

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIZABETH DE COSTER *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

No. 2:21-cv-00693-RSM

**DEFENDANT AMAZON.COM'S
ANSWER TO PLAINTIFFS'
CONSOLIDATED AMENDED
COMPLAINT**

PRELIMINARY STATEMENT

Having a reputation for competitive prices—and in fact offering competitive prices—are fundamental business objectives for Amazon, which prides itself on being Earth’s most customer-centric company. Within the intensely competitive retail environment, customers shop around until they find the best deal. Even a single bad experience in Amazon’s store—such as paying an uncompetitive price for a product—can damage customer trust, which is essential to success in retail and can easily be lost. The gravamen of Plaintiffs’ Complaint is that Amazon’s policies encouraging low prices in its store somehow constitute an antitrust violation. This proposition—that Amazon should not be allowed to encourage low prices from third-party sellers in its store, featuring competitively priced products—defies common sense and the fundamental principles of competition law.

1 **AMAZON’S ANSWER TO PLAINTIFFS’ COMPLAINT**

2 Amazon responds to the allegations in the Complaint as set forth below. Any allegation
3 not expressly and explicitly admitted is denied. To the extent substantive factual allegations
4 embodied in the boldface headings from the Complaint reproduced below require a response,
5 Amazon denies them.

6 1. Amazon admits that it works with independent sellers, authors, content creators,
7 developers, delivery businesses and IT solution providers. The retail landscape is vigorously
8 competitive across channels (offline, online, omni-channel), with brick-and-mortar stores
9 competing with online stores for sales. The largest retailer in the United States (and the world) is
10 Walmart. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
11 1.

12 2. Amazon admits that it sells a wide range of physical goods to consumers
13 shopping in its U.S. store. Except to the extent expressly admitted, Amazon denies the
14 allegations in Paragraph 2.

15 3. Amazon admits that Paragraph 3 selectively quotes from a 2017 Declaration from
16 Nicholas Denissen and a 2013 report from the Bundeskartellamt, which each speak for
17 themselves. Except to the extent expressly admitted, Amazon denies the allegations in
18 Paragraph 3.

19 4. Amazon admits that Paragraph 4 selectively cites from a 2020 Report from the
20 Subcommittee on Antitrust, Commercial, and Administrative Law which speaks for itself.
21 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 4. Walmart
22 is the largest retailer in the United States (and the world).

23 5. Amazon admits that many third-party sellers who sell goods in Amazon’s U.S.
24 store also sell goods through other retail channels. Amazon also admits that about two million
25 third-party sellers offer goods in Amazon’s U.S. store. While Amazon admits Walmart is the
26 largest retailer in the United States (and the world), Amazon lacks knowledge or information
27 sufficient to form a belief as to the truth of the allegations in Paragraph 5 regarding the number

1 of third-party sellers that sell in Walmart’s store. Except to the extent expressly admitted,
2 Amazon denies the allegations in Paragraph 5.

3 6. Amazon admits that in 2000, Amazon opened its U.S. store—the U.S. Amazon
4 Marketplace—to offer its marketplace services to third-party sellers. Before that time, Amazon
5 only sold goods to consumers as a retailer. Amazon further admits that the retail industry is
6 fiercely competitive, and Amazon is just one of tens of thousands of retailers—existing online,
7 offline, and omni-channel—competing for consumers’ business. According to the U.S. Census
8 Bureau, only 16 percent of consumer retail purchases take place through online stores, with the
9 overwhelming majority taking place in physical stores. Except to the extent expressly admitted,
10 Amazon denies the allegations in Paragraph 6.

11 7. Amazon admits that Amazon Prime is an membership program that entitles
12 members to certain benefits. Amazon admits that Paragraph 7 selectively quotes or refers to
13 various articles, which speak for themselves. Amazon lacks knowledge or information sufficient
14 to form a belief as to the truth of the allegations in Paragraph 7 regarding retailer Molson Hart,
15 and, on that basis, denies them. Except to the extent expressly admitted, Amazon denies the
16 allegations in Paragraph 7.

17 8. Amazon admits that in Amazon’s U.S. store, it offers third-party sellers multiple
18 selling plans, including an individual plan that costs \$0.99 per unit sold, and a professional plan
19 that costs \$39.99 per month without regard to the number of units sold. Third-party sellers
20 receive additional services when they choose the professional plan, and Amazon has made
21 substantial innovations and investments to support third-party sellers, resulting in their
22 experiencing massive growth in Amazon’s U.S. store. Amazon further admits that for each item
23 sold in its U.S. store, it retains a “referral fee,” which varies based on the item sold. Amazon
24 also admits that Paragraph 8 selectively quotes or refers to a New York Times article, which
25 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
26 Paragraph 8.

1 9. Amazon admits that there is vigorous competition for online retail and fulfillment
2 services and that for the type and quality of services that Amazon provides, its services are
3 priced competitively and reflect the value that Amazon delivers to sellers and customers.
4 Third-party sellers thrive in Amazon's U.S. store because Amazon has helped third-party sellers
5 compete by innovating and investing in and offering them selling tools, including tools to help
6 sellers manage inventory, process payments, track shipments, and create reports. Amazon's
7 innovation and investment in Fulfillment by Amazon and the Prime membership program
8 meaningfully improved the customer experience of buying from independent sellers,
9 contributing to their success in Amazon's U.S. store. Except as expressly admitted, Amazon
10 lacks knowledge or information sufficient to form a belief as to the truth of the allegations in
11 Paragraph 9 and therefore denies them.

12 10. Amazon admits that there is vigorous competition for online retail and fulfillment
13 services and that for the type and quality of services that Amazon provides, its services are
14 priced competitively and reflect the value that Amazon delivers to sellers and customers.
15 Amazon further admits that it charges third party sellers fees for optional services that third-party
16 sellers would need otherwise to perform and pay for (for example, storage, packaging, and
17 shipping), including when they sell on their own websites. These fees are therefore not
18 additional fees, but are rather fees for services that a seller has the option of having Amazon
19 perform. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
20 10.

21 11. Amazon denies the allegations in Paragraph 11.

22 12. Amazon denies the allegations in Paragraph 12.

23 13. Amazon denies the allegations in Paragraph 13.

24 14. Amazon admits that Paragraph 14 selectively quotes from a report by the House
25 Antitrust Subcommittee and other articles, which speak for themselves. Except to the extent
26 expressly admitted, Amazon denies the allegations in Paragraph 14, and specifically denies the
27 substance of the quoted language.

1 15. Amazon admits that it enters into a Business Solutions Agreement (“BSA”) with
2 third-party sellers who sell physical goods in Amazon’s U.S. store that describes the terms and
3 conditions under which third-party sellers may sell their physical goods in Amazon’s U.S. store.
4 Amazon admits that the BSA contained a parity provision, which was removed for U.S. sellers in
5 March 2019. Amazon further admits that the parity provision required that “the Purchase Price
6 and every other term of offer or sale” of a seller’s product be “at least as favorable to Amazon
7 Site users as the most favorable terms upon which a product is offered or sold” via a seller’s
8 other sales channels. These provisions are commonplace in retail to avoid suppliers from
9 discriminating against a store’s customers and to help stores offer consumers a trusted place to
10 shop, and are intended to help ensure lower prices for consumers. Except to the extent expressly
11 admitted, Amazon denies the allegations in Paragraph 15.

