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

JEFFREY TAYLOR and ROBERT SELWAY,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY DEMAND

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1 Plaintiffs allege the following based on personal knowledge as to their own acts and
2 experiences and, as to all other matters, based on the investigation of counsel:

3 **I. INTRODUCTION**

4 1. Amazon operates the largest online retail marketplace in the United States: Amazon
5 Marketplace. It counts hundreds of millions of U.S. consumers among its customers.

6 2. Amazon sells goods as a first-party retailer, but it also operates its website as a
7 marketplace where third-party sellers can pay fees to list their goods alongside, and in competition
8 with, Amazon’s own first-party retail listings.

9 3. Amazon claims to be a “customer-centric” company that works to offer the lowest
10 prices to its customers, but in violation of the Washington Consumer Protection Act, Amazon
11 employs a deceptive scheme to keep its profits—and consumer prices—high. It uses a biased
12 algorithm to determine which offers shoppers will see, and therefore which sellers they will buy
13 from, when they search for items on Amazon.

14 4. When more than one seller on Amazon’s marketplace offers the same item for sale,
15 an Amazon algorithm selects just one seller’s offer to appear in the “Buy Box” of a given product
16 page. The Buy Box contains “Buy Now” and “Add to Cart” buttons that allow consumers to
17 purchase the item in question. Nearly 98% of the time, Amazon shoppers go with the offer Amazon
18 chooses for the Buy Box.¹

19 5. Customers can opt for a different offer than the Buy Box selection, but they rarely
20 do, in part due to the one-click convenience of the purchase, but also because Amazon doesn’t make
21 other options very conspicuous. To select a different offer, consumers have to locate the
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23
24 ¹ *Federal Trade Commission v. Amazon.com, Inc.*, Case No. 2:23-cv-01495-JHC (W.D. Wash.
25 Nov. 2, 2023) Complaint (“FTC Complaint”), ¶ 85. The FTC and 17 states filed an antitrust
26 complaint against Amazon in the Western District of Washington in September 2023. The FTC’s
27 complaint was filed after an extensive investigation of Amazon’s practices. *Id.* at 11, 122; *see*
28 *also* “Amazon Faces Landmark Monopoly Lawsuit by FTC,” REUTERS (Sept. 27, 2023), available
at <https://www.reuters.com/technology/us-sues-amazoncom-breaking-antitrust-law-harming-consumers-2023-09-26/> (stating that FTC filed antitrust complaint against Amazon after a four-year investigation) (last visited Feb. 7, 2024).

1 inconspicuous text that says “Other Sellers on Amazon” or “See All Buying Options,” and then
2 pick from the list that appears.²

3 6. Consumers reasonably believe that the Buy Box price is the best price available in
4 the marketplace for a given item. But they are often wrong. The Buy Box algorithm is biased in
5 favor of Amazon first-party retail offers or offers from third-party sellers who participate in
6 Fulfillment By Amazon (FBA, Amazon’s logistics service, for which it charges third-party sellers
7 hefty fees to store their inventory, pack their products, ship orders, handle returns, and communicate
8 with customers). While ostensibly identifying the selection that consumers would make if they
9 considered all the available offers, Amazon’s Buy Box algorithm deceptively favors Amazon’s own
10 profits over consumer well-being and will often select an Amazon first-party retail or FBA offer
11 over an offer from a non-FBA seller, even when the non-FBA offer for the same product and
12 delivery time is cheaper. The result is that consumers routinely overpay for items that are available
13 at lower prices from other sellers on Amazon—not because consumers don’t care about price, or
14 because they’re making informed purchasing decisions, but because Amazon has chosen to display
15 the offers for which it will earn the highest fees.

16 7. For example, the same toy construction set might be sold on Amazon’s marketplace
17 by two sellers: one that uses FBA and one that fulfills and ships its own orders. If the seller using
18 FBA sells the toy for \$55, and the seller that doesn’t use FBA sells the toy for \$51, the Buy Box
19 algorithm will favor the FBA offer, and the more expensive offer will “win” the Buy Box. Thus, if
20 a consumer searches Amazon for “toy construction set” and clicks on the item’s Detail Page, the
21 buttons that allow the consumer to “Buy Now” or “Add to Cart” will display the \$55 offer—not
22 because that offer is better for the consumer, but because that offer generates the most fees for
23 Amazon.

24 8. American and European antitrust authorities have launched multiple investigations
25 of Amazon’s anticompetitive conduct in relation to the Buy Box (among other Amazon practices).

26 ² Stacy Mitchell and Shaoul Sussman, *How Amazon Rigs Its Shopping Algorithm*,
27 PROMARKET (Nov. 6, 2019), available at [https://www.promarket.org/2019/11/06/how-amazon-
28 rigs-its-shopping-algorithm/](https://www.promarket.org/2019/11/06/how-amazon-rigs-its-shopping-algorithm/) (last visited Feb. 7, 2024).

1 In 2021, the Italian Competition Authority imposed a €1.1 billion fine on Amazon companies in
2 Italy for “abusing its dominant position” in the market in many ways, including by favoring FBA
3 offers in the Buy Box.³ The regulators found that Amazon’s buy box algorithm favored FBA sellers
4 since at least 2016.⁴

5 9. This is a proposed class action on behalf of all persons who made a purchase using
6 the Buy Box from 2016 to the present asserting claims for monetary and injunctive relief under the
7 Washington Consumer Protection Act.

8 II. JURISDICTION

9 10. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act
10 of 2005, 28 U.S.C. § 1332(d), because at least one Class member is of diverse citizenship from
11 Amazon, there are more than 100 Class members nationwide, and the aggregated amount in
12 controversy exceeds \$5,000,000, exclusive of interest and costs.

13 11. Plaintiffs are residents of California and purchased from Amazon’s Buy Box many
14 times. Amazon’s conduct as discussed herein harmed and injured Plaintiffs financially.

15 12. This Court has personal jurisdiction over Amazon because Amazon is headquartered
16 in Washington State, does business in Washington, directly or through agents, and has registered
17 with the Washington Secretary of State, such that it has sufficient minimum contacts with
18 Washington.

19 III. VENUE

20 13. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because Amazon’s principal
21 place of business is in this judicial district, and a substantial part of the events giving rise to the
22 claims occurred in this judicial district.

24 ³ *Italian Competition Authority: Amazon Fined Over € 1,128 Billion for Abusing its Dominant*
25 *Position*, AGCM (Dec. 9, 2021), available at [https://en.agcm.it/en/media/press-](https://en.agcm.it/en/media/press-releases/2021/12/A528)
[releases/2021/12/A528](https://en.agcm.it/en/media/press-releases/2021/12/A528) (last visited Feb. 7, 2024).

