

1 **Jamin S. Soderstrom, Bar No. 261054**

2 **jamin@soderstromlawfirm.com**

3 **SODERSTROM LAW PC**

4 **3 Park Plaza, Suite 100**

5 **Irvine, California 92614**

6 **Tel: (949) 667-4700**

7 **Fax: (949) 424-8091**

8 *Counsel for Plaintiffs and the Proposed Class*

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**  
11 **(WESTERN DIVISION – LOS ANGELES)**

12 **GRANT MCKEE, ERIC WEBER, and**  
13 **MICHAEL ROGAWSKI, individually**  
14 **and on behalf of all others similarly**  
15 **situated,**

16 **Plaintiffs,**

17 **v.**

18 **AUDIBLE, INC.,**

19 **Defendant.**

**Case No. 2:17-cv-01941 GW (Ex)**

**THIRD AMENDED CLASS ACTION  
COMPLAINT**

**DEMAND FOR JURY TRIAL**



1 Plaintiffs Grant McKee, Eric Weber, and Michael Rogawski (collectively,  
2 “Plaintiffs”) bring this action against Defendant Audible, Inc. (“Audible”) on behalf of a  
3 nationwide Class of consumers and allege as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has original jurisdiction over this action under 28 U.S.C. § 1331  
6 because it is being brought under the Electronic Funds Transfer Act, 15 U.S.C. § 1693 *et*  
7 *seq.* (“EFTA”). This Court also has original jurisdiction under 28 U.S.C. § 1332 because  
8 the parties are diverse and the amount in controversy exceeds \$75,000. This Court also  
9 has original jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C.  
10 §§ 1332(d) and 1453, because this is a class action in which (i) there are 100 or more  
11 Class members, (ii) at least one Plaintiff or Class member has a different state of  
12 citizenship than Audible, and (iii) the amount in controversy is more than \$5,000,000.  
13 This Court is also empowered to grant declaratory relief under 28 U.S.C. §§ 2201 and  
14 2202.

15 2. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over  
16 Plaintiffs’ state law claims because the state law claims and federal claims are so closely  
17 related that they form part of the same case or controversy.

18 3. This Court has personal jurisdiction over Audible because (a) a substantial  
19 portion of the wrongdoing alleged in this action took place in California, (b) Audible is  
20 authorized to do business in California, has sufficient minimum contacts with California,  
21 and has intentionally availed itself of the markets in California through the promotion,  
22 marketing, and sale of products and services in California, and (c) the exercise of  
23 jurisdiction by this Court is permissible under traditional notions of fair play and  
24 substantial justice.

25 4. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(1) and (2)  
26 because Audible has a significant presence in California and a substantial part of the  
27 events and omissions that give rise to Plaintiffs’ and Class members’ claims occurred in  
28 this District.

**PARTIES**

1  
2           5.     **Plaintiff Grant McKee** is a citizen and resident of Los Angeles County,  
3 California. Prior to signing up for an Audible “free” trial in June 2016, McKee viewed  
4 on his smartphone Audible’s online statements representing that “one credit equals one  
5 audiobook,” members “get 1 book each month,” and members can “cancel anytime” with  
6 “no strings attached” while getting to “keep your audiobooks.” McKee did not see any  
7 disclosure of or reference to credits being designed to expire within months based on  
8 Audible’s “rollover” policy or immediately based on Audible’s cancellation policy.  
9 McKee also did not see any reference to “membership credits,” so he could not infer that  
10 prepaid credits were only redeemable during a membership. Relying on Audible’s  
11 statements and substantially similar ones Audible displayed in connection with the free  
12 trial sign-up process, and relying on Audible’s omission of relevant and material  
13 information concerning its credit redemption and expiration policies, McKee completed  
14 the sign-up process and received a “free” 30-day trial membership and “free” credit.

15           6.     During the sign-up process, McKee was required to designate a payment  
16 method for potential future purchases from Audible. McKee did not see any disclosure  
17 when he designated a credit card or when he completed the free sign-up process that  
18 clearly explained Audible’s policies and practices concerning making automatic  
19 payments or that clearly explained Audible’s cancellation requirements and  
20 consequences. He did see two disclosures stating simply that Audible cost \$14.95 per  
21 month and that he could “cancel anytime.” Audible again did not inform him that credits  
22 were designed to expire within months based on a rollover policy or immediately upon  
23 cancellation. When McKee did not cancel his free trial within 30 days, Audible began  
24 automatically charging his credit card each month and giving him one credit each month  
25 in exchange.

26           7.     McKee only learned of Audible’s credit expiration and cancellation policies  
27 when he decided to cancel his monthly payments. McKee cancelled his monthly  
28 payments in December 2016, and when he cancelled his two remaining credits for which

1 he paid \$14.95 each immediately and automatically expired. Audible did not refund him  
2 the \$29.90 he paid for the expired credits or give him an audiobook in exchange for each  
3 expired credit. McKee would be interested in continuing to be an Audible customer if he  
4 believed he could trust Audible's representations and if he believed that Audible's  
5 policies and practices were fair and lawful.

6       8.     **Plaintiff Eric Weber** is a citizen and resident of Los Angeles County,  
7 California. Prior to signing up for an Audible "free" trial in May 2017, Weber viewed on  
8 his smartphone Audible's online statements representing that "one credit equals one  
9 audiobook," members "get 1 book each month," and members can "cancel anytime" with  
10 "no strings attached" while getting to "keep your audiobooks." Weber did not see any  
11 disclosure of or reference to credits being designed to expire within months based on  
12 Audible's "rollover" policy or immediately based on Audible's cancellation policy.  
13 Weber also did not see any reference to "membership credits," so he could not infer that  
14 prepaid credits were only redeemable during a membership. Relying on these statements  
15 and substantially similar ones Audible displayed in connection with the free trial sign-up  
16 process, and relying on Audible's omission of relevant and material information  
17 concerning its credit redemption and expiration policies, Weber completed the sign-up  
18 process and received a "free" 30-day trial membership and "free" credit.

19       9.     During the sign-up process, Weber was required to designate a payment  
20 method for potential future purchases from Audible. Weber did not see any disclosure  
21 when he designated his personal debit card or when he completed the free sign-up process  
22 that clearly explained Audible's policies and practices concerning making automatic  
23 payments and Audible's cancellation requirements and consequences. He did see two  
24 disclosures stating simply that Audible cost \$14.95 per month and that he could "cancel  
25 anytime." Audible again did not inform him that credits were designed to expire within  
26 months based on a rollover policy or immediately upon cancellation

27       10.    When Weber did not cancel his free trial within 30 days, Audible began  
28 making automatic monthly charges. However, instead of charging the personal debit card

1 Weber designated during the sign-up process, Audible started automatically charging a  
2 corporate credit card that was stored on Weber's separate Amazon account. Several  
3 months later, Weber's boss asked him about the Audible charges made on the corporate  
4 credit card, and Weber determined that Audible had been making automatic charges to  
5 the corporate credit card stored on his Amazon account instead of charging the personal  
6 debit card he had designated for Audible purchases.

7 11. Weber was eventually able to get Audible to reverse the charges to the  
8 corporate credit card, but it took him several hours to do so, caused him embarrassment  
9 at work, and caused him to delete the corporate credit card from his Amazon account so  
10 he would not risk future unauthorized charges. Audible also deleted several credits from  
11 his account when it reversed the unauthorized charges made to the corporate credit card.

12 12. Thereafter, Audible began automatically charging his personal debit card  
13 each month and giving him one credit each month in exchange. Weber still did not see  
14 any disclosure that clearly explained Audible's policies and practices concerning making  
15 automatic payments and Audible's cancellation requirements and consequences. Audible  
16 did not inform him that the credits he was purchasing were designed to expire within  
17 months based on a rollover policy or immediately upon cancellation.

18 13. On March 28, 2018, several months after Weber joined this action, Audible  
19 terminated Weber's membership against his wishes in retaliation for participating in this  
20 action. The termination caused Weber's six unredeemed, prepaid credits to expire  
21 immediately. Weber did not want his Audible membership to be cancelled or terminated  
22 and he would like his membership and expired credits to be reinstated. Weber simply  
23 wants to be able to trust Audible's representations and payment policies and does not  
24 want to lose or forfeit prepaid credits if he does not redeem them quickly.

25 14. **Plaintiff Michael Rogawski** is a California citizen and resident. Prior to  
26 signing up for an Audible "free" trial in September 2014, Rogawski viewed Audible's  
27 online statements representing that "one credit equals one audiobook," members "get 1  
28 book each month," and members can "cancel anytime" with "no strings attached" while

1 getting to “keep your audiobooks.” Rogawski did not see any disclosure of or reference  
2 to credits being designed to expire within months based on Audible’s “rollover” policy  
3 or immediately based on Audible’s cancellation policy. Rogawski also did not see any  
4 reference to “membership credits,” so he could not infer that prepaid credits were only  
5 redeemable during a membership. Relying on these statements and substantially similar  
6 ones Audible displayed in connection with the free trial sign-up process, and relying on  
7 Audible’s omission of relevant and material information concerning its credit redemption  
8 and expiration policies, Rogawski completed the sign-up process and received a “free”  
9 30-day trial membership and “free” credit.

