

The Honorable John H. Chun

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-JHC

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

PRELIMINARY STATEMENT

Amazon's reputation for competitive prices and, in fact, offering competitive prices is a fundamental business objective for Amazon, which prides itself on being Earth's most customer-centric company. To maintain that reputation and ensure that no customer has a single bad experience in Amazon's store, Amazon, like other online marketplaces, has various policies and practices concerning the pricing behavior of third-party sellers that sell in Amazon's store. These policies and practices are designed to prevent abusive and, in some instances, illegal pricing policies and practices, and to feature the highest quality offers more prominently. The core allegations in the Second Consolidated Amended Complaint ("Complaint"), Dkt. 125, that

1 Amazon's policies and practices, which directly promote, incentivize, and reward competition by
2 third-party sellers who sell in Amazon's store, violate federal antitrust law are meritless.

3 **AMAZON'S ANSWER TO PLAINTIFFS' COMPLAINT**

4 Defendant Amazon.com, Inc. responds to the allegations in the Complaint, as set forth
5 below. Any allegation not expressly and explicitly admitted is denied.

6 1. To the extent the allegations in Paragraph 1 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
8 required, Amazon admits the Court denied, in part, Amazon's motion to dismiss Plaintiffs'
9 Consolidated Amended Complaint, Dkt. 59, which speaks for itself. Except to the extent expressly
10 admitted, Amazon denies the allegations in Paragraph 1.

11 2. To the extent the allegations in Paragraph 2 are legal conclusions and
12 characterizations, no responsive pleading is required. Amazon admits that the Price Parity Clause
13 was removed from the Business Solutions Agreement, "BSA," in March 2019. Amazon also
14 admits that Paragraph 2 purports to cite and refer to the complaint in *Federal Trade Commission*
15 *v. Amazon.com*, Case No. 23-cv-01495, Dkt. No. 114, and other of Amazon's pricing policies and
16 practices, which speak for themselves. Except to the extent expressly admitted, Amazon denies
17 the allegations in Paragraph 2.

18 3. Amazon admits that it operates an online retail store in the United States. Except
19 to the extent expressly admitted, Amazon denies the allegations in Paragraph 3.

20 4. Amazon admits that it sells a wide range of physical goods to consumers shopping
21 in its U.S. store. Amazon further admits that Paragraph 4 purports to cite a Business Wire article,
22 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
23 Paragraph 4.

24 5. Amazon admits that Paragraph 5 selectively quotes a 2017 Declaration from
25 Nicholas Denissen and a 2013 report from the German Federal Cartel Office, which speak for
26 themselves. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph

27 5.

1 6. Amazon admits that Paragraph 6 selectively cites from a 2020 Report from the
2 Subcommittee on Antitrust, Commercial, and Administrative Law, which speaks for itself. Except
3 to the extent expressly admitted, Amazon denies the allegations in Paragraph 6.

4 7. Amazon admits that many third-party sellers who sell goods in Amazon’s U.S. store
5 also sell goods through other retail channels. Amazon also admits that about two million third-
6 party sellers offer goods in Amazon’s U.S. store. Amazon lacks knowledge or information
7 sufficient to form a belief as to the truth of the allegations in Paragraph 7 regarding the number of
8 third-party sellers that sell in Walmart’s store. Except to the extent expressly admitted, Amazon
9 denies the allegations in Paragraph 7.

10 8. Amazon admits that, in 2000, Amazon opened its U.S. store—the U.S. Amazon
11 Marketplace—to offer its marketplace services to third-party sellers. Before that time, Amazon
12 only sold goods to consumers as a retailer. Amazon further admits that the retail industry is fiercely
13 competitive, and Amazon is just one of tens of thousands of retailers—existing online, offline, and
14 omni-channel—competing for consumers’ business. According to the U.S. Census Bureau, only
15 16.2 percent of consumer retail purchases take place through online stores, with the overwhelming
16 majority taking place in physical stores. Except to the extent expressly admitted, Amazon denies
17 the allegations in Paragraph 8.

18 9. Amazon admits that Amazon Prime is a membership program that entitles members
19 to certain benefits. Amazon admits that Paragraph 9 selectively quotes or refers to various articles,
20 which speak for themselves. Amazon lacks knowledge or information sufficient to form a belief
21 as to the truth of the allegations in Paragraph 9 regarding retailer Molson Hart, and, on that basis,
22 denies them. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
23 9.

24 10. Amazon admits that in Amazon’s U.S. store, it offers third-party sellers multiple
25 selling plans, including an individual plan that costs \$0.99 per unit sold, and a professional plan
26 that costs \$39.99 per month without regard to the number of units sold. Third-party sellers receive
27 additional services when they choose the professional plan, and Amazon has made substantial

1 innovations and investments to support third-party sellers, resulting in their experiencing massive
2 growth in Amazon’s U.S. store. Amazon further admits that for each item sold in its U.S. store, it
3 retains a “referral fee,” which varies based on the item sold. Amazon also admits that Paragraph
4 10 selectively quotes or refers to a New York Times article, which speaks for itself. Except to the
5 extent expressly admitted, Amazon denies the allegations in Paragraph 10.

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

17 12. Amazon admits that it charges third-party sellers fees for optional services that
18 third-party sellers would need otherwise to perform and pay for (for example, storage, packaging,
19 and shipping), including when they sell on their own websites. These fees are therefore not
20 additional fees but are rather fees for services that a seller has the option of having Amazon
21 perform. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 12.

22 13. Amazon denies the allegations in Paragraph 13.

23 14. Amazon denies the allegations in Paragraph 14.

24 15. Amazon denies the allegations in Paragraph 15.

25 16. Amazon admits that Paragraph 16 selectively quotes a report by the House Antitrust
26 Subcommittee and other articles, which speak for themselves. Except to the extent expressly
27 admitted, Amazon denies the allegations in Paragraph 16.