12 16. Amazon admits that it enters into a BSA with third-party sellers who sell physical
13 goods in Amazon’s U.S. store that describes the terms and conditions under which third-party
14 sellers may sell their physical goods in Amazon’s U.S. store. Amazon admits that the BSA
15 formerly contained a parity provision, which was removed for European sellers in 2013 and
16 removed for U.S. sellers in March 2019; prior to its removal, the provision was rarely enforced.
17 Amazon further admits that the parity provision required that “the Purchase Price and every other
18 term of offer or sale” of a seller’s product be “at least as favorable to Amazon Site users as the
19 most favorable terms upon which a product is offered or sold” via a seller’s other sales channels.
20 These provisions are commonplace in retail to avoid suppliers from discriminating against a
21 store’s customers and to help stores offer consumers a trusted place to shop. Amazon further
22 admits that the parity provision was the subject of investigations conducted by agencies of the
23 United Kingdom and Germany in 2013. The claims in this case involve third-party sellers and
24 consumers in the United States. When the Attorney General of the District of Columbia relied
25 on similar allegations concerning investigations by U.K. and German regulators, Judge Puig-
26 Lugo concluded that such reliance was “misplaced” because “the statements of European
27 investigators amount to legal conclusions premised on British and German legal frameworks

1 which may or may not be consistent with the legal, procedural, and evidentiary requirements
2 applicable in the United States.” Except to the extent expressly admitted, Amazon denies the
3 allegations in Paragraph 16.

4 17. Amazon admits that Paragraph 17 selectively quotes from a 2013 Report from the
5 German Federal Cartel Office, which speaks for itself. Except to the extent expressly admitted,
6 Amazon denies the allegations in Paragraph 17.

7 18. Amazon admits that the parity provision was removed from the BSA in March
8 2019, including because it was rarely enforced. Except to the extent expressly admitted,
9 Amazon denies the allegations in Paragraph 18.

10 19. Amazon admits that the BSA requires third-party sellers to follow Amazon
11 policies, including the Marketplace Fair Pricing Policy (“MFPP”). The MFPP is not an MFN
12 policy; it prohibits third-party sellers from offering their products in Amazon’s U.S. store at
13 prices that are “significantly higher” than competitive prices across thousands of retail stores, as
14 well as recent prices on Amazon; in other words, the MFPP prohibits price gouging. The MFPP
15 was adopted in November 2017, over a year before the parity provision was removed from the
16 BSA. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 19.

17 20. Amazon admits that Paragraph 20 selectively quotes and refers to the MFPP,
18 which speaks for itself. Amazon further admits that it takes action to enforce the MFPP. Except
19 to the extent expressly admitted, Amazon denies the allegations in Paragraph 20.

20 21. Amazon admits that multiple offers for the same product may be placed on a
21 single detail page in Amazon’s U.S. store, allowing customers to easily compare all offers for a
22 particular product. Amazon further admits that the “Featured Offer” is intended to highlight for
23 customers an offer that Amazon believes that customers would most likely choose if they
24 compared all offers, and that most of the sales in Amazon’s U.S. store are from the Featured
25 Offer. Amazon further admits that, in addition to the Featured Offer, other competing offers are
26 available on the single detail page, including the all offer display. Amazon admits that
27 Paragraph 21 selectively quotes from a report by the House Antitrust Subcommittee and articles,

1 which speak for themselves. Except to the extent expressly admitted, Amazon denies the
2 allegations in Paragraph 21, and specifically denies the substance of the quoted language.

3 22. Amazon denies the allegations in Paragraph 22.

4 23. To the extent the allegations in Paragraph 23 are legal conclusions and
5 characterizations, no responsive pleading is required. Amazon admits that Paragraph 23
6 selectively quotes from a 2013 Report from the German Federal Cartel Office, which speaks for
7 itself. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 23 regarding retailer Molson Hart, and, on that basis, denies them.
9 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 23.

10 24. To the extent the allegations in Paragraph 24 are legal conclusions and
11 characterizations, no responsive pleading is required. Amazon admits that Paragraph 24
12 selectively quotes from a 2013 Report from the German Federal Cartel Office, which speaks for
13 itself. Amazon admits that some third-party sellers may incorporate some portion of fees into
14 their list prices, but Amazon lacks knowledge or information sufficient to form a belief as to the
15 amount of fees incorporated by each third-party seller in each of its list prices. Except to the
16 extent expressly admitted, Amazon denies the allegations in Paragraph 24.

17 25. To the extent the allegations in Paragraph 25 are legal conclusions and
18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
19 required, Amazon denies the allegations in Paragraph 25.

20 26. Amazon admits that it seeks to ensure that it features competitive prices to
21 customers and that customers are not subject to price gouging by third-party sellers when they
22 shop in Amazon's U.S. store. Except to the extent expressly admitted, Amazon denies the
23 allegations in Paragraph 26.

24 27. Amazon admits that Paragraph 27 selectively quotes from a report by the House
25 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
26 Amazon denies the allegations in Paragraph 27, and specifically denies the substance of the
27 quoted language. Sales by third-party sellers on Amazon have grown because, among other

1 reasons, Amazon helped sellers compete by investing in and offering them tools that allowed
2 them to manage inventory, process payments, track shipments, and create reports. Through
3 Fulfillment by Amazon and the Prime membership program, Amazon also meaningfully
4 improved the customer experience of buying from third-party sellers.

5 28. Amazon denies the allegations in Paragraph 28. Plaintiffs' allegations disregard
6 the realities of retail competition: all retail—online, offline, and omni-channel—competes for
7 the same sales. Consumers may purchase the same product through multiple retail channels.
8 According to the U.S. Census Bureau, for the fourth quarter of 2022, 84 percent of retail took
9 place offline¹ prices online and offline have largely converged, demonstrating that consumers
10 substitute across channels.

11 29. To the extent the allegations in Paragraph 29 are legal conclusions and
12 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
13 required, Amazon admits that Plaintiffs purport to plead subject matter jurisdiction pursuant to
14 28 U.S.C. §§ 1331, 1337.

15 30. To the extent the allegations in Paragraph 30 are legal conclusions and
16 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
17 required, Amazon admits that Plaintiffs purport to plead subject matter jurisdiction pursuant to
18 28 U.S.C. § 1332(d). Except to the extent expressly admitted, Amazon denies the allegations in
19 Paragraph 30.

20 31. To the extent the allegations in Paragraph 31 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
22 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
23 Plaintiffs' residencies. Except to the extent expressly admitted, Amazon denies the allegations in
24 Paragraph 31.

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27 ¹ U.S. Census Bureau News, Quarterly Retail E-Commerce Sales (Feb. 17, 2023),
https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

1 32. To the extent the allegations in Paragraph 32 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon admits that one of its two headquarters is in Seattle, Washington, and it does
4 business in Washington and has registered with the Washington Secretary of State. Except to the
5 extent expressly admitted, Amazon denies the allegations in Paragraph 32.

6 33. To the extent the allegations in Paragraph 33 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
8 required, Amazon admits that Plaintiffs purports to plead venue pursuant to 28 U.S.C.
9 § 1391(b)(1) and (2). Except to the extent expressly admitted, Amazon denies the allegations in
10 Paragraph 33.

11 34. Amazon lacks knowledge or information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 34 and therefore denies them.

13 35. Amazon lacks knowledge or information sufficient to form a belief as to the truth
14 of the allegations in Paragraph 35 and therefore denies them.

15 36. Amazon lacks knowledge or information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 36 and therefore denies them.

17 37. Amazon lacks knowledge or information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 37 and therefore denies them.

19 38. Amazon lacks knowledge or information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 38 and therefore denies them.

21 39. Amazon lacks knowledge or information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 39 and therefore denies them.

23 40. Amazon lacks knowledge or information sufficient to form a belief as to the truth
24 of the allegations in Paragraph 40 and therefore denies them.

