon violated, and continues to violate, the CLRA by engaging in the
2 follow practices proscribed by California Civil Code § 1770(a):

- 3 • Amazon passed off goods or services as those of another. Cal. Civ. Code
4 § 1770(a)(1)
- 5 • Amazon misrepresented the source or certification of goods. Cal. Civ.
6 Code § 1770(a)(2)
- 7 • Amazon misrepresented the affiliation, connection, or association with, or
8 certification by, another. Cal. Civ. Code § 1770(a)(3)
- 9 • Amazon misrepresented that its goods had characteristics, benefits, or
10 uses that they did not have. Cal. Civ. Code § 1770(a)(5)
- 11 • Amazon represented that goods were original or new if they have
12 deteriorated unreasonably or are altered, reconditioned, reclaimed, used,
13 or secondhand. Cal. Civ. Code § 1770(a)(6)
- 14 • Amazon advertised that its products were of a particular standard, quality,
15 or grade when they were of another. Cal. Civ. Code § 1770(a)(7)
- 16 • Amazon advertised its products with an intent not to sell them as
17 advertised. Cal. Civ. Code § 1770(a)(9)
- 18 • Amazon made false or misleading statements of fact concerning reasons
19 for, existence of, or amounts of price reductions. Cal. Civ. Code §
20 1770(a)(13)

21 174. Amazon's misrepresentations and nondisclosures regarding battery
22 capacity, safety features, and the dangerous nature of fraudulent lithium-ion 18650
23 batteries were material to Plaintiffs, because Plaintiffs and a reasonable person would
24 have considered them important in deciding whether to purchase the batteries.

25 175. Amazon had a duty to disclose these aforementioned facts, which could
26 have been reasonably communicated to Plaintiffs and Class members. Amazon had
27 knowledge of these facts and choose to conceal this information from Plaintiff and the
28 Class.

1 176. Plaintiffs reasonably relied upon Amazon’s material misrepresentations
2 and nondisclosures, and had they known these undisclosed material facts they would
3 have attached importance to them in determining whether to purchase the batteries and
4 other products.

5 177. Had Plaintiffs known of the material facts that were not disclosed they
6 would have considered purchasing batteries from a place other than Amazon.

7 178. Amazon made false, fraudulent and deceptive promises and commitments
8 to deliver obvious fraudulent batteries and products that threaten the health and safety
9 of Plaintiffs and the general public, while enjoying ongoing profits from the fraudulent
10 batteries sold.

11 179. Pursuant to § 1782(a) of the CLRA, Amazon has received Plaintiffs’
12 proper notice of such CLRA violations. On or about March 26, 2019, Plaintiff Craig
13 Crosby sent a Notice to Cure letter to Amazon via certified mail to Amazon’s principal
14 place of business. Mr. Crosby described in the letter Amazon’s violations of the
15 Consumer Legal Remedies Act and demanded that it rectify the problems detailed
16 above. Amazon failed to respond to the letter. He demanded that Amazon rectify its
17 above-described misconduct. In January 2020, Plaintiff Craig Crosby sent another
18 letter to Amazon at their principal place of business, requesting arbitration of his
19 claims contained in the Notice to Cure letter.

20 180. On or about August 8, 2019, Plaintiff Chris Johnson served on Amazon a
21 Notice to Remedy and Cure their violations of California law via certified mail. Mr.
22 Johnson described in detail more than twenty-five specific products, deceptively
23 advertised and sold by Amazon, each of which contained fraudulent lithium-ion 18650
24 batteries. Mr. Johnson requested, among other things, that Amazon cease and desist
25 from making false and fraudulent statements regarding lithium-ion 18650 batteries.

26 181. As a direct and proximate result of the misleading and deceptive
27 marketing practices by Amazon in their presentation, advertisement, and sale of the
28 batteries and other products, Plaintiffs and Class members suffered injury.

1 182. Unless restrained by this Court, Amazon will continue to engage in unfair,
2 deceptive, and unlawful conduct, as alleged above, in violation of California Civil
3 Code § 1750 *et seq.*, harming Plaintiffs and the general public.

4 183. As a result of the foregoing, Plaintiffs and the general public are entitled
5 to permanent injunctive relief.

6 184. The balance of the equities favors the entry of permanent injunctive relief
7 against Amazon. The general public will be irreparably harmed absent the entry of
8 permanent injunctive relief against Amazon. The general public lacks an adequate
9 remedy at law, especially given Amazon’s unilateral imposition of binding arbitration
10 agreements on its consumers, preventing meaningful litigation over individual
11 fraudulent product sales. An injunction against Amazon is in the public interest.
12 Amazon’s unlawful behavior is likely to reoccur absent the entry of an injunction.

