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**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION**

MEGAN SMITH, on behalf of herself and  
all others similarly situated,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

Case No. 2:21-cv-00838

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**TABLE OF CONTENTS**

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

INTRODUCTION ..... 1

JURISDICTION AND VENUE ..... 3

PARTIES ..... 4

FACTUAL ALLEGATIONS ..... 4

    A. Amazon: Paradise Lost ..... 4

        i. Amazon’s Predatory Pricing..... 5

        ii. Amazon’s Unfair Conditions With Merchants..... 7

INTERSTATE TRADE AND COMMERCE ..... 9

RELEVANT MARKET ..... 9

CLASS ACTION ALLEGATIONS ..... 10

ANTITRUST INJURY ..... 13

CAUSES OF ACTION..... 13

PRAYER FOR RELIEF ..... 19

JURY TRIAL DEMAND ..... 20

1 Plaintiff MEGAN SMITH, on behalf of herself and all others similarly  
2 situated (“Plaintiff”), by and through her undersigned attorneys, brings this Class  
3 Action Complaint (the “Action”) against Defendant AMAZON.COM, INC.  
4 (“Amazon” or “Defendant”) based upon personal knowledge as to herself and her  
5 own acts, and as to all other matters upon information, investigation, and belief of  
6 counsel.

## 7 INTRODUCTION

8 1. In 1890, on the floor of the United States Senate, while trying to pass  
9 the Sherman Antitrust Act, Senator Sherman of Ohio, stated that “overcharges by  
10 monopolists [are a form of] ‘extortion which makes the people poor.’”<sup>1</sup> Amazon, a  
11 digital e-commerce marketplace founded by Jeff Bezos, is such a monopolistic  
12 entity, and its policy of overcharging consumers is woven into the fabric of  
13 Amazon’s existence.

14 2. Like Standard Oil and the robber-barons of old, “Amazon is the titan of  
15 twenty-first century commerce. In addition to being a retailer, it is now a marketing  
16 platform, a delivery and logistics network, a payment service, a credit lender, an  
17 auction house, a major book publisher, a producer of television and films, a fashion  
18 designer, a hardware manufacturer, and a leading host of cloud server space.”<sup>2</sup>

19 3. This Action focuses solely on Amazon’s role as a digital retailer – an  
20 online distribution channel for its own goods, as well as goods offered by merchants  
21 who come to Amazon to sell their products not out of choice, but out of necessity.  
22 Amazon has monopoly power as an online distribution channel in the United States  
23 (the “Relevant Market”), with approximately 50% of all e-commerce sales occurring  
24

25 \_\_\_\_\_  
26 <sup>1</sup> 21 CONG. REC. 2461 (1890) (statement of Sen. Sherman) *cited by* Khan, Lina, “Amazon’s  
Antitrust Paradox,” YALE LAW JOURNAL, Vol. 126, No. 3 (Jan. 2017) (hereinafter “Khan”).

27 <sup>2</sup> *Id.*

1 through Amazon’s website, Amazon.com.<sup>34</sup> After the Novel Coronavirus-19  
 2 pandemic (“COVID-19”) emerged, Amazon’s monopolistic grasp over the Relevant  
 3 Market grew – as Amazon’s sales skyrocketed by 38% in 2020.<sup>5</sup>

4 4. Amazon uses its pervasiveness over the Relevant Market to abuse  
 5 consumers and merchants alike. Amazon does this by imposing “referral fees,”  
 6 which are essentially commissions, that Amazon charges its merchants to be able to  
 7 sell goods on the Amazon.com platform. These merchants then include these  
 8 commissions in their prices which are paid by Plaintiff and the Class directly to  
 9 Amazon. In a normal competitive and functioning market, merchants would charge  
 10 a lesser, more competitive price on Amazon than they would absent the “referral  
 11 fees.”

12 5. Additionally, Amazon imposes a “price parity clause” (commonly  
 13 known as a Most Favored Nations clause, or “MFN”) on merchants through its  
 14 “Amazon Services Business Solutions Agreement.” Under threat of government  
 15 action by the Federal Trade Commission, in 2019, Amazon purportedly withdrew  
 16 its “price parity clause,” only to be replaced with its “Fair Pricing Policy”  
 17 (hereinafter “FPP”). The FPP currently exists and has the same effect as an MFN.  
 18 The MFN forbids merchants from being able to sell their goods at cheaper prices on  
 19 other e-commerce platforms within the Relevant Market. This, in effect, fixes,