25 41. Amazon lacks knowledge or information sufficient to form a belief as to the truth
26 of the allegations in Paragraph 41 and therefore denies them.
27

1 42. Amazon admits that one of its two headquarters is in Seattle, Washington.
2 Amazon admits that it sells as a first-party seller in its U.S. store and also allows third-party
3 sellers to sell certain physical goods in its U.S. store. Except to the extent expressly admitted,
4 Amazon denies the allegations in Paragraph 42.

5 43. Amazon admits that Paragraph 43 selectively quotes or refers to from a report by
6 the House Antitrust Subcommittee, which speaks for itself. Except to the extent expressly
7 admitted, Amazon denies the allegations in Paragraph 43, and specifically denies the substance
8 of the quoted language.

9 44. Amazon denies the allegations in Paragraph 44.

10 45. Amazon admits that it allows third-party sellers to sell physical goods in its U.S.
11 store and that third-party sellers must register with Amazon to do so. Amazon further admits
12 that it enters into a BSA with third-party sellers who offer for sale physical goods in Amazon's
13 U.S. store. The BSA describes the terms and conditions under which third-party sellers may sell
14 their physical goods in Amazon's U.S. store. Except to the extent expressly admitted, Amazon
15 denies the allegations in Paragraph 45.

16 46. The retail landscape is vigorously competitive, with all retailers, whether they sell
17 online, offline, or omni-channel, competing for the same sales. Amazon admits that third-party
18 sellers compete with Amazon as a first-party seller. Amazon also admits that about two million
19 third-party sellers sell physical goods in its U.S. store. While Walmart is the largest retailer in
20 the United States (and the world), Amazon lacks knowledge or information sufficient to form a
21 belief as to the truth of the allegations in Paragraph 46 regarding the number of third-party sellers
22 that sell in Walmart's store. Except to the extent expressly admitted, Amazon denies the
23 allegations in Paragraph 46.

24 47. Amazon admits that Paragraph 47 selectively quotes from and refers to a report
25 by the House Antitrust Subcommittee, which speaks for itself. Amazon admits that it has made
26 substantial investments to set up its own distribution network, including trailers and aircraft, to
27 ensure customers receive their purchased goods quickly and efficiently. Except to the extent

1 expressly admitted, Amazon denies the allegations in Paragraph 47, and specifically denies the
2 substance of the quoted language.

3 48. Amazon admits that Paragraph 48 selectively relies on an analysis done by
4 Morgan Stanley. Amazon lacks knowledge or information sufficient to form a belief as to the
5 truth of the allegations in Paragraph 48 regarding the parcel volume of UPS, FedEx, and the U.S.
6 Postal Service. Except to the extent expressly admitted, Amazon denies the allegations in
7 Paragraph 48.

8 49. Amazon admits that it developed a voice assistant, known as Alexa, and that it
9 acquired Whole Foods. Given the vague and argumentative nature of the remaining allegations,
10 Amazon lacks knowledge and information sufficient to form a belief as to the truth of the
11 remaining allegations in Paragraph 49 and therefore denies them.

12 50. Amazon admits that Paragraph 50 summarizes an article describing network
13 effects, which speak for themselves. Amazon lacks knowledge and information sufficient to
14 form a belief as to the truth of the remaining allegations in Paragraph 50 and therefore denies
15 them.

16 51. Amazon admits that the allegation in Paragraph 51 concerning the number of
17 third-party seller offering for sale goods in Amazon's U.S. store. These third-party sellers have
18 many attractive distribution options other than Amazon through which to make sales, including
19 their own websites, other online retail websites, and physical stores, with it being common for
20 third-party sellers to sell their physical goods through multiple retail channels. Amazon admits
21 that consumers can search its U.S. store for goods sold directly by Amazon as well as by third-
22 party sellers. Except as expressly admitted, Amazon denies the allegations in Paragraph 51.

23 52. Amazon admits that Amazon Prime is a paid membership program that entitles
24 customers to certain benefits, including, free shipping on eligible products as well as access to
25 Prime Video and Amazon Music Prime. Except to the extent expressly admitted, Amazon denies
26 the allegations in Paragraph 52.

1 53. Amazon admits that Paragraph 53 summarizes articles and surveys, which speak
2 for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
3 Paragraph 53.

4 54. Amazon admits that Amazon Prime is a membership program that entitles
5 customers to certain benefits, and that such benefits have grown since the program was initially
6 offered. Amazon admits that it invests in the services provided as part of Amazon Prime and that
7 in 2018, Amazon Prime membership was offered at a standard annual fee of \$119 per year.
8 Except to the extent expressly admitted, Amazon denies the remainder of the allegations in
9 Paragraph 54.

10 55. Amazon admits that Amazon Prime is a membership program that entitles
11 customers to certain benefits, including free shipping eligible goods. Except to the extent
12 expressly admitted, Amazon denies the remainder of the allegations in Paragraph 55.

13 56. Amazon admits that Paragraph 56 selectively quotes from a report by the House
14 Antitrust Subcommittee, which speaks for itself. Fulfillment by Amazon is offered to sellers as
15 an optional service. Except to the extent expressly admitted, Amazon denies the allegations in
16 Paragraph 56, and specifically denies the substance of the quoted language.

17 57. Amazon admits that Paragraph 57 selectively quotes from a report by the House
18 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
19 Amazon denies the allegations in Paragraph 57, and specifically denies the substance of the
20 quoted language.

21 58. Amazon admits that third-party sellers pay Amazon certain fees in exchange for
22 services, including optional services, provided by Amazon. Except to the extent expressly
23 admitted, Amazon denies the allegations in Paragraph 58. Most of the fees that the Plaintiffs
24 describe are fees for optional services, services that sellers would have to otherwise pay for if
25 they did not have Amazon perform those services (for example, storing, packing, and shipping).
26 These fees are fees for services that a seller has the option of having Amazon perform, a third
27 party perform, or the seller performing on its own.

1 59. Amazon admits that when an Amazon customer buys an item listed by a
2 third-party seller, the customer pays Amazon directly; Amazon receives a referral and sometimes
3 other fees; and remits payment to the third party-seller. Except to the extent expressly admitted,
4 Amazon denies the allegations in Paragraph 59.

5 60. Amazon admits that that it offers two different selling plans to sellers on its U.S.
6 marketplace, one for \$0.99 per item sold and another for \$39.99 per month, and that it offers
7 sellers other optional services for a fee. Except to the extent expressly admitted, Amazon denies
8 the allegations in Paragraph 60.

9 61. Amazon admits that it offers third-party sellers services in the FBA program for
10 additional fees. Except to the extent expressly admitted, Amazon denies the allegations in
11 Paragraph 61.

12 62. Amazon admits that it offers sellers the opportunity to purchases ads, and that
13 many sellers avail themselves of the opportunity to purchase ads, although ads are not required to
14 sell in Amazon's U.S. Store. Except to the extent expressly admitted, Amazon denies the
15 allegations in Paragraph 62.

16 63. Amazon denies the allegations in Paragraph 63. Most of the fees Plaintiffs
17 describe are fees for optional services, services that sellers would have to otherwise pay for if
18 they did not have Amazon perform those services (for example, storing, packing, and shipping).

19 64. To the extent the allegations in Paragraph 64 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon admits that Paragraph 64 selectively quotes from a report by the House
22 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
23 Amazon denies the allegations in Paragraph 64, and specifically denies the substance of the
24 quoted language. Retail sales and marketplaces have grown and expanded rapidly during the
25 relevant time period.

26 65. Amazon admits that there are multiple ways in which consumers can shop for
27 goods from their homes, smartphones, and other internet-enabled devices, with Amazon's U.S.

1 store being just one of those ways. Except to the extent expressly admitted, Amazon lacks
2 knowledge or information sufficient to form a belief as to the truth of the allegations in
3 Paragraph 65 and therefore denies them.