26 ⁴ Final Decision by the Autorità Garante della Concorrenza e del Mercato, dated November
27 30, 2021 (“AGCM Decision”), ¶ 876, available (in Italian) at
28 https://www.agcm.it/dotcmsdoc/allegati-news/A528_chiusura%20istruttoria.pdf (last visited Feb.
7, 2024).

1 14. There is also a venue provision, specifying this judicial district under the terms of
2 use for all Amazon customers.⁵

3 **IV. PARTIES**

4 **A. Plaintiffs**

5 15. Plaintiff Jeffrey Taylor is a resident of San Clemente, California. Mr. Taylor has
6 been a long-term Amazon customer for at least the past ten years and has made many purchases
7 through Amazon's Buy Box. He seeks relief for the harm suffered by Class members because of
8 Defendant's unfair and deceptive Buy Box algorithm.

9 16. Plaintiff Robert Selway is a resident of Corona Del Mar, California. Mr. Selway has
10 been a long-term Amazon customer since approximately 1999 and has made many purchases
11 through Amazon's Buy Box. He seeks relief for the harm suffered by Class members because of
12 Defendant's unfair and deceptive Buy Box algorithm.

13 **B. Defendant**

14 17. Amazon is an online retail giant with its principal headquarters in Seattle,
15 Washington. Amazon sells its own goods directly to retail customers throughout the United States
16 via its online retail marketplace, Amazon Marketplace, where Amazon also sells third-party
17 merchants' goods.

18 **V. FACTUAL ALLEGATIONS**

19 18. Amazon is one of the largest companies in the world, ranked among the five largest
20 publicly traded companies by both market capitalization and revenue. Amazon's business
21 encompasses broad swaths of the American economy, from online retail to media, cloud computing,
22 grocery stores, logistics, operational services, and more.

23 19. The key aspects of Amazon's operations relevant to this Complaint are its online
24 retail marketplace and its fulfillment service.

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26 ⁵ *Conditions of Use*, AMAZON HELP & CUSTOMER SERVICE (last updated Sept. 14, 2022),
27 available at
28 <https://www.amazon.com/gp/help/customer/display.html%3FnodeId%3DGLSBYFE9MGKKQXXM> (last visited Feb. 7, 2024).

1 **A. Amazon’s Business**

2 **1. Amazon’s Online Retail Marketplace**

3 20. Amazon began selling books online in 1994 and quickly expanded into new product
4 categories: first computer games and music, then electronics and toys, and then nearly everything.⁶
5 In 2020, Amazon sold almost 92 million unique products across virtually every conceivable
6 category to U.S. consumers.⁷

7 21. Amazon originally sold goods to shoppers by purchasing items wholesale and
8 reselling them on its website. Amazon calls its wholesale suppliers “vendors.” Today, Amazon
9 continues to sell a wide range of products through this type of vendor-retailer relationship, from
10 laundry detergent to sports equipment.

11 22. Amazon also sells its own private label goods. These range from Amazon’s Kindle
12 e-reader to consumer products like batteries sold under the “Amazon Basics” label.

13 23. These two components, vendor-retailer and private label, make up Amazon’s first-
14 party retail business unit, which Amazon refers to collectively as Amazon “Retail.”

15 24. Amazon Retail sells on Amazon Marketplace, where other retailers can also sell
16 products directly to shoppers through Amazon’s online retail platform. Amazon calls third-party
17 companies that sell on Amazon “sellers,” and refers to sales by sellers as “Marketplace” sales.

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26 ⁶ Christopher McFadden, *A Very Brief History of Amazon, the Everything Store*, INTERESTING
27 ENGINEERING (Mar. 17, 2023), available at <https://interestingengineering.com/culture/a-very-brief-history-of-amazon-the-everything-store> (last visited Feb. 7, 2024).

28 ⁷ FTC Complaint ¶ 67.

1 25. Amazon charges sellers four primary fees to sell on its Marketplace. First, Amazon
2 requires sellers to pay a selling fee, which can be a monthly fee or a fee for each item sold. Second,
3 Amazon charges all sellers a commission or “referral fee” based on the price of each item sold on
4 Amazon. Third, Amazon charges sellers enrolled in FBA for the use of Amazon’s logistics services.
5 Fourth, Amazon charges sellers for advertising services. Most sellers pay all four fees to make a
6 significant volume of sales on Amazon.⁸ FBA and advertising are typically their largest costs.⁹



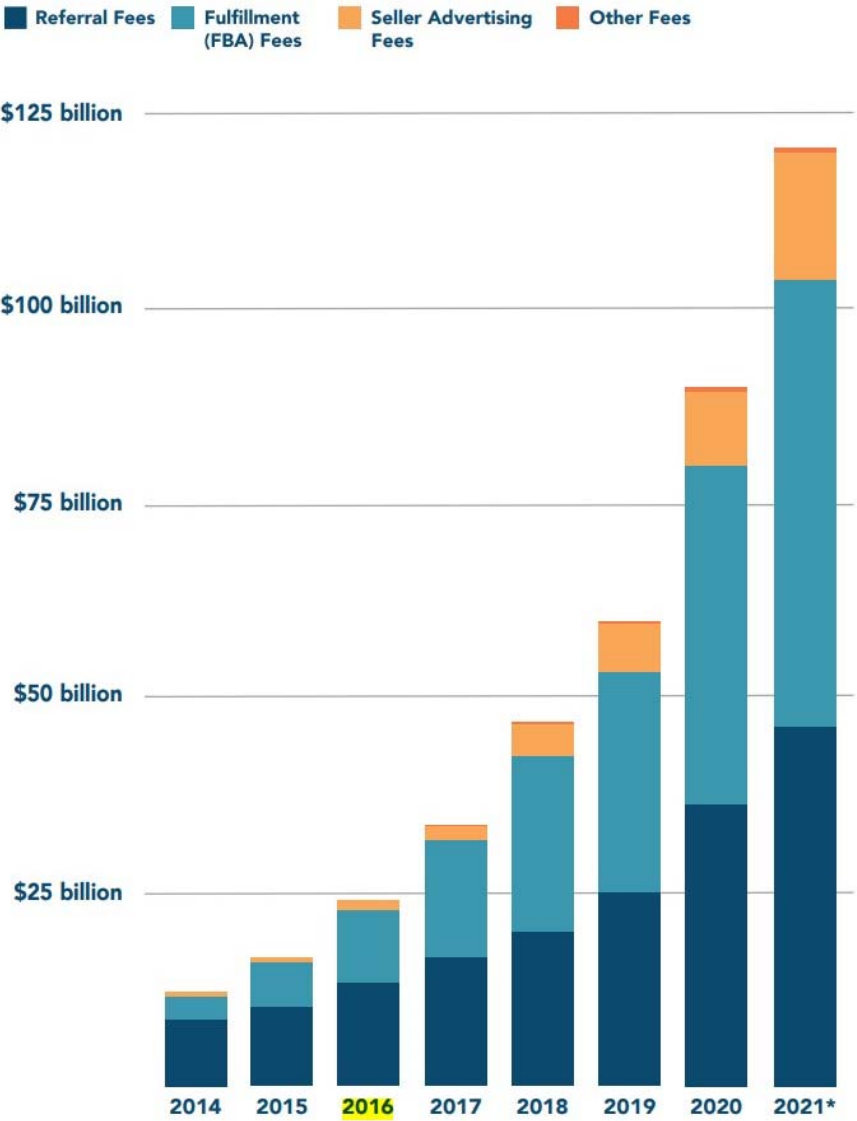
19
20 26. Amazon’s revenue from the fees it charges sellers, including FBA, has increased
21 dramatically over time:¹⁰