1 17. Amazon admits that it enters into a BSA with third-party sellers who sell physical
2 goods in Amazon's U.S. store that describes the terms and conditions under which third-party
3 sellers may sell their physical goods in Amazon's U.S. store. Amazon admits that the BSA
4 contained a parity provision, which was removed for U.S. sellers in March 2019. Amazon further
5 admits that the parity provision required that "the Purchase Price and every other term of offer or
6 sale" of a seller's product be "at least as favorable to Amazon Site users as the most favorable
7 terms upon which a product is offered or sold" via a seller's other sales channels. These provisions
8 are commonplace in retail to avoid suppliers from discriminating against a store's customers and
9 to help stores offer consumers a trusted place to shop and are intended to help ensure lower prices
10 for consumers. Except to the extent expressly admitted, Amazon denies the allegations in
11 Paragraph 17.

12 18. Amazon admits that Paragraph 18 selectively quotes a 2010 Letter from Amazon
13 to the UK Office of Fair Trading and a 2017 Report from the Japan Fair Trade Commission, which
14 speak for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
15 Paragraph 18.

16 19. Amazon admits that the parity provision was removed from the BSA in March
17 2019, including because it was rarely enforced. Except to the extent expressly admitted, Amazon
18 denies the allegations in Paragraph 19.

19 20. Amazon admits that Paragraph 20 selectively quotes several documents, which
20 speak for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
21 Paragraph 20.

22 21. Amazon admits that Paragraph 21 selectively quotes a document, which speaks for
23 itself. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 21.

24 22. Amazon admits that Paragraph 22 selectively quotes a document, which speaks for
25 itself. Amazon further admits that, in certain instances, third-party sellers' offers may be ineligible
26 to be selected as a Featured Offer. The methods of selecting which offers are ineligible to be
27

1 featured speak for themselves. Except to the extent expressly admitted, Amazon denies the
2 allegations in Paragraph 22.

3 23. Amazon denies the allegations in Paragraph 23.

4 24. Amazon admits that Paragraph 24 selectively quotes from and refers to a document,
5 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
6 Paragraph 24.

7 25. Amazon admits that Paragraph 25 selectively quotes and refers to a document,
8 which speaks for itself. Amazon further admits that, when a third-party seller's offer becomes
9 ineligible to be the Featured Offer because it is not competitively priced, Amazon generally
10 informs the seller what the competitive price is. Except to the extent expressly admitted, Amazon
11 denies the allegations in Paragraph 25.

12 26. Amazon admits that, in certain circumstances, third-party sellers' offers may be
13 ineligible to be selected as a Featured Offer. The methods of selecting which offers are ineligible
14 speak for themselves, and Amazon denies any attempt at characterizing them. Except to the extent
15 expressly admitted, Amazon denies the allegations in Paragraph 26.

16 27. Amazon admits that Paragraph 27 purports to refer to a document, which speaks
17 for itself. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 27.

18 28. To the extent the allegations in Paragraph 28 are legal conclusions and
19 characterizations, no responsive pleading is required. Amazon lacks knowledge or information
20 sufficient to form a belief as to the truth of the allegations in Paragraph 28 regarding the ability of
21 competing platforms to offer retail prices lower than those in Amazon's store. Except to the extent
22 expressly admitted, Amazon denies the allegations in Paragraph 28.

23 29. Amazon admits that Paragraph 29 purports to refer to a document, which speaks
24 for itself. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 29.

25 30. Amazon admits that Paragraph 30 selectively quotes and refers to a document,
26 which speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
27 Paragraph 30.

1 31. Amazon admits that Paragraph 31 selectively quotes and refers to internal Amazon
2 documents and a Bloomberg article, which speak for themselves. Except to the extent expressly
3 admitted, Amazon denies the allegations in Paragraph 31.

4 32. Amazon admits that the Seller Code of Conduct is incorporated into the BSA.
5 Amazon further admits that Paragraph 32 selectively quotes and refers to the Seller Code of
6 Conduct, the November 2021 clarification to the Seller Code of Conduct, and the former Parity
7 Provision, all of which speak for themselves. Except to the extent expressly admitted, Amazon
8 denies the allegations in Paragraph 32.

9 33. Amazon admits that the Marketplace Fair Pricing Policy, or “MFPP,” is
10 incorporated into the BSA. Amazon further admits that Paragraph 33 selectively quotes and refers
11 to the MFPP, which speaks for itself. Except to the extent expressly admitted, Amazon denies the
12 allegations in Paragraph 33.

13 34. Amazon denies the allegations in Paragraph 34.

14 35. Amazon admits that Paragraph 35 selectively quotes from a report by the House
15 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon
16 denies the allegations in Paragraph 35.

17 36. To the extent the allegations in Paragraph 36 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 36.

20 37. To the extent the allegations in Paragraph 37 are legal conclusions and
21 characterizations, no responsive pleading is required. Amazon admits that Paragraph 37
22 selectively quotes a 2013 Report from the German Federal Cartel Office, which speaks for itself.
23 Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations
24 in Paragraph 37 regarding retailer Molson Hart, and, on that basis, denies them. Except to the
25 extent expressly admitted, Amazon denies the allegations in Paragraph 37.

1 38. To the extent the allegations in Paragraph 38 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 38.

4 39. To the extent the allegations in Paragraph 39 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon admits that Paragraph 39 selectively quotes a 2013 Report from the German
7 Federal Cartel Office, which speaks for itself. Amazon lacks knowledge or information sufficient
8 to form a belief as to how each third-party seller sets its prices which varies from seller to seller.
9 Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 39.

10 40. To the extent the allegations in Paragraph 40 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 40.

13 41. Amazon admits that it seeks to ensure that it features competitive prices to
14 customers and that customers are not subject to price gouging by third-party sellers when they
15 shop in Amazon's U.S. store. Amazon also admits that it has a Competitor Monitoring Team,
16 which, among other things, monitors publicly available information, including prices offered for
17 certain items, from certain competitors. Amazon further admits that Paragraph 41 purports to
18 selectively quote a document, which speaks for itself. Except to the extent expressly admitted,
19 Amazon denies the allegations in Paragraph 41.

20 42. Amazon admits that Paragraph 42 selectively quotes a report by the House Antitrust
21 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
22 the allegations in Paragraph 42. Sales by third-party sellers on Amazon have grown because,
23 among other reasons, Amazon helped sellers compete by investing in and offering them tools that
24 allowed them to manage inventory, process payments, track shipments, and create reports.
25 Through Fulfillment by Amazon and the Prime membership program, Amazon also meaningfully
26 improved the customer experience of buying from third-party sellers.