20 \_\_\_\_\_  
 21 <sup>3</sup> Ingrid Lunden, *Amazon’s share of the US e-commerce market is now 49%, or 5% of all retail*  
 22 *spend*, TECHCRUNCH (July 13, 2018) at [https://techcrunch.com/2018/07/13/amazons-share-of-the-us-e-commerce-market-is-now-49-or-5-of-all-retail-spend/?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAH\\_RRrESwhO-iyIf\\_c0DM\\_1jT-E60-0WHlj05YQDiqJmN4GLi-q5bVJs3pbQAI7r5Ozph3wxGfPkoJfCamx8LcBBCvJvVjHEiGFZA\\_t\\_2h2Lr\\_fRZNceqWPZiAr2TE8IC0vQEoIeIXhZGJh2H7Sm3CIOVF879qU5GDsqyxinBbR6V](https://techcrunch.com/2018/07/13/amazons-share-of-the-us-e-commerce-market-is-now-49-or-5-of-all-retail-spend/?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAH_RRrESwhO-iyIf_c0DM_1jT-E60-0WHlj05YQDiqJmN4GLi-q5bVJs3pbQAI7r5Ozph3wxGfPkoJfCamx8LcBBCvJvVjHEiGFZA_t_2h2Lr_fRZNceqWPZiAr2TE8IC0vQEoIeIXhZGJh2H7Sm3CIOVF879qU5GDsqyxinBbR6V).

23 \_\_\_\_\_  
 24 <sup>4</sup> *Amazon and Walmart Are Nearly Tied in Full-Year Share of Retail Sales*, PYMNTS (Mar. 11,  
 25 2021) at <https://www.pymnts.com/news/retail/2021/amazon-walmart-nearly-tied-in-full-year-share-of-retail-sales/>.

26 \_\_\_\_\_  
 27 <sup>5</sup> Amazon.com, Inc., Form 10-k Securities and Exchange Commission Annual Report, Fiscal  
 28 Year Ended Dec. 31, 2020 (last visited June 15, 2021) (hereinafter, “Amazon 2020 10-k”)

1 stabilizes, and/or increases the prices of goods sold on alternative e-commerce  
2 platforms. Amazon imposes significant fees for the use of its platform, including a  
3 subscription fee and referral fees on the sale of each product which inflate the price  
4 for goods sold by merchants on Amazon and are imposed on consumers on other  
5 platforms via the MFN.<sup>6</sup>

6 6. Amazon is also a horizontal competitor to merchants, as it sells the very  
7 same goods that merchants sell on the Amazon.com platform. And, because the  
8 merchants' goods are overpriced due to the existence of the "referral fees," Amazon  
9 is able to undercut the merchants' prices with its own Amazon-label branded goods  
10 – vanquishing competition and eliminating consumer freedom to purchase the goods  
11 they seek in a normal functioning market free of anticompetitive conduct.

12 7. By this Action, Plaintiff, on behalf of herself and other consumers,  
13 seeks monetary damages in the form of restitution and treble damages for injuries  
14 sustained by Amazon's unlawful conduct, as well as injunctive relief enjoining  
15 Amazon from continuing its anticompetitive conduct alleged herein.

### 16 **JURISDICTION AND VENUE**

17 8. This Court has subject-matter jurisdiction over Plaintiff's federal  
18 antitrust claims pursuant to the Sherman Act and the Clayton Antitrust Act, 15  
19 U.S.C. §§ 1, 2, 15(a); and 28 U.S.C. §§ 1331 and 1337.

20 9. This Court has personal jurisdiction over the Defendant. Defendant is  
21 headquartered in this District. Defendant has engaged in sufficient minimum  
22 contacts with and has its principal place of business in the State of Washington.

23 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because  
24 Defendant maintains its principal places of business in the State of Washington and  
25 in this District, because a substantial part of the events or omissions giving rise to  
26

27 <sup>6</sup> Going forward, all references hereafter to the MFN includes the FPP and the price parity clause.  
28

1 Plaintiff's claims occurred in this District. In the alternative, personal jurisdiction  
2 and venue also may be deemed proper under Section 12 of the Clayton Antitrust Act,  
3 15 U.S.C. § 22, because the Defendant may be found in or transact business in this  
4 District.

### 5 **PARTIES**

6 11. **Plaintiff.** Megan Smith is an individual residing in Tennessee who  
7 made purchases on Amazon's digital e-commerce platform, Amazon.com, during  
8 the relevant time period. Plaintiff was and will continue to be economically harmed  
9 by the Defendant's anticompetitive conduct alleged herein.

10 12. **Defendant.** Amazon.com, Inc. is an e-commerce channel and retail  
11 giant with its principal place of business located in the State of Washington. Amazon  
12 directly sells its own goods to consumers like Plaintiff. Amazon also allows  
13 merchants to sell products on its online retail sales platform and Amazon charges  
14 supracompetitive prices for the goods sold on the Amazon.com platform.

