

1 Heidi K. Hubbard (*pro hac vice*)
2 Kevin M. Hodges (*pro hac vice*)
3 Jonathan B. Pitt (*pro hac vice*)
4 Carl R. Metz (*pro hac vice*)
5 Carol J. Pruski (State Bar No. 275953)
6 WILLIAMS & CONNOLLY LLP
7 680 Maine Ave. SW
8 Washington, DC 20024
9 Tel.: (202) 434-5000
10 Fax: (202) 434-5029

11 Jeffrey M. Davidson (State Bar No. 248620)
12 Cortlin H. Lannin (State Bar No. 266488)
13 Neema T. Sahni (State Bar No. 274240)
14 COVINGTON & BURLING LLP
15 Salesforce Tower
16 415 Mission Street, Suite 5400
17 San Francisco, CA 94105
18 Tel: (415) 591-6000
19 Fax: (415) 591-6091

20 *Attorneys for Defendant Amazon.com, Inc.*

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN FRANCISCO**

23 THE STATE OF CALIFORNIA,

24 Plaintiff,

25 v.

26 AMAZON.COM, INC.,

27 Defendant.

28 AMAZON.COM, INC.,

Cross-Complainant,

v.

THE STATE OF CALIFORNIA

Cross-Defendant.

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

05/30/2023

Clerk of the Court

BY: ANNIE PASCUAL

Deputy Clerk

CASE NO. CGC-22-601826

**DEFENDANT AMAZON.COM, INC.'S
CROSS-COMPLAINT**

REDACTED

Complaint Filed: September 14, 2022

Department: 304

Courtroom: Hon. Ethan P. Schulman

1 Amazon.com, Inc. (“Amazon”) hereby alleges for its cross-complaint against The People of the
2 State of California (“Cross-Defendant”), on personal knowledge as to its own activities and on information
3 and belief as to the activities of others, as follows:

4 **I. THE PARTIES**

5 1. Cross-Complainant Amazon is a Delaware corporation with its principal place of business
6 at 400 Terry Avenue North, Seattle, Washington 98109.

7 2. The California Attorney General is the chief law enforcement officer of the State of
8 California. (Cal. Const., art. V, § 13). He filed the Complaint in this action on behalf of the People of the
9 State of California.

10 **II. JURISDICTION AND VENUE**

11 3. This Court has jurisdiction over the claims asserted in this Cross-Complaint pursuant to
12 the California Constitution, Article VI, § 10. Venue is proper in this Court pursuant to Code of Civil
13 Procedure, § 395(a).

14 **III. BACKGROUND**

15 4. The retail industry is intensely competitive. Every day, consumers decide where to shop
16 among countless retail stores based upon the relative attractiveness of the prices, quality, selection,
17 displays, and other attributes they encounter when they shop there.

18 5. Amazon works hard to compete in this industry. In particular, Amazon invests heavily in
19 improving the consumer experience and seeks to offer customers low prices, fast and free delivery, easy-
20 to-use functionality, and timely customer service.

21 6. Amazon has been a procompetitive force in the retail industry. Indeed, in part through its
22 policies and practices, Amazon has helped the retail industry continue to demonstrate the procompetitive
23 hallmarks the antitrust laws encourage, including enhanced customer experiences, lower prices, rapid
24 innovation, greater efficiencies, increased output and selection, and new entrants.

25 7. In particular, Amazon continuously innovates to provide opportunities for third-party
26 sellers in its store and in doing so expands consumer choice. Amazon has invested heavily in helping
27 third-party sellers succeed, investing billions of dollars, building hundreds of tools, and providing sellers
28 with rich data to accelerate their sales.

1 8. Amazon must continuously work hard to attract sellers to sell via its store given the many
2 distribution options at their disposal, including direct sales, other online outlets and brick-and-mortar
3 stores. Because third-party sellers help Amazon provide customers with a wide array of competitively
4 priced offers, Amazon has strong incentives to attract, grow, and support third-party sellers.

5 9. Third-party sellers are appropriately focused on increasing their respective individual sales.
6 At the same time, Amazon is mindful that third-party sellers do not have the same long-term incentives to
7 protect customer trust in Amazon’s store as a destination for great prices, selection, and convenience in
8 order to encourage customers to return to Amazon for future purchases. Accordingly, Amazon must
9 ensure that all offers, regardless of seller, preserve that customer trust, which is hard to win but easy to
10 lose.