1 43. Amazon denies the allegations in Paragraph 43. Plaintiffs' allegations disregard
2 the realities of retail competition: all retail—online, offline, and omni-channel—competes for the
3 same sales. Consumers may purchase the same product through multiple retail channels.
4 According to the U.S. Census Bureau, for the third quarter of 2024, 83.8 percent of retail took
5 place offline, and prices online and offline have largely converged, demonstrating that consumers
6 substitute across channels.

7 44. To the extent the allegations in Paragraph 44 are legal conclusions and
8 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
9 required, Amazon admits that Plaintiffs purport to plead subject matter jurisdiction pursuant to 28
10 U.S.C. §§ 1331, 1337 and 15 U.S.C. §§ 1, 2, 15(a)

11 45. To the extent the allegations in Paragraph 45 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 28
14 U.S.C § 1332(d). Except to the extent expressly admitted, Amazon denies the allegations in
15 Paragraph 45.

16 46. To the extent the allegations in Paragraph 46 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of
19 Plaintiffs' residencies and therefore denies them. Except to the extent expressly admitted, Amazon
20 denies the allegations in Paragraph 46.

21 47. To the extent the allegations in Paragraph 47 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon admits that one of its two headquarters is in Seattle, Washington, that it does
24 business in Washington, and that it has registered with the Washington Secretary of State. Except
25 to the extent expressly admitted, Amazon denies the allegations in Paragraph 47.

26 48. To the extent the allegations in Paragraph 48 are legal conclusions and
27 characterizations, no responsive pleading is required. Insofar as any responsive pleading is

1 required, Amazon admits that Plaintiffs purport to plead venue pursuant to 28 U.S.C. § 1391(b)(1)
2 and (2). Amazon further admits that Paragraph 48 purports to reference a provision in the
3 Amazon.com Conditions of Use, which speaks for itself.

4 49. Amazon lacks knowledge or information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 49 and therefore denies them.

6 50. Amazon lacks knowledge or information sufficient to form a belief as to the truth
7 of the allegations in Paragraph 50 and therefore denies them.

8 51. Amazon lacks knowledge or information sufficient to form a belief as to the truth
9 of the allegations in Paragraph 51 and therefore denies them.

10 52. Amazon lacks knowledge or information sufficient to form a belief as to the truth
11 of the allegations in Paragraph 52 and therefore denies them.

12 53. Amazon lacks knowledge or information sufficient to form a belief as to the truth
13 of the allegations in Paragraph 53 and therefore denies them.

14 54. Amazon lacks knowledge or information sufficient to form a belief as to the truth
15 of the allegations in Paragraph 54 and therefore denies them.

16 55. Amazon lacks knowledge or information sufficient to form a belief as to the truth
17 of the allegations in Paragraph 55 and therefore denies them.

18 56. Amazon admits that one of its two headquarters is in Seattle, Washington. Amazon
19 admits that it sells as a first-party seller in its U.S. store and also allows third-party sellers to sell
20 certain physical goods in its U.S. store. Except to the extent expressly admitted, Amazon denies
21 the allegations in Paragraph 56.

22 57. Amazon admits that Paragraph 57 selectively quotes or refers to a report by the
23 House Antitrust Subcommittee and refers to an article, which speak for themselves. Except to the
24 extent expressly admitted, Amazon denies the allegations in Paragraph 57.

25 58. Amazon denies the allegations in Paragraph 58.

26 59. Amazon admits that it allows third-party sellers to sell physical goods in its U.S.
27 store and that third-party sellers must register with Amazon to do so. Amazon further admits that

1 it enters into a BSA with third-party sellers who offer for sale physical goods in Amazon's U.S.
2 store. The BSA describes the terms and conditions under which third-party sellers may sell their
3 physical goods in Amazon's U.S. store. Except to the extent expressly admitted, Amazon denies
4 the allegations in Paragraph 59.

5 60. The retail landscape is vigorously competitive, with all retailers, whether they sell
6 online, offline, or omni-channel, competing for the same sales. Amazon admits that third-party
7 sellers compete with Amazon as a first-party seller. Amazon also admits that about two million
8 third-party sellers sell physical goods in its U.S. store. Amazon lacks knowledge or information
9 sufficient to form a belief as to the truth of the allegations in Paragraph 60 regarding the number
10 of third-party sellers that sell in Walmart's store. Except to the extent expressly admitted, Amazon
11 denies the allegations in Paragraph 60.

12 61. Amazon admits that Paragraph 61 selectively quotes and refers to a report by the
13 House Antitrust Subcommittee, which speaks for itself. Amazon admits that it has made
14 substantial investments to set up its own distribution network, including retailers and aircraft, to
15 ensure customers receive their purchased goods quickly and efficiently. Except to the extent
16 expressly admitted, Amazon denies the allegations in Paragraph 61.

17 62. Amazon admits that Paragraph 62 selectively relies on an analysis done by Morgan
18 Stanley. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations in Paragraph 62 regarding the parcel volume of UPS, FedEx, and the U.S. Postal
20 Service. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 62.

21 63. Amazon admits that it developed a voice assistant, known as Alexa, and that it
22 acquired Whole Foods. Given the vague and argumentative nature of the remaining allegations,
23 Amazon lacks knowledge and information sufficient to form a belief as to the truth of the
24 remaining allegations in Paragraph 63 and therefore denies them.

25 64. Amazon admits that Paragraph 64 summarizes an article describing network
26 effects, which speaks for itself. Amazon lacks knowledge sufficient to form a belief as to the truth
27 of the remaining allegations in Paragraph 64 and therefore denies them.

1 65. Amazon admits the allegations in Paragraph 65 concerning the number of third-
2 party sellers offering for sale goods in Amazon's U.S. store. These third-party sellers have many
3 attractive distribution options other than Amazon through which to make sales, including their
4 own websites, other online retail websites, and physical stores, with it being common for third-
5 party sellers to sell their physical goods through multiple retail channels. Amazon admits that
6 consumers can search its U.S. store for goods sold directly by Amazon as well as by third-party
7 sellers. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 65.

8 66. Amazon admits that Amazon Prime is a paid membership program that entitles
9 customers to certain benefits, including free shipping on eligible products as well as access to
10 Prime Video and Amazon Music Prime. Except to the extent expressly admitted, Amazon denies
11 the allegations in Paragraph 66.