10 15. During the sign-up process, Rogawski was required to designate a payment  
11 method for potential future purchases from Audible. Rogawski did not see any disclosure  
12 when he designated a credit card or when he completed the free sign-up process that  
13 clearly explained Audible’s policies and practices concerning making automatic  
14 payments and Audible’s cancellation requirements and consequences. He did see two  
15 disclosures stating simply that Audible cost \$14.95 per month and that he could “cancel  
16 anytime.” Audible did not inform him that credits were designed to expire within months  
17 based on a rollover policy or immediately upon cancellation.

18 16. When Rogawski did not cancel his free trial within 30 days, Audible began  
19 making automatic monthly charges. Over the next few years, Rogawski purchased and  
20 redeemed credits on occasion. Audible never informed him of its rollover policy or its  
21 cancellation policy until he wanted to cancel his monthly payments because he was  
22 unable to listen to at least one audiobook each month. When he started the cancellation  
23 process, he learned that a number of credits had already expired based on Audible’s  
24 undisclosed rollover policy, and that all of his unredeemed credits would expire  
25 immediately if he completed the cancellation process.

26 17. Not wanting to lose more credits he had already paid for, Rogawski felt  
27 trapped by Audible’s previously undisclosed cancellation policy. He did not cancel his  
28 monthly payments because he did not want to lose the money he had already paid for his

1 unredeemed credits. Based on his Audible account history, Rogawski estimates that he  
2 had more than a dozen of his credits expire during his membership based on Audible’s  
3 rollover policy, which collectively would total more than \$179.40 in lost credits.

4 18. On March 28, 2018, several months after Rogawski joined this action,  
5 Audible terminated Rogawski’s membership against his wishes in retaliation for  
6 participating in this action. The termination caused his unredeemed, prepaid credits to  
7 expire immediately. Rogawski did not want his Audible membership to be cancelled or  
8 terminated and he would like his membership and expired credits to be reinstated.  
9 Rogawski simply wants to be able to trust Audible’s representations and payment policies  
10 and does not want to lose or forfeit prepaid credits if he does not redeem them quickly.

11 19. **Defendant Audible, Inc.** is a Delaware corporation with its principal place  
12 of business in New Jersey. Audible is an affiliate of Amazon.com, Inc. Audible advertises  
13 and sells audiobooks and related products and services on www.audible.com and  
14 www.amazon.com, among other places.

15 **AUDIBLE’S UNLAWFUL BUSINESS PRACTICES**

16 20. Audible engages in a host of unlawful and unfair business practices that  
17 violate federal and state law.

18 21. **False and Misleading Representations and Omissions.** Audible’s  
19 unlawful and unfair business practices start with the representations and omissions it  
20 makes to consumers in its advertisements and related online promotions prior to and  
21 during the sign-up process. When consumers sign up with Audible, or when they receive  
22 a gift credit from a friend or family member (or purchase it for themselves), they are told  
23 that credits are equal to the same number of audiobooks. Audible represents that “one  
24 credit equals one audiobook,” consumers will “get 1 book each month,” and consumers  
25 can “cancel anytime” with “no strings attached” while getting to “keep all your books.”  
26 Audible uses multiple variations of these statements online and in print and other media,  
27 all of which have the same theme: consumers who sign up will get at least one audiobook  
28 each month and there is no penalty if they ever cancel the monthly payments.

1           22. None of Audible’s representations is true. Each is either literally false or  
2 highly misleading based on the material information it omits. A credit does not equal an  
3 audiobook. A consumer who signs up for Audible does not get an audiobook each month,  
4 or even an irrevocable right to use a credit to get an audiobook at a later time. All  
5 credits—both regular and gift—are designed to expire automatically within months (and  
6 possibly days). And consumers lose their credits immediately if they ever cancel their  
7 payments and they get no guaranteed refund and receive no audiobooks in exchange for  
8 their expired credits. Audible does not disclose its credit expiration policies or  
9 cancellation policies in its advertisements or when consumers sign-up, purchase credits,  
10 or redeem credits.

11           23. Consumers sign up for Audible believing that each credit is equivalent to  
12 one audiobook which they can pick at a later date and which they will own and keep even  
13 if they cancel their recurring payments. Their belief is justifiable but their reliance on  
14 Audible’s representations is misplaced. Only after they sign up for Audible and start  
15 purchasing credits, and only if they independently come across it on Audible’s website,  
16 do consumers learn that Audible imposes rollover and cancellation policies that causes  
17 them to lose their prepaid credits automatically without receiving a guaranteed refund or  
18 an audiobook. Even Audible’s disclaimers placed discretely on other webpages falsely  
19 state that credits do not expire during a membership; credits do expire during an active  
20 membership based on Audible’s rollover policy. Moreover, Audible does not advertise  
21 its credits as “membership credits,” so consumers cannot be expected to infer that credits  
22 are only usable during an active membership.

23           24. Audible’s so-called “memberships” are not even memberships in the  
24 traditional sense. Consumers simply sign up to get a free credit that is supposed to be  
25 equal to an audiobook. After 30 days, if the consumer does not take steps to affirmatively  
26 cancel, Audible starts making monthly charges on a designated card and giving credits  
27 in exchange. In addition to the “free” initial credit, Audible further entices consumers to  
28 purchase credits on a monthly basis by offering what it describes on its website as



1 “complimentary” or “free” benefits that will accompany the prepaid credits. That the add-  
2 ons are marketed as “complementary” or “free” make clear that purchasing prepaid  
3 credits automatically on a monthly basis is the *sine qua non* of Audible’s so-called  
4 “memberships.”

5 25. Plaintiffs relied on Audible’s false and misleading representations and  
6 material omissions to their detriment when they signed up for Audible and when they  
7 purchased prepaid credits. Had they known the truth about Audible’s policies and  
8 practices concerning credits, expiration terms, and cancellation, they would not have  
9 signed up for Audible, purchased as many credits as they did, continued to make  
10 payments for as long as they did, or paid as much for each credit knowing they may never  
11 get an audiobook in exchange.

12 26. Plaintiffs enjoy listening to audiobooks and would purchase Audible credits  
13 in the future if they could trust and rely on Audible’s advertisements and the lawfulness  
14 of Audible’s related policies and disclosures.

15 27. **Unlawful Gift Certificates or Gift Cards.** The terms of Audible’s prepaid  
16 credits violate both federal and California gift certificate and gift card laws.

17 28. Every Audible credit—both regular and gift—constitutes a gift certificate or  
18 gift card under federal law because each credit is (i) intended primarily for personal,  
19 family, or household use by a consumer, (ii) an electronic promise that is stored in each  
20 consumer’s online Audible account, (iii) redeemable by the holder of the credit (whether  
21 by purchase or gift) at Audible’s or an affiliate’s online bookstore for an audiobook or  
22 similar good or service, (iv) issued in a specified amount that may not be increased or  
23 reloaded, (v) purchased on a prepaid basis in exchange for payment, and (vi) honored by  
24 Audible or an affiliate for an audiobook or other good or service upon presentation.

25 29. *Personal use.* As intended by Plaintiffs and other consumers purchase or  
26 receive credits primarily for personal use.

27 30. *Electronic promise.* When Plaintiffs and other consumers purchase or  
28 receive a credit, that credit appears in an online account hosted by Audible on its website.

1 The number of credits in the consumer’s account constitute the number of promises  
2 Audible has made to the consumer with respect to redeeming such credits in exchange  
3 for audiobooks or other Audible products or services. A consumer who has purchased six  
4 credits and has three credits remaining will have an Audible account that shows “3 credits  
5 available.”

6 31. *Redeemable by the holder.* Whenever Plaintiffs and other consumers have a  
7 credit in their Audible account, they are entitled to redeem that credit at Audible’s or its  
8 affiliate Amazon’s online bookstore for an audiobook or other goods or services sold by  
9 Audible.

10 32. *Issued in a specified amount.* Audible issues each credit in a specified  
11 amount. While many Audible audiobooks can be purchased by redeeming one credit,  
12 Audible sells audiobooks and other goods and services that require consumers to redeem  
13 two or more (and in some cases as many as nine) credits to purchase them. When  
14 consumers purchase or receive a credit, they are not entitled to redeem the credit for any  
15 audiobook regardless of the audiobook’s “cash” value advertised by Audible; rather, they  
16 are only entitled to redeem the credit for an audiobook or other products or services up  
17 to the value fixed by Audible. Audible historically and currently prices its audiobooks  
18 and other products and services in different increments (e.g., “purchase for 1 credit,”  
19 “purchase for 2 credits,” “purchase for 5 credits,” “purchase for 9 credits”), and it issues  
20 each credit in a specified amount where every credit can be redeemed for any audiobook  
21 or other product or service that is valued by Audible at up to 1 credit but not more than 1  
22 credit.

