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**CGC-22-601826**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SAN FRANCISCO**

| | |
|---|---|
| **THE PEOPLE OF THE STATE OF CALIFORNIA,**<br>Plaintiff,<br>**v.**<br>**AMAZON.COM, INC.,**<br>Defendant. | **COMPLAINT FOR VIOLATIONS OF:**<br>**(1) THE CARTWRIGHT ACT (BUS. & PROF. CODE § 16720, *et seq.*); AND**<br>**(2) THE CALIFORNIA UNFAIR COMPETITION LAW – UNLAWFUL AND UNFAIR PRONGS (BUS. & PROF. CODE § 17200, *et seq.*);**<br>**DEMAND FOR JURY TRIAL**<br>**<u>REDACTED</u>**<br>**PUBLIC—REDACTS MATERIALS FROM CONDITIONALLY SEALED RECORD** |

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California Attorney General Rob Bonta brings this civil antitrust and unfair competition action on behalf of the People of the State of California ("the People"), in his law enforcement capacity, to enjoin defendant Amazon.com, Inc. and its affiliates ("Amazon") from unlawful conduct in violation of California's Cartwright Act and the California Unfair Competition Law, to recover *parens patriae* damages, disgorgement, restitution, penalties, and fees and costs, and to restore competition among online retail stores involving California consumers and merchants. The People allege as follows:

## I. INTRODUCTION

1. The policy and spirit of the California antitrust laws are to promote the free play of competitive market forces and the lower prices to consumers that result. Amazon, the dominant online retail store in the United States, has violated the policy, spirit, and letter of those laws by imposing agreements at the retail and wholesale level that have prevented effective price competition across a wide swath of online marketplaces and stores. Amazon claims these agreements improve the "customer experience." After all, Amazon says, if consumers see (or pay) a higher price on Amazon than on Walmart.com or eBay, for example, consumers will be dissatisfied with Amazon. It is better for the Amazon "customer experience" if consumers do not see lower prices off Amazon—regardless of whether they are actually getting the lowest prices possible.

2. But the California antitrust laws are not concerned with making consumers think they are getting low prices when they are not. Rather, these laws are concerned with protecting market competition, including the unhindered setting of prices through the forces of supply and demand. Amazon makes consumers *think* they are getting the lowest prices possible, when in fact, they cannot get the low prices that would prevail in a freely competitive market because Amazon has coerced and induced its third-party sellers and wholesale suppliers to enter into anticompetitive agreements on price. The intent and effect of these agreements is to insulate Amazon from price competition, entrenching Amazon's dominance, preventing effective competition, and harming consumers and the California economy.

3. In these anticompetitive agreements, Amazon's third-party sellers and wholesale suppliers agree not to offer, and to prevent Amazon's competitors from offering, lower prices elsewhere—including Walmart.com, Target.com, eBay, their own websites, and other online stores—and incur steep penalties if these other online stores have lower prices. Without basic price competition, without different online sites trying to outdo each other with lower prices, prices artificially stabilize at levels higher than would be the case in a competitive market. Competing sites do not offer lower prices the way they would in a competitive market, not because Amazon competed successfully, not because Amazon is a more efficient retailer and marketplace, but because Amazon forbids it by contract.

4. Amazon imposes these agreements at two levels—the retail level via third-party sellers that sell on Amazon's Marketplace, and the wholesale level via wholesale suppliers that sell directly to Amazon. At the retail level, Amazon coerces the third-party sellers on its Marketplace into agreeing not to offer their products at a lower price elsewhere. From 2012 to March 2019, this agreement was codified most expressly in the "Price Parity Provision" of Amazon's Business Solutions Agreement ("BSA") with Marketplace sellers. After a German regulatory authority found that the Price Parity Provision "resulted in significant price increases in e-commerce,"[1] and Senator Richard Blumenthal called for an investigation of the practice, Amazon quietly retired the specific language from its BSA in March 2019.

5. But despite removing that language, Amazon continued to interpret and apply other provisions of its BSA to mandate the same price parity agreement from third-party sellers. As an internal Amazon document put it, despite "[redacted]" Sellers on Amazon's Marketplace agree to this price parity policy in Amazon's Seller Code of Conduct, its Fair Pricing Policy, and its Standards for Brands Selling in the Amazon Store, all of which are incorporated into Amazon's Business Solutions Agreement, which binds all sellers and is a required agreement to sell on Amazon's Marketplace. And irrespective of its written agreements and policies, Amazon

[1]Bundeskartellamt [BKartA] [Federal Cartel Office], Nov. 26, 2013, B6-46/12 at 3, https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2013/B6-46-12.pdf?__blob=publicationFile&v=2.

strictly enforces a de facto retail price parity agreement by imposing escalating penalties on sellers that fail to comply with price parity, until they do comply. These sanctions have included disqualifying them from winning the "Buy Box" (the box containing the "Add to Cart" button on the product detail page the shopper clicks to add the product to her cart), demoting their offers to the bottom of Amazon's organic search results, and blocking them from creating new offers in their third-party seller accounts altogether.

6. Amazon also enforces price parity at the wholesale level, through one-sided minimum margin agreements with its wholesale suppliers that Amazon—not the suppliers—requests and insists on. Under these agreements, suppliers *explicitly agree*, against their own interests, to make true-up payments to Amazon if Amazon's price-matching in response to other online stores' lower prices results in Amazon making less than the "minimum margin" specified in the agreement. In other words, Amazon's wholesale suppliers agree to be punished if they discount or fail to prevent discounting by Amazon's rivals, thereby powerfully disincentivizing that discounting. [redacted]

7. Amazon's retail- and wholesale-level price parity agreements cause third-party sellers and wholesale suppliers to impose higher prices or enforce minimum advertised price policies on Amazon's rivals, to charge higher prices on their own websites and on competing marketplaces, and to withhold selection from these competing online stores and their own sites. These actions hamper the ability of Amazon's rivals to compete by offering lower prices. Amazon calls these machinations [redacted]. As a result, merchants on their own direct-to-consumer sites, and numerous online retailers, have dramatically cut back on discounting and other price competition, including in some cases abandoning or pivoting away from a discount model altogether. Absent these agreements, a greater selection and total output of lower-priced products would be available across online stores.

8. Amazon's own internal documents demonstrate that it is aware that [redacted]

[redacted] Indeed, Amazon admitted to the [redacted]—i.e., price competition. Amazon forbids such pricing competition by contract.

9. Amazon's price parity agreements with its third-party sellers and wholesale suppliers are facially anticompetitive, horizontal price restraints. Amazon's third-party sellers and wholesale suppliers are not just vertically-situated inputs to Amazon's online retail store. They are also, individually and collectively, a powerful horizontally-situated threat to Amazon, because they can and do sell their own products directly to consumers through their own websites. Internal Amazon documents confirm that Amazon viewed the early growth of competing direct-to-consumer online stores as "[redacted]" Amazon committed to "[redacted]" Amazon has done so—has neutralized this threat—by coercing these merchants to agree not to compete with Amazon on price on their own direct-to-consumer websites. According to Amazon's documents, these price parity agreements—specifically, the Amazon Standards for Brands policy and implementation measures—"[redacted]" competition from direct-to-consumer online stores.

10. Amazon is able to extract these anticompetitive terms from its third-party sellers and wholesale suppliers because it enjoys substantial market power. Amazon is the dominant online retail store in the United States and a critical outlet and distribution channel for these merchants. For hundreds of thousands of third-party sellers, Amazon sales are effectively their entire business—lose Amazon, and they lose their livelihood. Even for larger brands and other merchants that sell wholesale to Amazon, sales on Amazon regularly represent 20-30% or more of their total sales, particularly in certain product categories like consumer electronics.

11. Because of this market power over third-party sellers and wholesale suppliers, Amazon can—and does—charge substantially higher fees and demand substantially higher profitability on its sales of their products than it could in a competitive market. [redacted] these higher fees translate into higher prices on Amazon, but Amazon does not truly care if consumers pay higher prices. Amazon knows its price parity agreements prevent rivals from stealing market share away with lower prices reflective of their lower fees. So Amazon keeps raising fees, leading to higher prices on Amazon, leading to higher prices off Amazon due to price parity—a vicious anticompetitive cycle in which Amazon wins and its third-party sellers, its wholesale suppliers, consumers, and competition lose.

12. The evidence uncovered by the Office of the Attorney General is widespread and sourced from multiple levels of the market, including the internal files of Amazon and the Office's independent investigation of data, documents, and witnesses. Individual third-party sellers and wholesale suppliers have told the Office that they would offer lower prices or allow discounting on competing sites if Amazon did not demand price parity. Ecommerce consultants—experienced market participants who advise third-party sellers and wholesale suppliers on how to sell and be successful on Amazon—tell their clients not to offer or allow lower prices off Amazon. They have confirmed to the Office that their clients would offer lower prices and greater selection and allow more discounting off Amazon were it not for Amazon's price parity policies. And major online retail stores—i.e., Amazon's primary competitors—confirmed to the Office that sellers told them that they cannot offer lower prices or participate in discount events, or in some cases offer their products at all, on those competing retail sites because of Amazon price parity. Moreover, [redacted] the Office's data analyses confirm that merchants generally do *not* lower their prices on or to Amazon to comply with the prohibition on relative discounting off Amazon. Rather, Amazon has misled consumers into believing they are getting the low prices that would prevail in a competitive market when, in fact, it has deliberately caused prices to be generally higher everywhere else than they would be absent price parity.

13. As the United States Congress and competition authorities domestic and abroad have investigated this conduct, Amazon has misled enforcers about its conduct or, in real-time, altered its behavior to appear to eliminate the suspect conduct. Amazon then either painted a misleading picture to investigators that it never engaged in the conduct to begin with, or engaged in different conduct with the same purpose and effects.

14. For example, internal Amazon documents confirm that just months after Amazon eliminated the Price Parity Provision from its BSA, [redacted]. An Amazon Director observed that [redacted] In other words, Amazon *claimed* to antitrust enforcers that it was no longer enforcing price parity, but it continued to do just that. Amazon even anticipated that "[redacted]"

15. To remedy and effectively combat Amazon's anticompetitive practices requires significant relief. Amazon must pay damages to compensate the People for preventing competition from competing online stores and raising prices to consumers above what they would be in a competitive market. Amazon must also give up its ill-gotten gains and pay penalties, provided by statute to serve as a deterrent to other companies contemplating similar actions. And Amazon must cease its anticompetitive behavior.

16. In further support of this action, the People state as follows:

## II. JURISDICTION AND VENUE

17. This action is brought under the Cartwright Act, California Business and Professions Code section 16720, *et seq.*, and the California Unfair Competition Law, California Business and Professions Code section 17200, *et seq.*, for equitable, monetary, and other relief due to Amazon's unlawful conduct.

18. At all relevant times alleged in this Complaint, Amazon did and continues to do substantial business in or affecting the State of California, and the injuries that have been sustained as a result of Amazon's illegal conduct occurred in part in California, rendering this Court's exercise of jurisdiction over Amazon proper.

19. Venue is proper in the City and County of San Francisco because Amazon does business in San Francisco. Venue is further proper in the City and County of San Francisco because many acts giving rise to the claims asserted herein were committed in San Francisco, and the injuries that have been sustained as a result of Amazon's illegal conduct occurred in part in the City and County of San Francisco.

## III. THE PARTIES

20. Plaintiff is the People of the State of California. Rob Bonta is the Attorney General of the State of California ("the Attorney General") and the chief law enforcement officer of the State under the California Constitution, article V, section 13. The Attorney General is authorized to bring an action for equitable nonmonetary and monetary relief under the Cartwright Act and Unfair Competition Law on behalf of the People under California Business and Professions Code sections 16750, 16754, 16754.5, 17203, 17204, and 17206.

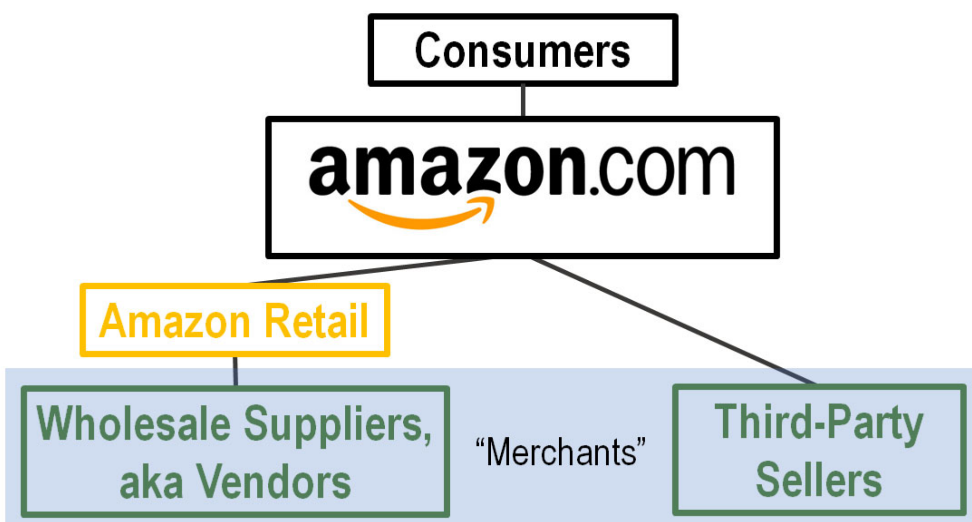
21. This authorization includes securing mandatory injunctions to restore and preserve fair competition under Business and Professions Code section 16754.5, in addition to prohibitory injunctions, and securing restitution, injunctive relief, and civil penalties under California Business and Professions Code sections 17204, 17206, and 16750(a). The Attorney General has a unique role in representing the People and the State of California in antitrust cases in carrying out the public interest in this State, particularly where equitable actions are concerned.

22. Defendant Amazon.com, Inc. ("Amazon") operates the leading online retail store in the United States, which includes the Amazon Marketplace, where millions of third-party sellers sell products directly to consumers, and where Amazon resells products purchased wholesale from suppliers to consumers. For over twenty years, Amazon has advertised, marketed, promoted, offered for sale, and sold goods and services in California.

## IV. BACKGROUND

23. Amazon began its business as an online bookseller. Over time, it expanded beyond books with the aspiration of becoming "the everything store." Originally, Amazon followed a traditional retail model: it purchased products directly from wholesale suppliers (or "vendors") at a wholesale price, and resold them to consumers through its online store at a retail price. Today, a little less than half of the sales of Amazon are represented by these "first-party sales"—Amazon the retailer selling products on its own platform. Amazon earns profits on these sales (1) by generally selling products for a higher retail price than Amazon paid for them wholesale and (2) charging/collecting from its wholesale suppliers various fees and funding, [redacted].

24. The balance of sales in Amazon's store are "third-party" sales through Amazon's Marketplace. Third-party sellers include "brands" that sell their own branded products, brand representatives that sell on behalf of brands, and resellers. Third-party sellers pay Amazon "referral" fees (a percentage or minimum dollar amount per unit sold), shipping and fulfillment fees, storage fees, sponsored products and other advertising fees, and other miscellaneous fees (such as stocking fees). On average, third-party sellers pay Amazon fees equal to approximately [redacted]% of their revenues from sales on Amazon. This Complaint refers to third-party sellers and wholesale suppliers together as "merchants."



25. In 2005, Amazon introduced "Amazon Prime," an express shipping membership program. For a flat membership fee of $79 per year, members were entitled to unlimited, express two-day shipping for free, with no minimum purchase requirement. Non-Prime members could still qualify for free shipping if they met certain order size thresholds. Amazon has expanded its Prime program over the years to include additional benefits, including free video and music streaming. Today, an Amazon Prime membership costs $139 per year, and Amazon counts over 160 million Prime members in the United States alone—in a country with approximately 130 million households. Products in Amazon's store available for express Prime shipping are denoted with the Prime "badge."