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23
24 ⁸ Amazon Takes a 50% Cut of Sellers’ Revenue, Marketplace Pulse (Feb. 13, 2023), available
25 at <https://www.marketplacepulse.com/articles/amazon-takes-a-50-cut-of-sellers-revenue> (last
visited Feb. 7, 2024).

26 ⁹ *Id.*

27 ¹⁰ Stacy Mitchell, *Amazon’s Toll Road*, INSTITUTE OF LOCAL SELF-RELIANCE (Dec. 2021)
28 (“Amazon’s Toll Road”) at 10, available at <https://ilsr.org/amazons-toll-road/> (last visited Feb. 7,
2024).

Amazon's Seller Fee Revenue by Category



* Projected for the full year

Notes: These are estimates based on ILSR's analysis of data in Amazon's 10-K filings, data from eMarketer, and Amazon's rate cards for various seller fees.

2. Amazon's "Fulfillment by Amazon" Service

27. Amazon sells logistics services under the name "Fulfillment by Amazon," which is commonly abbreviated to "FBA." Sellers can use FBA to fulfill orders made on Amazon.

28. Logistics providers like FBA provide warehousing, packing, shipping, and handling of returns. Here's how Amazon describes it to its sellers¹¹:



29. According to the FTC's investigation of Amazon, the company provides logistics services for nearly 92% of all orders made on Amazon across both its Marketplace and Retail business units.¹² When Amazon first launched FBA in 2006, only a small fraction of sellers signed up for it.¹³ When Amazon introduced Prime in 2011, that number began to increase substantially. By 2016, 56% of the top 10,000 sellers on Amazon Marketplace were using FBA and by 2020, that number increased to 84%.¹⁴

¹¹ *Guide to Fulfillment: Grow Your Online Sales Channels*, AMAZON, available at https://sell.amazon.com/learn/ecommerce-fulfillment?ref_=sdus_fba_ecommf_what_h1#top (last visited Feb. 7, 2024).

¹² FTC Complaint ¶ 112.

¹³ Amazon's Toll Road at 12, *supra* n.10.

¹⁴ *Id.*

1 30. When a seller uses FBA, Amazon charges the seller for storing their items and
2 charges the seller a fee based on the dimensions and weight of the product when it is purchased.¹⁵

3 31. Amazon increased the fulfillment fees it charges sellers for FBA by approximately
4 30% in just two years, from 2020 to 2022.¹⁶

5 **3. Amazon Prime**

6 32. Amazon runs a subscription program called Amazon Prime. Amazon launched
7 Prime in 2005 as a shipping subscription. For an annual fee of \$139, subscribers buy access to
8 unlimited shipping on eligible items, at no per-order cost to shoppers, as well as access to video-
9 on-demand, a music streaming service, a gaming service, a prescription subscription service, and
10 other benefits.¹⁷

11 33. Amazon displays a “Prime Badge” in search results to show Prime subscribers which
12 items are eligible for the prepaid unlimited shipping included in the Prime subscription. Amazon’s
13 interfaces also let Prime subscribers filter their searches to display only Prime-eligible offers. On
14 the top left-hand side of Amazon’s desktop webpage and mobile app, Amazon displays a “Prime”
15 filter. Once a shopper selects the filter, only Prime-eligible offers appear in search results.

16 34. More than 160 million Americans are Amazon Prime members.¹⁸ As a result,
17 whether a seller’s offer for a given item is eligible for Prime shipping can determine whether that
18 offer is visible in search results for millions of shoppers.

19 **4. The Buy Box**

20 35. Amazon Retail simultaneously presents its own products to the public side-by-side
21 with those of its third-party sellers on Amazon Marketplace. To a shopper browsing on Amazon

22 ¹⁵ *Amazon FBA: Fulfillment Services for Your Ecommerce Business*, AMAZON, available at
23 <https://sell.amazon.com/fulfillment-by-amazon> (last visited Feb. 7, 2024).

24 ¹⁶ FTC Complaint ¶ 112.

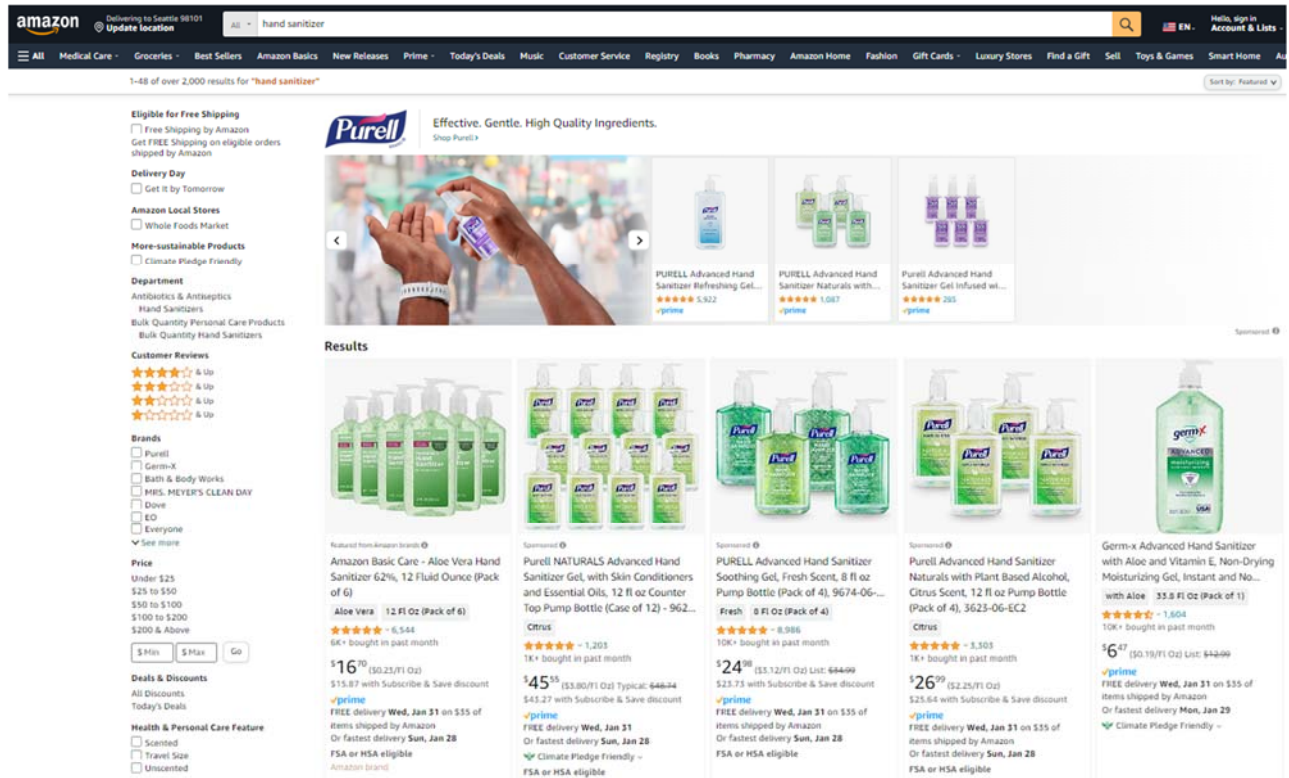
25 ¹⁷ *Prime*, AMAZON, available at <https://www.amazon.com/amazonprime> (last visited Feb. 7,
2024).