23 33. A credit can be redeemed for an inexpensive audiobook with an advertised  
24 cash price below the cost of purchasing a credit. Audible also sometimes permits multiple  
25 credits to be combined in connection with particular audiobook sales promotions (e.g.,  
26 “buy 3 audiobooks for 2 credits”). But no single credit can be redeemed for an audiobook  
27 or other product or service that Audible values at more than 1 credit. Historically, Audible  
28 has also priced certain audiobooks at more than 1 credit (e.g., “purchase for 2 credits”).

1           34. Audible also sells “extra credits” separate and apart from automatic  
2 purchases (e.g., “buy 3 extra credits”) with no “complementary” or “free” benefits added  
3 to such credit purchases. These credits are subject to the same terms and practices as  
4 other credits purchased automatically.

5           35. Audible has decided to use terminology that replaces the “cash” value of its  
6 products and services with its own unique and subjective “credit” value of the same  
7 products and services. Sometimes Audible’s credit pricing scheme offers what some  
8 consumers would consider a good deal (e.g., a consumer can redeem one credit for an  
9 audiobook or other product or service with an advertised cash value of \$20), and other  
10 times Audible’s credit pricing scheme offers what some consumers would consider a bad  
11 deal (e.g., a consumer can redeem one credit for an audiobook or other product or service  
12 with an advertised cash value of \$10). But omitting a dollar sign from its pricing scheme  
13 when dealing in “credits” does not exempt Audible from federal gift certificate and gift  
14 card laws. Indeed, Audible shows the cash purchase price of its audiobooks and other  
15 products and services directly next to its “purchase with credit” option, indicating the  
16 specific value of that credit (or multiple credits) when used to purchase that product or  
17 service. Each Audible credit is issued in a specified amount whether or not Audible  
18 chooses to price its products and services in terms of “cash” value or “credit” value.

19           36. *Cannot be increased.* The specific amount of an Audible credit cannot be  
20 increased even though the total number of individual credits in a consumer’s account will  
21 automatically increase with every new credit purchase (subject to Audible’s so-called  
22 “rollover” policy that caps the total number of credits a consumer can have in his or her  
23 account at one time and forces older credits to expire to “make room” for new credits).  
24 Each credit can be redeemed for any good or service Audible values at “1 credit,” and  
25 once a credit is redeemed (or has expired) it no longer has any value. The value of an  
26 unredeemed credit is always “1 credit,” and the value of a redeemed or expired credit  
27 cannot be increased.

28 ///

1           37. *Is not reloadable.* The specific amount of an Audible credit is not reloadable.  
2 Each credit purchase is a distinct transaction. Plaintiffs and other members do not have  
3 physical “credit” cards or electronic “credit” accounts that are “reloaded” with each new  
4 credit purchase. A member’s Audible account stores each credit individually alongside  
5 each audiobook that has been purchased by such member. A redeemed or expired credit  
6 cannot be reloaded and become worth “1 credit” again; a subsequent credit purchase can  
7 simply replace a redeemed credit with a new, different credit. The total number of credits  
8 in a member’s account will change over time based on purchases, redemptions, and  
9 expirations, but no credit can itself be reloaded.

10           38. Even if an Audible credit was determined to be capable of being increased  
11 or reloaded, it would still constitute a “store gift card” even if it would not constitute a  
12 “gift certificate” because it satisfies all of the other requirements of federal law.

13           39. An Audible “credit” also constitutes a gift certificate or gift card under  
14 California law. Audible formerly permitted and encouraged consumers to send individual  
15 prepaid credits to other consumers as gifts. In April 2017, Audible discontinued this  
16 “credit gifting” feature. Audible continues, however, to advertise and offer for purchase  
17 so-called “gift memberships” where consumers purchase sets of 3, 6, or 12 prepaid credits  
18 that they can either keep for themselves or give to other consumers as gifts. Gift credits  
19 are priced the same or very similar to regular credits, with their distinguishing feature  
20 being that all gift credits automatically expire exactly six months after the “gift  
21 membership” period ends instead of based on Audible’s rollover and cancellation policies  
22 that apply to regular credits.

23           40. When an Audible member receives a gift credit, it is intermingled with  
24 regular credits in the member’s account and has the same features and limitations as a  
25 regular credit. A member may have two regular and two gift credits and his or her Audible  
26 account will say “4 credits available.” When redeeming a credit, a member cannot choose  
27 whether to redeem a regular credit or a gift credit. This matters because regular and gift  
28 credits have different expiration terms and redeeming a credit that will not expire for five

1 months before redeeming a credit that will expire in one week increases the chances that  
2 a credit will expire before it is redeemed. Audible members who receive gift credits do  
3 not receive any additional benefits with their gift credits.

4 41. Plaintiffs and other consumers who purchased or received regular and/or gift  
5 credits have been harmed by Audible’s failure to ensure that its credits comply with gift  
6 certificate and gift card laws. They have each purchased or received one or more regular  
7 credits or gift credits that expired earlier than five years after the date each credit was  
8 issued. They did not receive a full refund of the purchase price for each expired credit,  
9 they did not receive an audiobook in exchange for each expired credit, and they paid  
10 more for each credit than they would have paid had they known the credits were designed  
11 to expire automatically within months. Moreover, the possibility of having credits expire  
12 within months (or immediately upon cancellation) caused Plaintiffs and other consumers  
13 to redeem credits for audiobooks they would not have otherwise purchased if they had  
14 more time to make a selection or wait to purchase a book that was not yet available from  
15 Audible.

16 42. **Incomplete Payment and Cancellation Policy Disclosures.** The core  
17 benefit to Audible of its so-called “memberships” is charging payment methods  
18 automatically each month (or annually for an annual subscription). To sign-up for an  
19 Audible “free” trial, every consumer is required to designate a payment method (i.e., a  
20 debit card, bank account, or credit card) for potential future purchases. Audible intends  
21 that after 30 days it will begin making automatic monthly or annual charges to the  
22 designated card in perpetuity until the consumer affirmatively cancels the payments. This  
23 automatic payment feature is the way Audible ensures it always gets paid whether or not  
24 consumers ever redeem the credits they purchase. When the automatic payment feature  
25 is combined with Audible’s rollover, expiration, and cancellation policies—none of  
26 which are disclosed before consumers sign up for Audible and start purchasing credits—  
27 every expired credit constitutes a cash windfall for Audible and avoids the expense of  
28

1 having to give the consumer an audiobook or other product or service in exchange for  
2 the credit purchase.

3 43. Audible’s cancellation policy causes consumers to continue paying for  
4 credits they do not want or believe they will not have time to use simply because the  
5 consumers want to avoid losing credits they already paid for by cancelling. Audible’s  
6 “rollover” policy takes advantage of the fact that consumers do not always have time to  
7 read as many books as they would like (or there are not enough books currently available  
8 for purchase that they want to read), and thus consumers do not always have the time or  
9 inclination to redeem credits quickly. Audible uses its cancellation and rollover policies  
10 to capitalize on consumer loss aversion (if consumers ever learn of such policies) and  
11 maximize windfall profits at consumers’ expense. These windfall profits are precisely  
12 the profits gift certificate and gift card laws were enacted to prevent, because Audible is  
13 paid in advance for a product (a credit that is advertised as being “equal” to an  
14 audiobook), but Audible had designed the process so that it never has to provide anything  
15 to the consumer in return if a credit is not quickly redeemed.

16 44. To support its automatic payment feature, Audible uses a “free to pay”  
17 advertising tactic where consumers get a “free” 30-day trial membership and a “free”  
18 credit when they sign up. Consumers only start getting charged 30 days later if they fail  
19 to affirmatively cancel their free membership (but consumers are not provided the  
20 payment and cancellation terms and requirements when they sign up for a “free trial”).  
21 This “free to pay” tactic capitalizes on generalized consumer behavior that suggests  
22 consumers are likely to sign-up for free subscriptions when there are few hassles or  
23 requirements, but are unlikely to cancel an existing subscription if doing so involves  
24 hassles or extra requirements. This “free to pay” tactic makes the automatic renewal  
25 payment and preauthorized transfer disclosures that are required by state and federal law  
26 all-the-more important because required disclosures and written acknowledgements are  
27 designed to ensure that consumers are fully informed *before* Audible starts automatically  
28 charging their payment methods without any further notice.

1           45. Audible fails to disclose to consumers at sign up or at the point of sale all of  
2 the information required by law concerning automatically renewed payments and the  
3 related cancellation policies and requirements. The limited, incomplete information  
4 Audible does disclose to consumers when they sign up—e.g., “After 30 days, Audible is  
5 \$14.95/month” and “cancel anytime”—is not presented clearly and conspicuously next  
6 to the “Start Now” or similar button as required by law. The text of the limited disclosures  
7 that Audible does make is in small font and is not contrasted or set off from the  
8 surrounding text in a manner that clearly calls attention to the language. None of  
9 Audible’s limited disclosures contain an email address, phone number, or hyperlink to  
10 the cancellation policy, and they do not inform consumers that cancellation must be done  
11 on Audible’s standard website even if the consumer signed up on a mobile device and/or  
12 on Amazon.com. When consumers try to cancel, Audible tries to convince them not to  
13 cancel, often suspends instead of cancels their payments (which payments start again  
14 automatically a few months later), or simply fails to process the cancellation request.

