

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO: 2021 CA 001775 B

Judge Hiram E. Puig-Lugo

Next Event: Feb. 11, 2022

Event: Initial Conference

**PLAINTIFF DISTRICT OF COLUMBIA'S MEMORANDUM OF POINTS AND
AUTHORITIES IN OPPOSITION TO DEFENDANT AMAZON.COM, INC.'S
OPPOSED MOTION FOR A PROTECTIVE ORDER AND TO STAY DISCOVERY**

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INTRODUCTION

The District has brought this enforcement action against Amazon for its ongoing anticompetitive conduct that forecloses competition and results in higher prices for online consumers. Amazon's instant motion to stay is no more than a continuation of its delay tactics during the District's pre-suit investigation, when Amazon erected barrier after barrier that had nothing to do with reasonable protections of its information, which the District's Antitrust Act itself provides. This latest attempt to delay the inevitable – the District's appropriate access to and discovery of information – should be rejected by the Court.

In its Motion to Stay, Amazon seeks to halt the progression of this action for the unremarkable reason that Amazon has filed a motion to dismiss. Not only does Amazon's Motion ignore the well-established rules and case law that disfavors a stay based solely on the filing of a motion to dismiss, it fails to articulate any cognizable burden or other factor that would support a stay of discovery in this case. Indeed, Amazon refers only to the speculative expense of responding to discovery in an antitrust case (for a trillion-and-a-half-dollar corporation) and to the even more speculative claim that the Court will be mired in dispute resolution. These arguments (as thin as they are) are further undermined by the fact that Amazon has propounded discovery on the District (guised as a Freedom of Information Act Request ("FOIA") to which the District has already responded in full) and that Amazon has responded to the District's discovery requests, although it has yet to produce any documents. The Court's Rules of Civil Procedure instruct the parties and the Court that cases should move towards a "just" and "speedy" resolution. D.C. Super. Ct. R. Civ. P. 1. Amazon has given this Court no reason to divert from that mandate and deprive the District and the Court of the substantial progress that could be made during the pendency of the Motion to Dismiss.

BACKGROUND

The District's Amended Complaint alleges that Amazon is the dominant online retail marketplace in the United States, having at least 50-70% market share, while its closest competitors (eBay and Walmart.com) have market shares in the single digits. Am. Cmpl. ¶¶ 3, 39. Amazon serves as a multi-seller online marketplace, like eBay and Walmart.com, that sells access to Third Party Sellers ("TPSs") to sell their products on Amazon's marketplace. *Id.* In doing so, Amazon competes with other multi-seller online marketplaces, as well as single-seller online marketplaces (like a TPS's own website) to attract consumer traffic and sales to its marketplace. Am. Cmpl. ¶ 40. In addition to competing as an online retail marketplace, Amazon competes with TPSs and others as a retailer of products that it sells directly to consumers through its online marketplace. Am. Cmpl. ¶ 65. In its capacity as a retailer, Amazon sells goods that it purchases from manufacturers and wholesalers that Amazon refers to as First Party Sellers ("FPSs"). Am. Cmpl. ¶ 2. In a recent survey, 53% of TPSs reported that Amazon sells its own products as a retailer in direct competition with the products sold on Amazon's marketplace by that TPS. *Id.* Therefore, Amazon is not only the dominant online marketplace, it is also a significant competitor for retail sales on its marketplace. *Id.*

Amazon's dominance among online retail marketplaces is protected by several anticompetitive business practices, including anticompetitive agreements that it includes in its contracts with TPSs and FPSs. Am. Cmpl. ¶ 4. These provisions include Amazon's former Price Parity Provision ("PPP"); Amazon's current Fair Pricing Policy ("FPP"); and Amazon's recently-introduced Minimum Margin Agreement ("MMA"). *Id.* All three of these contract provisions impose the same burden on competition and consumers: they punish TPSs and FPSs if they provide or sell goods to or on other online marketplaces for lower prices than they provide on Amazon's

marketplace. This significant prohibition hinders other online marketplaces from offering lower prices to consumers to gain volume and share from Amazon, further entrenching Amazon's monopoly, and creates an artificially high price floor for goods sold to online consumers. Am. Cmpl. ¶ 4, 24, 62.