4 66. Amazon competes with brick-and-mortar stores in the intensely competitive
5 market for retail goods—which is one of the most competitive industries in the world.
6 Customers constantly compare prices between brick-and-mortar and online retailers and stores,
7 and they switch their retail purchases between such retailers and stores. The same products that
8 are offered online are also offered in brick-and-mortar stores, and, for the fourth quarter of 2022,
9 approximately 84 percent of retail sales were in physical stores. At the same time, traditional
10 retailers are creating hybrid options for reaching consumers who can order products online and
11 then pick them up at a physical store. And, brick-and-mortar stores tout themselves as
12 competitors to online retailers, offering price-match guarantees that include prices offered by
13 online retailers. Accordingly, Amazon denies the allegations in Paragraph 66 regarding there
14 being a distinction between online retail marketplaces and conventional brick-and-mortar
15 retailers. Amazon admits that like any retailer, it collects information concerning the use of its
16 U.S. store. Except as specifically admitted, Amazon denies the allegations in Paragraph 66.

17 67. Amazon admits that Paragraph 67 selectively quotes from an academic article,
18 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
19 in Paragraph 67, and specifically denies the substance of the quoted language.

20 68. To the extent the allegations in Paragraph 68 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
22 required, for the reasons set forth in Paragraph 66 above—including the fact that brick-and-
23 mortar stores offer identical products as online stores, as well as hybrid options for customers—
24 Amazon denies the allegations in Paragraph 68 regarding reasonable interchangeability between
25 goods sold in online and offline retail. Except to the extent expressly admitted, Amazon denies
26 the allegations in Paragraph 68.

1 69. To the extent the allegations in Paragraph 69 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 69.

4 70. To the extent the allegations in Paragraph 70 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 70.

7 71. To the extent the allegations in Paragraph 71 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon denies the allegations in Paragraph 71 because the same goods that are
10 available in online marketplaces are also available on direct-to-consumer websites and in
11 physical stores, and these goods are reasonable substitutes for one another. Further, the
12 distinction between online and offline has been blurred with omni-channel—buy online, pick up
13 at store—becoming increasingly popular with consumers.

14 72. Amazon admits that Paragraph 72 selectively quotes from a report by the House
15 Antitrust Subcommittee which summarize various articles and reports, which speak for
16 themselves. Except to the extent expressly admitted, Amazon denies the allegations in
17 Paragraph 72.

18 73. Amazon admits that third-party merchant sales account for the majority of sales in
19 Amazon's U.S. store. Except to the extent expressly admitted, Amazon denies the allegations in
20 Paragraph 73.

21 **74.** Amazon denies the allegations in Paragraph 74. Third-party sellers have many
22 attractive options other than Amazon through which to make sales, including their own websites,
23 other online retail websites, and physical retail stores.

24 75. Amazon admits that Paragraph 75 selectively quotes testimony given before the
25 House Judiciary Committee, which speaks for itself. Amazon denies the allegations in
26 Paragraph 75, and specifically denies the substance of the quoted language. There are low
27 barriers to entry in retail, as demonstrated by the tens of thousands of retail stores across the

1 United States, the ease with which physical stores have expanded online, and the number of new
2 marketplaces that have emerged. E-commerce has reduced barriers to entry, with companies like
3 Shopify and Channel Advisor facilitating retailers' entry and expansion online. For example, in
4 2020, nearly \$120 billion in sales were processed through Shopify alone.² Sales through
5 Amazon represent only a small percentage of the intensely competitive U.S. retail industry,
6 where customers switch seamlessly between online and offline shopping, with most sales still
7 made through physical stores that sell identical products to those offered online. Retail is one of
8 the least concentrated industries in the United States, with customers shopping and purchasing
9 across many different retailers and stores.

10 76. Amazon admits that Paragraph 76 selectively quotes from a report by the House
11 Antitrust Subcommittee, which speaks for itself. Third-party often use multiple distribution
12 channels for selling their goods. Amazon denies the allegations in Paragraph 76, and specifically
13 denies the substance of the quoted language.

14 77. Amazon denies the allegations in Paragraph 77. There are low barriers to entry in
15 retail, as demonstrated by the tens of thousands of retail stores across the United States, the ease
16 with which physical stores have expanded online, and the number of new marketplaces and
17 direct-to-consumer websites that have emerged in recent years. Retail is one of the least
18 concentrated industries in the United States, with customers shopping and purchasing across
19 many different retailers and stores.

20 78. Amazon denies the allegations in Paragraph 78. There are low barriers to entry in
21 retail, as demonstrated by the tens of thousands of retail stores across the United States, the ease
22 with which physical stores have expanded online, and the number of new marketplaces and
23 direct-to-consumer websites that have emerged in recent years. Retail is one of the least
24 concentrated industries in the United States, with customers shopping and purchasing across
25 many different retailers and stores.

26
27 ² Do Good Things, *The Future of eCommerce: Shopify Online Store 2.0* (July 19, 2021),
<https://www.dogoodthings.co.nz/blog/e-commerce-trends-shopify-online-store-2-0>.

1 79. Amazon admits that Paragraph 79 selectively quotes from a report by the House
2 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
3 Amazon denies the allegations in Paragraph 79, and specifically denies the substance of the
4 quoted language.

5 80. Amazon admits that Paragraph 80 selectively quotes from a report by the House
6 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
7 Amazon denies the allegations in Paragraph 80, and specifically denies the substance of the
8 quoted language.

9 81. Amazon admits that, like any retailer, it collects information concerning the use of
10 its store. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
11 81.

12 82. Amazon admits that Paragraph 82 selectively quotes from a report by the House
13 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
14 Amazon denies the allegations in Paragraph 82, and specifically denies the substance of the
15 quoted language.

16 83. Amazon admits that Paragraph 83 selectively quotes from a report by the House
17 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
18 Amazon denies the allegations in Paragraph 83, and specifically denies the substance of the
19 quoted language.

20 84. Amazon admits that, like any retailer, it collects information concerning the use of
21 its store. Amazon admits that Paragraph 84 selectively quotes from a report by the House
22 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
23 Amazon denies the allegations in Paragraph 84, and specifically denies the substance of the
24 quoted language.

25 85. Amazon admits that Paragraph 85 selectively quotes from a report by the House
26 Antitrust Subcommittee, which speaks for itself. Amazon further admits that Paragraph 85
27 quotes from an article regarding retailer Molson Hart; Amazon lacks sufficient knowledge or

1 information to form a belief of the truth or accuracy of the quoted language. Except to the extent
2 expressly admitted, Amazon denies the allegations in Paragraph 85, and specifically denies the
3 substance of the quoted language report by the House Antitrust Subcommittee.

4 86. Amazon admits that Paragraph 86 selectively quotes from testimony before the
5 House Judiciary Committee, which speaks for itself. Except to the extent expressly admitted,
6 Amazon denies the allegations in Paragraph 86, and specifically denies the substance of the
7 quoted language.

8 87. Amazon admits that Paragraph 87 selectively quotes from and refers to a report
9 by the House Antitrust Subcommittee, which speaks for itself. Amazon further admits that the
10 report by the House Antitrust Subcommittee selectively quotes from a document labeled
11 AMAZON–HJC–00186540, which explains that a fee increase “reflects the changing costs of
12 fulfillment, transportation, and customer service” and that “[w]e are notifying sellers early so
13 they can plan for these changes.” Except to the extent specifically admitted, Amazon denies the
14 allegations in Paragraph 87, and specifically denies the substance of the quoted language from
15 the report by the House Antitrust Subcommittee, to the extent that report quotes Amazon’s
16 document, the quotations are selective and taken out of context.