11 10. To foster consumer trust and offer a high-quality consumer experience, Amazon has in
12 place policies and practices for third-party sellers that set forth specific terms on which third-party sellers
13 may sell in Amazon’s store.

14 11. Yet the Attorney General challenges these practices, which are common in retail, beneficial
15 to consumers, and clearly procompetitive. Declaratory judgment will give much-needed certainty to
16 Amazon, its third-party sellers and vendors, and retail competitors more broadly that the standard
17 agreements, policies, and practices that Amazon has in place are lawful. It will also serve to narrow the
18 present litigation based on the evidence. At the end of the case, there should be a judgment stating not
19 only that the Attorney General has failed to prove its case, but that the practices the Attorney General has
20 wrongfully challenged are lawful.

21 12. The Complaint alleges the existence of agreements between Amazon and third-party sellers
22 and wholesale suppliers to agree not to offer lower prices off-Amazon. (Compl. ¶ 3). No such agreements
23 exist. There is no requirement for third parties “not to offer . . . lower” prices off Amazon, much less to
24 raise prices in other stores. (Compl. ¶ 3). Amazon does not “strictly enforce[] a de facto retail price parity
25 agreement” with third parties (Compl. ¶ 5) or a “price parity provision” at the “wholesale level” (Compl.
26 ¶ 6). Rather, Amazon’s policies relating to “competitive prices” and “price competitiveness” (Compl. ¶
27 115) are designed to encourage exactly what they say: *competitive* prices for consumers.

1 13. The Complaint alleges that Amazon’s Business Solutions Agreement (“BSA”) constitutes
2 an “anticompetitive price parity agreement[.]” that Amazon “coerc[es]” sellers to enter into. (Compl.
3 ¶ 113). Instead, the BSA sets forth the terms pursuant to which Amazon offers third parties the opportunity
4 to sell on Amazon’s store.

5 14. The Complaint alleges that through the BSA, third-party sellers “expressly agree to certain
6 ‘Program Policies’” (Compl. ¶ 114), including the Amazon Standards for Brands (“ASB”) (Compl. ¶ 116),
7 the Marketplace Fair Pricing Policy (“MFPP”) (Compl. ¶ 118), and the Seller Code of Conduct (Compl.
8 ¶ 121), which purportedly require sellers to “offer the same or higher prices elsewhere versus Amazon”
9 (Compl. ¶ 116), “not to do anything to cause their prices elsewhere to be lower than their prices on
10 Amazon” (Compl. ¶ 119), and “agree to advertise the same prices off Amazon as they offer on Amazon”
11 (Compl. ¶ 121), respectively. Amazon makes no such requirement of its third-party sellers. Rather, each
12 policy contains common provisions that to protect consumers and improve the consumer experience by,
13 for example, preventing price gouging, prohibiting disingenuous or manufactured product reviews, and
14 promoting competitive pricing and fast, reliable shipping. None of these policies prohibit third-party
15 sellers from lowering, or require third-party sellers to raise, their prices off-Amazon.

16 15. The Complaint alleges that Amazon “enforces price parity at the wholesale level” through
17 Guaranteed Minimum Margin (“GMM”) agreements (Compl. ¶ 6) and through “de facto minimum margin
18 agreements” via Amazon’s Matching Compensation Program (“MCP”) (Compl. ¶ 178). But minimum
19 margin agreements are a common mechanism in the retail industry by which vendors and retailers
20 mutually agree to manage risk and increase predictability, in turn generating benefits such as increased
21 consumer product selection, appropriate product stocking, and competitive prices. Such practices are
22 procompetitive and do not require third-party sellers to refuse to lower, or to raise, their prices off Amazon.

23 16. Were the Attorney General to prevail in this action, the Attorney General would hurt
24 California consumers, sellers, and the state’s retail industry as a whole.

25 **IV. AMAZON’S THIRD-PARTY SELLER PRICING POLICIES**

26 17. Amazon publishes clear policies that inform third-party sellers of Amazon’s expectations
27 for customer service in its store.

28

1 18. Amazon does not set prices for third-party sellers; rather, third-party sellers are responsible
2 for setting their own prices in Amazon’s store.

3 19. No Amazon policy prohibits third-party sellers from discounting their product offers
4 through channels other than Amazon’s store.

5 **A. Business Solutions Agreement**

6 20. Sellers wishing to sell in Amazon’s store must enter into the BSA.