The District filed its Complaint against Amazon on June 1, 2021, following a pre-suit investigation during which Amazon was uncooperative and stonewalled the District's attempts to collect documents. Amazon repeatedly spurned reasonable efforts (all in excess of the significant protections provided in the Antitrust Act itself) to provide further comfort to Amazon that its information would be used in this and only this investigation. *See* D.C. Code § 4505 (restricting the use of material obtained pursuant to a pre-suit subpoena to the particular investigation at issue). That Act's protection was apparently insufficient for Amazon, which repeatedly implied that counsel for the District would violate its legal prohibitions. Thus, the District, against the District's general practice, agreed to implement a Confidentiality Agreement with Amazon signed by both the District's internal and outside counsel team. Despite these ample protections, Amazon refused to produce documents.

On August 5, 2021, Paul, Weiss, Rifkind, Wharton & Garrison LLP, counsel of record for Amazon in this matter, sent a FOIA request to OAG requesting documents amounting to OAG's investigative file and other documents frequently requested in discovery. Attached as Exhibit A. On September 17, 2021, OAG responded to Amazon's request and produced documents, making clear that it was construing the request as discovery in this matter.

After learning of additional anticompetitive conduct by Amazon, the District amended its Complaint on September 10, 2021 and propounded discovery on September 14, 2021. On October 13, 2021, Amazon informed Plaintiffs that it intended to move for a stay of discovery. The parties

met and conferred on October 15, 2021 during which the District proposed alternatives to full document production, including a suggestion that Amazon merely produce documents already produced to other government enforcers pending resolution of its Motion to Dismiss. Amazon rejected this proposal. Amazon provided responses and objections to the District's discovery requests on October 22, 2021 but repeated its refusal to produce any documents at this time. On October 25, 2021, Amazon filed its motion to dismiss and the instant motion to stay.

ARGUMENT

I. Amazon Fails to Bear its Heavy Burden to Support a Stay of Discovery.

Pursuant to Rule 26, discovery is open at the filing of the Complaint.¹ Had the Court of Appeals contemplated that a motion to dismiss would stay discovery, "the Rules would contain a provision for that effect. In fact, such a notion is directly at odds with the need for expeditious resolution of litigation." *Skellerup Indus. Ltd v. City of L.A.*, 163 F.R.D. 598, 600-01 (C.D. Cal. 1995). There are strong practical reasons to allow discovery to proceed while a motion to dismiss is pending. Specifically, "[m]otions to dismiss are denied more often than they result in the termination of a case [so] it is more likely than not from a statistical point of view that a delay pending a ruling on the motion to dismiss would prove unnecessary." *Standard Bank PLC v. Vero Ins. Ltd*, No. 08-cv-02127-PAB-BNB, 2009 WL 82494, at *2 (D. Colo. Jan. 13, 2009); *see also Family Fed'n for World Peace and Unification Int'l. v. Moon*, No. 2011 CA 003721 B, 2011 WL

¹ This differs from the practice in federal courts, as recognized in the comments to the Superior Court rule: "Federal Rule of Civil Procedure 26(a)(1) is inconsistent with Superior Court practice, and would ultimately slow down the process of discovery. *The Superior Court rules allow parties to begin discovery at the filing of the complaint*; this process gives parties greater options for early discovery than those available under the Federal Rules." *Comment to Rule 26*, D.C. Super. Ct. R. Civ. P. (emphasis added) (2021).

8199636 (D.C. Super. Ct. Nov. 18, 2011) (summarily denying motion to stay discovery during pendency of a motion to dismiss).

Accordingly, "[a] party seeking a stay of discovery carries a heavy burden of making a 'strong showing' why discovery should be denied." *Skellerup Indus. Ltd v. City of L.A.*, 163 F.R.D. at 600. "Bare assertions that discovery will be unduly burdensome ... are insufficient to justify the entry of an order staying discovery." *Beecham v. Socialist People's Libyan Arab Jamahiriya*, 245 F.R.D. 1, 3 (D.D.C. 2007) (quotation and citation omitted). "Absent some compelling reason, the Court will not stay discovery." *Steil v. Humana Health Care Plans, Inc.*, No. CIV. A 99-2541-KHV, 2000 WL 730428, at *1 (D. Kan. May 1, 2000).