26 ¹⁸ Daniela Coppola, *Number of Amazon Prime Users in the United States from 2017 to 2022*
27 *with a Forecast for 2023 and 2024*, STATISTA (Jul. 11, 2023), available at
28 [https://www.statista.com/statistics/504687/number-of-amazon-prime-subscription-households-](https://www.statista.com/statistics/504687/number-of-amazon-prime-subscription-households-usa/)
[usa/](https://www.statista.com/statistics/504687/number-of-amazon-prime-subscription-households-usa/) (last visited Feb. 7, 2024).

1 Marketplace, there are no obvious differences between the types of listings, nor is there a way to
 2 regularly shop for products sold only by Amazon Retail or Amazon’s third-party sellers.

3 36. Shoppers typically reach Amazon using an internet browser or a dedicated Amazon
 4 shopping application (“mobile app”) on an internet-connected device. Each month in the United
 5 States, 126 million people visit Amazon on a mobile device, and more than 42 million people access
 6 Amazon on a desktop computer.¹⁹

7 37. There are more than a billion different products available for sale on Amazon.²⁰ To
 8 navigate this billion-plus product catalog, Amazon offers a search bar. When shoppers enter a
 9 search, Amazon’s systems generate a “Search Results Page” that displays product listings
 10 interspersed with advertisements. Product listings on the Search Results Page typically show a
 11 name, picture, price, star rating, shipping speed estimate, and Prime status (or lack thereof) for each
 12 item:



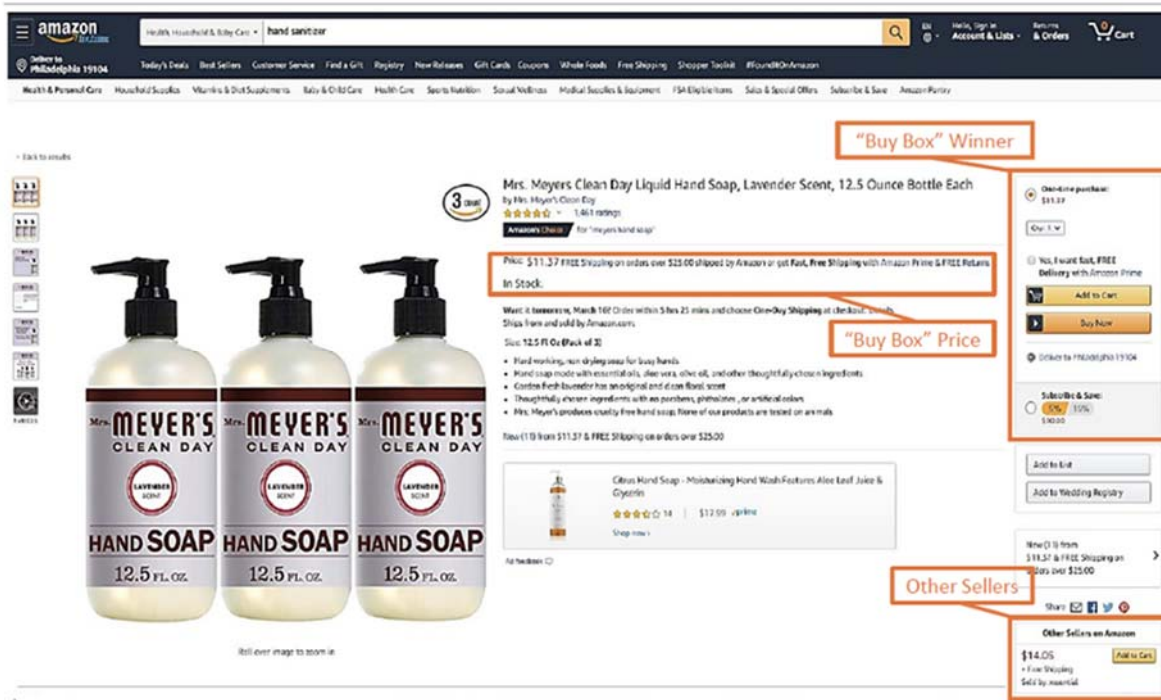
19 FTC Complaint ¶ 80.

20 Id. ¶ 81.

38. If shoppers want to learn more about or purchase an item displayed on the Search Results Page, they must click the product listing, which brings them to the “Detail Page” for that item. An item’s Detail Page typically includes a detailed product description, additional pictures, product dimensions or specifications, and customer-generated ratings and reviews. Importantly, the Detail Page usually includes a “Featured Offer” or “Buy Box” winner.

39. When an item is offered by more than one seller on Amazon and there are multiple offers for a single item, Amazon uses the “Featured Merchant Algorithm” to choose one offer to display in the Buy Box. Amazon calls this displayed offer the “Featured Offer.” Being chosen as the Featured Offer is commonly known as “winning” the Buy Box.²¹

40. The Buy Box displays a single offer for a specific item, as shown below. Shoppers can use the Buy Box to add the displayed item into their online shopping cart (“Add to Cart”) or buy the item immediately (“Buy Now”):



²¹ Because what Amazon calls the “Featured Merchant Algorithm” determines which offer appears in the Buy Box for a given item, this Complaint refers to the Featured Merchant Algorithm as the “Buy Box algorithm.”