12 67. Amazon admits that Paragraph 67 summarizes articles and surveys, which speak
13 for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
14 Paragraph 67.

15 68. Amazon admits that Amazon Prime is a membership program that entitles
16 customers to certain benefits, and that such benefits have grown since the program was initially
17 offered. Amazon also admits that it invests in the services provided as part of Amazon Prime and
18 that in 2018, Amazon Prime membership was offered at a standard annual fee of \$119 per year.
19 Except to the extent expressly admitted, Amazon denies the remainder of the allegations in
20 Paragraph 68.

21 69. Amazon admits that Amazon Prime is a membership program that entitles
22 customers to certain benefits, including free shipping on eligible goods. Except to the extent
23 expressly admitted, Amazon denies the remainder of the allegations in Paragraph 69.

24 70. Amazon admits that Paragraph 70 selectively quotes a report by the House Antitrust
25 Subcommittee, which speaks for itself. Fulfillment by Amazon is offered to sellers as an optional
26 service. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 70.
27

1 71. Amazon admits that Paragraph 71 selectively quotes a report by the House Antitrust
2 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
3 the allegations in Paragraph 71.

4 72. Amazon admits that third-party sellers pay Amazon certain fees in exchange for
5 services, including optional services, provided by Amazon. Except to the extent expressly
6 admitted, Amazon denies the allegations in Paragraph 72. Most of the fees that Plaintiffs describe
7 are fees for optional services, services that sellers would have to otherwise pay for if they did not
8 have Amazon perform those services (for example, storing, packaging, and shipping). These fees
9 are fees for services that a seller has the option of having Amazon perform, a third-party perform,
10 or a seller perform on its own.

11 73. Amazon admits that when an Amazon customer buys an item listed by a third-party
12 seller, the customer pays Amazon directly; Amazon receives a referral fee and sometimes other
13 fees; and remits payment to the third-party seller. Except to the extent expressly admitted, Amazon
14 denies the allegations in Paragraph 73.

15 74. Amazon admits that it offers two different selling plans to sellers on its U.S.
16 marketplace, one for \$0.99 per item sold and another for \$39.99 per month, and that it offers sellers
17 other optional services for a fee. Except to the extent expressly admitted, Amazon denies the
18 allegations in Paragraph 74.

19 75. Amazon admits that it offers third-party sellers services in the FBA program for
20 additional fees. Except to the extent expressly admitted, Amazon denies the allegations in
21 Paragraph 75.

22 76. Amazon admits that it offers sellers the opportunity to purchase ads, and that many
23 sellers avail themselves of the opportunity to purchase ads, although ads are not required to sell in
24 Amazon's U.S. store. Except to the extent expressly admitted, Amazon denies the allegations in
25 Paragraph 76.
26
27

1 77. Amazon denies the allegations in Paragraph 77. Most of the fees Plaintiffs describe
2 are fees for optional services, services that sellers would have to otherwise pay for if they did not
3 have Amazon perform those services (for example, storing, packing, and shipping).

4 78. To the extent the allegations in Paragraph 78 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon admits that Paragraph 78 selectively quotes a report by the House Antitrust
7 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
8 the allegations in Paragraph 78. Retail sales and marketplaces have grown and expanded rapidly
9 during the relevant time period.

10 79. Amazon admits that there are multiple ways in which consumers can shop for goods
11 from their homes, smartphones, and other internet-enabled devices, with Amazon's U.S. store
12 being just one of those ways. Except to the extent expressly admitted, Amazon lacks knowledge
13 or information sufficient to form a belief as to the truth of the allegations in Paragraph 79 and
14 therefore denies them.

15 80. Amazon competes with brick-and-mortar stores in the intensely competitive market
16 for retail goods—which is one of the most competitive industries in the world. Customers
17 constantly compare prices between brick-and-mortar and online retailers and stores, and they
18 switch their retail purchases between such retailers and stores. The same products that are offered
19 online are also offered in brick-and-mortar stores, and, for the third quarter of 2024, approximately
20 83.8 percent of retail sales were in physical stores. At the same time, traditional retailers are
21 creating hybrid options for reaching consumers who can order products online and then pick them
22 up at a physical store. And brick-and-mortar stores tout themselves as competitors to online
23 retailers, offering price-match guarantees that include prices offered by online retailers.
24 Accordingly, Amazon denies the allegations in Paragraph 80 regarding there being a distinction
25 between online retail marketplaces and conventional brick-and-mortar retailers. Amazon admits
26 that, like any retailer, it collects information concerning the use of its U.S. store. Except to the
27 extent expressly admitted, Amazon denies the allegations in Paragraph 80.

1 81. Amazon admits that Paragraph 81 selectively quotes an academic article, which
2 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
3 Paragraph 81.

4 82. To the extent the allegations in Paragraph 82 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, for the reasons set forth in Paragraph 80 above—including the fact that brick-and-mortar
7 stores offer identical products as online stores, as well as hybrid options for customers—Amazon
8 denies the allegations in Paragraph 82 regarding reasonable interchangeability between goods sold
9 in online and offline retail. Except to the extent expressly admitted, Amazon denies the allegations
10 in Paragraph 82.

11 83. To the extent the allegations in Paragraph 83 are legal conclusions and
12 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
13 required, Amazon denies the allegations in Paragraph 83.

14 84. To the extent the allegations in Paragraph 84 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
16 required, Amazon denies the allegations in Paragraph 84.

17 85. To the extent the allegations in Paragraph 85 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 85 because the same goods that are available
20 in online marketplaces are also available on direct-to-consumer websites and in physical stores,
21 and these goods are reasonable substitutes for one another. Further, the distinction between online
22 and offline has been blurred with omni-channel—buy online, pick up at store—becoming
23 increasingly popular with consumers.

24 86. Amazon admits that Paragraph 86 selectively quotes a report by the House Antitrust
25 Subcommittee summarizing various articles and reports, which speak for themselves. Except to
26 the extent expressly admitted, Amazon denies the allegations in Paragraph 86.

1 87. Amazon admits that third-party merchant sales account for the majority of sales in
2 Amazon's U.S. store. Except to the extent expressly admitted, Amazon denies the allegations in
3 Paragraph 87.

4 88. Amazon denies the allegations in Paragraph 88. Third-party sellers have many
5 attractive options other than Amazon through which to make sales, including their own websites,
6 other online retail websites, and physical retail stores.