A defendant cannot meet this heavy burden by merely pointing to the fact that a motion to dismiss is pending and suggesting discovery might be unnecessary if it is granted. "Generally, a pending motion to dismiss is not a good reason to stay discovery." *United States ex rel. Westrick v. Second Chance Body Armor, Inc.*, No. CV 04-0280 (RWR/AK), 2007 WL 9706653, at *2 (D.D.C. Aug. 31, 2007); *see also People With Aids Health Grp. v. Burroughs Wellcome Co.*, No. CIV. A 91-0574, 1991 WL 221179, at *1 (D.D.C. Oct. 11, 1991) ("[A] pending motion to dismiss is not ordinarily a situation that in and of itself would warrant a stay of discovery."). The fact that this is an antitrust case does not make these principles any less applicable. *See In Re Amazon.com, Inc. eBook Antitrust Litigation*, Case No. 21-cv-00351-GHW (S.D.N.Y. Oct. 7, 2021), ECF No. 108 (Order denying a stay of discovery) (attached as Exhibit B, docket with Order Denying Discovery highlighted).

Here, Amazon provides little beyond the mere filing of its motion to dismiss to support its heavy burden to obtain a stay. Its base speculation as to the expense of discovery and the number of disputes that the Court will need to resolve fails to appreciably move the needle. *See Am. Mot.*

Stay, 2 (“Discovery in this case, were it to proceed, will be expensive, burdensome, and disputed.”).

Amazon argues that this Court should follow the decision in *D.C. v. Facebook*, No. 2018 CA 008715 B (D.C. Super. Ct. Mar. 8, 2019), in which the court granted a stay. But Amazon ignores the fact that the motion to dismiss there was fundamentally different than Amazon’s motion to dismiss here. In *Facebook*, the motion to dismiss was focused on a jurisdictional question. It was thus reasonable for the court in *Facebook* to grant a stay of discovery while the basic jurisdictional question was addressed, as jurisdictional questions are much more likely to be outcome-dispositive of a case. Here, on the other hand, Amazon is only contesting the sufficiency of the factual allegations in the Complaint, such as whether the District alleged anticompetitive conduct; whether the District alleged a plausible market; whether the District alleged anticompetitive effects; and whether the District alleged concerted action – none of which are jurisdictional issues and none of which justifies a stay of discovery.² Additionally, Amazon ignores the fact that the motion to dismiss in *Facebook* was denied and the stay in that case ultimately proved unnecessary and caused the District and the Court to lose valuable time and progress in discovery of that case.

The Southern District of New York recently denied Amazon’s request for a stay of discovery in another antitrust case. *In Re Amazon.com, Inc. eBook Antitrust Litig.*, Case No. 21-

² Amazon cites to several federal antitrust cases where those courts granted stays of discovery. As discussed, those cases operate under the Federal Rules of Civil Procedure and thus do not proceed into discovery until a defendant answers the complaint or the motion to dismiss is resolved. Amazon also cites a handful of D.C. Superior Court cases that granted motions to stay discovery. Likewise, those cases are inapposite. For example, *Carlyle Inv. Mgmt. L.L.C. v. Ace Am. Ins. Co.*, 131 A.3d 886 (D.C. 2016), Amazon fails to note that *Carlyle* involved only a question of contract interpretation, which is a pure question of law for the court to decide. It is reasonable that the court would grant a motion to stay while considering an outcome-dispositive issue that required no additional fact discovery. *See Carlyle Inv. Mgmt. L.L.C. v. Ace Am. Ins. Co.*, No. 2013 CA 003190 B, 2014 WL 2106304, at *2 (D.C. Super. Ct. May 15, 2014).

cv-00351-GHW (S.D.N.Y. Oct. 7, 2021). In its motion there, Amazon made nearly identical arguments to those made here—that discovery would be expensive and burdensome and thus should be stayed pending a motion to dismiss. Am. Mot. to Stay 2. The court denied Amazon’s request, reasoning:

[A] stay is not warranted, given that the motions to dismiss are not based on any lack of jurisdiction or statute of limitations defense, but rather on supposed pleading deficiencies . . . This Court further finds that issues relating to the breadth and burden of discovery do not, in themselves, justify the delay of discovery in this action.

ECF No. 108 (Exhibit B). The court’s reasoning in *eBooks* is equally applicable here.