### 15 **FACTUAL ALLEGATIONS**

#### 16 **A. Amazon: Paradise Lost**

17 13. In 1994, Jeff Bezos conceptualized Amazon on a cross country road  
18 trip from Seattle to New York City. During his tenure as Chief Executive Officer,  
19 Amazon's growth over the last thirty years has been unimaginable, including that  
20 Amazon's digital marketplace has grown from exclusively offering books to selling  
21 an immense variety of goods. What began in Bezos' garage in 1994 quickly grew to  
22 a dominant digital marketplace offering goods in the following categories:  
23 electronics, computers, smart home devices, home/garden & tools, pet supplies, food  
24 & groceries, beauty & health products, toys/kids & baby products, handmade goods,  
25 sporting goods, outdoors goods, and automotive & industrial materials.<sup>7</sup>

26 \_\_\_\_\_  
27 <sup>7</sup> Amazon.com, Inc. at <https://www.amazon.com/>, (last visited June 15, 2021).  
28

1 14. Because of Amazon’s market power in the Relevant Market, the  
2 merchants of the aforementioned goods (in each of their respective categories) have  
3 no choice but to sell on the Amazon.com platform. This makes Amazon a  
4 monopsony.<sup>8</sup> A monopsony, “in economic theory, [is a] market situation where there  
5 is only one buyer .... Such a firm is able to pay lower wages than it would under  
6 competition.”<sup>9</sup> This is exactly what Amazon does. In order to maintain its market  
7 power, Amazon pays “lower wages” in the form of smaller margins to merchants  
8 and offers merchants unfair terms of sale.

9 **i. Amazon’s Predatory Pricing**

10 15. Initially, Amazon exercised its monopsonistic power to the advantage  
11 of consumers.

12 16. Amazon expressed a “willingness to forego profits to establish  
13 dominance.”<sup>10</sup> Amazon was able to accomplish this through systematic predatory  
14 pricing – anticompetitive conduct whereby the seller of the good foregoes profit in  
15 order to destroy competition in the Relevant Market.<sup>11</sup> This allowed Amazon to build  
16 scale, which means that it was able to build a loyal customer base. The customer  
17 base would eventually fall victim to a massive increase in Amazon’s pricing as a  
18 result of the market power Amazon built through predatory pricing.

19 17. Jeff Bezos admitted to this strategy leading up to Amazon’s bait-and-  
20 switch on consumers:

21  
22 <sup>8</sup> Paul Krugman, *Amazon’s Monopoly is Not O.K.*, NEW YORK TIMES (Oct. 20, 2014) at  
23 [https://www.nytimes.com/2014/10/20/opinion/paul-krugman-amazons-monopsony-is-not-  
ok.html](https://www.nytimes.com/2014/10/20/opinion/paul-krugman-amazons-monopsony-is-not-ok.html).

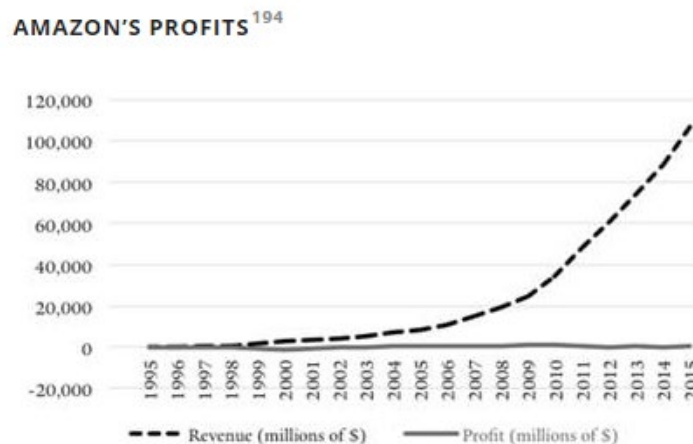
24 <sup>9</sup> “Monopsony” at <https://www.britannica.com/topic/monopsony>, (last visited June 15, 2021).

25 <sup>10</sup> *Khan*; citing Benedict Evans, *Amazon’s Profits* (Aug. 8, 2013) at [http://ben-evans.com  
26 /benedictevans/2013/8/8/amazons-profits](http://ben-evans.com/benedictevans/2013/8/8/amazons-profits).

27 <sup>11</sup> *Khan*.

1 We believe that a fundamental measure of our success will be the  
 2 shareholder value we create over the long term. This value will be a  
 3 direct result of our ability to extend and solidify our current market  
 4 leadership position . . . . We first measure ourselves in terms of the  
 5 metrics most indicative of our market leadership: customer and revenue  
 6 growth, the degree to which our customers continue to purchase from  
 7 us on a repeat basis, and the strength of our brand. We have invested  
 8 and will continue to invest aggressively to expand and leverage our  
 9 customer base, brand, and infrastructure as we move to establish an  
 10 enduring franchise.<sup>12</sup>

11 18. This is further evidenced by Amazon's increase in profitability while it  
 12 made the switch from predatory pricing to supracompetitive prices.