7 21. The BSA states that it “contains the terms and conditions that govern” a third-party seller’s
8 “access to and use of” Amazon’s services and articulates an expectation that sellers will follow the
9 applicable “Program Policies” (including but not limited to ASB, MFPP, and the Seller Code of Conduct).
10 The BSA further states that if an account “repeatedly violates” Amazon’s Program Policies, Amazon may
11 withhold payment to the third-party seller.

12 22. As relevant to the Complaint: ASB notifies third-party sellers that Amazon *may* take certain
13 actions and *might* cause sellers to “lose certain privileges” if they cannot “maintain [Amazon’s] standards
14 of customer experience”; the MFPP states that Amazon “monitors the prices of items on our stores” and
15 *can* “remove the Featured Offer, remove the offer, suspend the ship option, or in serious or repeated cases
16 suspend or terminate selling privileges” if sellers engage in egregious pricing practices such as price
17 gouging; and the Seller Code of Conduct states that sellers are “expected to adhere” to the policies therein
18 and that offenses against the policy *can* “result in suspension” of a seller’s account. As such, these policies
19 set forth guidelines and expectations for sellers and identify actions that Amazon might take in its
20 unilateral discretion.

21 23. The BSA does not prohibit third-party sellers from discounting their product offers through
22 channels other than Amazon’s store.

23 **B. Marketplace Fair Pricing Policy**

24 24. The MFPP, which is a unilateral Amazon policy published and publicly available on
25 Amazon Seller Central, has the goal of preventing price gouging and ensuring that egregious prices are
26 not offered to Amazon customers.

27 25. Amazon developed the MFPP to inform and educate third-party sellers about harmful and
28 egregious pricing behavior and its consequences. The MFPP states: “Amazon regularly monitors the

1 prices of items on our marketplaces, including shipping costs, and compares them with other prices
2 available to our customers. If we see pricing practices on a marketplace offer that harms customer trust,
3 Amazon can remove the Buy Box, remove the offer, suspend the ship option, or, in serious or repeated
4 cases, suspend[]or terminat[e] selling privileges.”

5 26. The MFPP provides a non-exhaustive list of pricing practices that harm customer trust,
6 including: (1) setting “a reference price on a product or service that misleads customers;” (2) setting “a
7 price on a product or service that is significantly higher than recent prices offered on or off Amazon;” (3)
8 selling “multiple units of a product for more per unit than that of a single unit of the same product;” or (4)
9 setting “a shipping fee on a product that is excessive.”

10 27. The MFPP does not prohibit third-party sellers from discounting their product offers
11 through channels other than Amazon’s store.

12 **C. Selling Policies and Seller Code of Conduct**

13 28. Amazon’s Selling Policies and Seller Code of Conduct, unilateral Amazon policies that are
14 published and publicly available on Amazon Seller Central, require that sellers act fairly and honestly in
15 Amazon’s store to ensure a safe buying and selling experience.

16 29. Specifically, under Amazon’s Selling Policies and Seller Code of Conduct, all sellers must:
17 provide accurate information to Amazon and its customers at all times; act fairly and not misuse Amazon’s
18 features or services; not attempt to damage or abuse another Seller, their listings or ratings; not attempt to
19 influence customers’ ratings, feedback, and reviews; not send unsolicited or inappropriate
20 communications; not contact customers except through Buyer-Seller Messaging; not attempt to
21 circumvent the Amazon sales process; not operate more than one selling account on Amazon without a
22 legitimate business need; and not engage in conduct that violates price fixing laws.

23 30. Amazon’s Selling Policies and Seller Code of Conduct do not prohibit third-party sellers
24 from discounting their product offers through channels other than Amazon’s store.

25 **D. Amazon Standards for Brands**

26 31. ASB, which is a unilateral Amazon policy published and publicly available on Amazon
27 Seller Central, was designed to ensure that Amazon customers get the best shopping experience. ASB
28 applies to “Brands and manufacturers, as well as their agents, licensees, and other representatives selling

1 on their behalf in the Amazon store.” Under the ASB policy, measures of the customer experience include
2 high in-stock rates, delivery experience, price competitiveness, and selection completeness.

3 32. ASB states that “Brands can operate as sellers in the Amazon store if they can consistently
4 maintain our standards for customer experience,” and reserves the right for Amazon to “choose to source
5 products from some Brands for sale by Amazon only,” in order to “preserve that customer experience.”