II. Amazon Should Not Be Permitted to Obtain Discovery and then Shield Itself from Discovery.

Amazon argues that allowing discovery to proceed now would create an unnecessary burden on it and this Court. Yet Amazon fails to acknowledge until the last page of its Motion that Amazon propounded the equivalent of broad discovery on the District, which the District fully responded to, including the production of relevant, non-privileged documents. Amazon – through its counsel – issued broad FOIA requests on the District seeking all evidence in the District’s possession that supports the factual allegations in the District’s Complaint. FOIA requests are often evaluated as discovery requests when served during active litigation. *See, e.g., Brooks v. D.C. Hous. Auth.*, 999 A.2d 134, 143 (D.C. 2010) (noting that court dismissed FOIA action where discovery dispute concerning at-issue documents was pending in the primary civil litigation). The District, in responding to Amazon’s requests, made clear that it was construing the requests as discovery. This Court should not allow Amazon to create an unlevel playing field here where it

can obtain full discovery under the guise of FOIA but is shielded from its own disclosure obligations.³

III. This D.C. Attorney General Lawsuit on Behalf of D.C. Citizens to Vindicate D.C. Laws Is Independent of and Distinct from the Federal Class Actions.

Contrary to Amazon's assertion, Amazon's desire to coordinate discovery between this case and private cases pending against Amazon in federal court in the Western District of Washington is not an appropriate basis to stay discovery in this case.⁴ First, Amazon recognized and stipulated, and the Court agreed, that this case is not subject to consolidation with the other cases. *See, e.g.,* Exhibit C, Order Regarding Parties' Stipulated Motion for Consolidation, Filing of Consolidated Amended Complaint, and Schedule for Answer or Motion to Dismiss, *Hogan et al. v. Amazon.com, Inc.*, 2:21-cv-00694-RSM (W.D. Wash. June 21, 2021) ("Although the factual allegations in the District of Columbia Action overlap with the allegations in *De Coster*, *West*, and *Frame-Wilson*, the *District of Columbia* Action is not pending in a federal trial court and is therefore not subject to transfer to this District and consolidation.").

Second, Amazon's convenience cannot override the fundamental rules of state sovereignty. *See D.C. v. Facebook Inc.*, No. 2018 CA 008715 B, 2019 WL 7212642, at *15 (D.C. Super. May 31, 2019). In declining to stay the proceedings based on the existence of private federal matters

³ Amazon makes much of the District's pre-suit investigation. At its core, it was Amazon that failed to cooperate in pre-filing discovery. The District and retained counsel made numerous efforts to provide Amazon with additional confidentiality protections, streamline the pre-suit discovery requests, and create additional ethical walls to protect any Amazon information. Amazon refused to work with the District in any of these areas, completely frustrating any pre-suit investigation.

⁴ In those cases, the Parties stipulated that any Federal Rule of Civil Procedure 26(f) discovery conference would be stayed until after Amazon answered the consolidated amended complaint; after a ruling on a motion to dismiss; or if this Court or the court in *Frame-Wilson* allowed discovery to proceed prior to either an answer or resolution on the motion to dismiss. In the *Frame-Wilson* case, motions to dismiss have been fully briefed and waiting for the federal court's ruling since November 2, 2020 (for more than a year). The progress, or lack thereof, of a large, multi-plaintiff, multi-state substantive law class action should not dictate the speed at which the Court is able to move this D.C.-focused litigation.

containing similar factual allegations, the court in *Facebook* found that there were key differences between the District representing its citizens and private plaintiffs seeking relief through a class action, and that a stay “could unduly prejudice the D.C. OAG.” *Id.* at *16. As in *Facebook*, the case here and the cases in Washington are brought under different laws by different plaintiffs who are differently situated. Accordingly, the District should be permitted to move its case forward as quickly as possible in order to protect its citizens, regardless of what is happening in the federal cases (including the various additional procedural steps inherent in a class proceeding that will not be necessary in this case).⁵

IV. A Stay Of Discovery Would Prejudice The District.

Contrary to Amazon’s assertion, even a short stay of discovery would deprive the District of the opportunity to move its case forward as contemplated by Rule 26 towards a just and speedy resolution. This burden would be even greater if discovery was stayed so that it could be coordinated with cases in other courts. As noted by the court in *Facebook*, there is prejudice to the District in having to wait an indeterminate amount of time to proceed with its matter dependent in any part on cases in other courts that are on different timelines, involving different procedural requirements, and dealing with different issues and differently situated parties. *Facebook*, 2019 WL 7212642 at *16.