15           46. Furthermore, Audible does not adequately disclose to consumers when they  
16 sign up that: (i) the payment method they designate when signing up for a “free” trial will  
17 automatically be charged every month in perpetuity unless the payments are affirmatively  
18 cancelled; (ii) it will automatically charge (without notice to the consumer or cardholder)  
19 a non-designated card stored on the member’s separate Amazon account if the designated  
20 card is declined for any reason, and it will continue making such automatic charges until  
21 the non-designated card is itself declined; or (iii) cancellation requires a consumer to take  
22 certain specific steps which, if taken, will cause all credits to expire immediately without  
23 a refund or an audiobook. Audible also fails to provide a written acknowledgement of  
24 the relevant payment and cancellation terms and requirements in written form that  
25 consumers can easily retain.

26           47. Plaintiffs and other consumers were harmed by Audible’s incomplete and  
27 inconspicuous automatic renewal payment disclosures and its failure to provide a written  
28 acknowledgement of the payment and cancellation terms and requirements to which they

1 were purportedly agreeing. After signing up, Plaintiffs and other consumers were charged  
2 at regular intervals automatically without being fully informed of all the payment and  
3 cancellation terms and policies. When they eventually learned of Audible’s payment and  
4 cancellation terms and policies it was too late because, once they learned that credits  
5 automatically expired upon cancellation and that Audible claimed a right to charge non-  
6 designated payment methods, they had no ability to reject the undisclosed terms. Had  
7 they known all of the information that the law requires to be disclosed to them at the point  
8 of sale and expressly acknowledged in writing, they would not have signed up and started  
9 allowing Audible to charge their cards automatically, they would not have paid the same  
10 amount of money for monthly credits, or they would not have allowed Amazon.com to  
11 automatically store cards on their separate Amazon account that they did not want to be  
12 charged by Audible without notice.

13 48. **Unauthorized Charges to Non-Designated Payment Methods.** After the  
14 30-day “free trial” period expires, Audible claims the right to charge any payment method  
15 stored on an Audible member’s separate Amazon account if the designated card is  
16 declined for any reason (e.g., it was cancelled, expired, or revoked). Not only does  
17 Audible claim the right to charge any card stored on a member’s separate Amazon  
18 account (even corporate cards and friends’ or family members’ cards under different  
19 names), it also disclaims any obligation to give members or cardholders notice that it  
20 automatically charged a card that the Audible member never designated for payment.

21 49. Weber, as an Audible member who had a corporate credit card stored on his  
22 Amazon account based on a prior work-related purchase, was subject to and harmed by  
23 Audible’s undisclosed policy and practice. In mid-2017, when his designated personal  
24 debit card was declined or otherwise not charged by Audible (unbeknownst to him),  
25 Audible automatically charged the corporate credit card stored on Weber’s separate  
26 Amazon account several times. Audible did not inform Weber that it charged the  
27 corporate card automatically and that it intended to continue doing so in perpetuity.  
28 Weber was forced to remove the corporate credit card from his Amazon account to ensure



1 it would not be charged again, and the incident caused him wasted time and  
2 embarrassment at work. When Weber convinced Audible to reverse the unauthorized  
3 charges, Audible deleted several credits from his account. Weber re-designated his  
4 personal debit card, which Audible thereafter charged each month until Audible  
5 terminated his membership on March 28, 2018 against his wishes.

6 **CLASS ACTION ALLEGATIONS**

7 50. Plaintiffs bring this action as a proposed nationwide class action pursuant to  
8 Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of all  
9 members of the following Class and Subclasses. Plaintiffs reserve the right to amend the  
10 following definitions before the Court determines whether class certification is  
11 appropriate, or thereafter upon leave of Court.

12 **Expired Credits**

13 **Nationwide Class**

14 All individual consumers in the United States who had an  
15 Audible credit expire within five years from the date the credit  
16 was issued.

17 **California Subclass**

18 All individual consumers in California who had an Audible  
19 credit expire.

20 **Automatic Payments**

21 **Nationwide Preauthorized Electronic Fund Transfer Class**

22 All individual consumers in the United States who had an non-  
23 credit card electronic fund transfer payment method  
24 automatically charged by Audible without first being presented  
25 with a disclosure explaining Audible's payment and  
26 cancellation policies and/or without receiving a written  
27 acknowledgement of such policies.

28 **California Automatic Renewal Payment Subclass**

1 All individual consumers in California who had any payment  
2 method automatically charged by Audible without first being  
3 presented with a clear and conspicuous disclosure of Audible’s  
4 payment and cancellation policies and/or without receiving a  
5 written acknowledgement of such policies.

6 **False and Misleading Advertising**

7 Nationwide Class

8 All individual consumers in the United States who signed up  
9 for Audible online without being presented with disclosures  
10 explaining Audible’s payment, credit expiration, and/or  
11 cancellation policies and practices.

12 California Subclass

13 All individual consumers in California who signed up for  
14 Audible online without being presented with disclosures  
15 explaining Audible’s payment, credit expiration, and/or  
16 cancellation policies and practices.

17 **Charges to Non-designated Payment Methods**

18 California Subclass

19 All individual consumers in California who had a payment  
20 method that was not specifically designated for payment to  
21 Audible charged by Audible.

22 51. Excluded from the proposed Classes and Subclasses are Audible and its  
23 parents, subsidiaries, affiliates, officers, directors, and current and former employees; all  
24 individuals who make a timely election to be excluded from this proceeding using the  
25 correct opt-out protocol; any and all federal, state or local governments, including but not  
26 limited to their departments, agencies, divisions, bureaus, boards, sections, groups,  
27 counsels, and/or subdivisions; and all judges assigned to hear any aspect of this litigation,  
28 as well as their immediate family members.

1           52. **Numerosity**. The members of the proposed Classes and Subclasses are so  
2 numerous that joinder is impracticable. Thousands (possibly millions) of consumers have  
3 relied on Audible’s representations, have purchased or received Audible credits during  
4 the relevant period, and have been subjected to and harmed by Audible’s unfair and  
5 unlawful acts. The number and identity of individuals who fall within the proposed Class  
6 and Subclass definitions are easily identifiable and ascertainable based on Audible’s  
7 business records.

8           53. **Commonality and Predominance**. Common questions of law or fact that  
9 will drive the resolution of this case include, but are not limited to:

- 10           a. Whether Audible included false, misleading, deceptive, untrue, or unfair  
11 statements and/or material omissions in its advertisements related to  
12 membership plans, credits, cancellation, automatic payments, and payment  
13 method charging policies;
- 14           b. Whether Audible credits are governed by federal and/or California gift  
15 certificate or gift card laws;
- 16           c. Whether Audible’s credit expiration policies comply with applicable federal  
17 and California gift certificate and gift card laws and/or are otherwise fair to  
18 consumers;
- 19           d. Whether Audible’s automatic payment policies and cancellation policies are  
20 properly disclosed to consumers;
- 21           e. Whether Audible’s asserted right to access and automatically charge any  
22 payment method stored on a member’s separate Amazon account if the  
23 designated payment method is declined for any reason is an unlawful or  
24 unfair business practice;
- 25           f. Whether Audible’s policy of charging non-designated payment methods  
26 without notice and/or Audible’s credit expiration policies are  
27 unconscionable; and
- 28

1 g. Whether causing prepaid credits to expire without a guaranteed refund  
2 and/or an audiobook in exchange constitutes conversion.

3 54. In addition to the common questions of law and fact that will drive this case,  
4 Audible has engaged in a common course of conduct giving rise to violations of the legal  
5 rights sought to be enforced by Plaintiffs and proposed Class and Subclass members.  
6 Similar or identical statutory and common law violations, business practices, and injuries  
7 are involved in this case and are applicable to Plaintiffs and most, if not all, of the  
8 proposed Class and Subclass members. Any individual questions that may arise in this  
9 action will pale in comparison to the numerous common questions.

10 55. **Typicality.** Plaintiffs' claims are typical of the proposed Class and Subclass  
11 members' claims because:

- 12 a. Plaintiffs and proposed Class members are subject to and detrimentally  
13 relied on Audible's uniform representations and material omissions made to  
14 all consumers online and through other means before they signed up and  
15 when they purchased credits;
- 16 b. Plaintiffs and proposed Class members are harmed by Audible's uniform  
17 policy that causes credits to expire within five years without a guaranteed  
18 refund or an audiobook in exchange;
- 19 c. Plaintiffs and proposed Class members are prevented from obtaining the full  
20 value of their prepaid credits (i.e., an audiobook or other product or service  
21 priced by Audible at "1 credit");
- 22 d. Plaintiffs and proposed Class members are subject to Audible's uniform  
23 automatic renewal payment terms, policies, and disclosures;
- 24 e. Plaintiffs and proposed Class members are subject to Audible's uniform  
25 policies concerning accessing and charging without notice payment  
26 methods that are not specifically designated for payment to Audible; and
- 27 f. Plaintiffs' and proposed Class members' injuries flow from a common  
28 nucleus of operative facts, can be determined from Audible's business

1 records, and can be calculated in an identical or substantially similar  
2 manner.