7 89. Amazon admits that Paragraph 89 selectively quotes testimony given before the
8 House Judiciary Committee, which speaks for itself. Amazon denies the allegations in Paragraph
9 89. There are low barriers to entry in retail, as demonstrated by the tens of thousands of retail
10 stores across the U.S., the ease with which physical stores have expanded online, and the number
11 of new marketplaces that have emerged. E-commerce has reduced barriers to entry, and sales
12 through Amazon represent only a small percentage of the intensely competitive U.S. retail
13 industry, where customers switch seamlessly between online and offline shopping, with most sales
14 still made through physical stores that sell identical products to those offered online. Retail is one
15 of the least concentrated industries in the U.S., with customers shopping and purchasing across
16 many different retailers and stores.

17 90. Amazon admits that Paragraph 90 selectively quotes a report by the House Antitrust
18 Subcommittee, which speaks for itself. Third-party sellers often use multiple distribution channels
19 for selling their goods. Amazon denies the allegations in Paragraph 90.

20 91. Amazon denies the allegations in Paragraph 91. There are low barriers to entry in
21 retail, as demonstrated by the tens of thousands of retail stores across the U.S., the ease with which
22 physical stores have expanded online, and the number of new marketplaces and direct-to-consumer
23 websites that have emerged in recent years. Retail is one of the least concentrated industries in the
24 U.S., with customers shopping and purchasing across many different retailers and stores.

25 92. Amazon denies the allegations in Paragraph 92. There are low barriers to entry in
26 retail, as demonstrated by the tens of thousands of retail stores across the U.S., the ease with which
27 physical stores have expanded online, and the number of new marketplaces and direct-to-consumer

1 websites that have emerged in recent years. Retail is one of the least concentrated industries in the
2 U.S., with customers shopping and purchasing across many different retailers and stores.

3 93. Amazon admits that Paragraph 93 selectively quotes a report by the House Antitrust
4 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
5 the allegations in Paragraph 93.

6 94. Amazon admits that Paragraph 94 selectively quotes a report by the House Antitrust
7 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
8 the allegations in Paragraph 94.

9 95. 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 95.

11 96. Amazon admits that Paragraph 96 selectively quotes a report by the House Antitrust
12 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
13 the allegations in Paragraph 96.

14 97. Amazon admits that Paragraph 97 selectively quotes a report by the House Antitrust
15 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
16 the allegations in Paragraph 97.

17 98. Amazon admits that, like any retailer, it collects information concerning the use of
18 its store. Amazon admits that Paragraph 98 selectively quotes a report by the House Antitrust
19 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
20 the allegations in Paragraph 98.

21 99. Amazon admits that Paragraph 99 selectively quotes a report by the House Antitrust
22 Subcommittee, which speaks for itself. Amazon further admits that Paragraph 99 quotes an article
23 regarding retailer Molson Hart; Amazon lacks sufficient knowledge or information to form a belief
24 of the truth or accuracy of the quoted language and therefore denies it. Except to the extent
25 expressly admitted, Amazon denies the allegations in Paragraph 99.

1 100. Amazon admits that Paragraph 100 selectively quotes testimony before the House
2 Judiciary Committee, which speaks for itself. Except to the extent expressly admitted, Amazon
3 denies the allegations in Paragraph 100.

4 101. Amazon admits that Paragraph 101 selectively quotes and refers to a report by the
5 House Antitrust Subcommittee, which speaks for itself. Amazon further admits that the report by
6 the House Antitrust Subcommittee selectively quotes from a document labeled AMAZON-HJC-
7 00186540, which explains that a fee increase “reflects the changing costs of fulfillment,
8 transportation, and customer service” and that “[w]e are notifying sellers early so they can plan for
9 these changes.” Except to the extent expressly admitted, Amazon denies the allegations in
10 Paragraph 101.

11 102. Amazon admits that third-party sellers pay Amazon certain fees in exchange for
12 services, including optional services, provided by Amazon. Some of the fees that the Plaintiffs
13 mention are fees for optional services, services that sellers would have to otherwise pay for if they
14 did not have Amazon perform those services (for example, storing, packing, and shipping). These
15 fees are therefore not additional fees; they are fees for services that a seller has the option of having
16 Amazon perform, a third party perform, or the seller perform on its own. Amazon admits that
17 Paragraph 102 selectively quotes an article in the New York Times, which speaks for itself.
18 Amazon lacks sufficient information about the reliability of the Instinet analysis cited in the article
19 and therefore denies the allegations in Paragraph 102 on that basis.

20 103. To the extent the allegations in Paragraph 103 are legal conclusions and
21 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
22 required, Amazon denies the allegations in Paragraph 103.

23 104. To the extent the allegations in Paragraph 104 are legal conclusions and
24 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
25 required, Amazon denies the allegations in Paragraph 104.

1 105. To the extent the allegations in Paragraph 105 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 105.

4 106. To the extent the allegations in Paragraph 106 are legal conclusions and
5 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
6 required, Amazon admits that Paragraph 106 selectively quotes a report by the House Antitrust
7 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
8 the allegations in Paragraph 106.

9 107. To the extent the allegations in Paragraph 107 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon admits that Paragraph 107 selectively quotes a report by the House Antitrust
12 Subcommittee and cites a report from the Department of Commerce, which speak for themselves.
13 Amazon competes with brick-and-mortar stores in the intensely competitive market for retail
14 goods—which is one of the most competitive industries in the world. Customers constantly
15 compare prices between brick-and-mortar and online retailers and stores and switch their retail
16 purchases between such retailers and stores. The same products that are offered online are also
17 offered in brick-and-mortar stores, and, for the third quarter of 2024, approximately 83.8 percent
18 of retail sales were in physical stores. At the same time, traditional retailers are creating hybrid
19 options for reaching consumers who can order products online and then pick them up at a physical
20 store. And brick-and-mortar stores tout themselves as competitors to online retailers, offering
21 price-match guarantees that include prices offered by online retailers. Except to the extent
22 expressly admitted, Amazon denies the allegations in Paragraph 107.

23 108. To the extent the allegations in Paragraph 108 are legal conclusions and
24 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
25 required, Amazon denies the allegations in Paragraph 108.