17 88. Amazon admits that third-party sellers pay Amazon certain fees in exchange for
18 services, including optional services, provided by Amazon. Some of the fees that the Plaintiffs
19 mention are fees for optional services, services that sellers would have to otherwise pay for if
20 they did not have Amazon perform those services (for example, storing, packing, and shipping).
21 These fees are therefore not additional fees; they are fees for services that a seller has the option
22 of having Amazon perform, a third party perform, or the seller performing on its own. Amazon
23 admits that Paragraph 88 selectively quotes from an article in the New York Times, which
24 speaks for itself. Amazon lacks sufficient information about the reliability of the Instinet
25 analysis cited in the article and therefore denies the allegations in Paragraph 88 on that basis.
26
27

1 89. To the extent the allegations in Paragraph 89 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 89.

4 90. To the extent the allegations in Paragraph 90 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 90.

7 91. To the extent the allegations in Paragraph 91 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon denies the allegations in Paragraph 91.

10 92. To the extent the allegations in Paragraph 92 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon admits that Paragraph 92 selectively quotes from a report by the House
13 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
14 Amazon denies the allegations in Paragraph 92, and specifically denies the substance of the
15 quoted language.

16 93. To the extent the allegations in Paragraph 93 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon admits that Paragraph 93 selectively quotes from a report by the House
19 Antitrust Subcommittee and cites a report from the Department of Commerce, which speak for
20 themselves. Amazon competes with brick-and-mortar stores in the intensely competitive market
21 for retail goods—which is one of the most competitive industries in the world. Customers
22 constantly compare prices between brick-and-mortar and online retailers and stores, and switch
23 their retail purchases between such retailers and stores. The same products that are offered
24 online are also offered in brick-and-mortar stores, and, for the fourth quarter of 2022,
25 approximately 84 percent of retail sales were in physical stores. At the same time, traditional
26 retailers are creating hybrid options for reaching consumers who can order products online and
27 then pick them up at a physical store. And, brick-and-mortar stores tout themselves as

1 competitors to online retailers, offering price-match guarantees that include prices offered by
2 online retailers. Except to the extent expressly admitted, Amazon denies the allegations in
3 Paragraph 93, and specifically denies the substance of the quoted language.

4 94. To the extent the allegations in Paragraph 94 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon denies the allegations in Paragraph 94.

7 95. Amazon admits that Paragraph 95 selectively quotes from two articles, which
8 speak for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
9 Paragraph 95, and specifically denies the substance of the quoted language.

10 96. Amazon lacks knowledge or information sufficient to form a belief as to the truth
11 of the allegations in Paragraph 96 and therefore denies them. As a retailer, Amazon competes
12 with retailers both online and offline. The overwhelming majority of retail sales take place in
13 physical stores, with the Census Bureau reporting that for the fourth quarter of 2022, online retail
14 sales represented only 16 percent of total sales;³ moreover, physical stores offer products
15 identical to those available through online retailers. Walmart is the largest retailer in the United
16 States (and the world).

17 97. To the extent the allegations in Paragraph 97 are legal conclusions and
18 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
19 required, Amazon denies the allegations in Paragraph 97 including for the reasons set forth in
20 response to Paragraph 96.

21 98. Amazon lacks knowledge or information sufficient to form a belief as to the truth
22 of the market share data allegations in Paragraph 98. Amazon denies the allegations in
23 Paragraph 98 because the Online Retail Sales Market is not a relevant antitrust market.

24 99. Amazon admits that Paragraph 99 selectively quotes from a report by the House
25 Antitrust Subcommittee as well as a study, a press release, and an article, which speak for
26

27 ³ U.S. Census Bureau News, Quarterly Retail E-Commerce Sales (Feb. 17, 2023),
https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

1 themselves. Except to the extent expressly admitted, Amazon denies the allegations in
2 Paragraph 99, and specifically denies the substance of the quoted language.

3 100. To the extent the allegations in Paragraph 100 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon denies the allegations in Paragraph 100.

6 101. To the extent the allegations in Paragraph 101 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
8 required, Amazon denies the allegations in Paragraph 101.

9 102. To the extent the allegations in Paragraph 102 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon denies the allegations in Paragraph 102.

12 103. Amazon admits that the parity provision was the subject of an investigation
13 conducted by the German Federal Cartel Office in 2013. Amazon lacks knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph
15 103, and, on that basis, denies them. Except to the extent expressly admitted, Amazon denies the
16 allegations in Paragraph 103.

17 104. Amazon admits that its revenue from third-party seller services was
18 approximately \$80 billion in FY 2020. Amazon further admits that Paragraph 104 selectively
19 quotes from a report by Retail Dive, which speaks for itself. Except to the extent expressly
20 admitted, Amazon denies the allegations in Paragraph 104, and specifically denies the substance
21 of quoted language.

22 105. Amazon admits that third-party sellers pay Amazon certain fees in exchange for
23 services, including optional services, provided by Amazon. Except to the extent expressly
24 admitted, Amazon denies the allegations in Paragraph 105.

25 106. Amazon lacks knowledge or information sufficient to form a belief as to the truth
26 of the allegations in Paragraph 106 regarding retailer Molson Hart, and, on that basis, denies
27 them.

1 107. Amazon admits that Paragraph 107 quotes from various articles, which speak for
2 themselves. Amazon admits that it seeks to prevent price gouging of customers in its store, in
3 accordance with the MFPP, including by monitoring prices on and off Amazon. Except to the
4 extent expressly admitted, Amazon denies the allegations in Paragraph 107.

5 108. Amazon admits that Paragraph 108 purports to quote an article. Except as
6 expressly admitted, Amazon denies the allegations in Paragraph 108.

7 109. Amazon admits that the parity provision was removed from the BSA for
8 European sellers in 2013 and removed from the BSA for U.S. sellers in March 2019; prior to its
9 removal the provision was rarely enforced. Amazon also admits that Senator Blumenthal wrote
10 a letter to the FTC in December 2018, and that Paragraph 109 purports to quote various articles,
11 which speak for themselves. Except to the extent expressly admitted, Amazon denies the
12 allegations in Paragraph 109.

13 110. Amazon admits that the parity provision was removed from the BSA in March
14 2019 for U.S. sellers; prior to its removal, the provision was rarely enforced. Amazon denies
15 that the Fair Pricing Policy “has the same effect” as the parity provision; the Fair Pricing Policy
16 prohibits prices on Amazon that are “significantly higher” than prices on or off Amazon. In
17 other words, it protects consumers in Amazon’s U.S. store from price gouging. The Fair Pricing
18 Policy does not reference the price set by a single third-party seller outside of Amazon’s U.S.
19 store. The Fair Pricing Policy expressly states that pricing practices that harm customer trust
20 include “Setting a price on a product or service that is significantly higher than recent prices
21 offered on or off Amazon,” as well as “Setting a reference price on a product or service that
22 misleads customers”; “Selling multiple units of a product for more per unit than that of a single
23 unit of the same product”; “Setting a shipping fee on a product that is excessive.” Except to the
24 extent expressly admitted, Amazon denies the allegations in Paragraph 110.

25 111. Amazon admits that multiple offers for the same product may be placed on a
26 single detail page, allowing customers to easily compare all offers for a particular product.
27 Amazon further admits that the “Featured Offer” is intended to highlight for customers an offer

1 that Amazon believes they would most likely choose if they compared all offers. Amazon
2 further admits that, in addition to the Featured Offer, other competing offers are available on the
3 single detail page, including in the all other display. In addition, Amazon admits that purchases
4 through Alexa result in the purchase of an offer that is a Featured Offer. Amazon also admits
5 that Paragraph 111 purports to include an image of Amazon's Desktop U.S. Store but lacks
6 sufficient knowledge or information to form a belief of the truth or accuracy of the image, and
7 Amazon specifically denies the annotations overlaid on the image. Except to the extent
8 expressly admitted, Amazon denies the allegations in Paragraph 111.