⁵ Amazon implies in its Motion to Stay that the federal court in *Frame-Wilson* expressed some opinion with regard to the merits of the case when it stayed discovery for jurisdictional reasons. Am. Motion at 4. Unsurprisingly, Amazon cites no language from the court to support its claim, because none exists. Under no reading of the docket entry staying discovery in *Frame-Wilson* could one conclude that the court indicated any opinion or leaning regarding the merits of the case. See Docket No. 14, *Frame-Wilson* (7/14/2020) (terminating “deadlines contained in the [ECF No.] 9 ORDER REGARDING FRCP 26(f) CONFERENCE, INITIAL DISCLOSURES, AND JOINT STATUS REPORT are suspended pending the Court’s ruling on Defendant’s [ECF No.] 11 MOTION to Dismiss for Failure to State a Claim.”).

CONCLUSION

For the foregoing reasons, the District respectfully requests that the Court deny Amazon's Motion for Protective Order and To Stay Discovery.

Dated: November 8, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 8, 2021, I caused the District of Columbia's Opposition to Defendant's Motion for a Protective Order and to Stay Discovery and the attached Proposed Order to be served on counsel for the Defendant via the court's CaseFileXpress e-filing service.

Dated: November 8, 2021

/s/ Theodore F. DiSalvo

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IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA,

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AMAZON.COM, INC.,

Defendant.

CASE NO: 2021 CA 001775 B

Judge Hiram E. Puig-Lugo

ORDER

Upon consideration of the Motion for a Protective Order and to Stay Discovery filed by Defendant Amazon.com, Inc., the District's opposition thereto, and the entire record in this case, it is hereby:

ORDERED that Defendant Amazon.com, Inc.'s Motion for a Protective Order and to Stay Discovery is **DENIED**.

Date: _____

Judge Hiram E. Puig-Lugo
Superior Court of the District of Columbia

Copies to: all counsel of record

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NOT ADMITTED TO THE NEW YORK BAR
*ADMITTED ONLY TO THE CALIFORNIA BAR

August 5, 2021

Runako Kumbula Allsopp
Assistant Attorney General
Office of the Attorney General for the District of Columbia
1350 Pennsylvania Ave NW, Suite 409
Washington, DC 20004

**RE: Freedom of Information Act Request for Documents Relating to the Lawsuit
District of Columbia v. Amazon.com, Inc., No. 2021 CA 001775 B.**

To Whom It May Concern:

Under the Freedom of Information Act, D.C. Code §§ 2-531 *et seq.*, Paul, Weiss, Rifkind, Wharton & Garrison LLP respectfully requests a copy of records¹ held by the Office of

¹ For the purpose of this request, the term "records" includes any and all documents, communications (electronic or otherwise), reports, statements, examinations, memoranda, correspondence, notes, indices, audio or video recordings, digital files, or other records. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records.

the Attorney General for the District of Columbia (the “Attorney General”).² Specifically, we request:

1. All records referenced in the complaint filed on June 1, 2021 in the Superior Court of the District of Columbia by the Attorney General in the lawsuit *District of Columbia v. Amazon.com, Inc.*, No. 2021 CA 001775 B (D.C. Super. Ct. June 1, 2021) (the “Complaint”) or relied on in formulating any allegations in the Complaint, including but not limited to:
 - a. records provided to the Attorney General by third-party sellers,
 - b. records provided to the Attorney General by Amazon customers, and
 - c. records provided to the Attorney General by any other person or entity.
2. All subpoenas, document requests, requests for information, and other formal or informal requests for records or information that the Attorney General served on or made to any person or entity other than Amazon in connection with:
 - a. allegations that Amazon’s Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503, or
 - b. the Attorney General’s investigation into Amazon related to or in connection with allegations that Amazon’s Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 (the “Investigation”).
3. All records that the Attorney General received, pursuant to any subpoena, document request, request for information, other formal or informal requests for records or information, or through voluntary production concerning or related to allegations that Amazon’s Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 or the Investigation.
4. A list of all persons and entities to whom the Attorney General issued a subpoena, document request, request for information, and other formal or informal requests for records or information related to or in connection with allegations that Amazon’s Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 or the Investigation.
5. All records concerning any interview of, or meeting, teleconference, or videoconference with, any person or entity related to or in connection with

² For the purposes of this FOIA request, the Attorney General includes its directors, officers, employees, agents, representatives, or other persons acting, or purporting to act, on its behalf, including attorneys at Hausfeld LLP.

allegations that Amazon's Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 or the Investigation.