6 33. ASB applies to all Brands. [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 34. ASB does not prohibit third-party sellers from discounting their product offers through
10 channels other than Amazon’s store.

11 **E. Practices to Determine the Featured Offer**

12 35. Amazon constantly innovates to provide a great shopping experience for customers, with
13 particular focus on offering a broad selection of products; fast, reliable shipping; low, competitive prices;
14 and great customer service. Like any store, Amazon has the right—and the good business sense—to
15 highlight the best deals for its customers.

16 36. Like many retailers, Amazon highlights offers based on the combination of features most
17 likely to provide the best experiences to customers. That is, Amazon’s selection of the “Featured Offer”
18 is based on a prediction of a customer’s preference if the customer were to compare all offers; the
19 qualification process thereby aims to earn and preserve trust in Amazon’s store.

20 37. Amazon considers various factors to determine an offer’s eligibility to be the Featured
21 Offer. For example, Amazon evaluates the [REDACTED]
22 [REDACTED]
23 [REDACTED].

24 38. Amazon also evaluates an offer’s price as part of its eligibility for the Featured Offer.
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 39. Offers that are not price competitive with other offers shoppers may find on Amazon or at
2 other retailers are not be removed from Amazon’s store. Though Amazon does not highlight those offers
3 as the Featured Offer, they remain fully discoverable and available for purchase, including being directly
4 visible to customers and available to buy on the Product Detail Page through a pop-out link (the “All Offer
5 Display”). This practice is based on very simple logic: it harms trust in Amazon’s store for Amazon to
6 feature offers at prices that it knows are uncompetitive with prices customers will find son the same
7 product at another comparable retail outlet.

8 40. [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 41. A seller whose offer has been disqualified from being the Featured Offer has multiple
13 options. While the seller can maintain the uncompetitive price, the preferred option for customers is for
14 the seller to lower the price so that it is competitive.

15 42. Among eligible offers, Amazon seeks to highlight the offer that is the “best fit” for the
16 customer based on factors such as customer actions (such as how frequently an item was purchased by
17 other customers), the product’s price, delivery speed, and measures of post-purchase satisfaction like
18 return rates.

19 43. Amazon’s Featured Offer is designed to maintain trust with customers. Third-party sellers
20 can see whether their offer is ineligible to be the Featured Offer based on their pricing through Seller
21 Central on, for example, the “Pricing Health Dashboard” and “Manage Your Inventory” pages.

22 **F. Guaranteed Minimum Margin Agreements**

23 44. Amazon may offer vendors from whom it purchases products at wholesale the option to
24 agree to a Guaranteed Minimum Margin (GMM), which proactively sets a mutually-defined margin
25 guardrail on the sell-through of that vendor’s products and allows Amazon to maintain that selection at a
26 competitive price.

27 45. Margin improvement practices such as cost support, vendor margin, guaranteed profit, or
28 gross margin agreements are commonplace in the retail industry.

1 46. It is up to each vendor to decide whether to enter into a GMM, the terms the vendor will
2 accept for the GMM, and the scope of products and time period the GMM will cover. GMMs are
3 individually negotiated with vendors, with the target minimum margins varying across vendors and the
4 products at issue.

5 47. Pursuant to a mutually-agreed upon GMM, Amazon generally has the contractual right to
6 a true-up payment [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 48. GMM agreements ensure that Amazon will receive a certain minimum profit margin on
11 goods purchased from the seller and sold in Amazon's store. In this respect, GMM agreements function
12 as agreements about wholesale prices between Amazon and its suppliers to *lower* the wholesale price
13 Amazon pays for its supply, thereby allowing it to cut prices for consumers.

14 49. GMMs provide benefits to vendors, Amazon, and customers. For vendors, such agreements
15 can fuel the growth of profitable ASINs which are more likely to be regularly ordered at increasing
16 quantities, preserve selection that may otherwise be unworkable for Amazon, and reduce workload by
17 eliminating reoccurring and ad hoc profitability discussions. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 GMMs benefit customers by enabling Amazon to offer customers the broadest possible selection at
22 competitive prices.