21 19. Many questioned Amazon's approach initially. But the approach  
 22 Amazon was taking was actually time-tested; in fact, this was the exact same strategy  
 23 taken by John D. Rockefeller with respect to the Standard Oil monopsony.<sup>14</sup>

24 <sup>12</sup> Letter to Shareholders, AMAZON.COM, INC. at [http://media.corporate-ir.net/media\\_files/irol/97/97664/reports/Shareholderletter97.pdf](http://media.corporate-ir.net/media_files/irol/97/97664/reports/Shareholderletter97.pdf), (last visited June 15, 2021).

25 <sup>13</sup> Khan; citing *Amazon's Profits* at <http://ben-evans.com/benedictevans/2013/8/8/amazons-profits>, (last visited June 15, 2021).

26 <sup>14</sup> Khan; citing Ida Tarbell, *A History of the Standard Oil Company* (1905).



1           20. In sum, “Amazon has achieved its position through deeply cutting  
2 prices and investing heavily in growing its operations — both at the expense of  
3 profits. The fact that Amazon has been willing to forego profits for growth undercuts  
4 a central premise of contemporary predatory pricing doctrine, which assumes that  
5 predation is irrational precisely because firms prioritize profits over growth. In this  
6 way, Amazon’s strategy has enabled it to use predatory pricing tactics without  
7 triggering the scrutiny of predatory pricing laws.”<sup>15</sup>

8                           **ii. Amazon’s Unfair Conditions With Merchants**

9           21. Amazon also uses its market power to impose unfair conditions on  
10 merchants who sell their goods on the Amazon.com platform.

11           22. These two conditions are: (1) the MFN that prevents merchants from  
12 being able to sell their goods on alternative digital e-commerce channels with terms  
13 and prices that are more favorable than those offered on Amazon, which harms  
14 consumers by fixing, stabilizing, or increasing the price of those same merchants’  
15 goods on all platforms including Amazon; and (2) the imposition of high “referral  
16 fees.” Amazon imposes these unfair terms through Amazon’s Services Business  
17 Solutions Agreement as well as other policies that are imposed through that  
18 agreement.<sup>16</sup>

19           23. Consider the following illustration of how these two terms work in  
20 tandem to harm merchants and consumers.

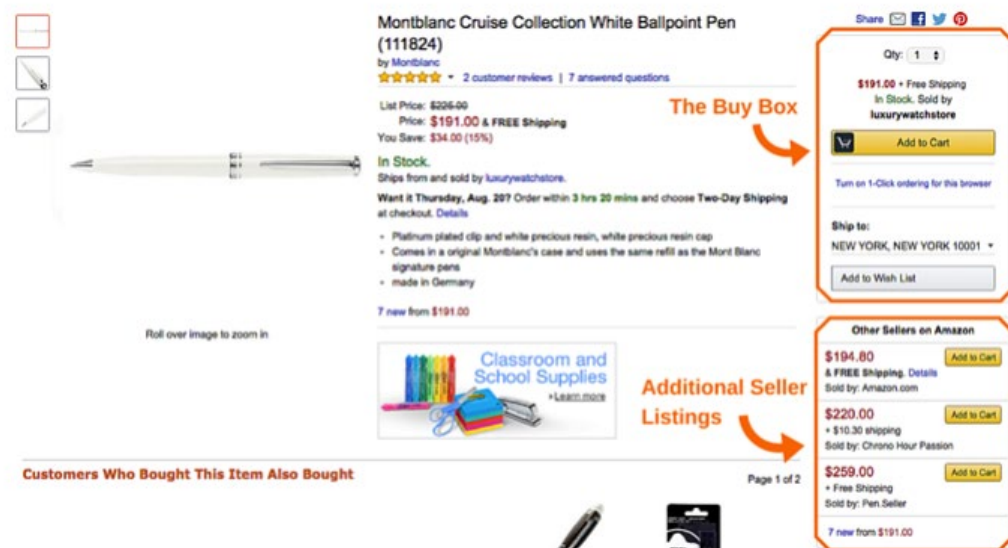
21           24. These two provisions – the “referral fee” provision and the price parity  
22 provision (the MFN) – harm competition and consumers alike.

23  
24  
25 \_\_\_\_\_  
26 <sup>15</sup> *Khan*.

27 <sup>16</sup> Declaration of Ella Irwin, Director of Marketplace Abuse at Amazon (Jul. 13, 2018),  
28 *Kangaroo Mfg., Inc. v. Amazon.com*, No. 17-cv-1806SPL (D. Ariz.), Dkt. No. 75, at ¶ 4.

1 25. If a merchant opts not to play by Amazon's rules the penalty for not  
2 cooperating with Amazon's monopolistic scheme is dire and swift.