9 112. Amazon admits that selection for the Featured Offer takes into account multiple
10 factors such as price, delivery speed, and seller reliability, with a goal of highlighting for
11 customers an offer that Amazon believes they would most likely choose if they compared all
12 offers. Amazon further admits that, in addition to the Featured Offer, other competing offers are
13 available on the single detail page, including in the all other display. In addition, Amazon admits
14 that most of the sales in Amazon U.S. store are from Featured Offers. Except to the extent
15 expressly admitted, Amazon denies the allegations in Paragraph 112.

16 113. Amazon lacks knowledge or information sufficient to form a belief as to the truth
17 of the allegations concerning retailer David Simnick and, on that basis, denies them. Amazon
18 denies the remaining allegations in Paragraph 113.

19 114. Amazon lacks knowledge or information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 114 concerning the percentage of Mr. Hart's sales come from
21 sales in Amazon's U.S. store. Amazon denies the remaining allegations in Paragraph 114.

22 115. Amazon admits that it seeks to feature offers that have competitive prices and to
23 prevent price gouging by third-party sellers when they offer goods for sale in Amazon's U.S.
24 store. Except to the extent expressly admitted, Amazon denies the allegations in 115.

25 116. To the extent the allegations in Paragraph 116 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon denies the allegations in Paragraph 116. Plaintiffs' allegations disregard the

1 realities of retail competition: all retail—online, offline, and omni-channel—compete for the
2 same sales. Consumers may purchase the same product through multiple retail channels.
3 According to the U.S. Census Bureau, for the fourth quarter of 2022, 84 percent of retail took
4 place offline⁴; prices online and offline have largely converged, demonstrating that consumers
5 substitute across channels.

6 117. To the extent the allegations in Paragraph 117 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
8 required, Amazon denies the allegations in Paragraph 117.

9 118. To the extent the allegations in Paragraph 118 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 118 regarding Viahart.com and, on that basis, denies them. Amazon
13 denies the remaining allegations in Paragraph 118. The retail landscape is intensely competitive.
14 E-commerce has reduced barriers to entry, with companies like Shopify and Channel Advisor
15 facilitating retailers' entry and expansion online. For example, in 2020, nearly \$120 billion in
16 sales were processed through Shopify alone.⁵ Sales through Amazon represent only a small
17 percentage of the intensely competitive U.S. retail industry, where customers switch between
18 online and offline shopping, with most sales still made through physical stores that sell identical
19 products to those offered online. There is also intense price competition, with consumers using
20 their smartphones in stores to compare prices at other physical and online stores.

21 119. To the extent the allegations in Paragraph 119 are legal conclusions and
22 characterizations, no responsive pleading is required. Plaintiffs' challenge to the Fair Pricing
23 Policy attacks Amazon's efforts to prohibit price gouging, which is illegal under the laws of
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26 ⁴ U.S. Census Bureau News, Quarterly Retail E-Commerce Sales (Feb. 17, 2023),
https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf.

27 ⁵ Do Good Things, *The Future of eCommerce: Shopify Online Store 2.0* (July 19, 2021),
<https://www.dogoodthings.co.nz/blog/ecommerce-trends-shopify-online-store-2-0>.

1 many states. Insofar as any responsive pleading is required, Amazon denies the allegations in
2 Paragraph 119.

3 120. To the extent the allegations in Paragraph 120 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon denies the allegations in 120. Amazon focuses on building consumer trust
6 through everyday low prices—not short term or per-unit profitability. Amazon’s mission is to be
7 Earth’s most customer-centric company. Amazon competes vigorously every day to provide its
8 customers lower prices, more selection, and better service. Third-party sellers benefit by being
9 associated with Amazon’s reputation as a place consumers find the best selection and low prices.

10 121. Amazon denies the allegations in Paragraph 121.

11 122. Amazon admits that Paragraph 122 selectively quotes from a report by the House
12 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
13 Amazon denies the allegations in Paragraph 122, and specifically denies the substance of quoted
14 language.

15 123. Amazon admits that Paragraph 123 selectively quotes from a report by the House
16 Antitrust Subcommittee, which speaks for itself. Amazon competes with brick-and-mortar stores
17 in the intensely competitive market for retail—which is one of the most competitive industries in
18 the world. Customers constantly compare prices between brick-and-mortar and online retailers
19 and stores, and switch their retail purchases between such retailers and stores. The same
20 products that are offered online are also offered in brick-and-mortar stores, and, for the fourth
21 quarter of 2022, nearly 84 percent of retail sales remained in physical stores. At the same time,
22 traditional retailers are creating hybrid options for reaching consumers who can order products
23 online and then pick them up at a physical store. And, brick-and-mortar stores tout themselves
24 as competitors to online retailers, offering price-match guarantees that include prices offered by
25 online retailers. Accordingly, Amazon denies the allegations in Paragraph 123 regarding there
26 being separate brick-and-mortar and online retail sales markets. Amazon has a small share of the
27

1 retail industry in the United States, with Walmart being the largest retailer in the United States
2 (and the world).

3 124. To the extent the allegations in Paragraph 124 are legal conclusions and
4 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
5 required, Amazon admits that Paragraph 124 selectively quotes from a report by the House
6 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
7 Amazon denies the allegations in Paragraph 124, and specifically denies the substance of quoted
8 language.

9 125. To the extent the allegations in Paragraph 125 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon admits that Paragraph 125 selectively quotes from a report by the House
12 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted,
13 Amazon denies the allegations in Paragraph 125, and specifically denies the substance of quoted
14 language. There are low barriers to entry in retail, as demonstrated by the tens of thousands of
15 retail stores across the United States, the ease with which physical stores have expanded online,
16 and the number of new marketplaces and direct-to-consumer websites that have emerged in
17 recent years. Retail is one of the least concentrated industries in the United States, with
18 customers shopping and purchasing across many different retailers and stores.

19 126. Amazon admits that Germany's Federal Cartel Office investigated the parity
20 provision in 2013. Plaintiffs' claims relate solely to the United States. Except to the extent
21 expressly admitted, Amazon denies the allegations in Paragraph 126.

22 127. To the extent the allegations in Paragraph 127 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon admits that Paragraph 127 selectively quotes from a report by the by the
25 German Federal Cartel Office, which speaks for itself. Plaintiffs' claims here relate solely to
26 their purchase of goods in Amazon's U.S. store in the United States. Except to the extent
27 expressly admitted, Amazon denies the allegations in Paragraph 127.

1 128. Amazon admits that Paragraph 128 selectively quotes from a report by the
2 German Federal Cartel Office, which speaks for itself. Except to the extent expressly admitted,
3 Amazon denies the allegations in Paragraph 128.

4 129. Amazon admits that Paragraph 129 selectively quotes from a report by the by the
5 German Federal Cartel Office, which speaks for itself. Except to the extent expressly admitted,
6 Amazon denies the allegations in Paragraph 129.

7 130. To the extent the allegations in Paragraph 130 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as a response is required, Amazon
9 admits that Paragraph 130 selectively quotes from a report by the by the German Federal Cartel
10 Office, which speaks for itself. Except to the extent expressly admitted, Amazon denies the
11 allegations in Paragraph 130.

12 131. To the extent the allegations in Paragraph 131 are legal conclusions and
13 characterizations, no responsive pleading is required. Insofar as a response is required, Amazon
14 admits that Paragraph 131 selectively quotes from a report by the by the German Federal Cartel
15 Office, which speaks for itself. Except to the extent expressly admitted, Amazon denies the
16 allegations in Paragraph 131.