26. As Amazon built its Prime program, it substantially expanded its shipping and fulfillment capabilities. As of 2020, approximately [redacted]% of all third-party orders are "Fulfilled by Amazon" ("FBA"):

**Percentage of Third-Party Transactions Fulfilled by Amazon, 2014-2020:**

[redacted]

27. Third-party sellers that use FBA keep their inventory in Amazon's fulfillment centers. After a consumer places an order online, Amazon does the picking, packing, and shipping, and provides customer service to complete the order. Amazon also offers a "Multi-Channel Fulfillment" service, which third-party sellers can use to fulfill non-Amazon orders.

Third-party sellers send their inventory for all of the channels through which they sell their products to Amazon's fulfillment centers, and Amazon then fulfills those orders regardless of whether they were made on or off Amazon.

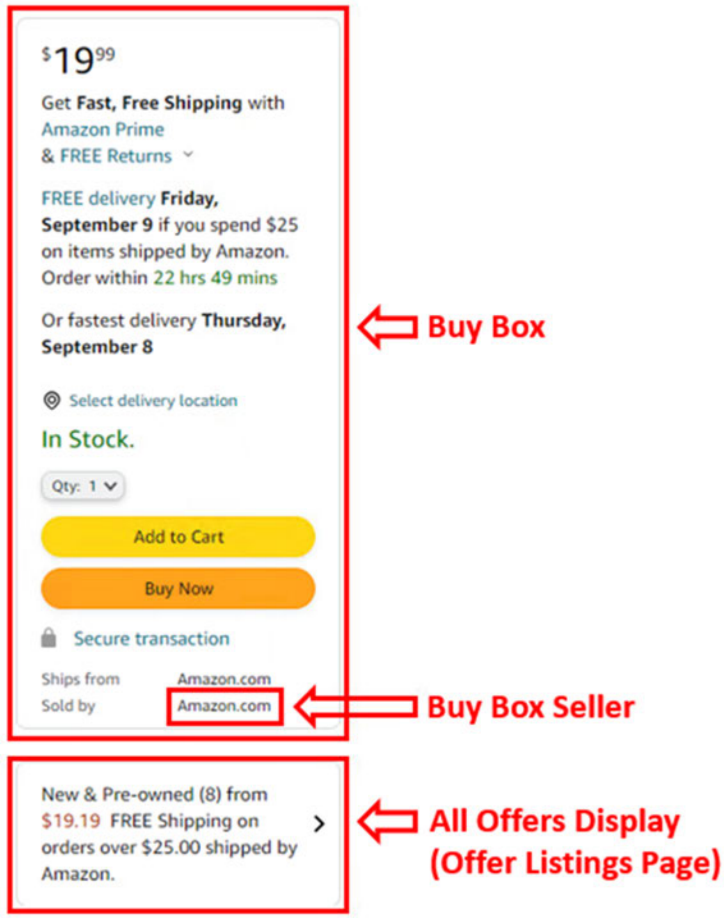
28. Amazon used to have a program called "Seller Fulfilled Prime," where sellers could fulfill orders for their products themselves and still receive the Prime badge on their products on Amazon, so long as they satisfied Prime standards. Amazon effectively discontinued this program in 2021. Today, if third-party sellers wish to avoid Amazon's FBA fees, they can fulfill orders themselves, but their products will not receive the Prime badge in Amazon's store, which significantly adversely affects sellers. As one third-party seller put it, "the way Amazon treats those of us sellers who do not participate in FBA is completely unfair and biased."

29. Around the second half of 2017, there was a significant expansion in the amount of advertising Amazon displayed in its online store. Wholesale suppliers and third-party sellers were now asked to pay Amazon additional fees if they wanted their products to appear near the top of relevant search results, in banner ads on the search results page, and on product detail pages as recommended alternatives in "widgets" (e.g., brief advertising slogans like, "Explore more from [Brand]," "4 stars and above," etc.). Before this time, Amazon would determine which products to feature (and in what order) in search results and recommendation widgets based on their relevance to shoppers, not advertising bids.

30. To purchase a product in Amazon's online store, the shopper first clicks on the "product detail page" for that product (from clicking on a search result or widget for that product). The "Buy Box" is the box on the right side of the product detail page where the shopper can click "Add to Cart" or "Buy Now."[2] Amazon generally includes only one Buy Box on a product detail page, and Amazon decides which seller's offer to include in the Buy Box (i.e., which seller will make the sale if the shopper clicks on the "Add to Cart" or "Buy Now" button in the Buy Box). If more than one seller has a given product (or "ASIN") on offer in the Amazon

[2] Amazon changed the official name from "Buy Box" to "Featured Offer" a few years ago, but many employees and executives in the company, and sellers virtually unanimously, still refer to it as the "Buy Box," not the "Featured Offer." This Complaint uses the original term "Buy Box" for clarity.

store at the same time, all of the other offers that Amazon has not selected for the Buy Box are listed on the "All Offers Display" (formerly the "Offer Listings Page"), a link to which is listed under the Buy Box:




31. Most Amazon shoppers do not even realize that if they click through to the All Offers Display, they can view other offers for the same product; instead, they interpret the Buy Box offer as "the offer"—the only means of purchasing the product. It is no wonder then that the Buy Box captures approximately [redacted]% of the sales of any given product on Amazon. According to Amazon, losing the Buy Box [redacted] As one seller put it, "when Amazon removes the price from the buy box . . . customers stop buying that product." An ecommerce consultant reported, "Based on my experience as a seller and advising sellers on

Amazon, Buy Box suppression is 'death to a listing.'" Another stated, "Without the Buy Box, you will not make sales."[3]

32. [redacted].

33. [redacted], Amazon has employed what it refers to as a "[redacted]" pricing strategy—if a competitor that Amazon monitors lowers prices, Amazon will lower its prices to match. As Jeff Wilke, Amazon's CEO of Worldwide Consumer through February 2021, explained in an internal Amazon interview: "[redacted]

[3] Ryan Faist, *How Pricing Strategy Helps You Win the Amazon Buy Box*, Channel Key (Feb. 9, 2022), https://channelkey.com/how-pricing-strategy-helps-you-win-the-amazon-buy-box.

[redacted]"

34. Amazon provides pricing tools to its third-party sellers that encourage them to adopt the same [redacted] pricing strategy. Specifically, Amazon encourages its third-party sellers to use its Marketplace Automated Repricing Service, or "MARS." With MARS, third-party sellers can implement what Amazon calls the "Competitive Price Match Rule," which "[u]pdates your price to help stay eligible for Featured Offer [Buy Box] status and ensure that you ***always match the competitive price*** (when there is one), to increase your chances of becoming the Featured Offer."[4] "Competitive price" means the lowest price offered by other online stores outside of Amazon.[5] In pitching the MARS tool to third-party sellers, Amazon highlights: "And remember, if a competitive price goes up, your offer price changes too."[6] In other words, Amazon actively encourages adoption of a tool that lets third-party sellers automatically raise their prices on Amazon if the price rises elsewhere.

## V. AMAZON'S MARKET POWER

### A. Direct Evidence of Amazon's Market Power

35. There is substantial direct evidence of Amazon's market power as an online retail store.

#### 1. Persistent Excess Returns

36. Amazon persistently earns excess returns (profit margins) above reasonably normal levels. This is a direct indication of Amazon's control over online retail store prices. As shown below, Amazon has earned staggeringly high and increasing profits, and high profit margins, over time from its online retail sales business:

[4] *Adjust pricing quickly and automatically*, Amazon.com, https://sell.amazon.com/tools/automate-pricing (last visited Sept. 11, 2022).

[5] *How does the Competitive External Price rule work?*, Amazon.com, https://sellercentral.amazon.com/help/hub/reference/external/E85R4NP368X5KKB?locale=en-US (last visited Sept. 11, 2022).

[6] Amazon Seller University, *Tips to become the Featured Offer on Amazon*, YouTube (Aug. 23, 2021), https://youtu.be/qdapqHVGbic.

**Amazon Online Store Gross Profits, 2014-2020:**

[redacted]

**Amazon Online Store Revenues and Gross Profit Margins, 2014-2020:**

[redacted]

37. The profit margins Amazon achieves on its online retail sales business are anything but normal. As another major retailer observed after analyzing its own profitability versus Amazon's a few years ago: "Never in the history of retail has a competitor created such a large margin gap." This is direct evidence of Amazon's market power.

### 2. Amazon's Power Over Merchants (Third-Party Sellers and Wholesale Suppliers)

38. Amazon is a critical outlet for third-party sellers and wholesale suppliers. In order to access Amazon's 160 million Prime-member households—the most lucrative customers online[7]—without making them go outside the Amazon ecosystem (where they generally either have to pay again for the fast shipping they get for free with Prime, or accept longer shipping times for free delivery), third-party sellers and wholesale suppliers must sell through Amazon. One survey found that 96% of all Prime members are more likely to buy products from Amazon than any other online store, and 74% of all consumers go directly to Amazon when they are ready to buy a specific product.[8] Indeed, one of Amazon's competitors concluded in 2018 that two out of three online product searches end with a transaction on Amazon.com.

39. As a result, for hundreds of thousands of merchants—both third-party sellers and wholesale suppliers—Amazon represents a critical portion of their sales—20-30% or more—that they could not recover through other channels if they stopped selling on Amazon. For a substantial portion of merchants whose products are sold on Amazon, Amazon is their most important distribution channel.

40. As a well-known consumer electronics device brand that sells wholesale to Amazon reported, "It would be very harmful to [our] business if [we] were to stop selling [our] products on Amazon.com. Not only do a large and growing proportion of [our] sales take place on Amazon.com, but a majority of [our] customers also are members of Amazon Prime. . . . [A] substantial portion of [our] sales take place on Amazon.com. Indeed, as of the third quarter of 2022, approximately 75% of [our] online device sales in the U.S. take place on Amazon."

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[7] *See* Stephanie Chevalier, *Share of online consumers in the United States who are Amazon Prime members as of August 2018, by household income*, Statista (June 15, 2022), https://www.statista.com/statistics/610070/amazon-prime-reach-usa-income.

[8] Kiri Masters, *89% Of Consumers Are More Likely To Buy Products From Amazon Than Other E-Commerce Sites: Study*, Forbes (Mar. 20, 2019), https://www.forbes.com/sites/kirimasters/2019/03/20/study-89-of-consumers-are-more-likely-to-buy-products-from-amazon-than-other-e-commerce-sites/?sh=1280ede64af1.

41. Amazon wields even more power over some third-party sellers. Indeed, almost half of Amazon's third-party sellers generate 81% to 100% of their revenues from sales on Amazon's Marketplace.[9]

42. As one third-party seller put it, "We have nowhere else to go and Amazon knows it." "If we lose 90 percent of our sales because we get suspended from Amazon, the business ceases to exist, basically. It doesn't work basically anymore." "We're stuck with Amazon. We need those sales in order to continue operating business as we do now." Another seller said, "We're stuck. We don't have a choice but to sell through Amazon." Another said, "There is no viable alternative to Amazon for my business."

43. One ecommerce consultant that has advised scores of Amazon third-party sellers explained, "In my experience, sellers have to sell on Amazon to be successful in the ecommerce space. . . . The brands I advise today typically get 50% to 80% of their revenue from Amazon. For most of my clients, if they were to stop selling on Amazon they would not be able to stay in business or at a minimum would have to downsize significantly. Based on my experience advising sellers, if you are not selling on Amazon, you are not selling online."

44. An internal document from a major Amazon competitor summarized it well, based on feedback from third-party sellers desperate for an alternative: "Amazon is not loved by sellers, but sellers are locked into their platform." "You have no choice but to make a deal with the devil." "You are one notice away from being shut down and losing your livelihood." "Amazon doesn't care about you." "We want [Amazon's competitor] to win because [they] aren't bullies."

45. Indeed, over time, Amazon has been able to profitably impose increasingly higher selling costs on third-party sellers and wholesale suppliers, without losing any meaningful business to its competitors—in fact, while gaining market share.

46. For example, from 2014 to 2018, the percentage of total sales revenues that sellers paid to Amazon (including referral fees, fulfillment fees, advertising fees, subscription fees, and other fees) increased from [redacted]% to [redacted]% of the sales revenues of all third-party sellers, and from

[9] Stephanie Chevalier, *Percentage of e-commerce revenue from Amazon sales according to Amazon marketplace sellers in 2018*, Statista (May 4, 2022), https://www.statista.com/statistics/886918/amazon-revenue-share-of-amazon-sellers/.

[redacted]% to [redacted]% of the sales revenues of Fulfilled by Amazon sellers. Amazon observed in 2018 that for some segments, "[redacted]"

47. Consistent with these findings, the Institute for Local Self-Reliance reported in December 2021 that, on average, Amazon pocketed 34% of each sale made by Marketplace sellers on its site, up from 30% in 2018 and 19% in 2014, and the average price sellers paid to simply list and sell a product on Amazon had risen by 28% since 2015.[10]

48. By 2021, the average fees paid by all third-party sellers to Amazon was approximately [redacted]% of their sales revenues, and that number for FBA sellers was [redacted]%. These numbers have increased since then, with dramatic (on the order of 40-50%) increases in effective FBA fees in the first half of 2022, well in excess of market-wide increases in shipping and fulfillment costs, and additional surcharges announced for the 2022 holiday season.[11]

**Average Fees Paid to Amazon as a Percentage of All Third-Party Sales Revenues and All Third-Party FBA Sales Revenues, 2014-Q1 2021:**

[redacted]

[10] Stacy Mitchell, *Amazon's Toll Road: How the Tech Giant Funds Its Monopoly Empire by Exploiting Small Businesses* 4, 6, 12 (Inst. for Local Self-Reliance, Dec. 2021), *available at* https://ilsr.org/wp-content/uploads/2021/11/ILSR-AmazonTollRoad-Final.pdf.

[11] *See* Annie Palmer, *Amazon is raising seller fees for the holidays to manage through surging inflation*, CNBC.com (Aug. 16, 2022, 1:49 PM EDT), https://www.cnbc.com/2022/08/16/amazon-to-raise-seller-fulfillment-fees-for-the-holidays.html.

49. Third-party sellers stick with Amazon, they sell more and more on Amazon every year, and the share of ecommerce sales that occurs on Amazon grows each year, despite the fact that the total cost of selling on Amazon has increased dramatically over time. Since at least 2014, third-party seller fees have been steadily increasing on the Amazon Marketplace, for example, from around [redacted]% of FBA sellers' FBA sales revenues to around [redacted]%. Yet the share of these third-party FBA sales on Amazon out of total ecommerce sales has grown during this same period, from around [redacted]% to around [redacted]%. This is direct evidence of Amazon's market power over sellers.

**Third-Party Sellers' Amazon Sales Volume (Revenues), 2014-2020:**

[redacted]

50. That Amazon is able profitably to impose increasingly higher merchant fees and costs is no accident. In the third quarter of 2016, [redacted] This group went straight to work, [redacted] and repeatedly observing that [redacted]

51. Indeed, the stated mission of Amazon Advertising is to "[redacted]" One Amazon benchmarking study found that [redacted] By the

end of 2017, nearly [redacted] A 2020 survey of large brands found that at least 73% used Amazon's advertising services, with 65% spending at least $40,000 a month on advertising on the site.[12]

52. One seller explained, "if you want your products to be seen above the fold kind of when a customer does a search, even if that search is for your own brand name, you -- you do need to pay for ads." As another seller put it, "over time it became clear that if we did not purchase advertisements, we would not show up in search results."