6. All records produced during any interview of, or meeting, teleconference, or videoconference with, any person or entity related to or in connection with allegations that Amazon's Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 or the Investigation.
7. All records of communications between the Attorney General and any person or entity, other than Amazon, related to or concerning allegations that Amazon's Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 or the Investigation.
8. All records related to the Attorney General's attempts to contact any person or entity, other than Amazon, related to or concerning allegations that Amazon's Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 or the Investigation.
9. All records of communications between the Attorney General and any potential expert witness or consulting witness related to or concerning allegations that Amazon's Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503 or the Investigation.
10. All records concerning the decision to retain Hausfeld LLP or any other law firm in connection with the Complaint, allegations that Amazon's Marketplace Fair Pricing Policy and the former price parity provision violated D.C. Code §§ 28-4502, -4503, or the Investigation.
11. All records concerning Contract Number DCCB-2020-F-0029 that was awarded to Hausfeld LLP.
12. All records of communications between the Attorney General and Hausfeld LLP concerning Contract Number DCCB-2020-F-0029 awarded to Hausfeld LLP.
13. All records concerning the relationship between any person employed by Hausfeld LLP and any person in the Office of the Attorney General for the District of Columbia, including records sufficient to show such relationship.
14. All records relied on to substantiate or calculate the \$55,000,000 award amount specified in the List of Contract Awards Over \$100,000, available on the Attorney General's website at <https://oag.dc.gov/jobs-partner-opportunities/doing-business-oag>, for Contract Number DCCB-2020-F-0029 that was awarded to Hausfeld LLP.

* * * * *

In accordance with D.C. Code § 2-532(c)(1), we look forward to your reply to this request for disclosure within 15 days.

Where possible, please provide the requested records in electronic format. If the Attorney General maintains the requested records in a computer database, please contact us before retrieving the records so that we can ensure the retrieved records are in a usable and readable format. For any electronic records or communications, please include appropriate metadata (*e.g.*, date and time created, author, file name for documents; *e.g.*, to, from, cc, bcc, subject, date and time for emails) with the production of those records.

Please furnish all applicable records to:

Melissa Felder Zappala
mzappala@paulweiss.com
2001 K Street, NW
Washington, DC 20006-1047
Tel: (202) 223-7458
Fax: (202) 379-4112

If, for any reason, any portion of this request is denied, please inform us of the reasons for the denial in writing and justify all denials by reference to specific exemptions of the FOIA. We expect release of all segregable portions of otherwise exempt material. *See* D.C. Code § 2-534(b). We also reserve the right to appeal any decision in relation to this request.

We are willing to pay fees for this request up to a maximum of \$1,000. If you estimate fees will exceed this limit please inform us first.

Thank you in advance for your prompt attention to this matter.

Sincerely,



Melissa Felder Zappala

cc:

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Amy J. Mauser
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EXHIBIT B

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

CASREF,ECF,LEAD

U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:21-cv-00351-CHW-DCF

In Re Amazon.com, Inc. eBook Antitrust Litigation
Assigned to: Judge Gregory H. Woods
Referred to: Magistrate Judge Debra C. Freeman
Related Cases: [1:21-cv-00615-GHW-DCF](#)

[1:21-cv-01369-GHW-DCF](#)[1:21-cv-01561-GHW-DCF](#)[1:21-cv-00421-GHW-DCF](#)[1:21-cv-01130-GHW-DCF](#)[1:21-cv-03411-GHW-DCF](#)[1:21-cv-01256-GHW-DCF](#)[1:21-cv-02584-GHW-DCF](#)[1:21-cv-03341-GHW-DCF](#)

Date Filed: 01/14/2021
Jury Demand: Plaintiff
Nature of Suit: 410 Anti-Trust
Jurisdiction: Federal Question

Cause: 15:1 Antitrust Litigation (Monopolizing Trade)

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Shannon Fremgen
*on behalf of themselves and all others
similarly situated*

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V.