3 56. Given the similar nature of Plaintiffs' and proposed Class members' claims,  
4 and given the absence of material differences in the relevant statutes and common laws  
5 on which the claims are based, a nationwide Class based on federal and common law and  
6 various California Subclasses based on California statutory law can be easily managed  
7 by the Court and the parties.

8 57. **Adequacy of Representation**. Plaintiffs will fairly and adequately protect  
9 the interests of all proposed Class and Subclass members. Moreover, Plaintiffs have  
10 retained counsel experienced in complex commercial litigation and consumer class  
11 actions, and Plaintiffs and their counsel intend to prosecute this action vigorously.  
12 Plaintiffs have no interests that are adverse or antagonistic to those of the Class members.  
13 Plaintiffs' claims are typical of Class members' claims, and all Class members have been  
14 similarly affected by Audible's unlawful conduct.

15 58. **Ascertainability**. Audible sells prepaid credits through its website and has  
16 collected detailed personal and financial information associated with each transaction.  
17 Audible also has access to its parent company Amazon.com, Inc.'s website and business  
18 records. Accordingly, the precise number and identity of Class and Subclass members  
19 can easily be determined by reference to Audible's business records and records Audible  
20 has access to through its affiliates. As such, Class and Subclass members are easily  
21 ascertainable and can be personally notified of the pendency of this action by first class  
22 mail, electronic mail, and/or published notice calculated to reach all such members.

23 59. **Superiority of a Class Action**. The proposed Class and each of the  
24 proposed Subclasses should be certified pursuant to Rule 23 of the Federal Rules of Civil  
25 Procedure because:

- 26 a. Prosecution of separate actions by individual Class members would create a  
27 risk of inconsistent or varying adjudication with respect to individual Class  
28

1 members that would establish incompatible standards of conduct for  
2 Audible;

3 b. Prosecution of separate actions by individual Class members would create a  
4 risk of adjudications that would, as a practical matter, be dispositive of the  
5 interests of other Class members who are not parties to the adjudications, or  
6 would substantially impair or impede such Class members' ability to protect  
7 their interests;

8 c. Individualized litigation would increase the delay and expense to all parties  
9 and the court system from the issues raised by this action; by contrast, the  
10 class action procedure provides the benefits of adjudicating these issues in  
11 a single proceeding, economies of scale, and comprehensive supervision by  
12 a single court, and it presents no unusual management difficulties;

13 d. Unless a class-wide injunction is issued, Audible will continue to commit  
14 the violations described herein, and the members of the Class and the  
15 general public will continue to be misled and injured;

16 e. Because of the relatively small size of the individual Class members' claims,  
17 no Class member could afford to seek legal redress on an individual basis,  
18 making the class action procedure superior to alternative means of  
19 prosecution; and

20 f. Audible has acted and failed to act on grounds generally applicable to  
21 Plaintiffs and Class members, thereby supporting the imposition of uniform  
22 relief to ensure compatible standards of conduct toward all Class members.

23 60. For each of these reasons, this action should be certified as a nationwide  
24 class action with appropriate subclasses.

25 ///

26 ///

27 ///

28 ///



1 **CAUSES OF ACTION**

2 **First Cause of Action**

3 **Violation of California’s False Advertising Law (“FAL”)**

4 **Cal. Bus. & Prof. Code § 17500 *et seq.***

5 61. Plaintiffs incorporate by reference all of the foregoing paragraphs.

6 62. Audible has intentionally made and disseminated statements to consumers  
7 in California and the general public concerning Audible’s products and services, as well  
8 as circumstances and facts connected to such products and services, which are untrue and  
9 misleading on their face and by omission, and which are known (or which by the exercise  
10 of reasonable care should be known) by Audible to be untrue or misleading. Audible has  
11 also intentionally made or disseminated such untrue or misleading statements and  
12 material omissions to consumers in California and to the public as part of a plan or  
13 scheme with intent not to sell those services as advertised.

14 63. Audible’s statements include but are not limited to representations and  
15 omissions made to consumers both prior to sign-up and following sign-up regarding (i)  
16 the use and value of credits, (ii) the terms of expiration of credits, and (iii) the terms of  
17 payment for and cancellation of a consumer’s automatic payments. Specifically,  
18 Audible’s representations and omissions are made online in connection with, but not  
19 limited to, its free trial promotion that “one credit equals one audiobook,” membership  
20 “includes 1 audiobook each month,” and members may “cancel anytime” with “no strings  
21 attached” while keeping all of their audiobooks constitute false and deceptive  
22 advertisements.

23 64. Plaintiffs were deceived by Audible’s statements and omissions made online  
24 when they signed up and started paying for credits, and there is a strong probability that  
25 other California consumers and members of the public were also or are likely to be  
26 deceived as well. Any reasonable consumer would be misled by Audible’s false and  
27 misleading statements and material omissions. Plaintiffs did not learn of Audible’s  
28 undisclosed rollover, cancellation, and automatic payment policies until after they had

1 already signed up for Audible and started paying for credits. They relied on Audible’s  
2 statements and omissions to their detriment.

3 65. Plaintiffs and other California consumers have been injured as a result of  
4 Audible’s statements and omissions, including by causing them to sign up for Audible,  
5 purchase credits, pay more than they would have paid had they not believed and relied  
6 on the representations and omissions, redeem credits for audiobooks they otherwise  
7 would not have purchased at all or on that specific time frame, continue making payments  
8 to avoid losing credits due to cancellation, and waiting until it was too late to redeem a  
9 credit.

10 66. Plaintiffs, individually and on behalf of all similarly situated California  
11 consumers, seek individual, representative, and public injunctive relief and any other  
12 necessary orders or judgments that will prevent Audible from continuing with its false  
13 and deceptive advertisements and omissions; restitution that will restore the full amount  
14 of their money or property; and disgorgement of Audible’s relevant profits and proceeds.  
15 They also seek an award of costs and reasonable attorneys’ fees.

16 **Second Cause of Action**

17 **Common Law Fraud and Misrepresentation**

18 67. Plaintiffs incorporate by reference all of the foregoing paragraphs.

19 68. Audible represented in its advertisements and related statements made in  
20 connection with the sign-up and credit purchase processes that “one credit equals one  
21 audiobook,” membership “includes 1 audiobook each month,” and members may “cancel  
22 anytime” with “no strings attached” while keeping all of their audiobooks. Audible  
23 omitted, failed to disclose, and intentionally concealed from such advertisements and  
24 related statements material facts concerning its credit expiration terms and policies, its  
25 cancellation policies and requirements, and its automatic payment terms and policies  
26 (including payments from non-designated payment methods).

27 69. Audible knew or should have known that its representations were  
28 themselves false and misleading, and that the material information it omitted concerning



1 credits expiring and cancellation policies further rendered the representations false and  
2 misleading.

3 70. Audible made its representations and it omitted material information  
4 concerning credits expiring and cancellation policies with the intent to cause consumers  
5 to rely on its representations and omissions. Alternatively, Audible had a duty to act with  
6 reasonable care and it breached its duty by making representations and omitting material  
7 information negligently, and it was reasonably foreseeable that consumers would rely on  
8 its representations and omitted information.

9 71. Plaintiffs and other consumers justifiably relied on Audible's  
10 representations and omissions when they signed up for Audible, started paying for  
11 credits, and/or received credits they reasonably believed were equal to receiving an  
12 audiobook.

13 72. Plaintiffs and other consumers suffered damages as a result of their  
14 justifiable reliance on Audible's representations and omissions, including by signing up  
15 for Audible, purchasing credits, paying more than they would have paid had they not  
16 believed and relied on the representations and omissions, redeeming credits for  
17 audiobooks they otherwise would not have purchased at all or on that specific time frame,  
18 continuing to make payments to avoid losing credits due to cancellation, and waiting until  
19 it was too late to redeem a credit.

20 73. Plaintiffs, individually and on behalf of all similarly situated consumers  
21 nationwide, seek an award of all damages to which they are entitled.

22 **Third Cause of Action**

23 **Violation of the CARD Act and EFTA**

24 **15 U.S.C. § 1693l-1(a)(2)(B)**

25 74. Plaintiffs incorporate by reference all of the foregoing paragraphs.

26 75. The federal CARD Act, which amends the federal EFTA, prohibits the sale  
27 or issuance of gift certificates or gift cards that feature and are subject to expiration dates  
28

1 that are earlier than five years after the date on which a gift certificate or gift card is  
2 issued.

3 76. Audible markets and sells both regular and gift “credits” which, both in form  
4 and substance, constitute “gift certificates” or “store gift cards” as defined by the CARD  
5 Act. This is because each credit is:

- 6 a. issued to consumers primarily for personal, family, or household purposes;
- 7 b. an electronic promise that is stored in each consumer’s online Audible  
8 account;
- 9 c. redeemable by the holder of the credit (whether by purchase or gift) at  
10 Audible’s online bookstore (or by an Audible affiliate) for an audiobook or  
11 other goods or services offered by Audible;
- 12 d. issued in a specified amount that may not be increased or reloaded;
- 13 e. issued on a prepaid basis in exchange for payment; and
- 14 f. honored by Audible for audiobook (or a portion of an audiobook) or other  
15 goods or services upon presentation.