53. As a result of Amazon's deliberate campaign to [redacted] and sellers' increasing need to pay for sponsored products and other ads just to appear in the same search results they used to appear in for a small referral fee, the average advertising fees third-party sellers pay as a share of their Amazon sales revenues has increased substantially. It has gone from less than [redacted]% of their revenues in 2014 to over [redacted]% of their revenues in the first quarter of 2021.

**Average Advertising Fees Paid by Third-Party Sellers as a Percentage of Their Amazon Sales Revenues, 2014-Q1 2021:**

[redacted]

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[12] Majority Staff of H. Subcomm. on Antitrust, Com. and Admin. L., 116th Cong., *Investigation of Competition in Digit. Mkts.: Majority Staff Rep. and Recommendations* 291 (2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519 (citing Feedvisor, Brands and Amazon in the Age of E-Commerce, 2020 Ed. 12 (2020), https://fv.feedvisor.com/CN_2020_Brands-and-Amazon-in-the-Age-of-E-Commerce.html).

54. Amazon's ability profitably to impose higher and higher costs to sell on Amazon can be seen not only at the overall fee level, but also with respect to specific instances of fee increases. For example, following Amazon's 2018 FBA fee increase, [redacted] If Amazon faced real competition, then when Amazon increased FBA fees in 2018, [redacted] evidences Amazon's market power over sellers and the market power-entrenching nature of Amazon's price parity agreements, which prevent third-party sellers from offering lower prices on other channels reflective of their lower fees, thereby preventing customers from being steered to lower-priced competitors.

55. Amazon has added and raised fees so dramatically, that the total cost of selling on Amazon materially exceeds that of selling in other online stores. For example, Walmart.com charges no setup, subscription, or listing fees, only a referral fee on each sale. Although it can vary by seller, product type, weight, and size, and time of year, Walmart.com's fulfillment and/or storage fees are typically lower than what Amazon charges. Another competitor, eBay, generally offers at least 50 free product listings before charging its $0.35 product listing fees, and generally sets its commissions below Amazon's.

56. In addition, as discussed, paying for "sponsored products" (i.e., ads) on Amazon has become a "must" for sellers and wholesale suppliers. Including advertising fees, fees to sell on Amazon are larger than those on any other platform. Indeed, in an August 2017 study, Amazon found that the [redacted]. Five years later, the gulf between total on-Amazon and off-Amazon effective seller fees persists.

57. One third-party seller, ViaHart, has publicly reported its costs of selling on Amazon, Walmart.com's marketplace, eBay, and its own website in 2020, as a percentage of its sales revenues on each of those sites. For every dollar in sales revenues this seller earned on

Amazon in 2020, it paid nearly 52 cents (and most of that to Amazon) in the form of commission fees, refund costs, advertising fees, shipping, fulfillment, packaging, and storage fees, and miscellaneous other fees. That was roughly 15% more expensive than selling on Walmart.com, 22% more expensive than selling on eBay, and over three times as expensive as selling the same product on its own website.[13] Since that time, Amazon has substantially increased its effective fulfillment fees (on the order of a 50% increase), such that these figures now understate the extent of the premium this seller pays to sell on Amazon.

58. Another third-party seller reported that "the total fees [it] incurs to sell its products on Amazon have increased over time, to the point where the margins [it] earns on Amazon sales are lower than the margins it earns on sales through any other channels." Whereas the fees this seller incurs to sell on Amazon represent about 50% of its Amazon sales revenues, that number is 30% for eBay. This seller reported that if it did not attempt to keep prices generally the same across websites, it might charge higher prices on Amazon than prices on other sales channels "because the fees for selling on Amazon are so high."

59. Another third-party seller reported that it costs 22% less to fulfill its orders itself than to use the Fulfilled by Amazon program. It also reported that the commissions or listing fees it pays Amazon as a percentage of its products' selling price are approximately 2 percentage points higher (17% versus 15% of the selling price) than what it pays other retail marketplaces, which include Walmart's and Target's marketplaces. As a result, this seller earns about 10% more on sales through other online channels compared with Amazon, because it costs this seller less to sell through these other channels and fulfill orders itself.

60. Amazon's own [redacted] third-party sellers' growing frustration with the cost of selling on Amazon. [redacted]

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[13] Molson Hart, *Clarifying the Costs of Selling on Various Marketplaces*, Molson Hart, https://www.molsonhart.com/blog/clarifying-the-costs-of-selling-on-various-marketplaces (last visited Sept. 9, 2022).

[redacted]

61. An ecommerce consultant echoed these same sentiments: "The Amazon sellers that I currently advise typically pay the following fees to sell on Amazon: (1) a referral fee that typically ranges from 15% to 20% of the sale price for each product sold; (2) advertising fees that typically range from 10% to 15% of total sales revenue; and (3) FBA fees typically ranging from 10% to 20% of the sale price per product. The cost of selling on Amazon is higher than the cost to sell through any other online sales channel. In 2003, 15 cents of every dollar I sold on Amazon was paid to Amazon in fees. Today, an average of 45 cents of every dollar sold by my clients on Amazon goes to Amazon. I expect advertising fees and FBA fees will continue to increase over time. Because of Amazon's high fees, the margins my clients earn on Amazon sales are lower than the margins they earn on sales through any other channel."

62. Amazon is a similarly expensive platform for wholesale suppliers, charging them [redacted]% fees on top of procuring their products at wholesale cost and earning the retail markup. A former Amazon senior executive who now runs an ecommerce consulting company reported that "in the past five years, manufacturers have consistently told me that Amazon's gone from their least expensive channel to their most expensive—by a long shot. 'Amazon is our highest

cost-to-serve retailer.' –said by Nearly Every Brand I've Ever Talked To."[14] Amazon routinely earns margins of [redacted]% or more on its retail sales of wholesale suppliers' products.

63. Not only has Amazon imposed increasingly higher selling costs on third-party sellers and wholesale suppliers, well in excess of the costs of selling on and to competing sites, but the value provided for Amazon's higher costs has also decreased. Today, it is harder (or more expensive) for a merchant to reach consumers with its products on Amazon than it was five to ten years ago. For the price of a small referral or merchandising fee, Amazon used to feature high-value, best-selling products naturally in organic search results and customer-friendly widgets (e.g., "Frequently Bought Together") on product detail pages. Now, in order to get that same placement, merchants must pay several percentage points more of their sales revenues to Amazon to be featured in sponsored ads in search results and on product detail pages. Otherwise, less relevant ads edge them out of meaningful visibility.

64. In the past, the price of a small referral fee also entitled third-party sellers to an Amazon category manager with whom they could consult and troubleshoot live over the phone. Around 2015, Amazon suspended third-party sellers' category manager access, forcing them to contact general "Amazon Seller Support"—a call center-type experience. These days, if third-party sellers want a live adviser to provide basic selling assistance that used to be free, they have to pay on the order of $60,000 or more per year, or $20,000 per year plus 0.3% of their annual sales revenues, for a "Selling Partner Premium Services" account manager. Similarly, wholesale suppliers may pay [redacted]% of their net receipts to Amazon if they want access to Amazon's "Strategic Vendor Services," otherwise referred to as "Brand Specialists," to help them navigate the increasingly complex selling environment on Amazon. Yet here again, third-party sellers and wholesale suppliers have largely not switched to competing sites in the face of this drop in service level—a direct indication of Amazon's market power.

65. The treatment that sellers put up with is not limited to price hikes and reductions in once-free services. As Amazon acknowledges in its own internal documents, [redacted]

[14] Andrea K. Leigh, *"Free Shipping" Online: The Truth About Who Pays It*, Andrea K. Leigh Consulting (Feb. 19, 2020), https://andreakleighconsulting.com/free-shipping-online-the-truth-about-who-pays-it.

[redacted] Despite the challenges posed by these fee schedules, sellers put up with it because they have no other meaningful option.

66. As one third-party seller put it, "Amazon's power over online merchants is not just in sales, but also in the way that sellers are treated." The typical seller on Amazon "has zero bargaining power whatsoever . . . in their negotiations with Amazon. Everything is take it or leave it . . . . All of the bargaining power rests with Amazon."

67. Another seller reported that it has no ability to negotiate the terms of its relationship with Amazon, and Amazon "changes its policies for sellers regularly and with little notice." This seller explained, "As a company whose whole business is dependent on sales on Amazon, when Amazon makes a policy change with little to no notice, it dramatically impacts [this seller's] business in a negative way."

68. Many sellers report that they fear retaliation by Amazon if they say anything publicly about it other than to praise the company. As one seller put it, "Amazon could say like, hey, this guy is a real problem and [his business's sales] is his source of income. Let's slowly, you know, turn this knob, so to speak, to reduce their visibility -- that visibility of their items in search," or "flip a switch, that can negatively affect your business in some way." One seller reported [redacted] Amazon admits in internal documents that "[redacted]"

69. Wholesale suppliers generally put up with the same treatment from Amazon, as many of them have little to no bargaining power in the relationship. Indeed, Amazon's power over some of the largest brands in the country is made plain by [redacted]

[redacted] because Amazon is a critical channel of distribution for these major brands.

70. Amazon's ability to practice price discrimination is further evidence of Amazon's market power. [redacted] Amazon's advertising fees are really just another form of referral fee—a cost to appear in the Amazon store—tailored to each merchant's "[redacted]." Specifically, Amazon auctions its advertising to charge different fees to different sellers based on their willingness to pay. Amazon can engage in this price discrimination because of its market power. Amazon can extract these higher fees from specific third-party sellers and wholesale suppliers because there is minimal concern other competitors would steal away Amazon's higher-value merchants.

**3. Amazon's Power Over Consumers**

71. Amazon also enjoys market power over consumers. When Amazon raises prices or lowers quality, consumers do not switch to competing sites like Walmart.com. For example, the attrition rate for Prime members [redacted]. If Amazon faced meaningful competition from other online stores, [redacted] evidences Amazon's market power over consumers. One seller—whose Amazon sales represent approximately half of its total sales—reported that "consumers are dependent on Amazon," including for product

reviews.

72. Amazon's documents recognize that [redacted]. For example, in 2019, Amazon forecasted that [redacted] Another internal analysis forecasted that based on [redacted] This means that for every 1% increase in the price of Prime, Amazon would [redacted] In other words, Amazon's own documents establish that [redacted]

73. Amazon has also dramatically expanded ads on its site, with lower relevance thresholds than its organic search algorithms, which substantially reduced the value of its online store to consumers, all the while *gaining*—not losing—market share. This is further evidence of its market power on the consumer side. For example, the Amazon Central Economics team reported that [redacted] Internally, Amazon readily concedes that [redacted] Amazon tolerates showing ads that are less relevant to consumers than organic search results and recommendations, knowing it harms the customer experience, because ads are the source of billions of dollars of profits for Amazon each year.

74. Many people who have been Amazon customers since before the era of "ads on Amazon" have noticed the dramatic difference in customer experience. Before ads, search results were "organic," i.e., results Amazon had determined were truly relevant to the customer's search. When the customer clicked on a search result, she was taken to a product detail page where she viewed the product as well as helpful recommendations and suggestions that Amazon had independently determined would improve the customer experience. Now, the customer often has to scroll or page down several times in search results before she comes to organic content; sponsored banners appear before and in between search results, and sponsored products can take up several of the top search results listings. When the customer clicks through to the product detail page, she now encounters widgets all over the page, recommending sponsored products in addition to or instead of the product she selected.

75. As one seller observed, ads on Amazon create "a negative experience for customers." As he explained it, "if you -- like you could use an algorithm to -- that is based on reviews, refund rate, return rate for a given search result alone instead of who is paying the most to appear at the top, and that would probably help customers find the products faster and more easily than the current system where it is paid to be seen."

76. [redacted] customers' frustration with ads that are not relevant to their shopping intent and have made the experience of shopping on Amazon worse. For example, [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

- [redacted]
- [redacted]
- [redacted]

Amazon concluded: "[redacted]." Moreover, [redacted]

77. [redacted]

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

Amazon found a [redacted]. Meanwhile, Amazon found, shoppers were [redacted]

[redacted]

78. [redacted] this deterioration in quality: [redacted]

79. Ads on Amazon have also put significant upward pressure on both seller fees and product prices. From 2015 to 2018 alone, [redacted] In other words, the explosion of advertising on Amazon in the second half of the 2010s [redacted]

80. It also coincided with [redacted]. For example, as paid advertising has dominated a greater and greater share of the top of search results, [redacted] Amazon's Chief Economist went on to observe that nonetheless, [redacted] A 2018 Amazon whitepaper is to the same effect—ads [redacted] Amazon's market power—evidence of Amazon reducing product quality, sacrificing output, in order to increase its own margins.

81. In response to the proliferation of less relevant content on Amazon, and concomitant higher prices as sellers pass through advertising fees to consumers, consumers generally have not switched to other online stores. To the contrary, each year, an estimated over 90% of Prime customers renew their membership, and more customers join each year, increasingly shopping and spending more on Amazon than any other online store. That customers do not switch to competing sites that offer a better customer experience and where sellers have lower fees to pass through to consumers is further evidence of Amazon's market power.

82. A key reason customers do not switch to competing online stores in the face of Amazon's price hikes and quality degradation—i.e., a key reason Amazon enjoys such market power—is Amazon's price parity policies. Walmart.com, eBay, Target.com, and Amazon's other competitors generally cannot draw customers away from Amazon with lower prices, because Amazon *compels* suppliers and sellers to cause the prices on those competing websites to be the same or higher than the prices for the same products on Amazon. Because of the price parity policies, and the artificial restriction of Amazon-alternatives, customers have little reason to shop elsewhere.

**B. Relevant Market**

83. Although the overwhelming direct evidence of Amazon's market power obviates the need for further analysis or defining a relevant market and Amazon's share of that market, that analysis yields the same result: Amazon has significant market power over merchants and consumers.

84. A market relevant to the illegal conduct described in this Complaint is the market for online retail sales of new products for custom delivery (e.g., delivery to the customer's home) in the United States ("Online Retail Stores Market"). Participants in the Online Retail Stores Market serve distinct sets of counterparties—merchants (wholesale suppliers and third-party sellers), and consumers.

85. Online Retail Store sales include: (1) sales on retailers' own websites where merchants can sell and customers can purchase new products directly from the retailer for custom

delivery (e.g., Costco.com, BestBuy.com), (2) sales on online retail marketplaces where third-party sellers can sell and customers can purchase new products for custom delivery (e.g., eBay, Etsy.com), (3) sales on hybrids of these sites (e.g., Amazon and Walmart.com, where both wholesale suppliers and third-party sellers can reach customers and vice versa for the purchase and sale of new products for custom delivery), and (4) sales on brands' direct-to-consumer websites (e.g., Spalding.com, Nike.com, etc.). In this last case, the brand self-supplies its own branded products for retail sale (i.e., it is both the merchant and the online store).

86. [redacted] According to Amazon internal documents, "[redacted]"

87. [redacted] As a 2019 internal Amazon document observed, [redacted]

88. Amazon goes to extraordinary lengths to ensure that the prices of third parties' products on its Marketplace are not offered for less by [redacted] Amazon disqualifies Marketplace sellers' offers from the coveted "Buy Box" if their products are offered for lower prices by these [redacted] competitors at competing online stores. Amazon acknowledges in internal documents that these [redacted]

89. The Online Retail Stores Market does not include sales of used items, which are not reasonable substitutes for new items. Used and new versions of the same product usually differ substantially in terms of price, packaging, condition, and reliability. New items can typically be returned to the store for a refund or credit, whereas used items typically cannot.