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Consolidated Plaintiff

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Consolidated Plaintiff

Jeffrey Cook

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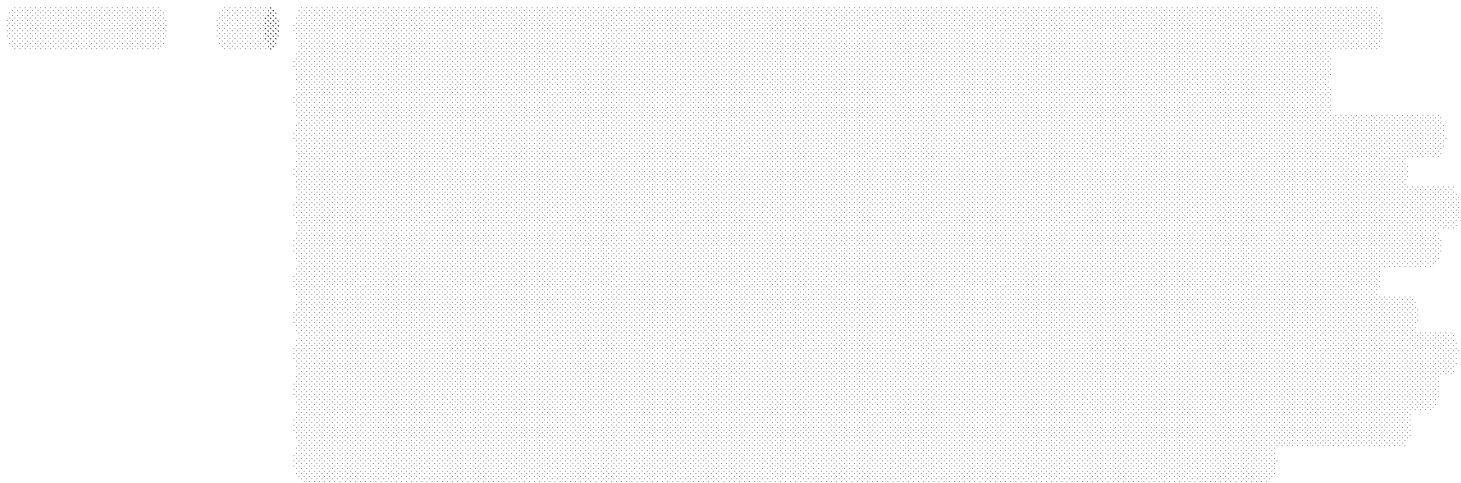


EXHIBIT C

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIZABETH DE COSTER, NEMANJA
KRSTIC, JOHN MARIANE, OSAHON
OJEAGA, and EMMA ZABALLOS, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

Case No. 2:21-cv-00693-RSM

STIPULATED MOTION AND ORDER
FOR CONSOLIDATION, FILING OF
CONSOLIDATED AMENDED
COMPLAINT, AND SCHEDULE FOR
ANSWER OR MOTION TO DISMISS

Note on Motion Calendar: June 18, 2021

KENNETH DAVID WEST and ROBERT
TAYLOR, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

Case No. 2:21-cv-00694-RSM

STIPULATED MOTION AND
[PROPOSED] ORDER FOR
CONSOLIDATION, FILING OF
CONSOLIDATED AMENDED
COMPLAINT, AND SCHEDULE FOR
ANSWER OR MOTION TO DISMISS

Note on Motion Calendar: June 18, 2021

1 The parties, by and through their counsel, stipulate and agree as follows:

2 1. Currently pending before this Court are two concurrently filed cases alleging
3 antitrust claims against Amazon.com, Inc., on behalf of a proposed class: (1) *De Coster v.*
4 *Amazon.com, Inc.*, Case No. 2:21-cv-693 (W.D. Wash., filed May 26, 2021) (the “*De Coster*”
5 Action) and (2) *West v. Amazon.com, Inc.*, Case No. 2:21-cv-694 (W.D. Wash., filed May 26,
6 2021) (the “*West*” Action). Plaintiffs in both the *De Coster* and the *West* Actions (“Plaintiffs”)
7 identified their cases as related to a third proposed class action pending before The Honorable
8 Richard A. Jones: *Frame-Wilson v. Amazon.com, Inc.*, Case No. 2:20-cv-424-RAJ (W.D. Wash.,
9 filed March 19, 2020) (the “*Frame-Wilson*” Action).