16 77. Audible’s sale and issuance of prepaid credits violates the CARD Act  
17 because each credit is designed to expire earlier than five years after it is issued by  
18 Audible. Regular credits are designed to expire within months of issuance based on  
19 Audible’s rollover policy and they are designed to expire immediately upon cancellation  
20 (which could be one day after the credit was issued). “Gift” credits are designed to expire  
21 exactly six months after the so-called “gift membership” ends. This means gift credits  
22 issued as part of a 12-month gift membership are designed automatically to expire 18  
23 months after the gift membership is redeemed. No credit issued by Audible is still  
24 available for use by a consumer five (or even two) years after the credit was issued.

25 78. Audible credits are sold and issued to consumers through electronic fund  
26 transfer systems established, facilitated, and monitored by Audible. Credits are issued in  
27 electronic form. Audible provides an electronic means by which consumers can access  
28 their Audible accounts, view and redeem their credits, and download and listen to the

1 goods they purchase (e.g., digital audiobooks and similar products). The regular and gift  
2 credits that are the subject of this action are issued to and used by consumers independent  
3 of a loyalty, award, or promotional program. Audible markets and sells credits to the  
4 general public throughout the United States.

5 79. Additionally, under the regulations implementing the CARD Act and EFTA,  
6 no person may sell or issue gift certificates with expiration dates unless there are policies  
7 and procedures in place to provide consumers with a reasonable opportunity to purchase  
8 a certificate with at least five years remaining until the certificate expiration date. *See* 12  
9 C.F.R. § 205.20(e)(1). Audible is a “person” under the CARD Act and EFTA. Audible  
10 further violates the CARD Act and EFTA by failing to provide consumers with a  
11 reasonable opportunity to purchase credits with five years remaining until the expiration  
12 date.

13 80. Because of its unlawful acts and conduct, Audible has deprived Plaintiffs  
14 and all similarly situated consumers of the use of the money Audible has collected  
15 through the sale of credits with illegal expiration dates. Plaintiffs and similarly situated  
16 consumers have been injured as a result of Audible’s unlawful credit expiration terms,  
17 including by causing them to sign up for Audible, make automatically renewing  
18 payments in exchange for credits, pay more than they would have paid for each credit,  
19 redeem credits for audiobooks they otherwise would not have purchased, and continue  
20 making recurring payments to avoid losing credits due to cancellation. Plaintiffs have  
21 been harmed by having one or more credits expire before they were redeemed and within  
22 five years of issuance.

23 81. As authorized by 15 U.S.C. § 1693m, Plaintiffs, individually and on behalf  
24 of all similarly situated consumers nationwide, seek actual and statutory damages to be  
25 determined by the Court, injunctive relief, the cost of this action, reasonable attorneys’  
26 fees, and all other available relief.

27 ///

28 ///

1 **Fourth Cause of Action**

2 **Violation of California’s Gift Certificate Law**

3 **Cal. Civ. Code § 1749.45 *et seq.***

4 82. Plaintiffs incorporate by reference all of the foregoing paragraphs.

5 83. Audible’s sale and issuance of credits violates California’s Gift Certificate  
6 Law, Cal. Civ. Code § 1749.45 *et seq.*, which prohibits the sale of a gift certificate  
7 (including a gift card) that is subject to an expiration date.

8 84. Audible advertises and sells credits to consumers in California.

9 85. Audible violates the Gift Certificate Law by selling and issuing and/or  
10 agreeing to sell and issue to consumers “credits” that, in both form and substance,  
11 constitute gift certificates with explicit and implicit expiration dates. The explicit dates  
12 are governed by Audible’s rollover policy, and the implicit dates are governed by  
13 Audible’s cancellation policy. Additionally, Audible sells “gift” credits to consumers that  
14 are designed to expire exactly six months after the “gift membership” ends (which is at  
15 most 18 months after at 12-credit gift membership begins).

16 86. Until April 2017, Audible permitted and encouraged its members to send  
17 individual credits to other consumers as “gifts” for the recipient to redeem whether or not  
18 the recipient was already an Audible member. Audible continues to offer so-called “gift  
19 memberships” that are simply packages of 3, 6, or 12 prepaid credits that consumers can  
20 purchase and either redeem themselves or send as gifts to Audible members or non-  
21 members. Audible expressly and implicitly treats both regular and gift credits (not simply  
22 already-purchased audiobooks, which also can be sent to other consumers under a  
23 separate Audible feature) as being a product that can be given by one consumer to another  
24 consumer as a gift.

25 87. The fact that Audible credits can expire harms Plaintiffs and other  
26 consumers in California in several ways, including by forcing them to either redeem their  
27 credits on an expedited schedule or lose their credits (and the money paid for them)  
28 without any refund or audiobook to show for them.

1 88. As a result of Audible’s unlawful acts and conduct, Plaintiffs and similarly  
2 situated consumers in California have been deprived of the use of their money that was  
3 charged and collected by Audible through the sale of credits with illegal expiration dates.  
4 They have been injured as a result of Audible’s unlawful credit expiration terms,  
5 including by causing them to sign up for Audible, purchase credits, pay more than they  
6 would have paid for each credit, redeem credits for audiobooks they otherwise would not  
7 have purchased, and continue paying to avoid losing due to the cancellation of credits  
8 they had already purchased. They have also had at least one credit expire before it was  
9 redeemed and within five years of issuance.

10 89. Plaintiffs, individually and on behalf of similarly situated California  
11 consumers, seek compensatory damages, including actual and statutory damages,  
12 injunctive and declaratory relief, the costs of this action, and reasonable attorneys’ fees.

13 **Fifth Cause of Action**

14 **Violation of EFTA, 15 U.S.C. § 1693 *et seq.***

15 **Improperly Preauthorized Electronic Fund Transfers**

16 90. Plaintiffs incorporate by reference all of the foregoing paragraphs.

17 91. The EFTA regulates electronic fund transfers in connection with consumer  
18 transactions, including “preauthorized electronic fund transfers” and “unauthorized  
19 electronic fund transfers.” The primary objective of the EFTA is to provide for and  
20 protect individual consumer rights.

21 92. The payments Audible initiates and secures from a consumer’s debit card,  
22 bank account, or other non-credit card payment method constitute an electronic fund  
23 transfer under the EFTA.

24 93. **Improperly Preauthorized Transfers.** Under the EFTA, a preauthorized  
25 electronic fund transfer from a consumer’s debit card, bank account, or other non-credit  
26 card payment method may be authorized only by a writing signed or similarly  
27 authenticated by the consumer, and the person or entity that obtains the authorization  
28 must immediately provide a copy of the authorization to the consumer. If the amount of

1 a preauthorized transfer may vary in amount, the consumer must be given reasonable  
2 advance notice of the amount to be transferred and the scheduled date of the transfer. The  
3 terms and conditions of electronic fund transfers involving consumers' accounts must be  
4 disclosed at the time the consumers contract for an electronic fund transfer service, and  
5 the disclosures must be in readily understandable language.

6 94. Audible is able to tell what payment methods from which it receives  
7 electronic fund transfers are debit cards, bank accounts, or non-credit card payment  
8 methods, and what payment methods are credit cards.

9 95. The automatic payments transferred from Weber's personal debit card to  
10 Audible violated the EFTA's preauthorized electronic fund transfer requirements. The  
11 automatic payments constituted electronic fund transfers with respect to consumers.

12 96. Weber and other consumers were not asked or required to authorize the  
13 automatic electronic fund transfers to Audible. Weber and other consumers are simply  
14 asked to designate a payment method for potential future purchases from Audible.

15 97. Weber and other consumers were not asked or required to authorize  
16 automatic payments in a writing that they signed or otherwise authenticated.

17 98. Weber and other consumers were not provided a copy of any authorization  
18 Audible contends it obtained from them.

19 99. The terms and conditions of the automatic electronic fund transfers to  
20 Audible were not disclosed prior to or at the time Weber signed up for a free trial and/or  
21 designated his personal debit card for potential future payments to Audible. Audible only  
22 stated inconspicuously on its website using small font that Audible was "\$14.95/month"  
23 and consumers could "cancel anytime." Audible did not disclose any specific automatic  
24 payment terms or the related cancellation policies and requirements, including terms  
25 related to making automatic charges, charging non-designated payment methods, and  
26 credits expiring upon cancellation.

27 ///

28 ///

1           100. Audible never sent any written or electronic copy, summary, or explanation  
2 of the terms and conditions of the automatic payments or related cancellation policies  
3 and requirements to Weber or other consumers.

4           101. Audible’s failure to obtain Weber’s and other consumers’ explicit written  
5 consent to automatic electronic fund transfers, failure to disclose all relevant payment  
6 and cancellation terms and conditions, and failure to provide a written acknowledgement  
7 of the automatic payment and related cancellation policies violates the EFTA. The EFTA  
8 requires that companies seeking preauthorized electronic fund transfers from consumers  
9 ensure that consumers are fully informed of the relevant payment and cancellation terms  
10 and conditions at the time fund transfers are preauthorized. Audible’s failures have  
11 caused Weber and similarly situated consumers to suffer harm because they provided  
12 uninformed consent to Audible’s automatic, preauthorized electronic fund transfers from  
13 their designated non-credit card payment methods.

14           102. Because they were not fully informed of all of Audible’s relevant automatic  
15 payment and cancellation policies when they signed up for Audible, Weber and other  
16 consumers made automatic electronic fund transfers they did not or would not have  
17 authorized, or they paid more money than they would have otherwise paid, had they been  
18 fully informed of all of Audible’s automatic payment and cancellation terms. Weber also  
19 had one or more credits expire automatically pursuant to Audible’s cancellation terms  
20 and conditions that were not disclosed when he signed up for Audible.

21           103. Weber, individually and on behalf of all similarly situated consumers  
22 nationwide, seeks and is entitled to recover the greater of actual damages or statutory  
23 damages for each violation of the EFTA’s preauthorized electronic fund transfer  
24 requirements, costs and reasonable attorneys’ fees, and declaratory and injunctive relief  
25 preventing Audible’s unlawful actions from continuing and requiring Audible to make  
26 proper disclosures and obtain explicit written consent to electronic fund transfers.

27 ///

28 ///



1 **Sixth Cause of Action**

2 **Common Law Conversion**

3 104. Plaintiffs incorporate by reference all of the foregoing paragraphs.

4 105. Plaintiffs and other similarly situated consumers have clear legal ownership  
5 and right to possession and exclusive use of the credits they purchase or receive and that  
6 are stored in their online Audible accounts.

7 106. Audible, by causing Plaintiffs' prepaid credits to expire based on  
8 undisclosed policies and practices, and by securing the entire value of such credits to  
9 itself without allowing Plaintiffs to possess and use such credits, has intentionally taken  
10 a wrongfully disposed of their prepaid credits and thus interfered with Plaintiffs' right to  
11 possess and use such credits at the time and in the manner of their own choosing.

12 107. Audible's unauthorized control over Plaintiffs' and other similarly situated  
13 consumers' credits by causing them to expire before they were redeemed has actually  
14 and substantially interfered with their ownership and possession of the credits and caused  
15 them to suffer damages. McKee has suffered damages in the specified sum of \$29.90 (the  
16 amount paid for two expired credits), Weber has suffered damages in the specified sum  
17 of \$119.60 (the amount paid for six expired credits), and Rogawski has suffered damages  
18 in the specified sum of \$179.40 (the amount paid for 12 expired credits) plus the amount  
19 he paid for the number of credits that expired when Audible cancelled his membership  
20 against his wishes (a number Audible knows and could easily provide).

21 108. Plaintiffs, individually and on behalf of all similarly situated consumers,  
22 seek and are entitled to recover actual damages in the amount of the specified sums they  
23 paid for credits that Audible caused to expire, or alternatively reinstatement of the credits  
24 to their accounts, and punitive damages to punish and deter Audible's malice, fraud, and  
25 oppression related to its act of causing prepaid credits to expire.

26 ///

27 ///

28 ///



1 Seventh Cause of Action

2 **Violation of California’s Consumers Legal Remedies Act (“CLRA”)**

3 **Cal. Civ. Code § 1750 *et seq.***

4 109. Plaintiffs incorporate by reference all of the foregoing paragraphs.

5 110. Audible has violated California’s Consumers Legal Remedies Act, Cal. Civ.  
6 Code § 1750 *et seq.* (“CLRA”), the in multiple ways by using unfair methods of  
7 competition and unfair and deceptive acts and practices related to their sale of goods and  
8 services.

9 111. **False and Misleading Advertising.** Audible has made false and misleading  
10 representations and omissions in violation of the CLRA through its use of representations  
11 and omissions regarding (i) the use and value of credits; (ii) the terms of expiration for  
12 credits; (iii) the terms of cancellation of a consumer’s “membership;” and (iv) the  
13 automatic payment terms and policies (including charges to non-designated payment  
14 methods). Specifically, the representations that “one credit equals one audiobook,”  
15 membership “includes 1 audiobook each month,” and members may “cancel anytime”  
16 with “no strings attached” while keeping all of their audiobooks constitute false and  
17 misleading advertising, both when made prior to sign up and following sign up. These  
18 representations and substantially similar ones made by Audible violate the CLRA by:

- 19 a. Representing that Audible’s goods or services have characteristics, uses, and  
20 benefits which they do not have, in violation of Section 1770(a)(5);
- 21 b. Representing that Audible’s goods or services are of a particular standard,  
22 quality, or grade, or that goods are of a particular style or model, if they are  
23 of another, in violation of Section 1770(a)(7);
- 24 c. Advertising Audible’s goods or services with intent not to sell them as  
25 advertised, in violation of Section 1770(a)(9);
- 26 d. Representing that a transaction with Audible confers or involves rights,  
27 remedies, or obligations which it does not have or involve, in violation of  
28 Section 1770(a)(14);

1 e. Representing that the subject of a transaction with Audible has been  
2 supplied in accordance with a previous representation when it has not, in  
3 violation of Section 1770(a)(16); and

4 f. Representing that the consumer will receive a rebate, discount, or other  
5 economic benefit from Audible, when the earning of the benefit is  
6 contingent on an event to occur subsequent to the consummation of the  
7 transaction, in violation of Section 1770(a)(17).

8 112. Audible’s acts and practices were intentional.

9 113. Plaintiffs and other consumers in California relied to their detriment on these  
10 advertisements and related statements and omissions both when they signed up for  
11 Audible and as they purchased credits, and they suffered damages as a result. The harm  
12 they suffered in reliance on such statements and omissions included signing up for  
13 Audible and paying for credits, paying more for credits than they otherwise would have  
14 paid, redeeming credits for audiobooks they otherwise would not have purchased, and  
15 losing credits that expired without receiving a full, guaranteed refund or an audiobook.

16 114. **Prohibited and Unconscionable Terms.** Audible’s credit expiration  
17 policies, as well as its practice of charging non-designated payment methods  
18 automatically and without notice, also violate Section 1770(a)(14) and Section  
19 1770(a)(19) of CLRA because they constitute terms and practices that Audible applies to  
20 credits, memberships, and automatic payments that are prohibited by law and  
21 unconscionable.

22 115. Designing prepaid credits to expire earlier than five years violates federal  
23 and California gift certificate and gift card laws. These expiration terms also constitute  
24 prohibited and unconscionable terms under the CLRA. The expiration terms are  
25 procedurally unconscionable because they are not disclosed before consumers sign up  
26 and start paying for credits, and they are substantively unconscionable because they are  
27 illegal and cause consumers to forfeit the value they have prepaid for what they were told  
28 was “equal” to an audiobook, creating pure windfall profits for Audible as a result. The

1 lack of disclosure causes complete surprise when consumers later learn about the  
2 expiration terms, and the terms are purely adhesive insofar as consumers have no ability  
3 to negotiate this undisclosed term. The illegal nature of the expiration terms, and the fact  
4 that expiration causes consumers to forfeit the entire value paid for an expired credit,  
5 renders them substantively unconscionable.

6 116. Similarly, Audible’s assertion of the right to access and automatically  
7 charge non-designated payment methods stored on a member’s separate Amazon account  
8 without giving any notice or obtaining authorization from either the Audible member or  
9 the cardholder, constitutes a prohibited and unconscionable term and practice inserted by  
10 Audible into the contract formed with consumers.<sup>1</sup> Audible does not clearly and  
11 conspicuously disclose the term and practice to consumers when they sign up for a “free”  
12 trial and designate a payment method for potential future payments. This causes complete  
13 surprise when consumers later learn about it (i.e., when consumers discover a non-  
14 designated card was charged without authorization or notice), and it is adhesive insofar  
15 as consumers have no ability to negotiate this undisclosed term. The term and practice  
16 are procedurally unconscionable.

17 117. The term and practice are also substantively unconscionable. According to  
18 Audible, without any prior or subsequent notice to members or cardholders it can access  
19 and automatically charge payment methods that are never given to Audible and are never  
20 designated to make any payments to Audible. Audible claims this right simply because  
21 non-designated payment methods are automatically stored on a member’s separate  
22 Amazon account when they are used to make a purchase on Amazon.com. Audible  
23 asserts the right to access and charge payment methods that are not even owned by the  
24 Audible member, including corporate payment methods and friends’ and family  
25 members’ payment methods of different types and under different names. Audible

26  
27 <sup>1</sup> While a contract is formed when consumers sign up for Audible and start paying for  
28 and receiving credits and other benefit, the terms of such contract are not comprised of  
Audible’s proposed “Terms of Use” because Audible does not properly disclose such  
“Terms of Use” and obtain consumers’ express and unambiguous assent to such terms.

1 members and non-members alike are not given the opportunity to give or withhold their  
2 consent before charges are actually made to non-designated payment methods because  
3 Audible makes such charges automatically and without notice. Members who discover  
4 this policy after an unauthorized charge occurs are subject to unwanted charges, interest,  
5 and fees, among other actual or potential financial effects, and have distress and  
6 embarrassment if the unauthorized charges were made to a card that was not in their  
7 name. The only way to not be subject to Audible's non-designated payment method  
8 charging policy is to delete all other payment methods from the related Amazon account.