1 109. Amazon admits that Paragraph 109 selectively quotes two articles, which speak for
2 themselves. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
3 109.

4 110. Amazon lacks knowledge or information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 110 and therefore denies them. As a retailer, Amazon competes
6 with retailers both online and offline. The overwhelming majority of retail sales take place in
7 physical stores, with the Census Bureau reporting that for the third quarter of 2024, online retail
8 sales represented only 16.2 percent of total sales; moreover, physical stores offer products identical
9 to those available through online retailers.

10 111. To the extent the allegations in Paragraph 111 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 111 including for the reasons set forth in
13 response to Paragraph 110.

14 112. Amazon lacks knowledge or information sufficient to form a belief as to the truth
15 of the market share data allegations in Paragraph 112 and therefore denies them. Amazon denies
16 the allegations in Paragraph 112 because the Online Retail Sales Market is not a relevant antitrust
17 market.

18 113. Amazon admits that Paragraph 113 selectively quotes a report by the House
19 Antitrust Subcommittee as well as a study, a press release, and an article, which speak for
20 themselves. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph
21 113.

22 114. To the extent the allegations in Paragraph 114 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon denies the allegations in Paragraph 114.

25 115. To the extent the allegations in Paragraph 115 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 115.

1 116. To the extent the allegations in Paragraph 116 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 116.

4 117. Amazon admits that the parity provision was the subject of an investigation
5 conducted by the German Federal Cartel Office in 2013. Amazon lacks knowledge or information
6 sufficient to form a belief as to the truth of the remaining allegations in Paragraph 117, and, on
7 that basis, denies them. Except to the extent expressly admitted, Amazon denies the allegations in
8 Paragraph 117.

9 118. Amazon admits that its revenue from third-party seller services was approximately
10 \$80 billion in FY 2020. Amazon further admits that Paragraph 118 selectively quotes a report by
11 Retail Dive, which speaks for itself. Except to the extent expressly admitted, Amazon denies the
12 allegations in Paragraph 118.

13 119. Amazon admits that third-party sellers pay Amazon certain fees in exchange for
14 services, including optional services, provided by Amazon. Except to the extent expressly
15 admitted, Amazon denies the allegations in Paragraph 119.

16 120. Amazon lacks knowledge or information sufficient to form a belief as to the truth
17 of the allegations in Paragraph 120 regarding retailer Molson Hart, and, on that basis, denies them.

18 121. Amazon admits that Paragraph 121 quotes various articles, which speak for
19 themselves. Amazon admits that it seeks to prevent price gouging of customers in its store, in
20 accordance with the MFPP, including by monitoring prices on and off Amazon. Except to the
21 extent expressly admitted, Amazon denies the allegations in Paragraph 121.

22 122. Amazon admits that Paragraph 122 purports to quote an article. Except as
23 expressly admitted, Amazon denies the allegations in Paragraph 122.

24 123. Amazon admits that the parity provision was removed from the BSA for European
25 sellers in 2013 and removed from the BSA for U.S. sellers in March 2019; prior to its removal, the
26 provision was rarely enforced. Amazon also admits that Senator Blumenthal wrote a letter to the
27 FTC in December 2018, and that Paragraph 123 purports to quote various articles, which speak

1 for themselves. Except to the extent expressly admitted, Amazon denies the allegations in
2 Paragraph 123.

3 124. Amazon admits that Paragraph 124 purports to refer to the price parity provision
4 removed from the BSA in March 2019 for U.S. sellers, MFPP, Seller Code of Conduct, ASB, and
5 Featured Offer disqualification, each of which speaks for itself, and Amazon denies they have the
6 same effect as the Price Parity Provision. Except to the extent expressly admitted, Amazon denies
7 the allegations in Paragraph 124.

8 125. Amazon admits that multiple offers for the same product may be placed on a single
9 detail page, allowing customers to easily compare all offers for a particular product. Amazon
10 further admits that the Featured Offer is intended to highlight for customers an offer that Amazon
11 believes they would most likely choose if they compared all offers. Amazon further admits that,
12 in addition to the Featured Offer, other competing offers are available on the single detail page,
13 including in the all offer display. In addition, Amazon admits that purchases through Alexa result
14 in the purchase of an offer that is a Featured Offer. Amazon also admits that Paragraph 125
15 purports to include an image of Amazon's Desktop U.S. Store but lacks sufficient knowledge or
16 information to form a belief of the truth or accuracy of the image, and Amazon denies the
17 annotations overlaid on the image. Except to the extent expressly admitted, Amazon denies the
18 allegations in Paragraph 125.

19 126. Amazon admits that selection for the Featured Offer takes into account multiple
20 factors such as price, delivery speed, and seller reliability, with a goal of highlighting for customers
21 an offer that Amazon believes they would most likely choose if they compared all offers. Amazon
22 further admits that, in addition to the Featured Offer, other competing offers are available on the
23 single detail page, including in the all offer display. In addition, Amazon admits that most of the
24 sales in Amazon's U.S. store are from Featured Offers. Except to the extent expressly admitted,
25 Amazon denies the allegations in Paragraph 126.

1 127. Amazon lacks knowledge or information sufficient to form a belief as to the truth
2 of the allegations concerning retailer David Simnick and, on that basis, denies them. Amazon
3 denies the remaining allegations in Paragraph 127.

4 128. Amazon lacks knowledge or information sufficient to form a belief as to the truth
5 of the allegations in Paragraph 128 concerning the percentage of Molson Hart's sales that come
6 from sales in Amazon's U.S. store. Amazon denies the remaining allegations in Paragraph 128.

7 129. Amazon admits that it seeks to feature offers that have competitive prices and to
8 prevent price gouging by third-party sellers when they offer goods for sale in Amazon's U.S. store.
9 Except to the extent expressly admitted, Amazon denies the allegations in 129.

10 130. To the extent the allegations in Paragraph 130 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 130. Plaintiffs' allegations disregard the
13 realities of retail competition: all retail—online, offline, and omni-channel—compete for the same
14 sales. Consumers may purchase the same product through multiple retail channels. According to
15 the U.S. Census Bureau, for the third quarter of 2024, 83.8 percent of retail took place offline;
16 prices online and offline have largely converged, demonstrating that consumers substitute across
17 channels.