3 26. First, Amazon's merchants can lose the "buy box" features – which, on  
4 Amazon's online marketplace, are the bright "Buy Now" and "Add to Cart" buttons  
5 that highlight products favored by Amazon's search algorithm.<sup>17</sup> The "buy box"  
6 features are an essential tool for merchants trying to sell their goods on  
7 Amazon.com: between 82% to 90% of all sales (or \$100 billion worth of goods  
8 annually) on Amazon are the products that feature the "buy box."<sup>18</sup> The necessity of  
9 "winning the buy box" has become so pervasive that it has become its own cottage  
10 industry. An example of the "buy box" is illustrated below:<sup>19</sup>



21 27. Second, Amazon's merchants could also have their shipping options  
22 suspended – which, in turn, would cost the merchants in sales volume.

23 <sup>17</sup> Grant Hindsley, *Prime Power: How Amazon Squeezes the Businesses Behind Its Store*, NEW  
24 YORK TIMES (Dec. 12, 2019) at <https://www.nytimes.com/2019/12/19/technology/amazon-sellers.html>.

25 <sup>18</sup> Aleksandra Tadrzak, *How to Win the Amazon Buy Box and Make More Sales*, DATAFEED  
26 WATCH <https://www.datafeedwatch.com/blog/amazon-buy-box>, (last visited June 18, 2021).

27 <sup>19</sup> *Id.*

1 28. And third, Amazon’s merchants could be outright terminated or  
2 suspended from selling on Amazon’s Amazon.com platform – shutting off access to  
3 over 50% of all e-commerce sales in the Relevant Market. This is a phenomenon  
4 observed by the United States Congress’ House of Representatives Subcommittee  
5 on Antitrust: that Amazon’s “market power is at its height in its dealings with  
6 [merchants].”<sup>20</sup>

7 29. Collectively, Amazon’s conduct harms consumers and throttles  
8 competition.

9 **INTERSTATE TRADE AND COMMERCE**

10 30. Amazon’s activities as alleged in this complaint were within the flow  
11 of, and substantially affected, interstate commerce. Amazon sells goods on its own  
12 behalf and as a platform for its merchants across, and without regard to, state lines.

13 **RELEVANT MARKETS**

14 31. Amazon has monopoly power in the market for online retail platforms  
15 in the United States and uses this power to restrain prices, resulting in injuries to  
16 consumers. Amazon also has monopoly power because it is able to dictate the price  
17 of commodities for sale in the Relevant Market by way of its MFN.

18 32. Alternatively, Amazon has monopoly power in the following  
19 submarkets: (1) home improvement tools; (2) men’s athletic shoes; (3) skin care; (4)  
20 batteries; (5) golf; (6) cleaning supplies; and (7) kitchen and dining products.

21 33. Amazon’s restraints on competition directly impact each of the markets  
22 stated above. Amazon harms consumers by imposing a price floor condition on its  
23 merchants that results in supracompetitive prices for goods sold on other online retail  
24 sales platforms. While harming consumers and competition, Amazon itself benefits  
25

26 <sup>20</sup> Investigation of Competition in Digital Markets, Majority Staff Report and Recommendations,  
27 SUBCOMMITTEE ON ANTITRUST, COMMERCIAL, AND ADMINISTRATIVE LAW OF THE COMMITTEE  
28 ON THE JUDICIARY (Oct. 6, 2020), at 15 (hereinafter, “House Report”).

1 from its pricing policies. By avoiding head-to-head competition from lower priced  
2 products on competing online retail sales platforms, Amazon is able to charge  
3 supracompetitive prices. Amazon's price restraints also allow Amazon to inflate the  
4 prices it can charge for products Amazon itself sells on its platform.

5 34. Plaintiff seeks relief on behalf of herself and other purchasers of  
6 products on Amazon's platform.

7 35. Eliminating Amazon's anticompetitive pricing policies would not lead  
8 to any discernible negative effects on either merchants or consumers.

9 36. Amazon can point to no legitimate considerations that countervail the  
10 propriety of the monetary and injunctive relief that Plaintiff seeks.

### 11 **CLASS ACTION ALLEGATIONS**

12 37. Plaintiff brings this action on behalf of herself, and as a class action  
13 under the Federal Rules of Civil Procedure, Rule 23(a), (b)(2) and (b)(3), seeking  
14 damages and injunctive relief pursuant to the statutes of the states listed below on  
15 behalf of the members of the following Class:

16  
17 All persons who on or after May 26, 2017, purchased one or more  
18 products through Amazon's platform.

19 38. Excluded from the Class are the Defendant and its officers, directors,  
20 management, employees, subsidiaries, or affiliates. Also excluded from the Class  
21 are the district judge or magistrate judge to whom this case is assigned, as well as  
22 those judges' immediate family members, judicial officers and their personnel, and  
23 all governmental entities. Further excluded from the Class are individuals who are  
24 already pursuing antitrust claims based on Amazon's MFN clause on their individual  
25 behalf in arbitration before the American Arbitration Association.  
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1 39. The identity of all Class members are readily identifiable from  
2 information and records maintained by Defendant.