9 118. Plaintiffs and other California consumers have suffered harm as a result of  
10 Audible's inclusion and use of prohibited and unconscionable terms in its policies and  
11 practices related to credits, memberships, and automatic payments. The harm includes  
12 signing up for Audible without knowing of its unlawful and unfair terms and practices,  
13 designating a payment method for potential purchases, purchasing credits on a monthly  
14 basis, paying more money than they would have had they known in advance of such  
15 terms and practices, allowing cards to be stored on a separate Amazon account not  
16 knowing Audible may obtain access and charge such cards without notice, and having  
17 non-designated payment methods charged by Audible without authorization or notice  
18 (causing additional work to remedy the situation and embarrassment). They are also  
19 continually at risk of having non-designated payment methods charged by Audible so  
20 long as such terms and practices exist and they maintain more than one payment method  
21 stored on a related Amazon account.

22 119. Under Sections 1780 and 1781 of the CLRA, Plaintiffs, individually and on  
23 behalf of California consumers, seek the greater of actual or statutory damages;  
24 individual, representative, and public injunctive relief that enjoins Audible's unlawful  
25 methods, acts, and practices; restitution; punitive damages; costs and reasonable  
26 attorneys' fees; and any other relief that the Court deems proper.

27 120. McKee gave Audible written notice by certified mail, return receipt  
28 requested, directed to the addresses provided by Audible, of the alleged violations of

1 Section 1770 of the CLRA and demanded that Audible correct or otherwise rectify the  
2 services alleged to be in violation of Section 1770. *See Exhibit A.* Audible has not  
3 identified or made a reasonable effort to identify all similarly situated consumers; has not  
4 notified such consumers that they will correct or otherwise remedy the unlawful acts and  
5 practices upon request; has not agreed to make such correction or offer such remedy  
6 within a reasonable time; and has not ceased from engaging in the unlawful acts and  
7 practices.

8 121. Concurrently with the filing of this action, McKee filed an affidavit in  
9 support of this action stating facts showing that the action has been commenced in a  
10 county or judicial district that constitutes a proper place for the trial of this action. *See*  
11 Exhibit B.

12 **Eighth Cause of Action**

13 **Violation of California’s Unfair Competition Law (“UCL”)**

14 **Cal. Bus. & Prof. Code § 17200 *et seq.***

15 122. Plaintiffs incorporate by reference all of the foregoing paragraphs.

16 123. Audible has engaged in unlawful, unfair, and fraudulent business acts and  
17 practices, and unfair, deceptive, untrue, and misleading advertisements that constitute  
18 unfair competition and false and misleading advertising under California’s Unfair  
19 Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (“UCL”).

20 124. Audible’s acts and practices that violate the EFTA, the California Gift  
21 Certificate Law, the FAL, and the CLRA, and that constitute common law fraud and  
22 conversion, are unlawful and fraudulent and therefore also violate the UCL.

23 125. **Violation of Automatic Purchase Renewals Law.** Audible’s automatic  
24 payment and cancellation policies and disclosures violate California’s Automatic  
25 Purchase Renewals Law, Cal. Bus. & Prof. Code § 17600 *et seq.* (“CAPRL”), which  
26 requires Audible to disclose all automatic payment terms and related terms, such as its  
27 cancellation policy and cancellation requirements, in a clear and conspicuous manner at  
28

1 the point of sale (e.g., the “Start Now” button). Audible’s acts and practices that violate  
2 CAPRL are also unlawful under the UCL.

3 126. Audible fails to make a clear, conspicuous, and complete disclosure of its  
4 relevant automatic payment and cancellation policies. Audible simply states with  
5 inconspicuous and small font that Audible is “\$14.95/month” and consumers can “cancel  
6 anytime.” There is no clear reference that monthly charges will be automatically made to  
7 the card designated during the free sign-up process; no clear reference that non-  
8 designated cards will be charged automatically without notice in certain circumstances;  
9 no mention that cancellation will cause unredeemed credits to expire immediately and  
10 automatically; no request that consumers explicitly consent to automatic charges; no  
11 mention that Audible will automatically charge an amount greater than \$14.95 in certain  
12 circumstances; no notice when payment or cancellation terms are modified; and no  
13 information concerning what steps consumers must take to cancel before being charged  
14 or at any time thereafter. Audible also does not provide consumers with a written or  
15 electronic acknowledgement of the automatic payment and cancellation terms and  
16 policies in a form they can easily retain.

17 127. Plaintiffs and other consumers did not see any disclosure concerning  
18 Audible’s automatic payment and cancellation policies other than that Audible cost  
19 \$14.95 per month and that they could “cancel anytime.” Because they were not fully  
20 informed of all of the relevant automatic payment and cancellation policies when they  
21 signed up and started being charged automatically, Plaintiffs and other consumers have  
22 lost or been deprived of their money because they made more payments than they  
23 otherwise would have made and because they paid more than they otherwise would have  
24 paid had they been fully informed of the relevant terms and policies. Plaintiffs and other  
25 consumers also have had credits expire based on Audible’s cancellation policy which  
26 should have been disclosed during the sign-up process. The harm Plaintiffs suffered was  
27 a direct result of Audible’s failure to fully and properly disclose its automatic payment  
28 and cancellation terms and policies before they signed up and started purchasing credits.

1 128. Audible’s acts and practices that cause credits to expire and that cause non-  
2 designated payment methods to be charged without authorization or notice are also unfair  
3 and independently violate the UCL.

4 129. All of Audible’s acts, practices, and advertisements described above were  
5 intentional and knowing.

6 130. Plaintiffs and other California consumers have suffered actual injuries and  
7 lost money or property as a direct result of Audible’s unlawful, unfair, and fraudulent  
8 acts and practices described above. Their harm includes but is not limited to being  
9 deceived into or not being fully informed before making automatic payments for credits,  
10 having credits expire before they were redeemed and without receiving a full refund or  
11 audiobooks in exchange, continuing their payments to avoid losing their unredeemed  
12 credits, having to use credits on a shorter time frame than otherwise preferred, being  
13 subject to automatically renewed charges without full disclosure of relevant terms and  
14 conditions, having non-designated payment methods charged, and being continuously at  
15 risk of having unauthorized charges made to non-designated payment methods.

16 131. Plaintiffs, individually and on behalf of all California consumers, seek  
17 individual, representative, and public injunctive relief and any necessary orders or  
18 judgments that will prevent Audible from continuing with its unlawful acts, practices,  
19 and advertisements; restitution that restores the full amount of their money or property;  
20 and disgorgement of Audible’s related profits and proceeds; and costs and reasonable  
21 attorneys’ fees.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs, on behalf of themselves and all proposed Class  
24 members, request the following relief against Audible:

- 25 (1) Certification of this action as a class action under Federal Rule of Civil  
26 Procedure 23, appointing Plaintiffs as class representatives and Soderstrom  
27 Law PC as class counsel;



- 1 (2) An award of actual, consequential, statutory, and punitive damages to  
2 Plaintiffs and Class members in an amount sufficient to make them whole,  
3 compensate them for all harm, and punish and deter Audible’s wrongful  
4 conduct;
- 5 (3) An award of restitution and/or disgorgement of profits and revenues to make  
6 Plaintiffs and Class members whole and to avoid unjust enrichment by  
7 Audible;
- 8 (4) An award of individual, representative, and public declaratory and  
9 injunctive relief stating that Audible’s acts and practices are unlawful and  
10 requiring corrective action as permitted by law, including but not limited to  
11 corrective advertising, correcting the expiration and forfeiture terms related  
12 to Audible “credits,” correcting the disclosures related to the automatic  
13 renewal payment policies and cancellation policies, prohibiting the term and  
14 practice of making automatic and unauthorized charges to credit cards not  
15 provided directly to Audible without notice to consumers, and reinstating  
16 Weber’s, Rogawski’s, and similarly situated consumers’ memberships  
17 which Audible terminated against their wishes in connection with their  
18 participation in this action;
- 19 (5) An award to Plaintiffs and Class Counsel of reasonable litigation costs,  
20 expenses, and attorneys’ fees under California Code of Civil Procedure  
21 section 1021.5, under the CLRA, or under any other applicable rule or  
22 statute;
- 23 (6) An award to Plaintiffs and Class members of pre-judgment and post-  
24 judgment interest, to the extent allowed by law; and
- 25 (7) Any and all other relief as equity and justice requires.  
26  
27  
28



1 Dated: May 21, 2018

SODERSTROM LAW PC

2 By: /s/ Jamin S. Soderstrom

3 Jamin S. Soderstrom

4 *Counsel for Plaintiffs and the Proposed Class*

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



**JURY TRIAL DEMANDED**

Plaintiffs demand a trial by jury of all issues triable by jury.

Dated: May 21, 2018

SODERSTROM LAW PC

By: /s/ Jamin S. Soderstrom

Jamin S. Soderstrom

*Counsel for Plaintiffs and the Proposed Class*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 21, 2018, I caused the foregoing document to be served on all counsel of record by the Court’s CM/ECF electronic filing system.

By: /s/ Jamin S. Soderstrom  
Jamin S. Soderstrom