18 131. To the extent the allegations in Paragraph 131 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon denies the allegations in Paragraph 131.

21 132. To the extent the allegations in Paragraph 132 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon lacks knowledge or information sufficient to form a belief as to the truth of the
24 allegations in Paragraph 132 regarding Viahart.com and, on that basis, denies them. Amazon
25 denies the remaining allegations in Paragraph 132. The retail landscape is intensely competitive.
26 E-commerce has reduced barriers to entry, and sales through Amazon represent only a small
27 percentage of the intensely competitive U.S. retail industry, where customers switch between

1 online and offline shopping, with most sales still made through physical stores that sell identical
2 products to those offered online. There is also intense price competition, with consumers using
3 their smartphones in stores to compare prices at other physical and online stores.

4 133. To the extent the allegations in Paragraph 133 are legal conclusions and
5 characterizations, no responsive pleading is required. Plaintiffs' challenge to the MFPP attacks
6 Amazon's efforts to prohibit price gouging; price gouging is an illegal practice under the laws of
7 many states. Insofar as any responsive pleading is required, Amazon denies the allegations in
8 Paragraph 133.

9 134. To the extent the allegations in Paragraph 134 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
11 required, Amazon denies the allegations in 134. Amazon focuses on building consumer trust
12 through everyday low prices—not short-term or per-unit profitability. Amazon's mission is to be
13 Earth's most customer-centric company. Amazon competes vigorously every day to provide its
14 customers lower prices, more selection, and better service. Third-party sellers benefit by being
15 associated with Amazon's reputation as a place consumers find the best selection and low prices.

16 135. Amazon denies the allegations in Paragraph 135.

17 136. Amazon admits that Paragraph 136 selectively quotes a report by the House
18 Antitrust Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon
19 denies the allegations in Paragraph 136.

20 137. Amazon admits that Paragraph 137 selectively quotes a report by the House
21 Antitrust Subcommittee, which speaks for itself. Amazon competes with brick-and-mortar stores
22 in the intensely competitive market for retail—which is one of the most competitive industries in
23 the world. Customers constantly compare prices between brick-and-mortar and online retailers
24 and stores and switch their retail purchases between such retailers and stores. The same products
25 that are offered online are also offered in brick-and-mortar stores, and, for the third quarter of
26 2024, nearly 83.8 percent of retail sales remained in physical stores. At the same time, traditional
27 retailers are creating hybrid options for reaching consumers who can order products online and

1 then pick them up at a physical store. And brick-and-mortar stores tout themselves as competitors
2 to online retailers, offering price-match guarantees that include prices offered by online retailers.
3 Accordingly, Amazon denies the allegations in Paragraph 137 regarding there being separate
4 brick-and-mortar and online retail sales markets. Amazon has a small share of the retail industry
5 in the U.S.

6 138. To the extent the allegations in Paragraph 138 are legal conclusions and
7 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
8 required, Amazon admits that Paragraph 138 selectively quotes a report by the House Antitrust
9 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
10 the allegations in Paragraph 138.

11 139. To the extent the allegations in Paragraph 139 are legal conclusions and
12 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
13 required, Amazon admits that Paragraph 139 selectively quotes a report by the House Antitrust
14 Subcommittee, which speaks for itself. Except to the extent expressly admitted, Amazon denies
15 the allegations in Paragraph 139. There are low barriers to entry in retail, as demonstrated by the
16 tens of thousands of retail stores across the U.S., the ease with which physical stores have expanded
17 online, and the number of new marketplaces and direct-to-consumer websites that have emerged
18 in recent years. Retail is one of the least concentrated industries in the U.S., with customers
19 shopping and purchasing across many different retailers and stores.

20 140. Amazon admits that Germany's Federal Cartel Office investigated the parity
21 provision in 2013. Plaintiffs' claims relate solely to the U.S. Except to the extent expressly
22 admitted, Amazon denies the allegations in Paragraph 140.

23 141. To the extent the allegations in Paragraph 141 are legal conclusions and
24 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
25 required, Amazon admits that Paragraph 141 selectively quotes a report by the German Federal
26 Cartel Office, which speaks for itself. Plaintiffs' claims here relate solely to their purchase of
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1 goods in Amazon's U.S. store in the U.S. Except to the extent expressly admitted, Amazon denies
2 the allegations in Paragraph 141.

3 142. Amazon admits that Paragraph 142 selectively quotes a report by the German
4 Federal Cartel Office, which speaks for itself. Except to the extent expressly admitted, Amazon
5 denies the allegations in Paragraph 142.

6 143. Amazon admits that Paragraph 143 selectively quotes a report by the German
7 Federal Cartel Office, which speaks for itself. Except to the extent expressly admitted, Amazon
8 denies the allegations in Paragraph 143.

9 144. To the extent the allegations in Paragraph 144 are legal conclusions and
10 characterizations, no responsive pleading is required. Insofar as a response is required, Amazon
11 admits that Paragraph 144 selectively quotes a report by the German Federal Cartel Office, which
12 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
13 Paragraph 144.

14 145. To the extent the allegations in Paragraph 145 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as a response is required, Amazon
16 admits that Paragraph 145 selectively quotes a report by the German Federal Cartel Office, which
17 speaks for itself. Except to the extent expressly admitted, Amazon denies the allegations in
18 Paragraph 145.

19 146. Amazon admits that it removed the parity provision from its agreements with third-
20 party sellers in Europe in 2013 and in Japan in 2017. Amazon also admits that the parity provision
21 was the subject of investigations conducted by agencies of the United Kingdom, Germany, and
22 Japan. Amazon further admits that Plaintiffs' claims relate solely to the U.S.; the parity provision
23 was removed in the U.S. in March 2019. Except to the extent expressly admitted, Amazon denies
24 the allegations in Paragraph 146.

25 147. Amazon admits that its method of determining the Featured Offer was the subject
26 of an investigation conducted by the Italian Competition Authority, and its Sold by Amazon
27 program was the subject of an investigation conducted by the Washington Attorney General.

1 Amazon further admits that Paragraph 147 purports to characterize the resolution of those
2 investigations, which speak for themselves. Except to the extent expressly admitted, Amazon
3 denies the allegations in Paragraph 147.