1 41. Nearly 98% of all purchases on Amazon are made using the “Add to Cart” and “Buy
2 Now” buttons in the Buy Box.²² As a result, winning the Buy Box is essential to making sales on
3 Amazon.

4 42. Amazon deliberately steers shoppers away from offers that are not featured in the
5 Buy Box. If a shopper using a computer wants to see an offer from a seller that is not featured in
6 the Buy Box, the shopper must either click a link that identifies only the number of additional offers,
7 which takes the shopper to the “All Offer Display,” or scroll down the page to see “Other Sellers
8 on Amazon,” which includes a list of additional sellers Amazon has selected. Shoppers using
9 Amazon’s mobile app must click on a link labeled “Other Sellers on Amazon” to access the All
10 Offer Display, which opens another page that displays multiple offers.

11 43. Amazon makes it similarly difficult for shoppers to make a purchase when Amazon
12 has removed the Buy Box from an item’s Detail Page. Amazon’s page layout prevents shoppers
13 from adding to a shopping cart or buying any offers directly from the Detail Page. If there is no
14 Buy Box for an item, then shoppers must navigate to the “All Offer Display” by clicking on a link
15 labeled “See All Buying Options.”

16 44. Fewer than 3% of purchases on Amazon are made from offers outside the Buy Box.²³

17 **B. Amazon’s Biased Buy Box Algorithm Causes Consumers to Overpay While**
18 **Rewarding Sellers for Paying Fees to Amazon**

19 45. Amazon claims to be “customer-centric” company²⁴ that consistently provides low
20 prices to its many customers. Amazon knows that when selecting among multiple offers for the
21 same item, consumers will usually choose the lowest-priced offer among those with the desired
22 terms, e.g., delivery time. Amazon acknowledges in public statements that “[l]ow prices matter to
23

24 ²² FTC Complaint ¶ 16 (The FTC estimates that almost 98% of Amazon sales are made
25 through the Buy Box).

26 ²³ *Id.* at ¶ 89.

27 ²⁴ Daniel Slater, *Leading and Innovating with Leadership Principles*, AWS, available at
28 <https://aws.amazon.com/executive-insights/content/leading-and-innovating-with-leadership-principles/> (last visited Feb. 7, 2024).

1 customers.”²⁵ It boasts that “[f]rom the beginning, Amazon has obsessed over offering customers
2 low prices across our wide selection of products,”²⁶ and that it “work[s] hard to keep prices low
3 across our store.”²⁷

4 46. Amazon asserts that “[b]y having third-party sellers in our store,” Amazon
5 “increase[s] selection and price competition for customers.”²⁸ It promises that its “customers can
6 trust that they will find low, competitive prices” on Amazon.²⁹

7 47. Amazon has also asserted that it “works hard every day to offer low prices and fast
8 delivery across our wide selection of products, whether it’s the holiday season or a regular shopping
9 day.” Amazon purports to offer “the lowest online prices among leading retailers” and that it will
10 “never stop working to make Amazon the place that customers think of for low prices.”³⁰

11 48. Regarding Amazon’s decision to open up its platform to other retailers and to offer
12 “a single detail page for both Amazon retail and third-party items,” Jeff Bezos wrote in a 2005 letter
13 to shareholders: “[O]ur judgment was simple. If a third party could offer a better price or better
14 availability on a particular item, then we wanted our customer to get easy access to that offer.”³¹

15 49. Amazon customers reasonably believe that the Buy Box—which presents the only
16 way for a customer to “Buy Now” or “Add to Cart” for a given item—features the lowest-price
17 offer for that item.

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19 ²⁵ *Amazon’s Approach to Providing customers Low Prices Every Day*, AMAZON (Nov. 30,
20 2023), available at <https://www.aboutamazon.com/news/retail/amazon-pricing#:~:text=We%20strive%20to%20offer%20Earth's,and%20keep%20them%20coming%20back> (last visited Feb. 7, 2024).

21 ²⁶ *Id.*

22 ²⁷ *Id.*

23 ²⁸ *Id.*

24 ²⁹ *Id.*

25 ³⁰ *Amazon Is the Lowest-Price U.S. Retailer for the Seventh Year in a Row, According to*
26 *Profitero Study*, AMAZON (Nov. 15, 2023), available at
<https://www.aboutamazon.com/news/retail/amazon-low-prices-2023> (last visited Feb. 7, 2024).

27 ³¹ Jeffrey P. Bezos, *2005 Letter to Shareholders*, available at
28 <https://www.sec.gov/Archives/edgar/data/1018724/000119312506084815/dex991.htm> (last
visited Feb. 7, 2024).

1 50. But that isn't true. Since at least 2016, Amazon's Buy Box algorithm has been rigged
2 in favor of offers for which Amazon fulfills and delivers the product, either because Amazon itself
3 is the seller, or the seller is a third party that participates in FBA.³² The result is that the Buy Box
4 frequently features offers that are more expensive than other offers for the *same product* on
5 Amazon's marketplace.³³ Because consumers make frequent purchases from Amazon through the
6 Buy Box, the chances that any Class member was unharmed by one or more purchases is virtually
7 non-existent.³⁴

8 51. According to a 2021 report by the Italian Competition Authorities, when a consumer
9 searches for an item on Amazon Marketplace, the Buy Box algorithm applies seven filters to
10 determine which product offers are responsive.³⁵ It then applies five additional factors to evaluate
11 which of the responsive offers should win the Buy Box.³⁶ Two of the five factors bias the algorithm
12 in favor of FBA offers.

13 52. One such factor is whether the offer qualifies for Amazon Prime.³⁷ FBA offers
14 automatically qualify for Amazon Prime. It is far less common for non-FBA sellers to have offers
15 that qualify for Prime, and Amazon holds non-FBA sellers to a higher standard when determining
16 whether they qualify for Prime. According to a report by the United States House Subcommittee
17 on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, third-party
18 sellers need a Prime Badge to "maintain a favorable search result position, to reach Amazon's more
19
20

21 ³² AGCM Decision, ¶ 876.

22 ³³ COMMISSION DECISION of 20.12.2022 relating to a proceeding under Article 102 of the
23 Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement
24 Cases AT.40462 – Amazon Marketplace and AT.40703 – Amazon Buy Box, ¶ 235, available at
https://ec.europa.eu/competition/antitrust/cases1/202310/AT_40703_8990760_1533_5.pdf (last
visited Feb. 7, 2024).

25 ³⁴ See FTC Complaint ¶ 85.

26 ³⁵ AGCM Decision ¶¶ 259-60.

27 ³⁶ *Id.* ¶ 261.

28 ³⁷ *Id.* ¶¶ 261–62.