13 **THIRD CAUSE OF ACTION**

14 **(Violation of California’s Unfair Competition Law “UCL,” California Business
15 and Professions Code Section 17200, *et seq.*)**

16 **(On behalf of Plaintiffs and the Class)**

17 185. Plaintiffs repeat and reallege paragraphs 1-182 above as if fully set forth
18 herein.

19 186. Plaintiffs seek public injunctive relief pursuant to California Business and
20 Professions Code § 17200 *et seq.* (“UCL”) which prohibits any “unlawful, unfair or
21 fraudulent business act or practice.”

22 187. Plaintiffs and Class members purchased lithium-ion batteries and lost
23 money, property, or suffered injury, as a result of Amazon’s unlawful, unfair, *or*
24 fraudulent conduct.

25 ***Unlawful Conduct***

26 188. As described above, Amazon violated applicable law by causing lithium-
27 ion batteries to be marketed and sold to Plaintiffs and Class members which were
28 fraudulent, defective, and dangerous, and failed to disclose their fraudulent and

1 dangerous nature, and misrepresented, promised and asserted false claims regarding
2 their alleged battery capacity and safety features at the time of purchase and thereafter.

3 189. Amazon's conduct constitutes an unlawful business act or practice in
4 violation of California Business and Professions Code § 17200 *et seq.*

5 ***Unfair Conduct***

6 190. Amazon engaged in “unfair” business acts or practices by selling lithium-
7 ion batteries and products containing the batteries that were fraudulent, defective, and
8 dangerous to Plaintiffs and consumers.

9 191. Amazon further engaged in “unfair” business acts or practices by their
10 marketing and advertisement of the lithium-ion batteries. Amazon knew that the
11 product descriptions and statements regarding the lithium-ion batteries and products
12 containing them were false and misleading but failed to disclose its knowledge of the
13 defects and continued to sell the batteries. Amazon’s misconduct offends public policy
14 and is immoral, dishonest, unethical and offensive, and causes substantial injury to
15 consumers.

16 192. Amazon’s unlawful and unfair business acts and practices present a
17 continuing threat to Plaintiffs, Class members and the general public in that Amazon
18 has refused to publicly acknowledge the fraudulent and defective nature of the
19 batteries and/or correct its wrongdoing.

20 ***Fraudulent Conduct***

21 193. A business act or practice is “fraudulent” under the UCL if it is likely to
22 deceive members of the consuming public.

23 194. Amazon’s acts and practices alleged above constitute fraudulent business
24 acts or practices as they have deceived Plaintiffs and are highly likely to deceive
25 members of the consuming public. Plaintiffs relied on Amazon’s fraudulent and
26 deceptive representations regarding the alleged capacity and safety features of lithium-
27 ion batteries and products which Amazon sells on their website Amazon.com.

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1 195. These misrepresentations played a substantial role in Plaintiffs' decision
2 to purchase the batteries and or products containing them, and Plaintiffs would not
3 have purchased the batteries or products without Amazon's misrepresentations.

4 ***Misrepresentations and Omissions***

5 196. Alternatively, Amazon in connection with its advertising, marketing, and
6 sale of lithium-ion batteries to Plaintiffs and the Class members, through its product
7 listings and descriptions implemented a business practice of conveying misleading
8 information on the characteristics of lithium-ion 18650 batteries and products
9 containing them.

10 197. The misrepresentations and omissions by Amazon alleged herein, were
11 the type of misrepresentations and omissions that are regularly considered to be
12 material, i.e., a reasonable person would attach importance to them and would be
13 induced to act on the information in making purchase decisions.

14 198. Plaintiffs reasonably relied upon Amazon's material misrepresentations
15 and omissions in purchasing the lithium-ion 18650 batteries and products containing
16 the batteries.

17 199. Unless restrained by this Court, Amazon will continue to engage in unfair,
18 deceptive, and unlawful conduct, as alleged above, in violation of California Business
19 and Professions Code § 17200 *et. seq.*, harming Plaintiffs, Class members, and the
20 general public.

21 200. As a result of the foregoing, Plaintiffs and the general public are entitled
22 to permanent injunctive relief.

23 201. The balance of the equities favors the entry of permanent injunctive relief
24 against Amazon. The general public will be irreparably harmed absent the entry of
25 permanent injunctive relief against Amazon. The general public lacks an adequate
26 remedy at law, especially given Amazon's unilateral imposition of binding arbitration
27 agreements on its consumers, preventing meaningful litigation over individual
28

1 fraudulent product sales. An injunction against Amazon is in the public interest.
2 Amazon’s unlawful behavior is likely to reoccur absent the entry of an injunction.

3 **FOURTH CAUSE OF ACTION**

4 **(Violation Of The Washington Consumer Protection Act,**
5 **RCW Section 19.86.010 *et seq.*, Stated In The Alternative)**

6 **(In the Alternative)**

7 **(On behalf of Plaintiffs and the Class)**

8 202. Plaintiffs incorporate the allegations in paragraphs 1-144 above as set
9 forth herein in full.

10 203. California consumer protection statutes apply to the claims of Plaintiffs
11 and Class members.

12 204. However, as the Terms of Service purport to require the application of
13 Washington law, Plaintiffs allege the following alternative cause of action under the
14 laws of the State of Washington, if it is later determined by this Court that the choice
15 of law provision in Amazon’s Terms of Use Agreement stands and Washington law
16 applies.

17 205. Under the Washington Consumer Protection Act, an out-of-state plaintiff
18 may bring a claim under the Washington Consumer Protection Act against a
19 Washington corporate defendant for deceptive acts.

20 206. Amazon's above-described conduct in failing to disclose and concealing
21 the fraudulent, defective and dangerous nature of lithium-ion batteries sold on their
22 website constitutes an unfair trade practice, and unfair and deceptive acts and
23 practices, within the meaning of the Washington Consumer Protection Act, RCW
24 19.86 *et. seq.*

25 207. The Washington Consumer Protection Act applies to the actions at issue
26 herein because Plaintiffs are “consumers” and Amazon is a “business.”

27 208. The conduct complained of herein occurred in the course of trade or
28 commerce.

1 209. Amazon’s above-described conduct affects the public interest because it
2 affected and injured or had the capacity to injure numerous Amazon customers. The
3 conduct complained of is capable of repetition and will likely affect other consumers.

4 210. As a result of Amazon’s above-described unfair and deceptive conduct,
5 Plaintiffs and the Class members were damaged by the wrongful acts and practices of
6 Amazon.

7 211. Defendant’s actions illustrate why a permanent injunction is necessary to
8 protect Plaintiffs and the general public from similar unfair and unconscionable
9 treatment.

10 212. The balance of the equities favors the entry of permanent injunctive relief
11 against Amazon. The general public will be irreparably harmed absent the entry of
12 permanent injunctive relief against Amazon. The general public lacks an adequate
13 remedy at law, especially given Amazon’s unilateral imposition of binding arbitration
14 agreements on its consumers, preventing meaningful litigation over individual
15 fraudulent product sales. An injunction against Amazon is in the public interest.
16 Amazon’s unlawful behavior is likely to reoccur absent the entry of an injunction.

17 **VIII. PRAYER FOR RELIEF**

18 213. WHEREFORE, Plaintiffs demand judgment in their favor and in favor of
19 the Class members for:

- 20 A. An Order certifying that Plaintiffs and the proposed Class members
21 constitute a single class and designating the action as a Class Action
22 pursuant to Federal Rule of Civil Procedure 23;
- 23 B. Appointment of Plaintiffs as class representatives and payment of
24 compensation as representatives if the Court deems appropriate;
- 25 C. Appointment of the attorneys below as Class counsel; and
- 26 D. Declaration that Amazon has violated the applicable laws as set forth
27 above;
- 28 E. Award permanent public injunctive relief against Amazon;

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F. Award reasonable attorney’s fees and costs; and
G. Provide such other and further relief the Court deems just and proper.

Dated: September 1, 2020 **COTCHETT, PITRE & McCARTHY, LLP**

By: /s/ Eric J. Buescher
 NIALL P. McCARTHY
 ERIC J. BUESCHER
 KELSEY J. MOE

Attorneys for Plaintiffs

1 **IX. DEMAND FOR JURY TRIAL**

2 Plaintiffs hereby demand a jury trial on all issues so triable.

3 Dated: September 1, 2020 **COTCHETT, PITRE & McCARTHY, LLP**

4
5 By: /s/ Eric J. Buescher
6 NIALL P. McCARTHY
7 ERIC J. BUESCHER
8 KELSEY J. MOE

9 *Attorneys for Plaintiffs*

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