3 40. **Numerosity.** Plaintiff believes that there are more than 100 million  
4 members of the Class, geographically dispersed throughout the United States, such  
5 that joinder of all Class members is impracticable.

6 41. **Typicality.** Plaintiff's claims are typical of the claims of the other Class  
7 members. The factual and legal bases of Defendant's liability are the same and  
8 resulted in injury to the Plaintiff and all other members of the proposed Class.

9 42. **Adequate representation.** Plaintiff will represent and protect the  
10 interests of the proposed Class both fairly and adequately. She has retained counsel  
11 competent and experienced in complex class-action litigation. Plaintiff has no  
12 interests that are antagonistic to those of the proposed Class, and her interests do not  
13 conflict with the interests of the proposed Class members she seeks to represent.

14 43. **Commonality.** Questions of law and fact common to the members of  
15 the Class predominate over questions that may affect only individual Class members  
16 because Defendant has acted on grounds generally applicable to the Class and  
17 because Class members share a common injury. Thus, determining damages with  
18 respect to the Class as a whole is appropriate. The common applicability of the  
19 relevant facts to claims of Plaintiff and the proposed Class are inherent in  
20 Defendant's wrongful conduct, because the overcharge injuries incurred by Plaintiff  
21 and each member of the proposed Class arose from the same anticompetitive conduct  
22 alleged herein.

23 44. There are common questions of law and fact specific to the Class that  
24 predominate over any questions affecting individual members, including:

- 25 a) Whether Defendant and its merchants unlawfully contracted,  
26 combined, or conspired to unreasonably restrain trade in violation  
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1 of Section 1 of the Sherman Act by agreeing under Amazon’s MFN  
2 clause that merchants would not sell their products to buyers through  
3 competing online retail sales platforms at a price lower than what  
4 they offered on Amazon’s platform;

5 b) Whether Defendant and its merchants unlawfully contracted,  
6 combined, or conspired to unreasonably restrain trade in violation  
7 of Section 1 of the Sherman Act by agreeing that merchants would  
8 be penalized under Amazon’s current MFN if they offered their  
9 products to buyers through competing online retail sales platforms  
10 at a lower price than what they offered on Amazon’s platform;

11 c) Whether Defendant has unlawfully monopolized, or attempted to  
12 monopolize, the U.S. online retail sales market, including by way of  
13 the contractual terms, policies, practices, mandates, and restraints  
14 described herein;

15 d) Whether consumers and Class members have been damaged by  
16 Defendant’s conduct;

17 e) The amount of any damages; and

18 f) The nature and scope of injunctive relief necessary to restore a  
19 competitive market.

20 45. **Injunctive relief.** By way of its conduct described in this Action,  
21 Defendant has acted on grounds that apply generally to the proposed Class.  
22 Accordingly, final injunctive relief is appropriate respecting the Class as a whole.

23 46. **Predominance and Superiority.** This proposed class action is  
24 appropriate for certification. Class proceedings on behalf of the Class members are  
25 superior to all other available methods for the fair and efficient adjudication of this  
26 controversy, given that joinder of all members is impracticable. Resolution of the  
27  
28

1 Class members' claims through the class action device will present fewer  
2 management difficulties, and it will provide the benefit of a single adjudication,  
3 economies of scale, and comprehensive supervision by this Court.

4 **ANTITRUST INJURY**

5 47. During the Class Period, Plaintiff and Class members directly  
6 purchased products on Amazon's platform. Because of Defendant's anticompetitive  
7 conduct, Plaintiff and Class members were forced to pay more for those products  
8 than they would have if Amazon had permitted its merchants to engage in price  
9 competition outside Amazon's platform. Defendant, therefore, has caused Plaintiff  
10 and Class members to suffer overcharge damages. Because Defendant continues to  
11 enforce its anticompetitive MFN policy, Plaintiff and Class members are reasonably  
12 likely to incur future overcharges when they purchase products on Amazon's  
13 platform.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 ***PER SE VIOLATION OF THE SHERMAN ACT***

17 **15 U.S.C. § 1**

18 48. Plaintiff repeats and realleges every allegation above as if set forth  
19 herein in full.

20 49. Defendant's merchants are Defendant's direct competitors in the online  
21 retail sales market in the United States. As a participant in the online retail sales  
22 market, Defendant directly offers for sale a broad range of goods on Amazon's  
23 platform. Products sold by merchants on Amazon's platform compete with one or  
24 more of Amazon's own products that it also sells on its platform.

25 50. Many products sold by merchants are therefore reasonably  
26 interchangeable with products sold directly by Defendant on Amazon's platform,  
27  
28

1 such that there is cross-elasticity of demand between Defendant's products and the  
2 products of merchants.