17 132. Amazon admits that it removed the parity provision from its agreements with
18 third-party sellers in Europe in 2013. Amazon admits that the parity provision was the subject of
19 investigations conducted by agencies of the United Kingdom and Germany in 2013. Plaintiffs'
20 claims relate solely to the United States; the parity provision was removed in the United States in
21 March 2019. Except to the extent expressly admitted, Amazon denies the allegations in
22 Paragraph 132.

23 133. Amazon admits that in Summer 2019, the Washington Post reported that the FTC
24 planned to conduct a broad investigation into "large technology companies." Amazon admits
25 that Paragraph 133 selectively quotes from a Washington Post news article, which speaks for
26 itself. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
27

1 allegations in Paragraph 133 regarding an FTC special task force, and on that basis, denies them.
2 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 133.

3 134. Amazon admits that Paragraph 134 selectively summarizes an article from VOX,
4 which speaks for itself. It is Amazon's belief that the FTC has spoken to competitors of
5 Amazon, but Amazon lacks knowledge or information sufficient to form a belief as to the
6 identities of those competitors. Except to the extent expressly admitted, Amazon denies the
7 allegations in Paragraph 134.

8 135. Amazon admits that Paragraph 135 selectively quotes or refers to a Bloomberg
9 article, which speaks for itself. Amazon lacks knowledge or information sufficient to form a
10 belief as to the truth of the allegations in Paragraph 135 regarding the FTC investigation, and on
11 that basis, denies them.

12 136. Amazon admits that Paragraph 136 selectively quotes a Bloomberg article, which
13 speaks for itself. Amazon lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations in Paragraph 136 regarding the FTC investigation, and on that basis,
15 denies them.

16 137. Amazon admits that Paragraph 137 selectively quotes a Bloomberg article, which
17 speaks for itself. Amazon lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations in Paragraph 137 regarding the FTC investigation, and on that basis,
19 denies them.

20 138. Amazon admits that Paragraph 138 selectively quotes from a C/NET news article,
21 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations
22 in paragraph 138.

23 139. Amazon admits that the Attorney General for the District of Columbia filed an
24 enforcement action against Amazon, which was dismissed for failure to allege anticompetitive
25 effects. To the extent the allegations in Paragraph 139 are legal conclusions and
26 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
27 required, Amazon denies the allegations in Paragraph 139.

1 140. Amazon admits that it sells goods in its U.S. store as a first-party seller and also
2 allows third-party sellers to sell specific physical goods in its U.S. store. Amazon further admits
3 that its U.S. store is accessible to consumers throughout the United States who have Internet
4 access. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
5 140.

6 141. Amazon admits that Plaintiffs purport to bring a class action pursuant to the
7 Federal Rules of Civil Procedure. Amazon denies that this case can be maintained as a class
8 action.

9 142. Amazon admits that Plaintiffs seek to exclude the individuals identified in
10 Paragraph 142 from the putative class Plaintiffs seek to represent. Amazon denies the remaining
11 allegations in Paragraph 142 and denies that this case can be maintained as a class action.

12 143. Amazon denies the allegations in Paragraph 143 and denies that this case can be
13 maintained as a class action.

14 144. Amazon admits that the proposed class in this case is unprecedented in size, with
15 the Supreme Court previously recognizing that a class of about 1,500,000 members was “one of
16 the most expansive classes ever.” *Wal-Mart v. Dukes*, 564 U.S. 338, 342 (2011). Except as
17 expressly admitted, Amazon denies that this case can be maintained as a class action.

18 145. Amazon denies the allegations in Paragraph 145.

19 146. Amazon lacks knowledge and information sufficient to form a belief as to the
20 truth of the allegations in Paragraph 146 and therefore denies the same.

21 147. Amazon denies the allegations in Paragraph 147 and denies that this case can be
22 maintained as a class action.

23 148. Amazon denies the allegations in Paragraph 148 and denies that this case can be
24 maintained as a class action.

25 149. Amazon denies the allegations in Paragraph 149 and denies that this case can be
26 maintained as a class action.

1 150. To the extent the allegations in Paragraph 150 are legal conclusions and
2 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
3 required, Amazon denies the allegations in Paragraph 150.

4 151. Amazon denies the allegations in Paragraph 151 and denies that Plaintiffs have
5 antitrust injury and standing.

6 152. Amazon reasserts and hereby incorporates by reference its responses to each
7 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

8 153. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
9 nationwide class and denies that this case can be maintained as a class action.

10 154. To the extent the allegations in Paragraph 154 are legal conclusions and
11 characterizations, no responsive pleading is required. Amazon denies the allegations in
12 Paragraph 154.

13 155. To the extent the allegations in Paragraph 155 are legal conclusions and
14 characterizations, no responsive pleading is required. Amazon denies the allegations in
15 Paragraph 155.

16 156. To the extent the allegations in Paragraph 156 are legal conclusions and
17 characterizations, no responsive pleading is required. Amazon denies the allegations in
18 Paragraph 156.

19 157. To the extent the allegations in Paragraph 157 are legal conclusions and
20 characterizations, no responsive pleading is required. Amazon denies the allegations in
21 Paragraph 157.

22 158. To the extent the allegations in Paragraph 158 are legal conclusions and
23 characterizations, no responsive pleading is required. Amazon denies the allegations in
24 Paragraph 158.

25 159. To the extent the allegations in Paragraph 159 are legal conclusions and
26 characterizations, no responsive pleading is required. Amazon denies the allegations in
27 Paragraph 159.

1 160. Amazon reasserts and hereby incorporates by reference its responses to each
2 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

3 161. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
4 nationwide class and denies that this case can be maintained as a class action.

5 162. To the extent the allegations in Paragraph 162 are legal conclusions and
6 characterizations, no responsive pleading is required. Amazon denies the allegations in
7 Paragraph 162.

8 163. To the extent the allegations in Paragraph 163 are legal conclusions and
9 characterizations, no responsive pleading is required. Amazon denies the allegations in
10 Paragraph 163.

11 164. To the extent the allegations in Paragraph 164 are legal conclusions and
12 characterizations, no responsive pleading is required. Amazon denies the allegations in
13 Paragraph 164.

14 165. To the extent the allegations in Paragraph 165 are legal conclusions and
15 characterizations, no responsive pleading is required. Amazon denies the allegations in
16 Paragraph 165.

17 166. To the extent the allegations in Paragraph 166 are legal conclusions and
18 characterizations, no responsive pleading is required. Amazon denies the allegations in
19 Paragraph 166.

20 167. To the extent the allegations in Paragraph 167 are legal conclusions and
21 characterizations, no responsive pleading is required. Amazon denies the allegations in
22 Paragraph 167.

23 168. To the extent the allegations in Paragraph 168 are legal conclusions and
24 characterizations, no responsive pleading is required. Amazon denies the allegations in
25 Paragraph 168.

1 169. To the extent the allegations in Paragraph 169 are legal conclusions and
2 characterizations, no responsive pleading is required. Amazon denies the allegations in
3 Paragraph 169.

4 170. To the extent the allegations in Paragraph 170 are legal conclusions and
5 characterizations, no responsive pleading is required. Amazon denies the allegations in
6 Paragraph 170.

7 171. Amazon reasserts and hereby incorporates by reference its responses to each
8 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

9 172. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
10 nationwide class and denies that this case can be maintained as a class action.

11 173. To the extent the allegations in Paragraph 173 are legal conclusions and
12 characterizations, no responsive pleading is required. Amazon denies the allegations in
13 Paragraph 173.