1 than 112 million Prime members, and to win the Buy Box.”³⁸ Purchasing “FBA is functionally the
2 only way for sellers to get the Prime Badge for their product listings.”³⁹

3 53. The second factor that is biased in favor of FBA offers is the seller performance
4 rating. This factor is supposed to incorporate data based on the seller’s consumer reviews and late
5 deliveries over the preceding 12 months.⁴⁰ But the Buy Box algorithm does not apply this metric to
6 offers where the seller participates in FBA. Instead, it assigns such offers the maximum value,
7 simply by virtue of being FBA offers.⁴¹

8 54. The result of the Buy Box algorithm’s biased factors is that offers routinely “win”
9 the Buy Box, even though they are more expensive than other offers in the Marketplace for the
10 same product, because the offer is from Amazon or the third-party sellers that participate in FBA—
11 and pay Amazon the requisite FBA fees.

12 55. Despite presenting the Buy Box winner as the offer consumers would prefer if they
13 viewed all the available options,⁴² Amazon’s Buy Box algorithm deceptively preferences offers
14 from Amazon itself and third parties that participate in FBA, even when there are lower prices on
15 otherwise identical offers from sellers that don’t use FBA. Its own records reflect that rather than
16 serving the interests of consumers, it is Amazon’s increased profits from FBA that are the relevant
17 factor in awarding the Buy Box to those sellers.⁴³

18 56. The fact that Amazon’s Buy Box algorithm is biased toward offers where Amazon
19 is the logistics provider is a material fact to the ordinary consumer, who otherwise believes that the
20 Buy Box features the best price for a given item. This deception was designed to—and has—
21

22 ³⁸ Subcommittee on Antitrust, Commercial, and Administrative Law of the Committee on the
23 Judiciary, 116th Cong., Investigation of Competition in Digital Markets, Majority Staff Report
24 and Recommendations (“House Report”) at 288 (2020), available at [https://democrats-
judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf](https://democrats-judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf) (last visited Feb. 7, 2024).

25 ³⁹ *Id.* at 287.

26 ⁴⁰ AGCM Decision ¶ 266.

27 ⁴¹ *Id.*

28 ⁴² House Report at 249.

⁴³ *Id.* at 288–89.

1 deceived consumers into believing that the offer featured in the Buy Box is the best deal available
2 on Amazon.

3 57. Consumers rely on Amazon’s unfair and deceptive acts and practices regarding the
4 Buy Box algorithm every time they make purchases using the Buy Box buttons (either “Buy Now”
5 or “Add to Cart”). When they use Buy Box buttons to purchase FBA items that are available for
6 lower prices from other sellers on Amazon, they overpay, while Amazon lines its pockets—not
7 only with referral fees, but with the fees it charges sellers for FBA.

8 58. Plaintiffs and class members have been harmed by Amazon’s deception. Through
9 willfully deceptive practices Amazon tricks consumers into paying more for goods on its site by
10 placing more expensive offers in the Buy Box when Amazon is the logistics provider.

11 **C. Plaintiffs and Class Members Could Not Have Reasonably Discovered Amazon’s**
12 **Biased Algorithm Until It Became the Subject of Regulars’ Concerns**

13 59. The discovery rule applies to Washington’s Consumer Protection Act.⁴⁴ Even within
14 Amazon, only a handful of people know how the Buy Box algorithm works and which factors it
15 uses to score competing offers.⁴⁵ Third-party sellers have no idea how they are being scored by
16 Amazon’s secret formula, and consumers are even more in the dark.⁴⁶

17 60. One seller provided “anecdotal evidence” to the congressional committee
18 investigating Amazon that “Amazon favors sellers who participate in Amazon’s fulfillment
19 program over sellers who do not.”⁴⁷ But in sworn testimony before the same committee, Amazon
20 Associate General Counsel Nate Sutton depicted Amazon’s Buy Box algorithm as a neutral arbiter
21 “aimed to predict what customers want to buy, and we apply the same criteria whether you’re a
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25 ⁴⁴ *Deegan v. Windermere Real Estate/Center-Isle, Inc.*, 197 Wn. App. 875, 893, 391 P.3d 582,
591 (2017).

26 ⁴⁵ *Mitchell & Sussman, supra* n.2.

27 ⁴⁶ *Id.*

28 ⁴⁷ House Report at 289.

1 third-party seller or Amazon to that because we want customers to make the right purchase
2 regardless of whether it's a seller or Amazon."⁴⁸

3 61. Regulators in Europe, however, investigated Amazon's algorithm and found that
4 Amazon used it to engage in systematic bias in its handling of the Buy Box selection. The Italian
5 Competition Authority published its results on November 30, 2021 (subsequently publishing a
6 corrected, final report on December 9, 2021).⁴⁹ The Italian Competition Authority imposed a €1.1
7 billion fine on members of the Amazon group of companies.⁵⁰ It was the first regulatory proceeding
8 to identify the mechanism that allows FBA sellers to charge higher prices while still receiving
9 preferred treatment in Amazon's selection of the Buy Box winner.

10 62. The Italian Competition Authority also imposed behavioural measures on Amazon
11 that would be subject to review by a monitoring trustee. Those measures included a requirement
12 that Amazon define and publish fair and non-discriminatory standards for the fulfilment of their
13 orders, in line with the level of service that Amazon intends to guarantee to Prime consumers and
14 that it grant sales benefits and visibility on Amazon.it to all third-party sellers which are able to
15 comply with those standards. And it further ordered Amazon to refrain from negotiating - on behalf
16 of sellers - rates and other contractual terms concerning the logistics of sellers' orders on Amazon.it
17 with carriers and/or competing logistics operators, outside FBA.⁵¹

18 63. Even before the Italian Competition Authority issued its report, the European
19 Commission announced on November 10, 2020, its own preliminary finding that Amazon's rules
20 and criteria for its Buy Box unduly favor FBA sellers.⁵² This announcement followed just months

21 ⁴⁸ Mitchell & Sussman, *supra* n.2.

22 ⁴⁹ AGCM Decision.

23 ⁵⁰ *Italian Competition Authority: Amazon Fined Over € 1,128 Billion for Abusing its*
24 *Dominant Position*, AGCM (Dec. 9, 2021), available at <https://en.agcm.it/en/media/press-releases/2021/12/A528> (last visited Feb. 7, 2024).

25 ⁵¹ *Id.*

26 ⁵² *Antitrust: Commission Sends Statement of Objections to Amazon for the Use of Non-Public*
27 *Independent Seller Data and Opens Second Investigation Into Its E-Commerce Business*
28 *Practices*, EUROPEAN COMMISSION (Nov. 10, 2020), available at https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2077 (last visited Feb. 7, 2024).

1 after former CEO Jeff Bezos admitted to Congress that “indirectly, I think the Buy Box does favor
2 products that can be shipped with Prime.”⁵³ The European Commission also opened a separate but
3 related investigation into “whether the criteria that Amazon sets to select the winner of the ‘Buy
4 Box’ and to enable sellers to offer products to Prime users, under Amazon’s Prime loyalty
5 programme, lead to preferential treatment of Amazon’s retail business or of the sellers that use
6 Amazon’s logistics and delivery services.”⁵⁴

7 64. On December 20, 2022, the European Commission reached a final settlement with
8 Amazon, in which Amazon agreed to take action to address the EU Commission’s concerns which
9 formed the basis of the Buy-Box-bias and data-misuse investigations.⁵⁵ As it relates to the Buy-Box
10 bias, the Commission emphasized its concern that the algorithm’s “systemic biases may lead to not
11 displaying the best offer as the Featured Offer” when that offer is proposed by sellers that are not
12 enrolled in FBA, or it may display the best offer by an FBA “seller but typically with a higher price
13 than the one which that seller would have had to offer should it not benefit from those preferential
14 conditions and the resulting more favourable ranking by the Amazon algorithm.”⁵⁶

15 65. Amazon’s settlement with the Commission requires it to apply equal treatment to
16 all sellers when deciding what to feature in the Buy Box.⁵⁷ As part of the agreement, Amazon will
17 display a second, competing offer in addition to the main Buy-Box item if there is a substantial
18 difference in price or delivery terms.⁵⁸

19 ⁵³ *Big Tech Antitrust Hearing Full Transcript July 29*, REV (July 29, 2020) (emphasis added),
20 available at <https://www.rev.com/blog/transcripts/big-tech-antitrust-hearing-full-transcript-july-29>
21 (last visited Feb. 7, 2024).

22 ⁵⁴ *Antitrust: Commission Sends Statement of Objections to Amazon*, *supra* n.52.

23 ⁵⁵ *COMMISSION DECISION of 20.12.2022 relating to a proceeding under Article 102 of the*
24 *Treaty on the Functioning of the European Union (TFEU) and Article 54 of the EEA Agreement*
25 *Cases AT.40462 – Amazon Marketplace and AT.40703 – Amazon Buy Box*, EUROPEAN
COMMISSION (Dec. 20, 2022), available at
https://ec.europa.eu/competition/antitrust/cases1/202310/AT_40703_8990760_1533_5.pdf (last
visited Feb. 7, 2024).

26 ⁵⁶ *Id.* ¶ 208 (brackets omitted).

27 ⁵⁷ *Id.* ¶ 234.

28 ⁵⁸ *Id.* ¶ 235.

1 66. The UK’s Competition and Markets Authority (CMA) also investigated Amazon’s
2 Buy Box practices. Amazon’s conduct raised the CMA’s concern that “Amazon sets and applies
3 the conditions and criteria for selecting the ‘Featured Offer’ on product pages in a discriminatory
4 manner, such that Amazon Retail and sellers that use [FBA] are unfairly advantaged over other
5 sellers.”⁵⁹ To address this concern, Amazon offered to change its practices and allow oversight by
6 the CMA to ensure that “Amazon will apply objectively verifiable, non-discriminatory conditions
7 and criteria to determine which offer (either from Amazon Retail or third-party sellers) will become
8 the Featured Offer and will not use Prime-eligibility or Prime labelling as relevant criteria for
9 selecting the Featured Offer (the ‘Buy Box Commitments’).”⁶⁰

10 67. Before these government investigations and official reports of Amazon’s biased
11 algorithm, there were only isolated reports in the press, suggesting that Amazon appear to favor
12 FBA sellers in the selection of the Buy Box winner. Those reports did not involve an investigation
13 of Amazon’s algorithm and other internal documents and therefore were not of the nature and kind
14 that would have spurred reasonable consumers to recognize that their rights had been infringed.

15 68. Because Amazon does not publicly reveal the factors that determine its Buy Box
16 selection, Plaintiffs and Class members could not have reasonably learned that its algorithm was
17 biased until regulators issued such findings in 2020 and 2021.

18 69. Amazon told the Italian Competition Authority that it modified its Buy Box
19 algorithm in June 2020. But regulators do not appear to be satisfied that Amazon’s changes removed
20 the FBA bias. As late as November 2023, regulators in Europe required Amazon to take further
21 action to remedy its Buy Box bias in their respective jurisdictions.

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25 ⁵⁹ *Decision to Accept Binding Commitments Under the Competition Act 1998 from Amazon In*
26 *Relation to Conduct on Its UK Online Marketplace* ¶1.2(b), COMPETITION & MARKETS
27 AUTHORITY (Nov. 3, 2023), available at
[https://assets.publishing.service.gov.uk/media/6544cbaed36c91000d935d20/Non-](https://assets.publishing.service.gov.uk/media/6544cbaed36c91000d935d20/Non-confidential_decision_pdfa_4.pdf)
28 [confidential_decision_pdfa_4.pdf](https://assets.publishing.service.gov.uk/media/6544cbaed36c91000d935d20/Non-confidential_decision_pdfa_4.pdf) (last visited Feb. 7, 2024).

⁶⁰ *Id.* ¶ 1.3(b).

1 **VI. CLASS ACTION ALLEGATIONS**

2 70. Plaintiffs bring this action on behalf of themselves, and as a class action under the
3 Federal Rules of Civil Procedure (“Rules”), specifically Rules 23(a) and (b)(3), seeking damages
4 pursuant to federal law on behalf of the members of the following Class:

5 All persons in the United States who purchased from the Buy Box
6 on or after January 1, 2016, and until the earlier of a) such time as
7 Amazon takes corrective action to remove the bias in favor of
Amazon retail or FBA offers from its Buy Box algorithm in the
United States, or b) the Court certifies the Class.

8 71. Excluded from the Class are Amazon and its officers, directors, management,
9 employees, subsidiaries, or affiliates. Also excluded from the Class are the district judge or
10 magistrate judge to whom this case is assigned, as well as those judges’ immediate family members,
11 judicial officers and their personnel, and all governmental entities. Also excluded from the class are
12 residents of Arizona.

13 72. The identities of all Class members are readily identifiable from information and
14 records maintained by Amazon.

15 73. **Numerosity:** Members of the Class are so numerous that joinder is impracticable.
16 Plaintiffs believe that there are hundreds of millions of Class members such that joinder of all class
17 members is impracticable.

18 74. **Typicality:** Plaintiffs’ claims are typical of the claims of the other Class members.
19 The factual and legal bases of Amazon’s liability are the same and resulted in injury to Plaintiffs
20 and all other members of the proposed Class.

21 75. **Adequate representation:** Plaintiffs will represent and protect the interests of the
22 proposed Class both fairly and adequately. Plaintiffs have retained counsel competent and
23 experienced in complex class-action litigation. Plaintiffs have no interests that are antagonistic to
24 those of the proposed Class, and their interests do not conflict with the interests of the proposed
25 Class members they seek to represent.