3 51. Because Defendant has engaged in horizontal price-fixing, which is a  
4 *per se* violation of the Sherman Act, no relevant market needs to be defined to  
5 establish liability under the Sherman Act. To the extent a market definition is  
6 required, the Relevant Market is the online retail sales market in the United States.

7 52. In violation of Section 1 of the Sherman Antitrust Act, Defendant  
8 entered into a horizontal agreement with its two million merchants on Amazon  
9 Marketplace concerning the price at which they were allowed to sell their products  
10 in the United States. Specifically, Defendant and its contractual partners unlawfully  
11 agreed under Amazon's former MFN clause that merchants will not offer their  
12 products to their customers in the U.S. online retail sales market at a price lower than  
13 the price they offer them on Amazon's platform. And under Amazon's current MFN,  
14 Amazon and its contractual partners unlawfully agree that any merchants who offer  
15 their products to customers at a price lower than the price they offer on Amazon's  
16 platform will be subject to severe penalties, including rendering the merchants'  
17 products ineligible for Amazon's buy box and/or suspending or terminating the  
18 merchants' accounts with Amazon.

19 53. These unlawful agreements have unreasonably restrained price  
20 competition among retailers for online sales of consumer goods and had the effect  
21 of establishing a floor price for sales of products offered on Amazon's platform. This  
22 combination is *per se* unlawful price-fixing.

23 54. Plaintiff and Class members have been injured and will continue to be  
24 injured in their businesses and property by paying more for consumer products than  
25 they would have paid or would pay in the future in the absence of Defendant's  
26 unlawful acts.

27  
28



1 55. Plaintiff and Class members are direct purchasers because they directly  
2 purchase products on Amazon's platform, and directly pay Amazon the products'  
3 purchase prices and referral fees.

4 56. Plaintiff and the Class are entitled to an injunction that terminates the  
5 ongoing violations alleged in this Complaint.

6 **SECOND CAUSE OF ACTION**  
7 **VIOLATION OF THE SHERMAN ACT**  
8 **15 U.S.C. § 1**  
9 **(ALTERNATIVE TO *PER SE*)**

10 57. Plaintiff repeats and realleges every allegation above as if set forth  
11 herein in full.

12 58. This Count is brought in the alternative if the agreement between  
13 Amazon the merchants, is determined to be a vertical price restraint and the conduct  
14 at issue is not a *per se* violation.

15 59. Plaintiff brings this federal law claim on her own behalf and on behalf  
16 of each member of the proposed nationwide Class described above.

17 60. Defendant's MFN policy has an open and obvious adverse effect on  
18 competition. It raises prices and acts as a barrier to market entry for new competitors  
19 and hinders the expansion of existing competitors in the market. This is because the  
20 major competitive parameter – the fees for platform services – is neutralized by the  
21 MFN policy, since more favorable fees cannot be translated into more favorable  
22 prices for final customers. This raises market prices and prevents competitors from  
23 establishing a greater reach.

24 61. Amazon's MFN has actual detrimental effects. It causes prices to be  
25 higher in each of the markets alleged above than they would have been in the absence  
26 of Amazon's restraints. These anticompetitive agreements further exclude the entry  
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1 and growth of competitor platforms in the online retail market and decrease  
2 innovation and consumer choice in the Relevant Market.

3 62. A straightforward application of fundamental economic principles  
4 shows that the arrangements in question would have an anticompetitive effect on  
5 customers and the Relevant Market.

6 63. Defendant and the merchants did not act unilaterally or independently,  
7 or in their own economic interests, when entering into the agreements. The  
8 agreements, and their enforcement substantially, unreasonably, and unduly restrain  
9 trade in the Relevant Market, which resulted in harm to Plaintiff and the Class.

10 64. Defendant is liable for the creation, maintenance, and enforcement of  
11 the agreements under a “quick look” or rule of reason standard.

12 65. Defendant possesses market power. That Amazon has market power is  
13 evident from the power it has to raise prices above those that would be charged in a  
14 competitive market.

15 66. Amazon’s relationship with its merchants is further evidence of its  
16 market power. It has the power to dictate and arbitrarily change the rules by which  
17 its merchants have access to the Amazon.com platform and bends the rules to give  
18 itself the advantage in the buy box and in sponsored advertising. Amazon charges  
19 exorbitant fees that give it a competitive advantage over its merchants. Additionally,  
20 Amazon uses merchants’ supplier information to contract directly with the suppliers  
21 and their customer information to decide what areas to focus its retail or product  
22 developments.

23 67. There is no legitimate, pro-competitive business justification for  
24 Amazon’s MFN or any justification that outweighs their harmful effect.  
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1 68. Plaintiff and members of the Class were injured in their business or  
2 property by paying higher prices for products purchased on the Amazon platform  
3 than they would have paid in the absence of Defendant’s unlawful conduct.