14 174. To the extent the allegations in Paragraph 174 are legal conclusions and
15 characterizations, no responsive pleading is required. Amazon denies the allegations in
16 Paragraph 174.

17 175. To the extent the allegations in Paragraph 175 are legal conclusions and
18 characterizations, no responsive pleading is required. Amazon denies the allegations in
19 Paragraph 175.

20 176. To the extent the allegations in Paragraph 176 are legal conclusions and
21 characterizations, no responsive pleading is required. Amazon denies the allegations in
22 Paragraph 176.

23 177. To the extent the allegations in Paragraph 177 are legal conclusions and
24 characterizations, no responsive pleading is required. Amazon denies the allegations in
25 Paragraph 177.

26 178. Amazon reasserts and hereby incorporates by reference its responses to each
27 paragraph of Plaintiffs' Complaint, as though fully set forth herein.

1 179. Amazon admits that Plaintiffs purport to bring this claim on behalf of a
2 nationwide class and denies that this case can be maintained as a class action.

3 180. To the extent the allegations in Paragraph 180 are legal conclusions and
4 characterizations, no responsive pleading is required. Amazon denies the allegations in
5 Paragraph 180.

6 181. To the extent the allegations in Paragraph 181 are legal conclusions and
7 characterizations, no responsive pleading is required. Amazon denies the allegations in
8 Paragraph 181.

9 182. To the extent the allegations in Paragraph 182 are legal conclusions and
10 characterizations, no responsive pleading is required. Amazon denies the allegations in
11 Paragraph 182.

12 183. To the extent the allegations in Paragraph 183 are legal conclusions and
13 characterizations, no responsive pleading is required. Amazon denies the allegations in
14 Paragraph 183.

15 184. To the extent the allegations in Paragraph 184 are legal conclusions and
16 characterizations, no responsive pleading is required. Amazon denies the allegations in
17 Paragraph 184.

18 185. Amazon admits that Plaintiffs demand a jury trial. Amazon admits that Paragraph
19 185 sets forth the relief that Plaintiffs purport to seek. Amazon denies that Plaintiffs are entitled
20 to any such relief and denies the remaining allegations in Paragraph 185. The remainder of the
21 Complaint consists of Plaintiffs' prayer for relief to which no response is required. To the extent
22 a response is required, Amazon denies that Plaintiffs are entitled to the relief sought in the
23 Complaint or to any relief whatsoever.

24 **SEPARATE DEFENSES**

25 Below are Amazon's separate defenses. By setting forth these separate defenses,
26 Amazon does not assume any burden of proof as to any fact issue or other element of any cause
27

1 of action that properly belongs to Plaintiffs. Amazon reserves the right to allege additional
2 defenses as they may become known during discovery, and to amend its Answer accordingly.

3 **FIRST DEFENSE**

4 **(LACK OF STANDING)**

5 Some or all of Plaintiffs' claims and those of the alleged class are barred, in whole or in
6 part, insofar as Plaintiffs or putative members of the alleged class lack standing to assert claims
7 individually or in a representative capacity.

8 **SECOND DEFENSE**

9 **(LACK OF ANTITRUST STANDING)**

10 Some or all of Plaintiffs' claims and those of the alleged class are barred, in whole or in
11 part, insofar as the chain of causation between Plaintiffs' claimed injury and the alleged
12 anticompetitive conduct is too attenuated, and there are multiple intervening causes.

13 **THIRD DEFENSE**

14 **(LEGITIMATE BUSINESS JUSTIFICATIONS)**

15 Some or all of Plaintiffs' claims and those of alleged class are barred, in whole or in part,
16 because at all times Amazon's conduct was reasonable and its actions were undertaken in good
17 faith to advance legitimate business interests and had the effect of promoting, encouraging, and
18 increasing competition.

19 **FOURTH DEFENSE**

20 **(DUPLICATIVE RECOVERY)**

21 Plaintiffs' claims and those of the alleged class are barred to the extent any recovery by
22 Plaintiffs and the alleged class would be duplicative of recovery by other plaintiffs and other
23 lawsuits, subjecting Amazon to the possibility of multiple recovery; such recovery is barred by
24 the Fifth and Eighth Amendments to the U.S. Constitution.

25 **FIFTH DEFENSE**

26 **(IMPROPER DAMAGES PRAYERS)**

1 To the extent that Plaintiffs and the alleged class seek a single sum of damages, the
2 prayer for damages is improper. As a matter of constitutional right and substantive due process,
3 Amazon would be entitled to contest by jury trial its liability for damages to any particular
4 individual plaintiff, even if the representatives of the putative class prevail on their claims.

5 **SIXTH DEFENSE**

6 **(FAILURE TO MITIGATE)**

7 Some or all of Plaintiffs' claims and those of the alleged class are barred from recovery
8 of some or any alleged damages because of and to the extent of their failure to mitigate.

9 **SEVENTH DEFENSE**

10 **(RES JUDICATA / COLLATERAL ESTOPPEL)**

11 Subject to proof through discovery, some or all of Plaintiffs' claims and those of the
12 alleged class may be barred by the doctrines of res judicata and/or collateral estoppel to the
13 extent that any Plaintiff or putative member of the alleged class has asserted in any prior legal or
14 administrative proceeding, including any arbitration proceeding, that he or she was entitled to
15 payment for claims alleged in this Complaint.

16 **EIGHTH DEFENSE**

17 **(STATUTES OF LIMITATIONS)**

18 Plaintiffs' claims and those of the alleged class are barred in whole or in part by the
19 statute of limitations applicable to their respective claims to the extent they seek relief based on
20 purchases outside of the applicable four-year limitations period.

21 **NINTH DEFENSE**

22 **(FAILURE TO JOIN INDISPENSABLE PARTY)**

23 Plaintiffs' claims and those of the alleged class are barred, in whole or in part, because
24 they have failed to join third-party sellers who are parties necessary for a just adjudication of
25 their purported claims.

26 **TENTH DEFENSE**

27 **(ACQUIESCENCE)**

1 Plaintiffs' claims and those of the alleged class are barred, in whole or in part, because of
2 ratification, agreement, acquiescence, authorization or consent to Amazon's alleged conduct.

3 **ELEVENTH DEFENSE**

4 **(UNDAMAGED CLASS MEMBERS)**

5 To the extent Plaintiffs and the alleged class seek relief on behalf of purported class
6 members who have not suffered any damages, the Complaint and each of its claims for relief
7 violate Defendant's rights to due process under the United States Constitution.

8 **TWELTH DEFENSE**

9 **(WAIVER)**

10 Plaintiffs' claims and those of the alleged class are barred, in whole or in part, by the
11 doctrine of waiver, including because Plaintiffs and putative members of the alleged class
12 continued to make purchases in the Amazon U.S. store after learning of the alleged
13 anticompetitive conduct and Plaintiffs continued to enjoy the benefits of said purchases. Thus,
14 the doctrine of waiver bars Plaintiffs' claims, in whole or in part.

15 **THIRTEENTH DEFENSE**

16 **(LACHES)**

17 The Complaint and each purported cause of action contained therein is barred by the
18 doctrine of laches because Plaintiffs and the alleged class inexcusably and unreasonably delayed
19 in filing and serving the Complaint and all complaints in this action against Amazon, to
20 Amazon's prejudice.

21 **FOURTEENTH DEFENSE**

22 **(LIMITATION OF LIABILITY)**

23 Plaintiffs and the alleged class are parties to one or more agreements with Amazon that
24 bar their claims, in whole or in part, because of applicable limitation of liability provisions
25 contained therein.

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1 DATED this 24th day of March, 2023.

2 Davis Wright Tremaine LLP

3 *s/ John A. Goldmark*

4

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