23 50. Ultimately, agreeing to such terms on a proactive basis allows both Amazon and vendors
24 to streamline pricing negotiations, drive a mutually beneficial vendor-retailer relationship, and ultimately
25 improve the customer experience in Amazon's store. For example, if a vendor increases the costs Amazon
26 pays for its selection, and such increases would erode Amazon's margins below target rates or below the
27 margins experienced with purchasing terms that other similarly-situated vendors can offer, then Amazon
28 may propose a GMM agreement. Similarly, when Amazon finds that it may not be able to carry product

1 selection because continuous competitive pricing is causing profitability concerns, Amazon may propose
2 a GMM agreement in order to continue carrying selection.

3 51. GMM agreements do not prohibit third-party sellers from discounting their product offers
4 through channels other than Amazon's store.

5 **G. Matching Compensation Program**

6 52. When products sold by Amazon experience reduced profitability, Amazon may ask
7 vendors for funding to offset those losses through the Matching Compensation Program ("MCP").

8 53. It is up to each vendor to decide whether and to what extent to provide MCP funding to
9 Amazon. If the vendor agrees to MCP funding, Amazon and the vendor generally will negotiate an
10 agreement specifying the terms of the payment to Amazon.

11 54. Like GMMs, the MCP provides benefits to vendors, Amazon, and customers. For vendors,
12 such agreements can fuel the growth of profitable products which are more likely to be regularly ordered
13 at increasing quantities and preserve selection that may otherwise be unworkable for Amazon. [REDACTED]

14 [REDACTED] The
15 MCP benefits customers by enabling Amazon to offer customers the broadest possible selection at
16 competitive prices. Ultimately, the MCP drives a mutually beneficial vendor-retailer relationship and
17 improves the customer experience in Amazon's store.

18 55. Agreements for MCP funding do not prohibit third-party sellers from discounting their
19 product offers through channels other than Amazon's store.

20 * * *

21 56. As described above, the policies and practices that the Attorney General has challenged are
22 all lawful and procompetitive. Most of the purported "agreements" that it identifies in its complaint are
23 not agreements; they are unilateral practices. Amazon has designed its business to create a great customer
24 experience, including wide selection, consistent availability, fast and reliable delivery, and low prices.
25 The Attorney General's allegations about these lawful and procompetitive policies and practices create
26 doubt and uncertainty that needs to be resolved. Amazon therefore requests declaratory relief that at the
27 end of the case will confirm the legality of the challenged practices and create a stable foundation for
28 Amazon's business moving forward.

1 **COUNT 1:**

2 **DECLARATORY JUDGMENT THAT PLAINTIFF’S DAMAGES CLAIMS BASED ON OFF-**
3 **AMAZON PURCHASES ARE FATALLY INDIRECT AND SPECULATIVE.**

4 57. Amazon incorporates and realleges the allegations above as if set forth herein in their
5 entirety.

6 58. This case is a *parens patriae* suit brought by Plaintiff the California Attorney General on
7 behalf of natural persons residing in the state. Plaintiff alleges that natural persons residing in the State
8 of California were injured in their business and property by Amazon’s policies and practices identified in
9 the Plaintiff’s complaint. Specifically, Plaintiff alleges such persons were injured when they purchased
10 products *off* Amazon, that Amazon did not manufacture, supply, distribute, or sell to such persons.

11 59. Plaintiff thus attempts to recover, in whole or in part, for purchases from third parties in
12 which Amazon was not the seller and not part of the supply chain, and over whose prices Amazon has no
13 control when sold through other outlets. This is a type of “umbrella standing” theory that is routinely
14 rejected in antitrust cases, because umbrella claims are based on indirect ripple effects through a
15 speculative chain of causation that here includes multiple independent decision-makers, such as third-
16 party sellers, retailers, and consumers.

17 60. Amazon seeks a declaratory judgment that Plaintiff’s claims for damages based on
18 purchases of products from third parties in which Amazon was not the seller and not part of the supply
19 chain are fatally indirect and speculative, that Plaintiff lacks antitrust standing to seek such damages, and
20 that Plaintiff fails to establish Amazon proximately caused any such alleged injury to support such
21 damages.

22 61. This determination is necessary at this time because Amazon is in genuine doubt as to its
23 legal rights, duties, and responsibilities with respect to purchases of products from independent third
24 parties.

25 **COUNT 2:**

26 **DECLARATORY JUDGMENT THAT AMAZON’S SELLING POLICIES AND SELLER**
27 **CODE OF CONDUCT ARE LAWFUL.**

1 80. Amazon's GMM agreements do not constitute explicit or implicit (or de facto) price parity
2 agreements.