90. The Online Retail Stores Market does not include online sales of products for curbside or in-store pickup, which are not reasonable substitutes for online sales of products for custom delivery, e.g., delivery to the customer's home or workplace. Selection for curbside and in-store pickup is limited to the existing selection within a brick-and-mortar store—in contrast to the vast array of products available online for home delivery—and traveling to a physical store for curbside or in-store pickup generally takes substantially more time and resources and is substantially less convenient than receiving delivery at one's home or other chosen, convenient location. This is particularly the case for consumers without ready access to a vehicle and who live in areas of high traffic congestion and high levels of sprawl. Home or workplace delivery generally can take place at any time of the day or night, without the consumer needing to be present, whereas consumers must carve out time from work, family, and personal care obligations to accomplish curbside or in-store pickup, which is generally only available during regular business hours.

91. The Online Retail Stores Market does not include online grocery sales, i.e., online sales of grocery products for delivery from local grocery stores, such as Amazon Fresh online sales (which are generally delivered within a delivery window from a physical grocery store in

close proximity to the customer, as opposed to being fulfilled in a matter of days through a national fulfillment and distribution network). These grocery store sales generally are substantially different from non-grocery sales in their origin (e.g., farms), shelf lives (e.g., milk, meat), and storage and transport requirements (e.g., refrigerated and frozen items), and as a result generally are sourced and delivered in a fundamentally different way from non-grocery items. Because of these differences, competition in online grocery sales is generally localized, and a consumer buying the same item via the online grocery channel and the online retail store channel could very well pay a different price on one channel versus the other. [redacted]

92. The Online Retail Stores Market does not include physical brick-and-mortar retail store sales. From a consumer standpoint, online stores that offer custom delivery are separately considered as a distinct sales channel with limited substitutability with brick-and-mortar stores. Primarily because online stores can have an essentially unlimited range of products, available at all hours and generally available to customers near or far away, online stores attract customer transactions associated with very different expectations than brick-and-mortar stores, including different expectations for pricing and delivery timing. As Jeff Bezos put it in his cover letter to Amazon's 2020 Annual Report:

> Customers complete 28% of purchases on Amazon in three minutes or less, and half of all purchases are finished in less than 15 minutes. Compare that to the typical shopping trip to a physical store—driving, parking, searching store aisles, waiting in the checkout line, finding your car, and driving home. Research suggests the typical physical store trip takes about an hour.

Simply put, physical stores and online stores are not reasonably interchangeable substitutes for one another from the standpoint of consumers.

93. As a corollary on the merchant side, because brick-and-mortar stores have limited shelf space, they physically cannot offer more than a handful or so of different brands of each product they carry, and they are extremely limited in the number of different products they can

carry altogether. As a result of limited physical shelf space, typically top-selling products, and top brands for those products, are selected for sale in brick-and-mortar stores. The merchants who realistically do not have access to this shelf space to reach consumers generally can only access them online. And for smaller merchants that online retail stores decline to purchase from on a wholesale basis due to inventory constraints and economies of scale considerations, their only realistic access to consumers is through online marketplaces and their own direct-to-consumer websites.

94. Online stores are considered separately by most merchants as a distinct sales channel with limited substitutability with brick-and-mortar stores. Primarily because online stores have significantly different distribution and logistics, and very different overhead and advertising costs than brick-and-mortar stores, most merchants—even those that sell through both channels—do not consider physical brick-and-mortar stores to be in the same market as online stores. For example, a clothing merchant reported that brick-and-mortar retail stores are "differently positioned in the market" than online sales channels (including both direct-to-consumer online sales and drop-ship sales to online wholesale customers) because for this merchant's online sales channels, "we accept the risk that the products we have ordered may not sell. Therefore our online prices are higher. By contrast, when we sell wholesale to retailers who in turn sell in brick-and-mortar stores, these buyers are committed to purchasing an entire order. There is less risk for us, and we can offer a lower wholesale price. Our prices are therefore lower for these stores." Indeed, some suppliers differentiate their product offerings between online and brick-and-mortar stores, and economies of scale and scope also may vary between online and brick-and-mortar distribution.

95. Online retail stores can also collect more information on their customers, and their searches and purchases, than brick-and-mortar stores. As a result, sellers can identify customers, and customers can find sellers' products, in a much more customized and targeted way than physical stores are capable of providing. Every customer in a physical store has generally the same shopping experience. But different customers shopping online generally have distinct experiences—they are likely to be presented with different featured products and

recommendations (based on their purchase history and search terms), different ads, and even different prices. As the Amazon Central Economics Team put it, "[redacted]."

96. For example, in 2018, the Amazon Central Economics team [redacted] Physical stores cannot replicate this kind of shopping experience—they cannot offer this targeted matching that online stores provide. For this reason, many sellers choose to sell their products only through online stores. This is further evidence that Amazon competes in a market that does not include brick-and-mortar sales—that in response to a small but substantial, non-transitory increase in the price of all products offered in online stores, customers would not switch and purchase those products in physical stores instead.

97. Amazon recognizes that [redacted] Specifically, Amazon [redacted]

[redacted] If brick-and-mortar stores meaningfully competed with online stores like Amazon for sales, Amazon would pay far more attention to the prices being offered in those physical stores. That it does not indicates that brick-and-mortar stores are not in the same relevant market as online retail stores.

98. That some consumers shopping in a brick-and-mortar store may use their mobile device to check in-store prices against online prices for the same product, does not suggest the Online Retail Stores Market includes brick-and-mortar stores. While some consumers may easily check online prices while shopping in a physical store, it does not work the other way around—consumers shopping online cannot easily check physical store prices, as doing so requires physically traveling to one or more physical stores, parking, walking into the store, locating the product, and checking the price. As a result, brick-and-mortar stores are not an effective check on online prices.

99. Indeed, prices often differ between physical and online stores. For example, a comparison of a given retailer's online and in-store prices for the same product will often show that the prices are different, for example, slightly higher online prices to reflect the costs of shipping to the customer's home.

100. In the face of a small but substantial, non-transitory increase in prices in the Online Retail Stores Market, consumers and providers generally would not substitute away to the purchase and sale of products in brick-and-mortar stores.

101. The relevant geographic market is the United States. Online retail stores serving consumers in the United States generally do not compete with stores serving consumers outside the United States. Online retail stores serving other countries are not reasonable substitutes from the perspective of U.S. consumers due to a variety of factors, including language and currency differences, geographical barriers to and differences in timely shipping capabilities, and restrictions on cross-border purchases. In response to a small but substantial, non-transitory

increase in the prices (to consumers and sellers) of online retail stores serving U.S. consumers and sellers, those consumers and sellers generally would not substitute away and start buying and selling through non-U.S. online retail stores.

102. Indeed, Amazon has [redacted] Similarly, Amazon's policies and practices vary by country or region. For example, one Seller Code of Conduct governs U.S. sellers; other codes govern sellers abroad. [redacted] In other words, the way Amazon organizes itself, negotiates with suppliers, and tracks and manages its business shows that its online store in the United States operates in a distinct relevant geographic market.

103. Amazon operates the largest online retail store in the United States, accounting for an estimated over 49% of all sales in the Online Retail Store Market by gross merchandise value.[15] That number is many multiples of those figures for Walmart and eBay, the two next-largest online retail stores.

104. Amazon's nearly 50% share of Online Retail Store sales is substantially under-representative of its market power over merchants and consumers. If one considers only the online retail store sales of Amazon and players in the market that [redacted] are the real competitive constraints on its pricing—namely, [redacted] (Walmart, Target, Costco, etc.) and the large marketplaces [redacted] (eBay, Newegg, etc.)—Amazon's share is approximately 60%. These competitors are, [redacted]

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[15] This number is 40% if online sales of used products, online sales for curbside and in-store pickup, and online grocery sales were included in this market.

[redacted] Amazon's most meaningful and effective competition.

105. Amazon also dominates several important categories of Online Retail Store sales in the United States. Amazon's share of U.S. Online Retail Store sales of books and magazines is approximately 80%, and is over 50% for consumer electronics, consumer packaged goods, and toys and hobbies. Sales in these categories represent over one-third of all U.S. Online Retail Store sales annually.

106. Amazon is also largely the only game in town for merchants who cannot reach consumers through wholesale sales to retailers—those who rely on their own sales on third-party marketplaces to reach customers. Amazon accounts for approximately 55% of all online third-party marketplace sales. Consistent with this statistic, according to an internal document of a major Amazon competitor, in 2021, 58% of U.S. monthly online marketplace visits were to Amazon.com. Even these numbers are under-representative of Amazon's market power over merchants, however, because they do not account for the vastly higher share of third-party marketplace ecommerce fees Amazon captures—also known as Amazon's "take"—versus other marketplaces. Amazon's share of third-party marketplaces' takes is nearly 90%.

### C. Barriers to Entry

107. Amazon's market power is reinforced by high barriers to entry and expansion and switching costs. A key barrier to entry and expansion is the network effects of Amazon's online store: as Amazon adds more and more customers to its customer base (which includes over 160 million U.S. Prime users), Amazon's platform becomes increasingly valuable—in fact, indispensable—for most third-party sellers and wholesale suppliers. Likewise, as Amazon attracts more and more merchants selling a wider variety of goods (not sold for less elsewhere due to price parity), Amazon's platform becomes more valuable to customers. More customers beget more merchants, and more merchants beget more customers, making it increasingly difficult for competing online stores to break in or expand to create a meaningful competitive constraint.

108. Another barrier to entry and expansion is Amazon's growing dominance in the logistics and fulfillment space. As Amazon's business has grown, it has developed a significant logistics business surrounding fulfillment and delivery of online orders with its Fulfillment by Amazon program. Approximately [redacted]% of all Amazon Marketplace transactions are fulfilled by Amazon. In addition to its over 10,000 truck trailers and its own freight airline, Amazon has built hundreds of package sorting and delivery centers across the United States and has established its own network of contracted delivery providers exclusively dedicated to delivering packages for Amazon. Amazon now handles a parcel volume comparable to those handled by the top carriers, including UPS, FedEx, and the U.S. Postal Service—Amazon surpassed FedEx's market share in 2020. The investment, expertise, and resources necessary for a would-be competitor to develop a logistics and fulfillment infrastructure that rivals Amazon's serve as a barrier to entry and expansion in the market.

109. The economies of scale inherent in online retail fulfillment serve as a further barrier to entry and expansion in the Online Retail Stores Market. Even where sellers prefer not to depend on Amazon for fulfillment, economies of scale favor a seller maintaining all of its inventory in a single fulfillment network. On top of this, sellers are effectively ineligible for the "Prime" badge (without which their sales fall substantially) if they do not use Fulfilled by Amazon for their Amazon orders, and Amazon penalizes sellers if they go out-of-stock by removing the "Prime" badge from their product listings, which makes sellers even more reluctant to split their inventory across providers. These factors serve as a further barrier to entry and expansion in the Online Retail Stores Market.

110. Moreover, because 160 million Prime members are *already* paying Amazon $139 per year (or the equivalent monthly fee) for unlimited free and fast shipping, they are generally reluctant to pay Amazon's competitors for the same kind of service. This means Amazon's competitors generally must give away to customers (or heavily discount) a service that Amazon makes billions of dollars every year on—a further impediment to entry and expansion.

111. Amazon's price parity agreements and policies have exacerbated the entry and expansion barriers in the Online Retail Stores Market. Simply put, if you cannot discount off

Amazon, you cannot compete against Amazon. Yet that is precisely what Amazon prevents its competitors from doing, through coerced agreements with its wholesale suppliers and third-party sellers.

## VI. AMAZON'S ANTICOMPETITIVE CONDUCT

112. Amazon has entered into and enforced its retail and wholesale price parity agreements with the intent and effect of expanding and entrenching its market power as an online retail store, impeding rivals, insulating the Amazon store from competition, enabling Amazon to extract anticompetitive rents through multiple channels, including supra-competitive seller fees, and pricing above competitive levels across California.

### A. Retail Price Parity

113. A key tactic Amazon employs to insulate its online store from competition and perpetuate its ability to charge supra-competitive prices is coercing third-party sellers to enter into anticompetitive price parity agreements. Amazon requires each of these Marketplace sellers to sign a Business Solutions Agreement ("BSA"), through which they expressly agree to certain "Program Policies" and other selling terms.

114. For years, Amazon's BSA contained an explicit "Price Parity Provision." This provision required sellers to agree that the "purchase price and every other term of sale [would] be at least as favorable to Amazon Site users as the most favorable terms via Your Sales Channels," i.e., the seller's own website, as well as other non-Amazon online marketplaces:

> **S-4 Parity with Your Sales Channels.**
>
> Subject to this Section S-4, you are free to determine which of Your Products you wish to offer on a particular Amazon Site. You will maintain parity between the products you offer through Your Sales Channels and the products you list on any Amazon Site by ensuring that : (a) the Purchase Price and every other term of offer or sale of Your Product (including associated shipping and handling charges, Shipment Information, any "low price" guarantee, rebate or discount, any free or discounted products or other benefit available as a result of purchasing one or more other products, and terms of applicable cancellation, return and refund policies) is at least as favorable to Amazon Site users as the most favorable terms upon which a product is offered or sold via Your Sales Channels (excluding consideration of Excluded Offers); (b) customer service for Your Products is at least as responsive and available and offers at least the same level of support as the most favorable customer services offered in connection with any of Your Sales Channels (this requirement does not apply to customer service for payment-related issues on Your Transactions, which we will provide); and (c) the Content, product and service information, and other information under Section S-1.1 regarding Your Products that you provide to us is of at least the same level of quality as the highest quality information displayed or used in Your Sales Channels. If you become aware of any non-compliance with (a) above, you will promptly compensate adversely affected customers by making appropriate refunds to them in accordance with Section S-2.2. For Amazon-Fulfilled Products, if the shipping and handling charges associated with the sale and fulfillment of any of Your Products offered on an Amazon Site are included (and not separately stated) in the item price listed for Your Product (collectively a "**Shipping Inclusive Purchase Price**"), then the parity obligation in (a) above will be satisfied if the Shipping Inclusive Purchase Price and each other term of offer or sale for the product on the Amazon Site are at least as favorable to Amazon Site users as the purchase price and each other term of offer or sale for the product (including any and all separately stated shipping and handling charges) pursuant to which the product or service is offered or sold via any of Your Sales Channels.

As the Office of the Attorney General has been informed, sellers understood this policy as a prohibition on listing products off Amazon for a lower price than the price posted on Amazon, and sellers refrained from selling their products for less off Amazon because they had agreed not to do so in their BSA with Amazon.

115. Other provisions of Amazon's BSA and incorporated program policies similarly require Marketplace sellers to agree not to cause the prices of their products on other online retail sites to be lower than their prices on Amazon. The term Amazon uses for this parity requirement is "price competitiveness"—sellers must agree to keep their prices on Amazon and their prices off Amazon "competitive." To be "competitively priced," the seller's "Price + Shipping must be less than or equal to" the lowest price for the item offered off Amazon by unidentified retailers tracked by Amazon.[16] At first glance, this sounds like a good thing—like Amazon wants price competition. But it means the opposite. Amazon's requirement of "competitive prices" actually destroys competition, because it forces sellers to keep prices *off Amazon* higher than they otherwise would be, in order to keep their on-Amazon prices "competitive." "Price competitiveness" is "price parity" by another name. As one third-party seller explained it, "'competitive price' has like a very specific meaning to Amazon in this context. They're not actually talking about whether or not a price is competitive in the eyes of a customer, but they're actually more like talking about, like, what the grounds for the suppression of an item sold on their website might be. . . . [T]his is some bullshit about how they're trying to explain what their pricing suppression policies are by using language that is vague and in some ways euphemistic."

[16] *Pricing status*, Amazon Seller Central, https://sellercentral.amazon.in/help/hub/reference/external/S9A4Q8K4Q6KT8TV?locale=en-IN (last visited September 11, 2022).