4 148. Amazon admits that the California Attorney General conducted an investigation
5 and, further, that the California Attorney General filed a complaint against Amazon alleging claims
6 under California's antitrust laws. Amazon also admits that Paragraph 148 purports to refer to a
7 decision by the court in that litigation, which speaks for itself. Except to the extent expressly
8 admitted, Amazon denies the allegations in Paragraph 148.

9 149. Amazon admits that the FTC conducted an investigation of Amazon and, further,
10 that the FTC filed a complaint against Amazon alleging antitrust claims under federal and state
11 law. Except to the extent expressly admitted, Amazon denies the allegations in Paragraph 149.

12 150. Amazon admits that it sells goods in its U.S. store as a first-party seller and also
13 allows third-party sellers to sell specific physical goods in its U.S. store. Amazon further admits
14 that its U.S. store is accessible to consumers throughout the U.S. who have internet access. Except
15 to the extent expressly admitted, Amazon denies the allegations in Paragraph 150.

16 151. Amazon admits that Plaintiffs purport to bring a class action pursuant to the Federal
17 Rules of Civil Procedure. Amazon denies that this case can be maintained as a class action.

18 152. Amazon admits that Plaintiffs seek to exclude the individuals identified in
19 Paragraph 152 from the putative class Plaintiffs seek to represent. Amazon denies the remaining
20 allegations in Paragraph 152 and denies that this case can be maintained as a class action.

21 153. Amazon denies the allegations in Paragraph 153 and denies that this case can be
22 maintained as a class action.

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

27 155. Amazon denies the allegations in Paragraph 155.

1 156. Amazon lacks knowledge and information sufficient to form a belief as to the truth
2 of the allegations in Paragraph 156 and therefore denies them.

3 157. Amazon denies the allegations in Paragraph 157 and denies that this case can be
4 maintained as a class action.

5 158. Amazon denies the allegations in Paragraph 158 and denies that this case can be
6 maintained as a class action.

7 159. Amazon denies the allegations in Paragraph 159 and denies that this case can be
8 maintained as a class action.

9 160. To the extent the allegations in Paragraph 160 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 160.

12 161. Amazon denies the allegations in Paragraph 161 and denies that Plaintiffs have
13 antitrust injury and standing.

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

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

18 164. To the extent the allegations in Paragraph 164 are legal conclusions and
19 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
20 required, Amazon denies the allegations in Paragraph 164.

21 165. To the extent the allegations in Paragraph 165 are legal conclusions and
22 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
23 required, Amazon denies the allegations in Paragraph 165.

24 166. To the extent the allegations in Paragraph 166 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon denies the allegations in Paragraph 166.

1 167. To the extent the allegations in Paragraph 167 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 167.

4 168. To the extent the allegations in Paragraph 168 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 168.

7 169. To the extent the allegations in Paragraph 169 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 169.

10 170. To the extent the allegations in Paragraph 170 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 170.

13 171. To the extent the allegations in Paragraph 171 are legal conclusions and
14 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
15 required, Amazon denies the allegations in Paragraph 171.

16 172. To the extent the allegations in Paragraph 172 are legal conclusions and
17 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
18 required, Amazon denies the allegations in Paragraph 172.

19 173. To the extent the allegations in Paragraph 173 are legal conclusions and
20 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
21 required, Amazon denies the allegations in Paragraph 173.

22 174. To the extent the allegations in Paragraph 174 are legal conclusions and
23 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
24 required, Amazon denies the allegations in Paragraph 174.

25 175. To the extent the allegations in Paragraph 175 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 175.

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

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

5 178. To the extent the allegations in Paragraph 178 are legal conclusions and
6 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
7 required, Amazon denies the allegations in Paragraph 178.

8 179. To the extent the allegations in Paragraph 179 are legal conclusions and
9 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
10 required, Amazon denies the allegations in Paragraph 179.

11 180. To the extent the allegations in Paragraph 180 are legal conclusions and
12 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
13 required, Amazon denies the allegations in Paragraph 180.

14 181. To the extent the allegations in Paragraph 181 are legal conclusions and
15 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
16 required, Amazon denies the allegations in Paragraph 181.

17 182. To the extent the allegations in Paragraph 182 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 182.

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

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

24 185. To the extent the allegations in Paragraph 185 are legal conclusions and
25 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
26 required, Amazon denies the allegations in Paragraph 185.

1 186. To the extent the allegations in Paragraph 186 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 186.

4 187. To the extent the allegations in Paragraph 187 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 187.

7 188. To the extent the allegations in Paragraph 188 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 188.

10 189. To the extent the allegations in Paragraph 189 are legal conclusions and
11 characterizations, no responsive pleading is required. Insofar as any responsive pleading is
12 required, Amazon denies the allegations in Paragraph 189.

13 190. Amazon admits that Plaintiffs demand a jury trial. Amazon admits that Paragraph
14 190 sets forth the relief that Plaintiffs purport to seek. Amazon denies that Plaintiffs are entitled
15 to any such relief and denies the remaining allegations in Paragraph 190.

16 191. The remainder of the Complaint consists of Plaintiffs' prayer for relief to which no
17 response is required. To the extent a response is required, Amazon denies that Plaintiffs are
18 entitled to the relief sought in the Complaint or to any relief whatsoever.

19 **SEPARATE DEFENSES**

20 Below are Amazon's separate defenses. By setting forth these separate defenses, Amazon
21 does not assume any burden of proof as to any fact issue or other element of any cause of action that
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1 properly belongs to Plaintiffs. Amazon reserves the right to allege additional defenses as they may
2 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 the
24 Fifth and Eighth Amendments to the U.S. Constitution.

1 **FIFTH DEFENSE**

2 **(IMPROPER DAMAGES PRAYERS)**

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

7 **SIXTH DEFENSE**

8 **(FAILURE TO MITIGATE)**

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

11 **SEVENTH DEFENSE**

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

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

16 **EIGHTH DEFENSE**

17 **(UNDAMAGED CLASS MEMBERS)**

18 To the extent Plaintiffs and the alleged class seek relief on behalf of purported class
19 members who have not suffered any damages, the Complaint and each of its claims for relief
20 violate Defendant's rights to due process under the U.S. Constitution.

21 **NINTH DEFENSE**

22 **(WAIVER)**

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

TENTH DEFENSE

(LIMITATION OF LIABILITY)

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

DATED this 27th day of December 2024.

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