3 81. Amazon's GMM agreements do not prohibit third-party sellers from discounting their
4 product offers through channels other than Amazon's store.

5 82. Amazon's GMM agreements do not have the ability to cause anticompetitive effects;
6 [REDACTED] when it does enter into such
7 an agreement, the agreement has the aforementioned procompetitive effects.

8 83. Amazon's GMM agreements are reasonably necessary to achieve its procompetitive
9 effects.

10 84. Amazon seeks a declaratory judgment that its GMM agreements are lawful. This
11 determination is necessary at this time because Amazon is in genuine doubt as to its legal rights, duties,
12 and responsibilities with respect to its GMM agreements.

13 **COUNT 5:**

14 **DECLARATORY JUDGMENT THAT AMAZON'S MATCHING COMPENSATION**
15 **PROGRAM IS LAWFUL.**

16 85. Amazon incorporates and realleges the allegations of the paragraphs above as if set forth
17 herein in their entirety.

18 86. The MCP is procompetitive; it improves product selection and reduces inefficiencies.

19 87. The MCP does not constitute an explicit or implicit (or de facto) price parity agreement.

20 88. The MCP does not prohibit third-party sellers from discounting their product offers through
21 channels other than Amazon's store.

22 89. The MCP does not have the ability to cause anticompetitive effects; rather, a limited
23 number of agreements are entered into pursuant to the MCP.

24 90. The MCP is reasonably necessary to achieve its procompetitive effects.

25 91. Amazon seeks a declaratory judgment that the MCP is lawful. This determination is
26 necessary at this time because Amazon is in genuine doubt as to its legal rights, duties, and responsibilities
27 with respect to the MCP.
28

1 **COUNT 6:**

2 **DECLARATORY JUDGMENT THAT THE AMAZON STANDARD FOR BRANDS POLICY IS**
3 **LAWFUL.**

4 92. Amazon incorporates and realleges the allegations of the paragraphs above as if set forth
5 herein in their entirety.

6 93. ASB is procompetitive; it encourages sellers to provide a high-quality consumer
7 experience, including lower prices, high in-stock rates, fast delivery, price competitiveness and selection
8 completeness. It has achieved and continues to achieve these procompetitive justifications, the effects of
9 which include lower prices, increased output and selection, and a better experience for sellers and
10 consumers.

11 94. ASB is not an agreement between third-party sellers and Amazon; rather, the ASB policy
12 sets forth guidelines and standards pursuant to which third-party sellers should operate and subject to
13 which they may face penalties if they violate the standards.

14 95. ASB does not prohibit third-party sellers from discounting their product offers through
15 channels other than Amazon's store.

16 96. ASB does not have the ability to cause anticompetitive effects; rather, the policy is enforced
17 only with respect to particular sellers and price competitiveness is not a considered factor in enforcement.

18 97. ASB is reasonably necessary to achieve its procompetitive effects.

19 98. Amazon seeks a declaratory judgment that the ASB policy is lawful. This determination
20 is necessary at this time because Amazon is in genuine doubt as to its legal rights, duties, and
21 responsibilities with respect to the ASB policy.

22 **COUNT 7:**

23 **DECLARATORY JUDGMENT THAT AMAZON'S PRACTICES TO DETERMINE**
24 **FEATURED OFFER ELIGIBILITY ARE LAWFUL.**

25 99. Amazon incorporates and realleges the allegations of the paragraphs above as if set forth
26 herein in their entirety.

27 100. Amazon promotes products that it believes will provide consumers the best experience
28 through the Featured Offer. This is patently procompetitive—it simplifies and improves the shopping

1 experience for consumers, to the benefit of the consumers and third-party sellers and vendors. It also
2 encourages third-party sellers to offer competitive prices and a high-quality consumer experience, because
3 these factors are considered by Amazon in deciding which offers to feature. Amazon's practices to decide
4 which offers to feature, [REDACTED] are procompetitive; they are necessary to achieve the
5 procompetitive effects of the Featured Offer. In part because of these practices, Amazon's Featured Offer
6 has achieved and continues to achieve the intended procompetitive justifications, the effect of which
7 includes lower prices, increased output and selection, and a better consumer experience.

8 101. Amazon does not enter into any agreements with third-party sellers as to how they may
9 secure the Featured Offer.