116. In agreeing to the BSA, sellers agree to the "Amazon Standards for Brands Selling in the Amazon Store," or "ASB" (formerly the "Manufacturers on Amazon," or "MOA" policy). The ASB requires brands and their agents and representatives selling in the Amazon store to "maintain [Amazon's] standards for customer experience," including "price competitiveness"—which, again, does not mean competition, but rather that sellers must offer the same or higher prices elsewhere versus on Amazon:

## Standards for Brands Selling in the Amazon Store

Amazon obsesses over providing our customers the best possible shopping experience. Since the inception of our store, one way we have ensured a great customer experience is by sourcing products directly from Brands and selling them to customers in our store ourselves. In order to preserve that customer experience, we may choose to source products from some Brands for sale by Amazon only. Other Brands can operate as sellers in the Amazon store if they can consistently maintain our standards for customer experience. However, to prevent customer confusion, if any of the Brand's products are sold by Amazon via Amazon retail, the Brand may not sell those products via Seller Central in the Amazon store.

We measure customer experience in a number of ways, including high in-stock rates, delivery experience, price competitiveness, and selection completeness. We offer several tools and services to help you meet our standards and sell successfully in the Amazon store, including tools for inventory management and automated pricing, fulfillment services like Fulfillment by Amazon (FBA), and services to grow and protect your Brand like Brand Registry.

If you are unable to maintain our standards for customer experience, you might lose certain privileges associated with operating as a seller in the Amazon store (including having your offers featured on product detail pages), or you might lose the opportunity to operate as a seller in the Amazon store altogether. In that case, you can still offer to sell your products to Amazon so that your products can be sold through Amazon retail

**Who does this policy apply to?**

This policy applies to Brands and manufacturers, as well as their agents, licensees, and other representatives selling on their behalf in the Amazon store.

**What is the purpose of this policy?**

To ensure that we are providing customers the best possible experience while shopping in the Amazon store.

**Does this policy impact my ability to sell through other retailers?**

No. You are free to sell through other retailers.

**How will I know if I need to take any action under this policy?**

We will notify Brands if they are impacted by this policy, whether they need to take any actions to maintain a great customer experience, what options they have to take those actions, and the deadlines for taking them.

117. According to internal Amazon documents, [redacted] meaning brands' products on Amazon must be priced equal to or cheaper than other websites 95% of the

time or more. As Amazon's corporate witness explained under oath in response to the question [redacted] This contractual requirement in the ASB program policy is effectively identical to the explicit Price Parity Provision.

118. Sellers also agree through the BSA to the "Amazon Marketplace Fair Pricing Policy," which provides: "Amazon regularly monitors the prices of items on our marketplaces, including shipping costs, and compares them with other prices available to our customers. If we see ***pricing practices on a marketplace offer that harms customer trust***, Amazon can remove the Buy Box, remove the offer, suspend the ship option, or, in serious or repeated cases, suspending or terminating selling privileges":

> ## Amazon Marketplace Fair Pricing Policy
>
> Sellers are responsible for setting their own prices on Amazon marketplaces. In our mission to be Earth's most customer-centric company, Amazon strives to provide our customers with the largest selection at the lowest price, and with the fastest delivery as sellers play an important role.
>
> Amazon regularly monitors the prices of items on our marketplaces, including shipping costs, and compares them with other prices available to our customers. If we see pricing practices on a marketplace offer that harms customer trust, Amazon can remove the Buy Box, remove the offer, suspend the ship option, or, in serious or repeated cases, suspending or terminating selling privileges.
>
> Pricing practices that harm customer trust include, but are not limited to:
>
> - Setting a reference price on a product or service that misleads customers;
> - Setting a price on a product or service that is significantly higher than recent prices offered on or off Amazon; or
> - Selling multiple units of a product for more per unit than that of a single unit of the same product.
> - Setting a shipping fee on a product that is excessive. Amazon considers current public carrier rates, reasonable handling charges, as well as buyer perception when determining whether a shipping price violated our fair pricing policy.

119. Amazon sends the message that pricing products higher on Amazon than off Amazon is a pricing practice that "harms customer trust" and violates the Amazon Marketplace Fair Pricing Policy. As Amazon's corporate witness testified under oath, [redacted] Amazon's written responses to investigative questions admit the same: [redacted] As Amazon admitted several years ago in

official correspondence to the [redacted] Indeed, according to Amazon, this is the [redacted] Under the Fair Pricing Policy, as a condition of selling in the Amazon store, third-party sellers must agree not to do anything to cause their prices elsewhere to be lower than their prices on Amazon, because such "pricing practices" "harm customer trust."

120. Sellers reported that this is their understanding of the Fair Pricing Policy. Indeed, a major ecommerce consultant to Amazon sellers describes the Fair Pricing Policy on its website as follows: Amazon "track[s] the prices of all products sold on Amazon and compare[s] them with other marketplaces. ***If Amazon sees your product priced lower on another website, they will penalize you.*** They may remove the Buy Box, remove the offer, or suspend the ship option. In serious or repeated cases, they may end your selling privileges. Pricing practices that harm customer trust can include: . . . Setting a price on a product or service that is higher than recent prices offered on or off Amazon."[17]

[17] Ryan Faist, *How Pricing Strategy Helps You Win the Amazon Buy Box*, Channel Key (Feb. 9, 2022), https://channelkey.com/how-pricing-strategy-helps-you-win-the-amazon-buy-box/.

121. In agreeing to the BSA, sellers also agree to the "Seller Code of Conduct," in which they agree to "act fairly."

# Selling Policies and Seller Code of Conduct

All sellers are expected to adhere to the following policies when listing products on Amazon. Seller offenses and prohibited content can result in suspension of your Amazon account.

## Seller code of conduct

This policy requires that sellers act fairly and honestly on Amazon to ensure a safe buying and selling experience. All sellers must:

- Provide accurate information to Amazon and our customers at all times
- Act fairly and not misuse Amazon's features or services
- Not attempt to damage or abuse another Seller, their listings or ratings
- Not attempt to influence customers' ratings, feedback, and reviews
- Not send unsolicited or inappropriate communications
- Not contact customers except through Buyer-Seller Messaging
- Not attempt to circumvent the Amazon sales process
- Not operate more than one selling account on Amazon without a legitimate business need
- Not engage in conduct that violates price fixing laws

Violating the Code of Conduct or any other Amazon policies may result in actions against your account, such as cancellation of listings, suspension or forfeiture of payments, and removal of selling privileges. More details about these policies are below.

122. Amazon conveys to sellers that in agreeing to "act fairly," they agree to advertise the same prices off Amazon as they offer on Amazon. In a November 2021 "clarification" to the Seller Code of Conduct, Amazon explicitly stated, "we welcome sellers advertising ***the same pricing and discounts off-Amazon as they offer in our store***."

## Clarification of Amazon's Policy on Rebates, Coupons, and other Marketing Incentives

US Announcements

SEAmod Amazon Moderator 1 Nov '21

The Amazon Seller Code of Conduct 441 requires acting fairly, and prohibits manipulating sales rank. We have recently received several seller inquiries regarding Amazon's policy on incentives that drive customer discovery and conversion—particularly through rebates, coupons, and other marketing incentives—and are offered outside Amazon as a way of driving a purchase in our store.

We welcome and encourage coupons, discounts, deals, and other tools to lower prices for customers and drive incremental sales—but only when those incentives are part of the product offer made in our store. Amazon offers numerous programs to help you drive discovery of new products and increase sales through lower prices, and we welcome sellers advertising the same pricing and discounts off-Amazon as they offer in our store. However, we consider it a violation of the Amazon Seller Code of Conduct if off-Amazon rebates, discounts, and other schemes are designed to drive customers to products that are listed and sold without those incentives on Amazon. These practices are potentially abusive to customers and other sellers, as they may inflate search ranking, incentivize product reviews, and generate artificial traffic and conversion behaviors.

One seller stated that the November 2021 clarification to the Seller Code of Conduct "just seems like a continuation of the pricing parity policy."

123. The Seller Code of Conduct also requires sellers to agree not to "divert[] Amazon customers to another website":

> **Circumventing the Sales Process**
>
> You may not attempt to circumvent the Amazon sales process or divert Amazon customers to another website. This means that you may not provide links or messages that prompt users to visit any external website or complete a transaction elsewhere.

Of course, the most effective way sellers can divert customers to another website—i.e., enable meaningful competition with Amazon—is by offering lower prices off Amazon.

124. In August 2022, Amazon updated its BSA to add a clause "which allows Amazon to suspend or terminate your account or this Agreement immediately if your Account Health Rating falls below our published thresholds for deactivation."[18] Under this new "Account Health Rating" policy, "[t]he Account Health Rating (AHR) indicates your selling account's ***risk of deactivation due to policy non-compliance***, and it displays on the seller's Account Health page for each store in which they sell worldwide."[19] Third-party sellers' Account Health Rating is based on their compliance with, *inter alia*, the Marketplace Fair Pricing Policy and the Seller Code of Conduct, i.e., in part on their compliance with price parity.[20] Amazon explains, "To calculate your AHR, we assign a certain number of points to each policy violation based on the severity of the violation. . . . When determining the severity, we consider factors including the degree to which the violation ***negatively impacts the customer experience***."[21] As discussed, the Amazon "customer experience" includes the experience of seeing different prices on and off Amazon—lower off-Amazon pricing "negatively impacts the customer experience," according to Amazon. This recent amendment to Amazon's BSA reinforces its price parity agreements with third-party sellers and potential penalties for noncompliance.

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[18] *Changes to the Amazon Services Business Solutions Agreement*, Amazon Seller Central, https://sellercentral.amazon.com/help/hub/reference/external/G47071 (last visited Sept. 9, 2022).

[19] *Policies included in Account Health Rating*, Amazon Seller Central, https://sellercentral.amazon.com/help/hub/reference/external/GQ5DSES264XVXNX7 (last visited Sept. 9, 2022).

[20] *Id.*

[21] *Account Health Rating program policy*, Amazon Seller Central, https://sellercentral.amazon.com/help/hub/reference/external/G200205250 (last visited Sept. 9, 2022).

125. In March 2019, after the Price Parity Provision received scrutiny from various regulators—including a finding by a German regulatory authority that it "resulted in significant price increases in e-commerce"[22]—Amazon removed the provision from its BSA. But as internal Amazon records from this time period document, with [redacted] As an Amazon Director explained, [redacted] Indeed, Amazon openly acknowledged internally that [redacted] a superficial change that did not correspond to any modification to Amazon's actual policies and practices. That is exactly what it was. Amazon continued to contractually require (and enforce) price parity through the Amazon Standards for Brands policy, the Marketplace Fair Pricing Policy, and the Seller Code of Conduct.

126. One seller confirmed that even though Amazon got rid of the Price Parity Provision in March 2019, "the policy continued." Similarly, another merchant reported it "understand[s] that Amazon maintains a strict policy"—to this day—"that a [company] may not sell a product anywhere, including on its own website, for a lower price than the [company] sells for on Amazon.com."

127. Amazon also continued to enforce a de facto price parity agreement by widely publicizing its price parity requirement and threatening and imposing a host of consequences if sellers charge, or cause to be charged, lower prices off Amazon. In other words, third-party sellers' explicit agreement to keep their on-Amazon prices "competitive" with (i.e., the same or lower than) off-Amazon prices, and their de facto agreement to do so, coerced by Amazon's threatened and actual penalties for pricing "discrepancies," are "Price Parity" by another name.

128. At the time Amazon retired the explicit Price Parity Provision from its BSA in March 2019, Amazon deliberately did *not* inform sellers that they were no longer required to maintain the same or higher prices via their other sales channels as they offered on Amazon.

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[22] BKartA, Nov. 26, 2013, B6-46/12 at 3, https://www.bundeskartellamt.de/SharedDocs/Entscheidung/EN/Fallberichte/Kartellverbot/2013/B6-46-12.pdf?__blob=publicationFile&v=2.

While Amazon [redacted] at the time it retired the Price Parity Provision from the BSA [redacted] Amazon [redacted]

129. In other words, Amazon did not want its sellers to think that anything had changed, because nothing *had* changed, and Amazon had a [redacted] in sellers continuing to keep off-Amazon prices artificially high. The sole proactive communication Amazon had with sellers about the retirement of the Price Parity Provision was a fleeting post on the Seller Central "Help" page that read: "Effective March 11, 2019, the following changes were made to the Amazon Services Business Solutions Agreement: Section S-4 Parity with Your Sales Channels was removed." Amazon did not tell sellers they were now free to price lower and offer discounts off Amazon that they did not match on Amazon. That is because they were not free to do so; their express and de facto contracts with Amazon still required them to abide by price parity.

130. Nor has Amazon clarified anything since that time. While Amazon claims to regulators that it welcomes sellers offering different pricing off Amazon, a corporate representative for Amazon with direct responsibility for seller pricing confirmed under oath [redacted] and that Amazon [redacted] The only direct communications are to the contrary; Amazon directly communicates to sellers, "we welcome sellers advertising ***the same pricing and discounts*** off-Amazon as they offer in our store."

131. Amazon [redacted] As Amazon's corporate representative explained under oath, [redacted] That is because such obfuscation helps Amazon send its message that it is monitoring all website

prices, everywhere, all the time—and that to stay in compliance with their price parity agreements, sellers must keep all of those prices the same or higher than their on-Amazon prices.

132. As an example of its obfuscation, when Amazon sends a seller a notification, alerting the seller that its offer is "priced higher on Amazon than at other retailers," and accordingly has lost eligibility for the Buy Box, it does not disclose the identity of the "other retailers" offering the lower price. Sellers interpret these notices to mean that they have violated Amazon's coerced price parity terms by pricing or causing their products to be priced lower off Amazon.

133. Thus, one seller reported that by 2019, it "regularly observed" that if it offered a lower price on its own website, or another online retailer offered a lower price for its products than it was offering on Amazon, "Amazon would take away the Buy Box" and "send [it] an email notification." This seller reported that "Amazon taking away the Buy Box is Amazon saying that [the seller's] Amazon prices have to match the prices of all other sales platforms, and is a penalty for having lower prices on those other sales platforms." This seller interprets the notifications as saying that the seller's "pricing on Amazon has to match pricing Amazon could find anywhere else on the Internet" and reported that "in phone conversations with our Amazon representative, the Amazon representative would reiterate to use that we had to adhere to this." Amazon itself confirmed that sellers interpret these notifications as [redacted]

134. It matters little what external prices Amazon *actually* uses to trigger its "price competitiveness" notifications and penalties, including Buy Box suppression. Through its obfuscation about what external prices it uses, Amazon makes sellers think that it is tracking all their off-Amazon prices (or off-Amazon prices they control) for compliance with price parity.

135. And in fact, Amazon largely *has* used third-party sellers' own external prices, as well as prices they influence or control, as triggers for its price parity non-compliance notifications and penalties. Since Buy Box suppression started [redacted], Amazon has disqualified sellers' offers from winning the Buy Box (and sent corresponding "nudges" to sellers) when they were higher than [redacted]—i.e., the prices posted on

[redacted] This included not only [redacted] offers, but also the prices offered by [redacted]. Around late 2019, Amazon [redacted] Thus, from 2016 to late 2019, if an [redacted] posted a lower offer on [redacted], Amazon would disqualify [redacted] offer from winning the Buy Box as a penalty for failing to maintain price parity. After late 2019, this remained the case for [redacted].

136. In early 2019, Amazon [redacted] whose prices Amazon began using to suppress third-party sellers' offers from the Buy Box and for "price competitiveness" notifications, including, for example, [redacted] This included the prices of [redacted]. To the extent any of these [redacted] were also third-party sellers on Amazon's Marketplace, Amazon would disqualify them from winning the Buy Box (and notify them of such) unless they charged the same or a higher price on [redacted]. As Amazon's Senior Vice President of North America Consumer advised internally, [redacted]

137. [redacted], Amazon [redacted] Buy Box suppression [redacted] Thus, there are [redacted] whose offers Amazon disqualifies from the Buy Box based on [redacted] Indeed, Amazon was motivated to do so in part precisely because [redacted] and thereby [redacted] In other words, they were engaging in

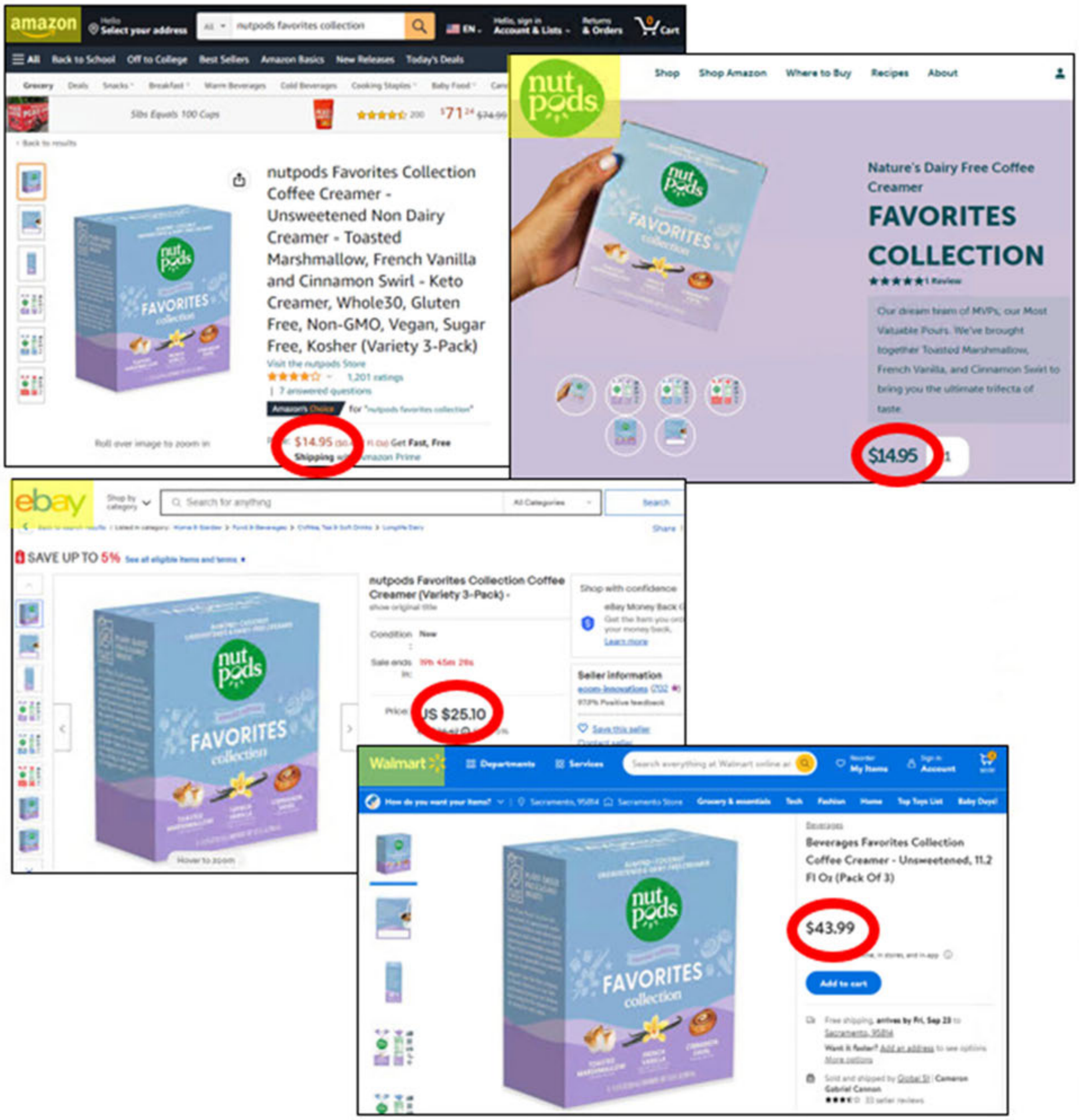
price competition with Amazon for the benefit of customers, and Amazon would not allow it. Today, all of the [redacted] that sell on Amazon as third-party sellers [redacted] Amazon uses for Buy Box suppression, must keep their prices as high on [redacted] as their Amazon Marketplace offers—even if it costs them less to sell [redacted]—or else risk seeing their [redacted] on Amazon.

138. Finally, in [redacted] Amazon [redacted] Buy Box suppression and its "price competitiveness" notification triggers [redacted] Amazon claims that at the same time, following multiple government investigations it [redacted] disqualifying a third-party seller's offer from winning the Buy Box [redacted] But Amazon's [redacted]

139. Moreover, consistent with its obfuscation scheme, Amazon has deliberately *not* told third-party sellers that [redacted] for Buy Box suppression and [redacted] trigger notifications of non-compliance with Amazon's price parity requirements.

140. As a result of Amazon's price parity enforcement, third-party sellers have learned to raise their prices on eBay and other marketplaces, and their own direct-to-consumer websites, to match or exceed their prices on Amazon—even though it costs them far more to sell on Amazon. They continue this practice to this day, to maintain compliance with their coerced price parity agreements.

141. Below is just one example: Nutpods, a direct competitor to Amazon through its own online store, www.nutpods.com, which is also a third-party seller on Amazon, charging the same price for the same product on Amazon and its own direct-to-consumer retail website, and refraining entirely from selling the same product on eBay and Walmart.com, where other third-party sellers have the product offered for substantially more:




142. As one former third-party seller, now ecommerce consultant, reported, “In my capacity as an advisor to Amazon sellers, I am aware that Amazon still requires sellers to price a product they sell on Amazon at least as low as the price offered for the same product elsewhere. I

currently advise sellers who, in addition to selling on Amazon, also sell on other websites including online marketplaces such as Walmart.com and eBay.com, as well as online retailers such as Chewy.com, Wayfair.com, and Newegg.com. All of these other websites charge much lower fees to sell on their platforms than Amazon charges. Because the cost to sell on these other websites is lower, my clients would like to offer lower prices on them. This includes allowing online retailers selling my clients' products to run discounts, promotions or otherwise offer a price that is lower than the Amazon price. However, my clients do not offer lower prices on those websites because doing so would result in the suppression of the Buy Box for their Amazon listing."

143. Another third-party seller reported, "We keep our prices for [our] products the same on every website where they are sold. This is because if we sold a product on another website for a lower price than on Amazon, Amazon would suppress the 'Add to Cart' or 'Buy Box' button on the product's Amazon page, causing lost sales. We could afford to sell items for less on eBay and Walmart and our own website, because fees are lower on these marketplaces, but because Amazon costs are higher, we need to price those costs into everywhere we sell."

144. Notably, Amazon's primary marketplace competitors, eBay and Walmart.com, do not use external prices to disqualify third-party sellers' offers from the Buy Box equivalent on their marketplace sites.

145. Buy Box suppression and seller "nudges" are not the only tactics Amazon has employed to enforce price parity. Another [redacted] on and off Amazon in compliance with their price parity obligations is the "Amazon Standards for Brands" ("ASB") policy, previously called the "Manufacturers on Amazon" or "MOA" policy. Under this policy, if a brand owner prices its products lower off Amazon, Amazon may revoke the seller's "opportunity to operate as a seller in the Amazon store altogether," and force it to sell its products "through Amazon retail" if it wants to reach Amazon customers. For example, a 2017 internal Amazon email documents [redacted] including several sellers that Amazon [redacted]

[redacted] By contrast, for sellers where there was [redacted]

146. Amazon's ASB policy applies not only to brands, but also to agents and representatives of brands—words whose definition Amazon in its sole discretion decides and stretches to the point where virtually any reseller can count as an "agent" or "representative" of a brand. As Amazon reported in sworn testimony, under ASB, for these third-party sellers, [redacted] (i.e., their price for any given brand's product must be "competitive" versus—i.e., the same or lower than—off-Amazon prices for the same product 95% of the time over a predefined period), [redacted]; then, [redacted] Amazon blocks the third-party seller from selling all new products introduced by that brand. And on third-party sellers' "Customer Experience Dashboards" in Amazon Seller Central, Amazon prominently displays to them Amazon's "Price Competitiveness [redacted]" of 95%, and shows a [redacted] "price competitiveness" falls below that threshold.

147. As an ecommerce consultant explained it, the ASB policy "penalizes some sellers whose products are not priced equal to or cheaper than other websites, 95% of the time or more. Amazon calls this 'price competitiveness'. Some large sellers who run afoul of the new '95% price competitive' metric are blocked from offering major national brands . . . . If sellers adjust their pricing to Amazon's satisfaction, they are once again allowed to sell these key brands. Those who don't change their pricing may find themselves unable to sell anything at all on Amazon."[23]

148. Amazon has also implemented [redacted] to punish sellers who do not conform to Amazon's pricing policies by [redacted] products offered for lower prices off Amazon. After [redacted] Amazon implements a [redacted] any product determined to have an "uncompetitive price" [redacted]

[23] *See* Lesley Hensell, *Amazon Sellers Are Losing Control of Pricing Due to "Standards for Brands"*, Webretailer (Nov. 8, 2021), https://www.webretailer.com/b/amazon-standards-for-brands/.

[redacted] Further, Amazon [redacted] are priced higher than the [redacted]. This action has a direct and foreseeable impact on sellers [redacted]

149. Amazon refers to the increasingly stiffer penalties it imposes for violating the price parity requirement as [redacted] For example, a November 2018 Amazon Brand Program document detailed Amazon's [redacted] to [redacted] A June 2019 Brand Program review documented, "[redacted]."

150. As a result of Amazon's price parity agreements and enforcement, sellers maintain higher prices on their own websites, maintain higher prices on other marketplaces and, in the case of brands that manufacture their own products, charge higher wholesale prices to other retailers and set higher price floors for resale. Indeed, an internal Amazon memo documented, "[redacted]"

151. As an ecommerce consultant who regularly works with third-party sellers on Amazon reported, "In my capacity as an advisor to Amazon sellers, I am aware that Amazon has previously and presently requires sellers to price a product they sell on Amazon at least as low as the price offered for the same product elsewhere. If a seller does price lower on another website, or enable other retailers to discount their products, the 'Add to Cart' or 'Buy Box' button for their Amazon listing is typically suppressed." This consultant refers to this as Amazon's "price parity policy," and reported, "As a result of Amazon's price parity policy, some sellers I've advised have stopped discounting on other ecommerce websites while others have stopped selling via other websites or online retailers altogether because they don't want to risk compromising their Amazon business." "Because Amazon's price parity policy penalizes sellers who list their

products for less on other websites unless they match this price on Amazon, this disincentivizes Amazon sellers who can't afford to discount the item on Amazon from offering the products for less via other ecommerce websites, even if the sellers' cost structure is lower on other ecommerce websites. For sellers who sell primarily on Amazon, jeopardizing their Amazon business to enter into new ecommerce channels is not worthwhile."

152. Numerous sellers reported that in response to Amazon's price parity requirements, penalties for noncompliance, and related notifications, they raised or have been unable to lower their prices for the same products on their own websites and other marketplaces such as Walmart.com and eBay.

153. Another seller reported, "In response to Amazon taking away the Buy Box, [this seller] has at times ended a sale on its website earlier than planned so that Amazon would restore the Buy Box."

154. Another reported a time when it had updated its pricing on Walmart.com to be lower than its Amazon pricing for the same product: "Amazon I think algorithmically using, like, automation software, noticed that the exact same product sold on Walmart was less expensive, and so then they . . . kind of like hid them both in search and on the product purchase page, and they sent us an email, something like you're in violation of the fair product pricing policy, and you need to reprice your item in order to not be in violation of that." As a result, the seller's sales on Amazon "definitely drop[ped], . . . probably 70, 80 percent, if not more." In response, the seller upped its price on Walmart.com. According to this seller, "the pricing parity policy, I think, pretty clearly prevents us from listing our products for less on other platforms. Because when we do that, our products get suppressed on Amazon and Amazon accounts for 90 percent of our sales." "Were there not this price parity policy on Amazon, we would price our products for less off Amazon," this seller reported.

155. Third-party sellers' prevention of lower prices off Amazon in response to Amazon's [redacted] reflects both their price parity agreement with Amazon and the means through which Amazon enforces that agreement.

156. In fact, receiving a notification that Amazon has suppressed a third-party seller's offer from the Buy Box generally does not cause the seller to lower its offer on Amazon. An Amazon [redacted] internal memo from 2017 [redacted] Buy Box suppression [redacted] As Amazon later admitted internally, "[redacted]." A colleague responded, "[redacted]" An Amazon Director confirmed that Amazon [redacted] He testified he was "[redacted]" the percentage of time that sellers lowered their prices in response to a suppression notification "[redacted]."

157. A particularly noteworthy example of a third-party seller raising its prices off Amazon to comply with price parity occurred in June 2019. Amazon realized that this third-party seller was [redacted] An Amazon Director suggested [redacted] Amazon proceeded to do so, and [redacted] due to its failure to comply with price parity.

158. When the seller did not update its prices, Amazon [redacted]. In response, the seller [redacted] Amazon [redacted] causing other retailers to raise their prices [redacted]

159. An ecommerce consultant reported that when Amazon suppresses the Buy Box for one of his clients' products, he "will check all of the other websites where [his] client lists the product at issue, to identify where the product is being sold for a lower price," and "almost always recommend[s] that [his] client contact the retailer in question and ask for the price to be increased to match the Amazon price."

160. Another Amazon seller reported, "When Amazon removes the price from the buy box from a particularly popular . . . product, I will try to find where that product is selling for less than on Amazon, and I will try to raise the price on the other website. For example, [certain items] are among our best-selling products. . . . Because these products sell so well, when [our company] loses the buy box on Amazon for these [items], I will raise the price on other sites, rather than discounting the price on Amazon." This seller explained, "Because we pay less in fees on our own and other websites, we could sell our products for lower prices on these websites. We do not do this, however, because if we do, Amazon will disqualify [our] offers from the buy box." This seller "keeps prices on our own website the same as the prices on Amazon specifically to avoid having the Amazon buy box suppressed."

161. As another example, in late 2018, an Amazon manager reported internally about [redacted] The seller [redacted] In other words, as a result of Amazon's price parity requirement, this seller believed her only option was to set a *floor* on the price that a *different* online store—[redacted]—could charge customers for her product.

162. An Amazon Marketplace Director [redacted] or be subject to Buy Box suppression on Amazon. Another Amazon Director

[redacted] the problem was that the seller was "[redacted]." In an internal pre-meeting in advance of an [redacted] an Amazon Director reminded the Amazon brand manager of [redacted]

163. As another example, in January 2019, a Marketplace seller [redacted] Amazon's VP of Pricing [redacted] The hint was straightforward: raise your prices elsewhere if you want to make sales on Amazon. Amazon's Director of Worldwide Pricing later admitted under oath that [redacted] with respect to price. Yet that is exactly the real world effect of Amazon's price parity policy.

164. As another example, in October 2019, Amazon [redacted] Shortly thereafter, Amazon observed, "[redacted]."

165. In several instances, third-party sellers on Amazon, in response to Amazon's enforcement of its price parity policy, have demanded that a competing online discount retailer increase its prices for their products, enforced minimum advertised price policies against this Amazon competitor, or withheld selection entirely.

166. For example, in November 2020, a supplier of beauty products asked a competing online discount retailer if "there is a way you can increase the sale prices? I am receiving complaints from several of my online retail partners (especially the exclusive partner for the Amazon marketplace). . . . When Amazon detects a substantially lower price for the same item,

Amazon will automatically reduce traffic and un-feature the item on Amazon. Thus, the sales on Amazon dropped significantly and my Amazon partner was not happy about this." The retailer attempted to resist the Amazon third-party seller's pressure to raise prices, but the seller insisted, "I don't think I can allow deep discounts for selling [my] items [on] online channels anymore . . . . Can you please raise the prices to at least $29.98? . . . I am running into a much bigger issue if I can't solve this matter by next week." In an internal discussion after the fact, the retailer observed, "they are asking to price fix and that is illegal." Ultimately, the Amazon third-party seller withheld selection from this online discount retailer entirely, thereby preventing not merely discounted prices on that competing site, but the availability of the seller's products through a competing retailer to Amazon altogether.

167. Similarly, in August 2021, a personal care electronics brand asked this retailer, "Would it be possible to update the retail on the below [item] to $19.99 ASAP…. This is currently below MAP pricing. . . . Unfortunately we will need to have this sku removed if it cannot be increased . . . . This caused the amazon listing to be pulled down. We also need the [other item] updated to $36.95 in all colors." The discount retailer responded that it could not change the price and "we have to be the lowest retail in the market." The Amazon third-party seller responded, "Unfortunately Amazon has implemented strict pricing requirements and they will remove any deals with lower pricing elsewhere. We are going to take an extremely big hit to revenue because of this and cannot afford for this to happen again. Previously we were ok to run lower than MAP pricing . . . , but moving forward we need all MAP pricing to be implemented for all skus." The discount retailer tried to work with the Amazon third-party seller to "hide" its prices for the seller's products and not display them until the customer added the product to the cart, but this was not enough. A few weeks later, the seller emailed the retailer, "It looks like there is an issue here again with items being below MAP/price not hidden . . . . At this point [we] want[] to remove all deals and inventory until Q1 since this has happened several times and is causing a big disruption to the Amazon business . . . . [W]e . . . have no choice but to remove [our product] from [this retailer] unless they began to sell at or above MAP permanently going

forward . . . . We simply cannot afford buy-box shutdowns on Amazon anymore." This Amazon third-party seller no longer supplies products to this competing retailer to Amazon.

168. Another Amazon third-party seller, which makes apparel, emailed this competing retailer in January 2020, complaining that "we have had almost 2000 skus suppressed on Amazon because of [lower prices on this competing retailer's site] . . . . Amazon has told us indirectly that [you are] the issue with all of their inactive skus . . . . As much as I dislike Amazon, and like [you], The fact is we sell more on Amazon . . . . I'm left with [limited] options," including:

- "We will have to move up our price on [your site]" [or]
- "We have to stop selling our best selling styles to [you]."

According to this online discount retailer, its "access to product selection has been impacted by Amazon behaviors."

169. Another third-party seller reported to the Office of the Attorney General that it briefly experimented with selling its products wholesale to Walmart for sale on Walmart.com, but stopped supplying Walmart shortly thereafter in part because "Walmart aggressively discounted [the seller's] products, causing us to lose the Buy Box on Amazon and ruining our sales on Amazon." Another seller reported that he is "personally familiar with other Amazon third-party sellers who have stopped selling products to competing discount retailers . . . in order to prevent a discounted price on these competing sites from disqualifying their Amazon offers from the buy box." As this seller put it, "This prevents consumers from accessing these merchants' products at discounted prices online."

170. An ecommerce consultant provided two examples of third-party sellers that have stopped offering their products to competing retailers because of price parity. With respect to a pet supply brand, "Prior to June 2022, this brand also sold their product on Chewy.com. However, Chewy often ran promotions or offered coupons or other discounts that resulted in a sale price that was lower than the price offered on Amazon. As a result, Amazon would suppress the Buy Box for this brand's Amazon listing, and sales would drop significantly. When Chewy ran promotions, I typically advised my client to request that Chewy stop offering the discount. Although this issue was generally resolved in a short time period, my clients' loss in sales each

time Chewy ran a promotion ultimately led my client to stop offering their product on Chewy altogether in June 2022." With respect to a supplier of pill dispensers, "They previously sold this product on Walmart.com as well. In March 2019, Walmart's pricing system experienced an issue where it would erroneously reduce the listing price for my client's product, which in turn resulted in Buy Box suppression for my client's Amazon listing page. Walmart was unable to immediately fix the issue, preventing this brand from raising the price of its product on Walmart. Because their Buy Box was suppressed on Amazon, my client's sales were declining significantly. This brand receives the majority of its revenue through Amazon, and they could not afford the drop in sales and views that occur when the Buy Box is suppressed. Therefore, they made the decision to stop selling their product on Walmart.com altogether."

171. A major competing online marketplace to Amazon itself confirmed that it has heard from merchants that they would need to raise their prices on its marketplace or decline to participate in a discount/sale event because a lower price on its marketplace had disqualified or could disqualify their offers from the Amazon Buy Box. This rival marketplace operator reported that during a sales event, certain merchants contacted it to pull their items from the event or indicated that they would need to raise their prices because they reported that they had lost the Buy Box on Amazon, believed they would lose the Buy Box on Amazon, or believed that they would be delisted on Amazon because their item prices were lower on this competing website for the event. According to this competing operator's internal business documents, the online marketplace "landscape is dominated by Amazon," and "they make it hard to compete on price," citing a seller's feedback that "if I as a seller offer a product for $5 less on [a competing marketplace], Amazon will do something called buybox suppression. They'll basically kill my listing and I will lose all of my digital real estate until I raise my price on [the competing marketplace]."

172. Another major competing marketplace operator confirmed its experience and understanding that some merchants believe that Amazon requires prices on this competitor's site to be the same or higher than their prices for the same products on Amazon, and that if they do not comply with this requirement, they could experience negative consequences from Amazon.

This competing operator confirmed that some merchants have acted to keep prices on its competing site the same or higher than their prices for the same products on Amazon.

173. Similarly, one Walmart manager reported to Bloomberg that "Walmart routinely fields requests from merchants to raise prices on its marketplace because they worry a lower price on Walmart will jeopardize their sales on Amazon."[24]

174. Amazon's coerced price parity agreements with Marketplace sellers constitute unlawful contracts and/or combinations in restraint of trade in violation of the Cartwright Act. Amazon's retail-level price parity acts and practices constitute unfair competition in violation of the Unfair Competition Law. And Amazon's successful imposition of its price parity policies and agreements on third-party sellers—its ability to coerce them to "[redacted]" by withholding product and demanding price increases from Amazon's competitors, so that they can keep selling on Amazon—further evidences Amazon's market power.

**B. Wholesale Price Parity (Minimum Margin Agreements)**

175. Amazon employs similarly anticompetitive agreements with its wholesale suppliers that sell directly to Amazon for resale in its online store, in order to insulate the Amazon store from price competition from other online stores. With respect to $[redacted] in annual sales (and counting), Amazon enters into formalized minimum margin agreements with wholesale suppliers, under which they explicitly agree to make true-up payments to Amazon if Amazon's price-matching results in Amazon making less than the "minimum margin" specified in the agreement. Amazon refers to these as "Guaranteed Minimum Margin agreements" or "Net PPM agreements."

176. These minimum margin agreements essentially allow Amazon to take control of pricing (and discounting) away from wholesale suppliers. If the product of a wholesale supplier is offered for a lower price off Amazon, Amazon proactively lowers the on-Amazon price and then demands the seller make up the difference. This hurts sellers' profits, so the effect is not lower prices, but a disincentive to lower prices off Amazon. As one ecommerce consultant put it,

[24] Spencer Soper, *Amazon is Squeezing Sellers That Offer Better Prices On Walmart*, Financial Advisor (Aug. 5, 2019), https://www.fa-mag.com/news/amazon-is-squeezing-sellers-that-offer-better-prices-on-walmart-50909.html?section=3.

"They literally spider the web and other major retailers to ensure they are basically the lowest. Don't like the price they are selling at? Tough luck says Amazon. Amazon will then direct you [the wholesale supplier] to other sites like Target and Walmart and ***tell you to tell them to raise their price*** before they raise Amazon back up."[25]

177. As an example of how these minimum margin agreements work, consider a product with a wholesale cost to Amazon of $10, a $2 cost to Amazon to resell the product to consumers, a guaranteed margin (i.e., markup from wholesale to retail price) in the agreement of $5, and a resulting effective guaranteed net margin of $3 to Amazon. If Amazon buys the product from the vendor for $10 and sells it for $15, then it has made the agreed-upon minimum margin (the $5 gross markup, and the $3 net effective margin). But what happens if the wholesale supplier sells this same product to a more efficient or competitive retailer—for example, Walmart.com—for the same wholesale price of $10, and Walmart.com resells it for $14 (either because it is more efficient, e.g., incurs only $1 per unit in reselling costs, or because it is willing to accept a lower margin than Amazon)? Amazon will lower its price to $14, knowing that it will still earn its guaranteed minimum margin because the vendor will have to pay a $1 "true-up" payment to Amazon. The result is straightforward: the wholesale supplier is compelled to impose a requirement on Walmart.com that it not resell the product for less than $15 because it has to make up the lost margin to Amazon, or withholds the product from Walmart.com altogether to avoid discounted sales that would result in required true-up payments. In the end, consumers are deprived of the cost savings that would otherwise flow from having a more efficient or competitive retailer in the market, and that retailer cannot use its efficiencies or willingness to accept a lower profit margin to attract customers and gain market share. As internal Amazon documents put it, Amazon uses its minimum margin agreements "[redacted]."

178. On top of these formalized agreements, Amazon imposes informal or de facto minimum margin agreements covering [redacted] of dollars more in sales every year, under its

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[25] Danny DeMichele, *Selling to Amazon or selling through Amazon? Vendor And Seller Central*, Danny DeMichele (Sept. 11, 2019), https://dannydemichele.com/selling-amazon-selling-amazon-vendor-seller-central/.

"[redacted] Program," or "[redacted]." Amazon jointly sets Amazon profitability targets with wholesale suppliers, and these suppliers agree to make true-up payments after the fact if Amazon failed to meet the profitability target because of price-matching—just as it does with its formalized minimum margin agreements. According to internal Amazon documents, "[redacted]"

179. In 2020, suppliers paid Amazon an additional approximately $[redacted] in true-up payments under this program, on top of the $[redacted] in true-up payments they paid under Amazon's formalized Guaranteed Minimum Margin agreements. This corresponds to a sales coverage level for the [redacted] program of over [redacted] times the $[redacted] in sales covered by formalized GMM agreements—or $[redacted] in annual sales.

180. Amazon describes its [redacted] Program as [redacted] If the wholesale supplier agrees to provide [redacted] funding, [redacted]

181. Amazon threatens wholesale suppliers that if they do not agree to pay [redacted] funding to restore Amazon's profitability, its systems will associate the supplier's item with unprofitability, which will result in "[redacted]." One business review from 2019 noted, "[redacted]

[redacted]

182. [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

[redacted] [redacted]

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[redacted] [redacted]

[redacted] [redacted]

- [redacted]; and
- [redacted]

183. Amazon vendor managers' notes from negotiations with wholesale suppliers illustrate how these profitability agreements work. For example, in a January-February 2020 review of Kitchen-category products, Amazon vendor managers noted that for a kitchen appliance supplier, Amazon had [redacted] As to a kitchen tools supplier, the vendor manager noted, [redacted]

184. Amazon's explicit and informal/de facto minimum margin agreements result in suppliers raising wholesale prices to competing online retail stores, asking those retailers to raise retail prices to consumers, charging higher prices on their own websites and on other marketplaces than they otherwise would, or withholding selection from Amazon's competitors altogether, to avoid triggering true-up payments.

185. Indeed, one former senior Amazon vendor manager who now operates an ecommerce consulting business advises Amazon suppliers on how to avoid the under-profitability triggers that lead to demands for true-up payments. He advises them to enforce minimum advertised price policies to ensure that their products are not sold elsewhere for a price that would be under-profitable for Amazon to sell at.

186. Another ecommerce consultant and former Amazon executive advised in a YouTube video entitled "Amazon Margin Guarantees – What Vendors Need to Consider," on the best "paths" for a wholesale supplier to ensure its products are profitable for Amazon to sell, including "looking at some iMAP [Internet minimum advertised price] policies" and "restricting the list of sellers that you sell to."[26] She further observed that one of the few reasons it "might make sense" to agree to a minimum margin agreement with Amazon is "if you have some projects in the works that will help stabilize pricing."[27] In other words, if you can ensure that you and no other retailer will discount your products on other channels, then you can reduce your

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[26] Andrea Leigh, *Amazon Margin Guarantees – what vendors need to consider with Andrea Leigh*, YouTube (Sept. 17, 2019), https://www.youtube.com/watch?v=y6dPn4emtfE.
[27] *Id.*

risks associated with entering into such an agreement. That is precisely the effect these minimum margin agreements have on wholesale suppliers—they cause them to prevent lower prices for their products off Amazon.

187. As one example, after Amazon started price-matching a competing online discount retailer, several of the competing retailer's suppliers, who were also wholesale suppliers to Amazon, voiced concerns with the retailer about its efforts to compete on price with Amazon, and some told the retailer that Amazon pressured them not to have a lower price off Amazon. Some of these suppliers informed the competing retailer that they could no longer do business with it if it was going to match Amazon. One of them said that it would no longer sell its products to the competing retailer unless the retailer priced its products higher. When the competing retailer refused to raise prices, several of these suppliers stopped selling to the retailer, leaving Amazon's higher prices unchecked. Some of these suppliers eventually returned, but when they did, they did not offer the retailer the full breadth of selection they had previously offered—some reduced their product offerings to this retailer, and others replaced the items they previously offered with less popular selection. These include a children's toy vendor, a multi-brand owner, a swimwear vendor, and an apparel supplier.

188. One supplier that stopped selling to this online discount retailer because of Amazon was a clothing supplier. This supplier reported that it was required to enter into net profitability agreements with Amazon, and that Amazon has increased the minimum profit threshold under those agreements in recent years, over the supplier's opposition. The supplier reported it is effectively left with only two choices—raise its prices on other retail sites, or eat into its own profitability. But reducing its profitability is not a sustainable strategy because, according to the supplier, Amazon will simply "com[e] back for more and more" (i.e., higher profitability thresholds). As such, these agreements influence the supplier into maintaining higher prices than it otherwise would set. Specifically, this supplier is now "pricing things higher" across all platforms to "manage" the increased profitability thresholds, reporting that the agreements limit its ability to price aggressively with other retailers because doing so would come

back to bite them with Amazon. This supplier reported being stuck with the profitability agreements.

189. An Amazon supplier that is a large consumer electronics device supplier explained that each year, it enters into agreements with Amazon that "set out [the supplier's] suggested retail price for each product, along with an Amazon margin associated with that price. For each product there is a margin percentage, which reflects Amazon's wholesale purchase price." This supplier "understand[s] that Amazon expects the prices on its retail platform to be the lowest prices available anywhere for a particular product," and "[i]f it finds a lower price for a particular item, Amazon generally lowers its own price to match the other retailer's price, and then seeks compensation from the [wholesale supplier] in an attempt to maintain its expected profit margin.." This understanding is based on the supplier's failed "experiences trying to conduct special sales or promotions with individual retail partners other than Amazon.com." For example, this supplier tried to partner with another major online retailer on a promotional event involving an effective discount on the supplier's products. This led to Amazon matching the discount and then demanding that the supplier make a $100,000 payment to Amazon to compensate Amazon for the lost margin. The supplier was able to negotiate with Amazon to make marketing opportunity purchases, rather than a straight payment, but "only sought these marketing opportunities, and only spent this money, in order to satisfy Amazon's demand for margin offset compensation."

190. This supplier "would prefer not to make these payments at all," but "has felt compelled to accede to Amazon's demands," and "[t]his especially has been the case when Amazon has demanded these payments at high-sales volume times of year, such as the winter holiday shopping period between Black Friday and Cyber Monday. During these windows, [the supplier] considers rejecting the demand to present too great a risk that Amazon will de-list or refuse to sell certain [of this supplier's] products on Amazon.com, which would be extremely harmful financially for [this supplier]."

191. These experiences have "made it difficult for [this supplier] to provide discounts on its website or to engage in promotions with its retailers" and "have lessened [this supplier's]

appetite for offering product discounts to, or running promotions with, other retailers because [this supplier] knows that Amazon likely will match the promotion and then demand from [this supplier] margin offset compensation. Accordingly, [this supplier] has reduced its efforts to engage in off-Amazon discounting."

192. Amazon's internal documents tell the same story: as a result of Amazon's agreements with wholesale suppliers on profitability targets, these suppliers raise their prices market-wide, or enable Amazon to raise its prices for their products by withholding them from competing retailers (thus removing the price-match trigger).

193. For example, a January-February 2020 review of Kitchen-category ASINs documented as to one wholesale supplier: "[redacted]" With respect to a kitchen appliance item, the vendor manager noted, "[redacted]."

194. In another example, the vendor manager noted, "[redacted]." In another example, from the Pets category, Amazon observed, "[redacted]."

195. In fact, Amazon has a name for the tactics its wholesale suppliers employ with other retailers to prevent discounting: [redacted] As Amazon documented with respect to a different Kitchen supplier, [redacted] is Amazon's naming gloss on the anticompetitive practice of suppliers imposing or enforcing minimum advertised price or resale price maintenance policies on, and withholding their products from, retailers that compete with Amazon, so that there are no lower prices in the market for Amazon to match.

196. In a February 2020 business review of the Furniture category, Amazon documented, "[redacted]."

197. A quarterly Lawn & Garden business review from 2019 documented that a generator product "[redacted]." The document went on to note that another supplier had [redacted]

198. An August 2019 business review of Furniture noted as to one wholesale supplier: [redacted] As to another wholesale supplier, Amazon documented: [redacted] Amazon's wholesale price parity agreements and enforcement prevent retailers that wish to compete with Amazon by offering discounted prices from doing so.

199. Below is just one example of the end result of Amazon's minimum margin agreements. In this example, [redacted]—a wholesale supplier whose guaranteed minimum margin agreements with Amazon covered $[redacted] in sales in 2021—has used the Amazon price for its [redacted] as the floor price for the same product on its own website and at other retailers, and has withheld the same product from several online sites to prevent discounting that would result in a true-up demand from Amazon:

[redacted]

200. Amazon's internal documents make clear that Amazon demands minimum margin agreements and [redacted] funding as a penalty for facilitating lower prices at Amazon's competitors. For example, an Amazon February 2020 monthly business review for the Sports & Outdoors category documented that Amazon had [redacted] to send a message to this supplier that it should not enable discounting below MAP at Amazon's competitors. A 2020 business review of Tools, Home Improvement, Lawn & Garden discussed the [redacted] In other words, Amazon considers it a violation for one of its suppliers to facilitate lower prices at competing retailers like Walmart.com and HomeDepot.com. What did Amazon do to these [redacted]

201. Amazon's minimum margin agreements with wholesale suppliers are generally requested or demanded by *Amazon*, not the supplier. Suppliers generally seek to *avoid* such agreements and any obligation to ensure Amazon's profitability. As an ecommerce consultant and former Amazon executive put it, "We've been getting a lot of questions from clients about margin guarantees. Amazon has put some out in proposals to our clients. . . . So Why would you sign up for one of these? Sounds crazy, right? . . . There's a ton of risks, and I think the risks in general outweigh the benefits. It's basically like writing Amazon a blank check. I generally think these are a pretty bad idea. If you can avoid them, that's great."[28] Even Amazon admits internally that minimum margin agreements [redacted] In 2019, Amazon sought to [redacted]

[28] Andrea Leigh, *Amazon Margin Guarantees – what vendors need to consider with Andrea Leigh*, YouTube (Sept. 17, 2019), https://www.youtube.com/watch?v=y6dPn4emtfE.

[redacted]

202. Amazon's minimum margin agreements reduce the ability of competing online stores to offer lower prices to consumers. They do this by inducing wholesale suppliers to deny discounts to competing online stores, to request or require those competing online stores to keep their retail prices high, to price their products on their own website higher than they otherwise would, or to withhold selection from competing online stores altogether. As a result, prices are higher across online stores, and Amazon maintains its market dominance. Amazon's minimum margin agreements are particularly pernicious in their effect of preventing more efficient retailers, or retailers willing to accept a lower margin, from lowering their prices below those of Amazon's.

203. Amazon is largely unique in its enforcement of minimum margin agreements, particularly at such scale and scope [redacted] Amazon's online store competitors generally do not use minimum margin agreements. Amazon, on the other hand, uses minimum margin agreements [redacted]

204. Amazon's minimum margin agreements constitute contracts and/or combinations in restraint of trade in violation of the Cartwright Act. Amazon's wholesale-level price parity acts and practices constitute unfair competition in violation of the Unfair Competition Law. And

Amazon's successful imposition of its wholesale price parity policies and agreements on wholesale suppliers—its ability to coerce them to "[redacted]" by withholding product or demanding price increases from Amazon's competitors, so that they can keep selling on Amazon—further evidences Amazon's market power.

## VII. THE ANTICOMPETITIVE EFFECTS OF AMAZON'S CONDUCT

205. Through Amazon's anticompetitive agreements and enforcement of its price parity policies, Amazon has insulated itself from competition, erected barriers to entry and expansion, imposed supra-competitive selling costs on third-party sellers and wholesale suppliers, degraded the quality of its offering, charged higher prices to consumers, and prevented consumers from accessing the full output and low prices across online stores that would prevail in a freely competitive market.

206. Amazon's retail price parity provisions and minimum margin agreements prevent competing sites from offering lower prices, hinder new entrants and existing competitors from successfully opening or expanding competing online stores, and thereby facilitate Amazon's maintenance of its economic power. Amazon's anticompetitive agreements make it virtually impossible for rival online stores to gain any significant market share by providing customers with lower prices. As one seller put it, "there is no incentive to buy [on our direct-to-consumer website] because the price isn't lower." Absent Amazon's anticompetitive agreements, the market would be expected to reflect lower prices at competing online stores, given the inflated fees Amazon charges to merchants to sell on or through its platform.

207. One seller reported, "I think what would be best for -- for consumers . . . would be for us to have our products on our website for less. Simultaneously, our products on Amazon would be higher but at the same profit per unit, and then customers could essentially choose." "If you actually think about it and slow down, you do see how prices stay up and you are kind of like -- it is this weird, like, stickiness in the market that just holds everything together with much of the sales happening on Amazon." Without Amazon's requirement that Marketplace sellers price at parity, third-party sellers would keep their prices lower off Amazon (where they pay fewer seller, advertising, and other fees), which would enable other online stores like eBay and

Walmart.com to compete more effectively with Amazon, and would lower overall retail prices to consumers. This competition in turn would put pressure on Amazon to improve the seller and customer experience in its online store and lower its seller fees and Prime membership fee, which in turn would lower the effective prices of retail products on Amazon. As Amazon itself acknowledges in internal documents, its price parity requirement "[redacted]"

208. Absent Amazon's minimum margin agreements, wholesale suppliers would charge lower wholesale prices and not impose minimum resale or advertised price requirements on other online retailers, would charge lower prices in their own online stores, and would offer greater selection in those stores and to Amazon's rival online retailers, leading to lower prices to consumers and increased competition against Amazon from other online marketplaces.

209. As a result of Amazon's unlawful price parity agreements and enforcement, California sellers and consumers have paid inflated fees and prices. There is a clear and direct path from the increasingly higher Amazon fees and the prices consumers pay for products. Amazon has long recognized [redacted] Amazon's own chief economist acknowledged that [redacted] As Amazon has observed internally, [redacted] Numerous sellers have reported that they incorporate the costs of selling on Amazon into their prices, and that as Amazon's fees have climbed higher and higher, they have raised their prices on Amazon commensurately.

210. The anticompetitive cycle is clear. Amazon exercises its market power by charging excessive fees to suppliers and sellers and demanding increasingly higher profitability on the products it buys wholesale from suppliers. Those merchants raise the prices for their products on Amazon and to Amazon to make up for the excessive fees and profitability requirements. Because of their contractual price parity and minimum margin obligations, they

raise their prices on competing marketplaces, on their own websites, and to competing online retailers commensurately, enforce minimum advertised price or resale price maintenance policies, or withhold selection from competing retailers. As a result, other online stores cannot effectively attract consumers away from Amazon with lower prices; and merchants are thus stuck selling to and through Amazon to reach consumers, accepting and passing on its higher fees and embedded profits throughout the market.

211. Amazon's anticompetitive agreements comprise a restraint of trade that unreasonably prevents the price competition that is the hallmark of our free-market economic system. These agreements insulate Amazon from the price discipline that flows from unconstrained price competition and, in the process, stabilize prices across the market, including by raising prices to a higher level than they would be in the absence of Amazon's anticompetitive conduct. The anticompetitive effects of Amazon's price parity agreements outweigh any procompetitive justification or effects proffered by Amazon.

212. Indeed, Amazon's price parity agreements with wholesale suppliers and third-party sellers constitute a blatantly anticompetitive horizontal agreement on price, in which these merchants—actual and potential direct horizontal competitors to Amazon in their operation of their own direct-to-consumer websites—agree that those rival online stores will not compete with Amazon on price. Amazon recognized that the potential growth of direct-to-consumer sales by Amazon's own suppliers and third-party sellers [redacted] and has used its price parity agreements to neutralize that threat. The anticompetitive nature and effects of these arrangements are inherent in their structure and the parties' relationship to each other, and self-evident without the need for any inquiry into a relevant market, Amazon's market power, or any further indicia of anticompetitive effects.

213. Given the sheer volume of Amazon sales in California, totaling [redacted] the economic damage to the State and the People by Amazon's conduct is substantial.

**Amazon Online Store Sales in California, 2014-2020:**

[redacted]

## VIII. <u>CAUSES OF ACTION</u>

### First Cause of Action – Restraint of Trade in Violation of the California Cartwright Act (Cal. Bus. & Prof. Code Section 16720, *et seq.*)

214. The People incorporate by reference and re-allege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

215. Amazon has entered into contracts and/or combinations with its third-party sellers and wholesale suppliers for the purpose and effect to create and carry out restrictions in trade or commerce; to limit and reduce the production, and increase the price of commodities; to prevent competition in the sale of commodities; to fix at a standard and figure, whereby their prices to consumers are controlled or established, commodities intended for sale, use, and consumption in this State; and to make and enter into and execute and carry out contracts, obligations, and agreements by which Amazon's third-party sellers and wholesale suppliers bind themselves not to sell commodities below a common standard figure and fixed value; and agree to keep the prices of such commodities at a fixed and graduated figure; establish and settle the prices of

commodities between them and themselves and others, so as directly and indirectly to preclude a free and unrestricted competition among themselves in the sale of such commodities.

216. Amazon's contracts and/or combinations were a substantial factor in causing harm to the People.

217. Under California Business and Professions Code section 16760, as *parens patriae* on behalf of natural persons residing in the state, the Attorney General seeks monetary relief three times the total damage sustained by such persons and their property, the interest on the total damages pursuant to California Business and Professions Code section 16761, and the costs of suit, including a reasonable attorneys' fee.

218. Under California Business and Professions Code sections 16754, 16754.5, and 16750(a), the Attorney General seeks injunctive, declaratory and other equitable relief to require Amazon to cease its anticompetitive conduct, to restore fair competition, to deny Amazon the fruits of its illegal conduct—specifically the disgorgement of ill-gotten gains, to prevent the resumption of that conduct or conduct with the same effect—and to impose such other relief as may be just and appropriate for Amazon's violations of the Cartwright Act.

### Second Cause of Action – Unfair Competition in Violation of the California Unfair Competition Law – Unlawful and Unfair Prongs (Cal. Bus. & Prof. Code Section 17200, *et seq.*)

219. The People incorporate by reference and re-allege, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

220. Amazon has engaged, and continues to engage, in the acts or practices described herein, which are unlawful, and which constitute unfair competition within the meaning of section 17200 of the Business and Professions Code. Amazon has violated Business and Professions Code section 16750(a).

221. Amazon has engaged, and continues to engage, in the acts or practices described herein, which are unfair, irrespective of the violation of any other law, and which constitute unfair competition within the meaning of section 17200 of the Business and Professions Code

222. Under California Business and Professions Code section 17200, *et seq.*, the Attorney General seeks injunctive, and other equitable relief to require Amazon to cease its

anticompetitive conduct, to restore fair competition, to deny Amazon the fruits of its illegal conduct—specifically, through restitution, to prevent the resumption of that conduct or conduct with the same effect—to impose a civil penalty of two thousand five hundred dollars ($2,500) against Amazon for each violation of Business and Professions Code section 17200, and to impose such other relief as may be just and appropriate for Amazon's violations of the California Unfair Competition Law.

## IX. PRAYER FOR RELIEF

WHEREFORE, the People pray that this Court enter judgment against Defendant, adjudging, and decreeing that:

A. Amazon has engaged in contracts and/or combinations in violation of California Business and Professions Code sections 16720 and 16750(a), and the People have been injured as a result of this violation;

B. The unlawful conduct, contracts, and/or combinations alleged herein be adjudged and decreed to be an unreasonable restraint of trade;

C. Amazon has engaged in acts or practices that are unlawful, and which constitute unfair competition within the meaning of Business and Professions Code section 17200, with acts or practices violative of the California Cartwright Act, sections 16720 and 16750(a) of the Business and Professions Code;

D. Amazon has engaged in acts or practices that are unfair, irrespective of the violation of any other law, and which constitute unfair competition within the meaning of Business and Professions Code section 17200;

E. Pursuant to Business and Professions Code section 16760, that the People be awarded their damages, trebled, in an amount according to proof;

F. Amazon be enjoined, in connection with its activities within, emanating from, or directed at the State of California, from continuing to engage in the anticompetitive conduct alleged herein, including an order appointing a Court-approved monitor, to ensure Amazon's compliance with the Court's order;

G. Pursuant to Business and Professions Code sections 16750(c) and 16754.5, that the Court enter all orders necessary to prevent Amazon as well as Amazon's successors, agents, representatives, employees, and all persons who act in concert with Amazon from engaging in any act or practice that constitutes a violation of the Cartwright Act, section 16720, *et. seq*., of the Business and Professions Code, including such mandatory injunctions as may reasonably be necessary to restore and preserve fair competition, and by disgorging ill-gotten gains arising from its anticompetitive acts;

H. That Amazon be ordered to compensate the People for the deadweight loss to the economy caused by these acts;

I. Pursuant to Business and Professions Code section 17203, that the Court enter all orders necessary to prevent Amazon, as well as Amazon's successors, agents, representatives, employees, and all persons who act in concert with Amazon from engaging in any act or practice that constitutes unfair competition in violation of Business and Professions Code section 17200;

J. Pursuant to Business and Professions Code section 17203, that the Court enter all orders or judgments as may be necessary to restore to any person in interest any money or other property that Amazon may have acquired by violations of Business and Professions Code section 17200, as proved at trial;

K. Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars ($2,500) against Amazon for each violation of Business and Professions Code section 17200, as proved at trial;

L. The People recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

M. The People receive such other, further, and different relief as the case may require and the Court may deem just and proper under the circumstances.

## JURY TRIAL DEMAND

The People hereby demand a trial by jury for all causes of action, claims, or issues in this action that are so triable.

Dated: September 14, 2022

Respectfully Submitted,

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Attorney General of California
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*/s/ Paula Blizzard*

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