4 **THIRD CAUSE OF ACTION**  
5 **VIOLATION OF THE SHERMAN ACT**  
6 **15 U.S.C. § 2**  
7 **(MONOPOLIZATION)**

8 69. Plaintiff repeats and realleges every allegation above as if set forth  
9 herein in full.

10 70. The Relevant Market is the online retail sales market in the United  
11 States.

12 71. Defendant obtained monopoly power in the online retail sales market  
13 in the United States, as demonstrated by its power to set the prevailing prices of  
14 virtually every good offered for sale in in that market.

15 72. Amazon has gained and maintains monopoly power in the applicable  
16 market by improper and unlawful means.

17 73. Defendant has willfully acquired its monopoly power in the applicable  
18 market in part through its enforcement of its MFN clause. These provisions establish  
19 a price floor based on the merchants’ price listing on Amazon’s platform. By  
20 requiring its two million merchants to apply a price floor on all other online retail  
21 sales platforms, Defendant largely immunizes these products from competitive  
22 pricing in the Relevant Market and causes the products on Amazon’s platform to be  
23 sold at supracompetitive prices.

24 74. Plaintiff and Class members are direct purchasers because they directly  
25 purchase products on Amazon’s platform and directly pay Amazon’s referral fees.  
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1 75. Plaintiff and the Class members have been injured and will continue to  
2 be injured in their businesses and property by paying more for products on Amazon's  
3 platform than they would have paid or would pay in the future in the absence of  
4 Defendant's unlawful acts.

5 76. Plaintiff and the Class are entitled to an injunction that terminates the  
6 ongoing violations alleged in this Complaint.

7 **FOURTH CAUSE OF ACTION**  
8 **VIOLATION OF THE SHERMAN ACT**  
9 **15 U.S.C. § 2**  
10 **(ATTEMPTED MONOPOLIZATION)**

11 77. Plaintiff repeats and realleges every allegation above as if set forth  
12 herein in full.

13 78. If Defendant does not already have a monopoly in the online retail sales  
14 market in the United States it has attempted to monopolize this market.

15 79. Amazon's MFN clause demonstrate Amazon's intent to control online  
16 prices of virtually every consumer good offered in the Relevant Market.

17 80. Through its enforcement of its MFN clause, Defendant has furthered its  
18 goal of controlling prices of virtually every consumer good offered in the applicable  
19 markets.

20 81. There is a dangerous probability that Defendant will succeed in  
21 monopolizing the applicable markets. Defendant, inclusive of its merchants, already  
22 accounts for 50% of the online retail sales market in the United States.

23 82. Plaintiff and Class members have been injured and will continue to be  
24 injured in their businesses and property by paying more for products on Amazon's  
25 platform than they would have paid or would pay in the future in the absence of  
26 Defendant's unlawful acts.

1 83. Plaintiff and Class members are direct purchasers because they directly  
2 purchase products on Amazon's platform and directly pay Amazon's referral fees.

3 84. Plaintiff and the Class are entitled to an injunction that terminates the  
4 ongoing violations alleged in this Action.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 7 A. The Court determine that this action may be maintained as a class  
8 action under Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of  
9 Civil Procedure, appoint Plaintiff as Class Representative and her  
10 counsel of record as Class Counsel, and direct that notice of this  
11 action, as provided by Rule 23(c)(2) of the Federal Rules of Civil  
12 Procedure, be given to the Class, once certified;
- 13 B. Adjudication that the acts alleged herein constitute unlawful  
14 restraints of trade in violation of the Sherman Act, 15 U.S.C. § 1;
- 15 C. Adjudication that the acts alleged herein constitute monopolization  
16 and/or attempted monopolization in violation of the Sherman Act,  
17 15 U.S.C. § 2;
- 18 D. Actual damages, statutory damages, punitive or treble damages, and  
19 such other relief as provided by the statutes cited herein;
- 20 E. Pre-judgment and post-judgment interest on such monetary relief;
- 21 F. Equitable relief in the form of restitution and/or disgorgement of all  
22 unlawful or illegal profits received by Defendant as a result of the  
23 anticompetitive conduct alleged herein;
- 24 G. Equitable relief requiring that Amazon cease the abusive, unlawful,  
25 and anticompetitive practices described herein; and,  
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1 H. The costs of bringing this suit, including reasonable attorneys' fees;  
2 and, all other relief to which Plaintiff and members of the Class may  
3 be entitled at law or in equity.

4 **JURY TRIAL DEMAND**

5 85. Plaintiff hereby demands a trial by jury of all the claims asserted in this  
6 Complaint.

7  
8 DATED: June 23, 2021

Respectfully submitted,

9 **PHILLIPS LAW FIRM, PLLC**

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*\*Pro Hac Vice Forthcoming*

*Attorneys for Plaintiff and the Proposed  
Class*