10 102. Amazon's practices to determine whether an offer is eligible to be displayed as the Featured
11 Offer, [REDACTED] do not prohibit third-party sellers from discounting their product offers through
12 channels other than Amazon's store.

13 103. Amazon's practices to determine whether an offer is eligible to be displayed as the Featured
14 Offer, [REDACTED] do not have the ability to cause anticompetitive effects; [REDACTED]
15 [REDACTED]

16 104. Amazon's practices to determine whether an offer is eligible to be displayed as the Featured
17 Offer, [REDACTED] are reasonably necessary to achieve their procompetitive effects.

18 105. Amazon seeks a declaratory judgment that its practices to determine whether an offer is
19 eligible to be displayed as the Featured Offer are lawful. This determination is necessary at this time
20 because Amazon is in genuine doubt as to its legal rights, duties, and responsibilities with respect to its
21 Featured Offer practices.

22 **COUNT 8:**

23 **DECLARATORY JUDGMENT THAT AMAZON'S BUSINESS SOLUTIONS AGREEMENT IS**
24 **LAWFUL.**

25 106. Amazon incorporates and realleges the allegations of the paragraphs above as if set forth
26 herein in their entirety.

27 107. As a condition to selling their products on Amazon, third-party sellers agree to the BSA.
28 The BSA generally governs third-party sellers' access to and use of Amazon's services.

1 108. The BSA is procompetitive; it encourages lower prices, seeks to prevent harmful practices
2 such as consumer deception and price gouging, promotes operating efficiencies, increases output and
3 selection, improves product quality, and generally enhances the consumer experience. Amazon has
4 achieved and continues to achieve these procompetitive justifications, the effects of which include lower
5 prices, higher product quality, increased output and selection, and an enhanced consumer experience.

6 109. The BSA is not a price parity agreement between third-party sellers and Amazon; the BSA
7 does not contain an explicit or implicit (or de facto) price parity provision and has not since March 2019.

8 110. The BSA does not prohibit third-party sellers from discounting their product offers through
9 channels other than Amazon's store.

10 111. The BSA is reasonably necessary to achieve its procompetitive effects.

11 112. Amazon seeks a declaratory judgment that the BSA is lawful. This determination is
12 necessary at this time because Amazon is in genuine doubt as to its legal rights, duties, and responsibilities
13 with respect to the BSA.

14 **COUNT 9:**

15 **DECLARATORY JUDGMENT THAT AMAZON'S THIRD-PARTY SELLER PRICING**
16 **POLICIES SINCE MARCH 2019 ARE LAWFUL.**

17 113. Amazon incorporates and realleges the allegations in the paragraphs above as if set forth
18 herein in their entirety.

19 114. As a condition to selling their products on Amazon, third-party sellers agree to the BSA.
20 The BSA generally governs third-party sellers' access to and use of Amazon's services. The Price Parity
21 Provision of the BSA, which required sellers not to discriminate against Amazon's customers, was
22 removed in March 2019.

23 115. Amazon's third-party pricing policies—including those set forth in the BSA, ASB, MFPP,
24 and Seller Code of Conduct—encourage lower prices, seek to prevent harmful practices such as consumer
25 deception and price gouging, increase output and selection, improve product quality, and generally
26 enhance the consumer experience. Amazon has achieved and continues to achieve these procompetitive
27 justifications, the effects of which include lower prices, higher product quality, increased output and
28 selection, and an enhanced consumer experience.

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DATED: May 30, 2023

COVINGTON & BURLING LLP

By: /s/ Jeffrey M. Davidson
Jeffrey M. Davidson (Bar No. 248620)
Cortlin H. Lannin (State Bar No. 266488)
Neema T. Sahni (State Bar No. 274240)
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, Suite 5400
San Francisco, California 94105-2533
Telephone: (415) 591-6000
Facsimile: (415) 591-6091

Attorneys for Amazon.com, Inc.

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

By: /s/ Heidi K. Hubbard
Heidi K. Hubbard (*pro hac vice*)
Kevin M. Hodges (*pro hac vice*)
Jonathan B. Pitt (*pro hac vice*)
Carl R. Metz (*pro hac vice*)
Carol J. Pruski (Bar No. 275953)
WILLIAMS & CONNOLLY LLP
680 Maine Ave. SW
Washington, DC 20024
Tel.: (202) 434-5000
Fax: (202) 434-5029