26 76. **Commonality:** Questions of law and fact common to the members of the Class
27 predominate over questions that may affect only individual Class members because Amazon has
28

1 acted on grounds generally applicable to the Class and because Class members share a common
2 injury. Thus, determining damages with respect to the Class as a whole is appropriate. The common
3 applicability of the relevant facts to claims of Plaintiffs and the proposed Class are inherent in
4 Amazon's wrongful conduct because the financial injuries incurred by Plaintiffs and each member
5 of the proposed Class arose from the same unfair and deceptive conduct alleged herein.

6 77. There are common questions of law and fact specific to the Class that predominate
7 over any questions affecting individual members, including:

- 8 a. Whether Amazon's Buy Box is biased to favor Amazon Retail or third-party
9 sellers' offers that rely on FBA as the logistics provider;
- 10 b. Whether Amazon intentionally designed its Buy Box algorithm to favor
11 offers where Amazon is the logistics provider;
- 12 c. Whether, if not intentionally designed, Amazon knowingly persisted in
13 employing a biased Buy Box algorithm, despite learning of its biased
14 outcome;
- 15 d. Whether such biased selection is likely to mislead a reasonable consumer;
- 16 e. Whether Plaintiffs and Class members have been damaged by Amazon's
17 conduct; and
- 18 f. Whether Plaintiffs and the other Class members are entitled to damages and
19 other monetary relief and, if so, in what amount.

20 78. **Predominance and superiority:** This proposed class action is appropriate for
21 certification. Class proceedings on behalf of the Class members are superior to all other available
22 methods for the fair and efficient adjudication of this controversy, given that joinder of all members
23 is impracticable. Resolution of the Class members' claims through the class action device will
24 present fewer management difficulties, and it will provide the benefit of a single adjudication,
25 economies of scale, and comprehensive supervision by this Court.

26 VII. CHOICE OF LAW

27 79. Washington law applies to Plaintiffs' claims by virtue of a choice-of-law provision
28 that is set forth in "conditions of use" that appear on Amazon's website:

By using any Amazon Service, you agree that applicable federal law, and the laws of the state of Washington, without regard to principles of conflict of laws, will govern these Conditions of Use

1 and any dispute of any sort that might arise between you and
2 Amazon.^[61]

3 **VIII. CLAIM FOR RELIEF**

4 **COUNT I**

5 **VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**
6 **(WASH. REV. CODE §§ 19.86.010, ET SEQ)**

7 80. Plaintiffs reallege and incorporate by reference all paragraphs as though fully set
8 forth herein. Plaintiffs bring this law claim on behalf of themselves and each member of the
9 proposed Class.

10 81. The Washington Consumer Protection Act (“Washington CPA”) broadly prohibits
11 “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any
12 trade or commerce.” Wash. Rev. Code § 19.86.010.

13 82. Amazon committed the acts complained of herein in the course of “trade” or
14 “commerce” within the meaning of Wash. Rev. Code § 19.86.010.

15 83. Amazon engaged in unfair or deceptive acts or practices through the conduct
16 described herein by employing a biased algorithm to confuse or deceive Plaintiffs and members of
17 the Class to nudge or trick them into purchasing higher priced offers despite the availability of
18 lower priced offers for the same product with equal or better estimated delivery times.

19 84. Amazon’s conduct was unfair or deceptive within the meaning of the Act in that
20 Amazon portrayed itself as a cost-conscious retailer that was dedicated to providing consumers the
21 best prices, when behind the scenes, Amazon intentionally and knowingly misled Plaintiffs and
22 Class members by creating and implementing an algorithm that gives preference to Amazon and
23 FBA sellers’ offers over less expensive offers for the same products offered from other third-party
24 sellers on Amazon Marketplace at the same or better estimated delivery times.

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26 ⁶¹ *Conditions of Use*, AMAZON HELP & CUSTOMER SERVICE (last updated Sept. 14, 2022),
27 available at
28 <https://www.amazon.com/gp/help/customer/display.html%3FnodeId%3DGLSBYFE9MGKKQXXM> (last visited Feb. 7, 2024).

1 85. Amazon's unfair and deceptive acts and practices concerning the Buy Box algorithm
2 were made for the purpose of inducing consumers to purchase from sellers that participated in the
3 FBA program (and therefore paid Amazon higher fees) rather than from sellers who were offering
4 the same products with equivalent delivery times for lower prices. Consumers will ordinarily
5 choose the lowest-price offer for a given item, and consumers reasonably believed that the Buy Box
6 displayed the lowest-priced offers for a given item in Amazon's marketplace.

7 86. Plaintiffs and Class members have suffered an injury in fact, including an
8 overpayment caused by Amazon placing higher priced offers in the Buy Box and thereby obscuring
9 lower priced offers for the same product at equivalent or better delivery times.

10 87. Amazon's selection of higher priced offers to occupy the Buy Box despite the
11 availability of lower priced but otherwise equal or better offers from non-FBA sellers was
12 inherently and materially deceptive to Class members because, as Amazon acknowledges,
13 consumers care about low prices.

14 88. But for Amazon's deceptive conduct concerning the Buy Box algorithm, Plaintiffs
15 and members of the Class would have purchased the lower priced offers from non-FBA sellers with
16 equivalent or better delivery times.

17 89. Amazon claims to have modified its Buy Box algorithm in June 2020. But the
18 adequacy of such changes is in doubt. As late as November 2023, regulators in Europe have
19 required Amazon to remedy its Buy Box bias.

20 90. To the extent that Amazon continues to employ a bias in favor of Amazon and FBA
21 sellers in its selection of the Buy Box winner. Plaintiffs seek to enjoin further unfair and fraudulent
22 acts or practices by Amazon, recover damages and obtain all other relief allowed under Wash. Rev.
23 Code § 19.86.010.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs prays for judgment against Amazon as follows:

26 A. The Court determine that this action may be maintained as a class action under
27 Rules 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure, appoint Plaintiffs as Class

1 Representatives and their counsel of record as Class Counsel, and direct that notice of this action,
2 as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to the Class, once
3 certified;

4 B. An order enjoining Amazon’s use of a biased algorithm in the process of selecting
5 the Buy Box winner and ordering Amazon to revise its selection process as it has done in Europe;

6 C. Actual damages in an amount to be determined at trial;

7 D. Treble damages pursuant to Wash. Rev. Code § 19.86.090;

8 E. An order requiring Amazon to pay both pre- and post-judgment interest on any
9 amounts awarded; and

10 F. Such other or further relief as may be appropriate.

11 **JURY TRIAL DEMANDED**

12 Plaintiffs hereby demand a trial by jury.

13 DATED this 8th day of February 2024.

14 Respectfully submitted,

15 HAGENS BERMAN SOBOL SHAPIRO LLP

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