10 2. Plaintiffs, along with Defendant Amazon.com, Inc. (together, the “parties”), agree
11 that consolidation of the *De Coster* and *West* Actions is appropriate. Both Actions involve
12 materially similar allegations that, *inter alia*, Defendant required third-party sellers on
13 “Amazon’s platform,” as Plaintiffs define that term, to agree to restrain competition with “online
14 retail platforms” that compete with Amazon, as a result of which prices on all “platforms” were
15 supracompetitive and Plaintiffs were overcharged for purchases on “Amazon’s platform.”
16 Amazon denies the material allegations in the *De Coster* and *West* Actions and contests the
17 characterizations in the complaints in those Actions, but acknowledges the overlapping
18 allegations make consolidation appropriate.

19 3. The First Amended Complaint in the *Frame-Wilson* Action also alleges antitrust
20 claims, that Amazon likewise denies, on behalf of a proposed class of consumers who made
21 purchases on “online retail platforms” that compete with Amazon. Because that action is subject
22 to a pending motion to dismiss, the parties agree that consideration of possible consolidation of
23 the *De Coster* and *West* Actions with *Frame-Wilson* would be premature at this stage. *Benson v.*
24 *Fischer*, 2019 U.S. Dist. LEXIS 12351, at *7 (D. Minn. Jan. 25, 2019).

25 4. Plaintiffs in the *De Coster* and *West* Actions have notified the Court of a further
26 related case pending outside the federal court system: *District of Columbia v. Amazon.com, Inc.*,
27 No. 2021 CA 001775 B (Superior Court of the District of Columbia, Civil Division, filed May
28 25, 2020) (“*District of Columbia*” Action). *See West*, ECF No. 8; *De Coster*, ECF No. 3; *see also*

1 *Frame-Wilson*, ECF No. 30. Although the factual allegations in the *District of Columbia* Action
 2 overlap with the allegations in *De Coster*, *West*, and *Frame-Wilson*, the *District of Columbia*
 3 Action is not pending in a federal trial court and is therefore not subject to transfer to this District
 4 and consolidation.

5 5. Based on the foregoing, the parties hereby stipulate and agree as follows:

- 6 a. Plaintiffs shall file a consolidated amended class action complaint within
 7 30 days of entry of this order;
- 8 b. Amazon shall file an answer or otherwise respond within 60 days after
 9 Plaintiffs file their consolidated amended class action complaint;
- 10 c. If Amazon moves to dismiss and Plaintiffs do not amend a second time,
 11 Plaintiffs' opposition to any motion to dismiss shall be due 60 days after
 12 the deadline for Amazon's motion to dismiss; and
- 13 d. Amazon shall have 45 days to file its reply brief.
- 14 e. Alternatively, if Plaintiffs obtain leave to amend further in response to
 15 Amazon's motion to dismiss, the parties shall meet and confer and submit
 16 a proposed schedule for any answer or response to Plaintiffs' second
 17 amended consolidated class action complaint.
- 18 f. The parties further agree that their Fed. R. Civ. P. 26(f) discovery
 19 conference shall occur within thirty days after the earlier of: (a) the filing
 20 of Amazon's answer to the consolidated amended complaint in these
 21 actions or (b) the Court's disposition of any motion to dismiss filed by
 22 Amazon in response to the consolidated amended complaint (or to a
 23 second amended complaint) in these actions, provided, however, that if the
 24 court in the *District of Columbia* Action permits discovery to go forward
 25 in that action before the Fed. R. Civ. P. 26(f) discovery conference in
 26 these actions, or the Court in the *Frame-Wilson* action permits discovery
 27 to go forward in that action before the Fed. R. Civ. P. 26(f) discovery
 28 conference in these actions, the parties will meet and confer to consider

whether and to what extent Plaintiffs may concurrently pursue discovery
here.

DATED this 18th day of June, 2021

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ORDER

Pursuant to stipulation, IT IS SO ORDERED.

DATED this 21st day of June, 2021.



RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE