IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, a municipal corporation, 400 6th Street N.W., 10th Floor Washington, D.C. 20001, Plaintiff, **v.** **AMAZON.COM, INC.**, 410 Terry Ave. North, Seattle, WA, 98109, Defendant.	CASE NO.: 2021 CA 001775 B JUDGE: Alfred S. Irving, Jr. NEXT EVENT: Initial Status Conference, Oct. 28, 2021,10:30a **JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT

Plaintiff District of Columbia (the "District"), by and through the Office of the Attorney General, brings this action against Defendant Amazon.com, Inc. ("Amazon") for violations of the District of Columbia Antitrust Act, D.C. Code §§ 28-4501, *et seq.* In support of its claims, the District states as follows:

INTRODUCTION

1. Amazon is by far the largest online marketplace in the United States. As a multi-seller online marketplace, Amazon competes with other multi-seller online marketplaces, like Walmart.com and eBay, to sell hosting and other services to Third Party Sellers ("TPSs") that want to sell their products online to consumers. Amazon also competes with both multi-seller and single-seller online marketplaces (for example, TPSs' own websites where a TPS has self-supplied access to online consumers) to attract consumer traffic and sales from its marketplace.

2. In addition to competing as an online marketplace, Amazon also competes with

its TPSs and others as a retailer of a wide variety of products that its sells directly to consumers through its online marketplace. In a recent survey, 53% of TPSs reported that Amazon sells its own products as a retailer in direct competition with the products sold by that TPS. Thus, not only is Amazon the gatekeeper to its dominant online marketplace, it is also a significant competitor for retail sales of many products sold by the TPSs who utilize Amazon's online marketplace. In its capacity as a retailer, Amazon sells goods that it buys from manufacturers and wholesalers that Amazon refers to as First Party Sellers ("FPSs").

3. The dominance of Amazon's online marketplace is clear. It hosts millions of TPSs on its marketplace; its closest competitor multi-seller online marketplaces host only a fraction of this number, despite charging lower fees and commissions than Amazon. Most TPSs believe that to successfully sell online, it is imperative that they have a presence on Amazon's online marketplace. Moreover, Amazon accounts for between 50-70% of all online sales in the United States. Amazon's share of sales is even larger among only multi-seller online marketplaces, such as Walmart.com and eBay. Most Americans overwhelmingly turn to Amazon as the first place they buy anything online.

4. Amazon's dominance among online marketplaces is protected by substantial barriers to entry, many created by Amazon itself. Amazon's dominance also is protected by its anticompetitive business practices. These business practices include: (1) Amazon's former Price Parity Provision; (2) Amazon's current Fair Pricing Policy; and (3) Amazon's new Minimum Margin Agreement. Far from enabling consumers to obtain the best products at the lowest prices, these practices instead cause prices across online marketplaces to be artificially inflated, both for products sold through Amazon's marketplace and through its competitors' marketplaces. These practices also cause commissions and fees to TPSs to be higher, and

profits for TPSs and FPSs to be lower, than they would be in a competitive market, thereby harming these sellers. These practices cause harm to competition among online marketplaces and in the retail markets of multiple products sold by both Amazon and TPSs. They also harm consumer choice and innovation.

5. The Price Parity Provision. In order to sell their products through Amazon's marketplace, TPSs execute Amazon's Business Solutions Agreement ("BSA"). Until at least 2019 in the United States, TPSs agreed through the BSA that they would not offer their products through other online marketplaces, including TPS's own websites, at a lower price or on better terms than TPSs offered their products through Amazon's marketplace. This term of the agreement was called the "Price Parity Provision" ("PPP").

6. Through this anticompetitive restraint, Amazon insulated its dominance by forcing TPSs to charge the same prices on other online marketplaces. This reduces the ability of those other online marketplaces to gain consumer traffic and sales by offering TPSs lower fees and commissions that allow TPSs to charge lower prices to consumers and still maintain their same profits on those marketplaces. This restraint artificially raised the price of goods to consumers across online marketplaces, because TPSs were forced to incorporate Amazon's high fees and commissions into their product prices not only when selling through Amazon's marketplace, but also when selling through competing online marketplaces. These price restrictions resulted in less competition and innovation among online marketplaces, and higher prices and less choice for consumers.

7. The PPP also served to protect Amazon from competition as a retailer in individual product markets. Amazon and TPSs compete to sell certain products directly to consumers (*e.g.*, Amazon sells its own brand of batteries against TPSs who sell Duracell and

Energizer batteries on Amazon's and other online marketplaces). The PPP ensured that the high commissions and fees that Amazon charged to TPSs were incorporated in the price everywhere that the TPS offered their products online, thereby reducing the price competition on Amazon's retail offerings that competed with these products.

8. Prior to 2013, TPSs in Europe agreed to this same PPP when utilizing Amazon's European online marketplaces. Around 2012, competition authorities in the United Kingdom and Germany initiated investigations to determine whether Amazon's PPP was anticompetitive and increased consumers' prices for products purchased through online marketplaces. While these investigations were pending, Amazon abandoned the PPP in Europe, but maintained the PPP in the United States and elsewhere.

9. The Fair Pricing Policy. In 2019, under intense scrutiny from Congress and U.S. government regulators, Amazon removed the PPP from its BSA in the United States. However, Amazon quickly replaced the PPP with an effectively identical substitute, its Fair Pricing Policy ("FPP"). TPSs must now agree, through the BSA, to abide by the FPP, which permits Amazon to impose sanctions on a TPS that offers a product for a lower price or on better terms through a competing online marketplace. These sanctions can include cancellation of listings, suspension or forfeiture of payments, and even banishment of the TPS from the Amazon online marketplace, which can result in devastating economic consequences for the TPS.

10. The effect of both the PPP and the FPP (referred to collectively hereafter at times as "the most-favored nation agreements" or "MFNs") is the same: Amazon and TPSs agree that the TPS will not sell their products through any other online marketplace—including TPSs' *own* websites—for lower prices, or on better terms, than offered through Amazon's

online marketplace. These restrictions insulate Amazon from competition as both an online marketplace and as a retailer of products that compete with TPS products, cause prices to consumers across all online marketplaces to be higher than they would be otherwise, and enable Amazon to charge TPSs higher commissions and fees than it could in a truly competitive market.

11. The Minimum Margin Agreement. Amazon employs a different anticompetitive agreement with its FPSs to insulate it from competition from other online marketplaces. FPSs sell their products to Amazon for Amazon to sell, either as its own brand or otherwise, as a retailer through its online marketplace. In their sales agreements, FPSs and Amazon agree that the FPS guarantees Amazon a certain minimum profit when Amazon sells the products it purchased from the FPS on Amazon's online marketplace ("Minimum Margin Agreement" or "MMA"). If Amazon ultimately sells the product for a price that results in Amazon achieving less than the agreed minimum profit, the FPS must compensate Amazon for the difference. This agreement can at times result in a FPS incurring millions of dollars in "true up" costs to Amazon. As a practical effect of this agreement, FPSs have an incentive to maintain higher prices on other online marketplaces to ensure that Amazon does not drop its price based on lower prices elsewhere, thereby triggering the FPS's "true up" requirements. Indeed, FPSs have raised their prices to competing online marketplaces to prompt the maintenance of higher prices on those marketplaces and even asked those marketplaces to raise prices to online consumers to avoid triggering Amazon's minimum margin protection. These agreements reduce other online marketplaces' ability to compete with Amazon by offering lower prices to consumers. Thus, like the MFNs imposed on TPSs, the MMA results in reduced competition among online marketplaces and higher prices to consumers.

12. Amazon's PPP, FPP, and MMA effectively insulate the marketplace giant from competition as both an online marketplace and a retailer. These agreements also cause prices on online marketplaces to be artificially inflated, enable Amazon to charge higher fees and commissions to TPSs, reduce profits to TPSs and FPSs, and suppress innovation and reduce investment in potentially competing online marketplaces.

13. The District brings this case seeking to have this Court: enjoin Amazon from engaging in these and similar anticompetitive practices in violation of D.C. Code §§ 28-4502 and 28-4503; provide other appropriate injunctive relief; order relief for harmed consumers; impose civil penalties to deter future misconduct by Amazon and others; and award attorneys' fees and costs.

JURISDICTION

14. This Court has subject matter jurisdiction over this case pursuant to D.C. Code §§ 1-301.81, 11-921, 28-4507, and 29-214.20(a). This Court has personal jurisdiction over Amazon pursuant to D.C. Code §§ 13-422 and 13-423(a).

THE PARTIES

15. Plaintiff District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The Attorney General is specifically authorized to enforce the District's antitrust laws, including D.C. Code §§ 28-4502 and 28-4503.

16. Defendant Amazon.com, Inc. ("Amazon") operates an online marketplace and acts as an online retailer. Amazon's marketplace sells access to its online vehicle to TPSs for them to sell their products to consumers. Millions of TPSs in the U.S. sell their products through Amazon's online marketplace, which directly competes with other online marketplaces. Amazon also sells its own Amazon-branded products and products purchased from FPSs directly to consumers through its online marketplace in individual retail product markets. In these markets, Amazon directly competes with other retailers, including its TPSs. Amazon maintains its principal headquarters in Seattle, Washington. At all times material to this Complaint, Amazon advertised, marketed, promoted, offered for sale, and sold goods and services in the District of Columbia.

AMAZON'S ANTICOMPETITIVE CONDUCT

A. AMAZON IS THE DOMINANT U.S. ONLINE MARKETPLACE.

17. Amazon operates the world's largest online marketplace. Since its early days, founder Jeff Bezos made clear that Amazon intended to ignore short-term profitability and instead grow market share in, and dominate, this market. Amazon is estimated to account for between 50-70% of the total sales through online marketplaces. By contrast, the next two largest online marketplaces—Walmart.com and eBay—have online marketplace shares in the single digits. Amazon accounts for an even larger percentage of sales on multi-seller online marketplaces.

18. Millions of TPSs sell their products through Amazon's online marketplace, while far fewer do so on competing online marketplaces. For example, only 110,000 TPSs sell on Walmart's online marketplace.

19. Amazon is, by far, the most-visited online marketplace by consumers, with 2.6 billion visits in a single month. Sixty-six percent of consumers start their search for new

products on Amazon, and a staggering 74% go directly to Amazon when they are ready to buy a specific product. Given its ubiquitous presence among online marketplaces, Amazon's business practices and decisions have an outsized effect on the U.S. economy.

B. AMAZON PROTECTS ITS DOMINANT ONLINE MARKETPLACE AND RETAIL BUSINESS WITH MOST FAVORED NATION AGREEMENTS.

20. In order for a TPS to sell its products through Amazon's online marketplace, it must execute Amazon's BSA. Prior to 2019, the BSA included the PPP, through which TPSs agreed that the "purchase price and every other term of sale [would] be at least as favorable to Amazon Site users as the most favorable terms via Your Sales Channels . . . ." "Your Sales Channels" included the TPS's own website, as well as other non-Amazon online marketplaces.

21. In response to scrutiny from U.S. regulators, Amazon replaced the PPP with the FPP in 2019, which similarly requires TPSs to agree that:

> Amazon regularly monitors the prices of items on our marketplaces, including shipping costs, and compares them with other prices available to our customers. If we see pricing practices on a marketplace offer that harms customer trust, Amazon can remove the Buy Box, remove the offer, suspend the ship option, or, in serious or repeated cases, suspending [sic] or terminating [sic] selling privileges.
>
> Pricing practices that harm customer trust include, but are not limited to: . . . setting a price on a product or service [on Amazon's platform] that is significantly higher than recent prices offered on or off Amazon.

22. Amazon's MFNs have elicited antitrust scrutiny from international and U.S. regulators. Antitrust investigations in the United Kingdom and Germany prompted Amazon to abandon its PPP in Europe in 2013. German authorities were especially concerned that Amazon's price parity provisions constituted price-fixing agreements between horizontal competitors.

23. In December 2018, U.S. Senator Richard Blumenthal (D-CT) wrote to the U.S. Department of Justice and the Federal Trade Commission expressing concern over the continued application of Amazon's PPP in the U.S.:

> Amazon's price parity provisions may raise prices for consumers both in the short term and in the long run. In the short term, these clauses prohibit third-party merchants who sell on online marketplaces from passing on any savings to consumers. For example, if a competitor to Amazon charges lower commission fees to third-party merchants operating on its site, Amazon's price parity provision will prohibit sellers from reducing their prices to reflect the lower cost of selling through Amazon's competitor. In the long run, these provisions may permit Amazon to steadily raise the transaction fees it charges third-party merchants, secure in the knowledge that sellers will either have to accept the higher fees or charge all its online customers higher prices across all sales channels.

Senator Blumenthal concluded that U.S. regulators could "easily establish that Amazon has the high market share typically necessary to bring successful litigation under Section 2 [of the Sherman Act.]." A few months later, in March 2019, Amazon eliminated the PPP from its BSA and replaced it with the FPP, with the same anticompetitive objective and effects.

24. Amazon aggressively enforces its MFNs. Amazon uses an extensive network of electronic surveillance and employees to monitor the prices of products offered by TPSs through other online marketplaces. When Amazon discovers that a TPS is offering the same or similar product through another online marketplace at a lower price, it sends the TPS a pricing alert that warns the TPS that its product is no longer eligible for the "Buy Box", which is the featured offer on any product page. TPSs report regularly receiving these types of alerts. Given the importance of the Buy Box feature, this punishment can be devastating for TPSs. Amazon also punishes TPSs not complying with its MFNs in additional ways, including freezing TPSs' inventory, placing holds on TPSs' accounts and payments from Amazon online marketplace sales, and suspending or revoking the TPSs' accounts entirely. TPSs regularly increase their prices on other online marketplaces in order to avoid these sanctions.

25. Amazon also punishes a TPS if a different seller obtains and sells the TPS's products for less on competing online marketplaces. In this way, Amazon further controls pricing on other online marketplaces by incentivizing a TPS to monitor whether its products are being sold online by other sellers for less than the price offered on Amazon's marketplace. TPSs devote enormous amounts of time and spend thousands of dollars each month on electronic marketplace "scraping" services to monitor the prices of their products on other online marketplaces in order to adhere to their agreements with Amazon and avoid the marketplace giant's punishment and sanctions. Worse still, Amazon will punish a TPS if Amazon discovers what it considers to be a product "similar" to that of the TPS being sold by another company for less through another online marketplace, even though these "similar" products are often distinguishable in quality or function from the TPS's product.

26. The MFNs also insulate Amazon from competition as a retailer. Amazon directly competes with over 50 percent of its TPSs to sell similar and substitutable products at retail to online consumers. Amazon's MFNs and high fees and commissions ensure that TPS products are offered at artificially high prices not only on Amazon's marketplace, but also on competing marketplaces, including the TPSs' own websites. This reduces TPSs' ability to compete with Amazon's substitutable products. Absent the MFNs, TPSs could offer their products for lower prices or on better terms through competing marketplaces, thereby providing consumers with alternatives to Amazon products at lower prices.

C. AMAZON'S INFLATED SELLING FEES FURTHER RAISE PRICES FOR CONSUMERS ON AMAZON'S AND OTHER ONLINE MARKETPLACES.

27. After a TPS executes the BSA and agrees to the pricing restrictions in the PPP and FPP, it may begin selling on Amazon's online marketplace subject to certain fees and commissions.

28. Amazon charges TPSs high fees to sell their products through Amazon's online marketplace. Over the past five years, Amazon has continuously increased its fees such that it has added an extra 11% to its cut of TPS sales. Amazon's basic fee, its "referral fee," is 15% on most products, while its referral fee on some products, such as clothing, is higher. Amazon's basic referral fee has stayed at approximately the same level since Amazon launched its online marketplace in 2000. Given Amazon's massive growth, and its ability to spread costs across far more transactions, Amazon's referral fees should (in a competitive market) have declined substantially. They have not, demonstrating the lack of competitive pressure on Amazon's online marketplace from other online marketplaces.

29. Sellers can either fulfill their own orders or they can select "Fulfillment by Amazon" ("FBA"). When a TPS selects FBA, Amazon charges the TPS additional fees to handle inventory, ship the product to the consumer, collect payments, process returns, and credit the seller's account. It is estimated that, including FBA charges on top of all other fees, many TPSs pay Amazon a 40% sales commission.

30. TPSs have little choice but to select FBA and pay these high fees, because it is the primary way for a TPS's products to become eligible for the "Buy Box" and obtain profitable sales levels. When Amazon and one or more TPSs offer the same or similar products on Amazon's online marketplace, Amazon combines all of the offers onto one product page, with one of the products being awarded the "Featured Offer" or "Buy Box." This product becomes the offer most visible to consumers on the product detail page and the product easiest for consumers to purchase through Amazon's online marketplace. Sellers not winning the Buy Box are relegated to a far-less prominent location on the listing page.

31. Being awarded Amazon's Buy Box is critical: 82% of all TPSs' sales through Amazon's online marketplace occur through the Buy Box, and the percentage is even higher for mobile purchases. Most people searching for a product on Amazon's online marketplace will not even see a TPS's product unless it appears in the Buy Box, putting those non-Buy-Box TPSs at a significant competitive disadvantage. The Buy Box is *not* reserved for the best-priced product. Instead, Amazon's selection methods for the Buy Box winner consider factors that further reinforce the dominance of Amazon's online marketplace.

32. A ProPublica investigation into Amazon's Buy Box practices confirms that Amazon cares more about enriching itself than offering its customers competitive prices. The investigation looked at 250 frequently purchased products over several weeks to see which ones were selected for the Buy Box. About three-quarters of the time, Amazon awarded the Buy Box to its own products and those of companies that pay for its auxiliary online marketplace services even when there were substantially-less-expensive product offerings from other TPSs.

33. By contrast, Amazon's online marketplace competitors charge much lower fees and commissions for sellers to sell through their marketplaces. For example, Walmart.com charges no setup, subscription, or listing fees, only a referral fee on each sale. TPSs who choose to use Walmart.com's Fulfillment Services program are charged a fixed monthly storage fee and fulfillment/delivery fees that are significantly less than what Amazon charges. Another competitor, eBay, generally offers at least 50 free product listings before charging its $0.35 product listing fees, and generally sets its commissions well below Amazon's. Amazon has seen little seller attrition as a result of maintaining and increasing its fees. The fact that Amazon can charge significantly higher fees without losing TPSs is further evidence of its market power.

34. Additionally, many TPSs sell their products on their own websites, self-supplying their access to online purchasers in a way that incurs far lower fees. Thus, selling on Amazon is substantially more expensive for TPSs than selling through other competing online marketplaces. Through Amazon's MFNs, these high fees are ultimately passed on to consumers through higher prices not only on Amazon, but also on other online marketplaces.

35. The high fees Amazon charges its TPSs are a substantial source of revenue for Amazon. Between 2014 and 2020, Amazon's revenue from TPS fees and charges grew from $11.75 billion to over $80 billion. Indeed, Amazon's third-party services were recently valued at more than $250 billion. Seller fees now account for 21% of Amazon's total corporate revenue. Amazon's profit margins on seller fees from its online marketplace are about 20%, four times higher than its margins on its own retail sales.

36. Amazon's MFNs force TPSs to incorporate Amazon's inflated fees into their prices on other online marketplaces, including the TPS's own online marketplace. Absent this restraint, many TPSs would be able to sell their products through their own or other online marketplaces for less than they sell them on Amazon's online marketplace, making the products available to consumers at lower prices. Removal of this restraint would also entice buyers and sellers to utilize competing online marketplaces and incentivize new competing online marketplaces.

D. AMAZON'S MMA SIMILARLY REDUCES COMPETITION AND INCREASES PRICES TO CONSUMERS.

37. Amazon also enters into anticompetitive agreements with its FPSs. Amazon and FPSs agree in the MMA that, if Amazon fails to realize the agreed profit when it resells the FPS's products at retail to consumers through its online marketplace, the FPS will pay Amazon

the difference. This can result in a FPS owing millions of dollars in “true up” payments to Amazon.

38. The typical scenario triggering the MMA is when Amazon lowers its retail price for a product on its online marketplace because it has identified a lower price for the product on a competing online marketplace. Thus, the practical effect of this agreement, like the MFNs, is that the FPS is penalized if it sells, or allows others to sell, its products on a competing online marketplace at a lower price. The purpose and effect of the MMA is the same as the TPS MFNs: to prevent sellers from offering their products on competing online marketplaces at lower prices or on better terms than the products are offered on Amazon’s online marketplace, thereby reducing other online marketplaces’ ability to compete with Amazon’s online marketplace for consumer traffic and sales by offering lower prices. These agreements insulate Amazon’s online marketplace from the competitive threat that competitors will successfully lure consumers away from Amazon and grow market share.

E. AMAZON’S MFNs AND MMA REDUCE COMPETITION IN THE RELEVANT MARKET OF ONLINE MARKETPLACES.

1. <u>Amazon’s Marketplace Competes in the U.S. with Other Online Marketplaces.</u>

39. Amazon is the dominant player among U.S. online marketplaces, accounting for between 50-70% of all online sales and an even greater share of multi-seller online marketplace sales. Amazon’s marketplace competes with other multi-seller online marketplaces such as e-Bay and Walmart.com to sell hosting and other services to TPSs to enable TPSs to access online consumers and sales. Amazon has millions of TPSs on its online marketplace, despite its high fees and commissions—far more than its closest competitors. For example, Walmart.com has only 110,000 sellers on its marketplace.

40. Amazon competes with both multi-seller and single-seller online marketplaces,

including the TPSs' own websites to attract consumer traffic and sales. A single-seller online marketplace is one where a particular seller has self-supplied access to online consumers. Amazon's MFNs and MMA are designed to and have successfully reduced competition in this online marketplace market and protected Amazon's dominant position.

41. Online marketplaces are separate and distinct from brick-and-mortar marketplaces ("physical marketplaces"). The FTC has recognized that a relevant market may be divided by channel of sale, resulting in separate markets for brick-and-mortar marketplaces and online marketplaces.

42. The U.S. House of Representatives' Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary ("House Antitrust Subcommittee") recently conducted an extensive investigation of anticompetitive practices in the tech industry—including by Amazon—concluding that online marketplaces are a distinct market from physical marketplaces. The U.S. Department of Commerce tracks online marketplace sales as a separate category, acknowledging its distinction from physical marketplaces.

43. Consumers do not consider online marketplaces and physical marketplaces to be substitutes. Consumers using online marketplaces can shop for a virtually-unlimited range of products, without limitation to what products are available in their individual geographic area. Consumers can shop online with no limitation as to the time of day or day of the week. Online marketplace consumers can quickly identify competing offers and more easily compare different alternatives before buying, with lower search costs than physical marketplaces. As a result of the enormous amount of data collected by online marketplaces about consumer buying habits, a consumer can receive product suggestions based on a comprehensive analysis of what the consumer is and is not likely to buy. The degree to which a retailer selling through an online

marketplace can tailor and personalize the shopping experience to a specific consumer is different in kind from the methods available to retailers selling through physical marketplaces, precisely because the type of behavioral data that online marketplaces can track is far more detailed and nuanced.

44. Economists and academics recognize consumers' distinction between online marketplaces and physical marketplaces and, therefore, the lack of substitutability between the two. For example, one study of consumer perceptions discovered that consumers expect lower pricing from online marketplaces, in consideration of the perceived difference in overhead costs between online and physical marketplaces. Another economic paper applied econometric analysis to sales data and found that consumers shopping online are generally more price sensitive than those shopping in physical stores. A third study noted that online marketplaces have a major difference from the traditional way of shopping with respect to terms of distribution and logistics.

45. Sellers generally do not consider online marketplaces and physical marketplaces to be close substitutes. As do consumers, sellers recognize the superiority of online marketplaces because of the unlimited geographic scope and hours of service. Economists recognize that online shopping represents a fundamentally different environment from physical shopping malls. This perception is confirmed by research showing that sellers' cost savings between online marketplaces and physical marketplaces include the reduction of handling costs within a physical marketplace (unpacking, stocking, and maintaining shelves), theft (which can easily account for 3% of the sale of a retailer), rent (low-cost distribution centers replace expensive urban or suburban real estate) and selling costs (automated and tele-sales replace relatively expensive in-store salespeople). The U.S. Bureau of Labor Statistics also notes that

retailers selling through online marketplaces typically maintain lower margins than those selling through physical marketplaces due to lower overhead costs. The vast majority of TPSs on online marketplaces are small-to-medium-sized businesses, which do not have the resources or ability to pay for their own physical marketplaces.

46. Online marketplaces also differ from physical marketplaces because online marketplaces have access to vastly more and different information about their potential or existing customers. For example, whereas physical stores and malls are generally only able to collect information on actual sales, online marketplaces track what shoppers are searching for but cannot find, which products they repeatedly return to, what they keep in their shopping cart, and what their mouse hovers over on the screen. Indeed, Amazon believed as far back as 1998 that personalization of the shopping experience would be one of the *insurmountable advantages* that online marketplaces would have over physical marketplaces. Not only is vastly more information about individual customer shopping habits available through online marketplaces, but online marketplaces are also better able to analyze overall demand for a product or products based on this data.

47. Business and industry experts similarly recognize that online marketplaces and physical marketplaces are not close substitutes. Industry reports studying trends in commerce regularly compare Amazon's online marketplace exclusively to other online marketplace competitors. A 2019 study of consumer behavior compared activity on Amazon's online marketplace only to that on other online marketplaces as competitors. A commonly-cited marketing research company, eMarketer, similarly determines Amazon's market share based only on the shares of other online marketplace sales.

48. The U.S. Census Bureau also noted that physical marketplaces typically engage in less advertising than online marketplaces, with the latter spending nearly three times as much on advertising and promotions per dollar of sales. Online marketplaces have additional unique characteristics, including in the marketing and distribution of products. Online marketplaces allow for more efficient information dispersion, unique communication methods, increased flexibility in digesting consumer information, and enhanced consumer interactivity and search capability.

49. Amazon acknowledges the distinction between online and physical marketplaces. For example, Amazon has identified eBay's online marketplace as Amazon's main competitor. Tellingly, Amazon's MFNs have only dictated what TPSs can do on other *online* marketplaces; they do not apply to physical marketplaces. This is because Amazon's intent with these anticompetitive agreements is to protect its monopoly in the distinct market of online marketplaces.

2. Amazon's Market Power Is Demonstrated by Its Control over Online Marketplace Pricing.

50. Market power exists where a market participant has the power to control prices or exclude competition. Amazon's market power in the market for online marketplaces is demonstrated by its ability through its MFNs to control prices on other online marketplaces and prevent those prices from being lower than they are on Amazon's online marketplace. These agreements effectively create a price floor across online marketplaces, resulting in the "Amazon price" spreading across online marketplaces, despite TPSs' ability and desire to sell their products for less through other online marketplaces.

51. Similarly, the MMA enables Amazon to constrain the price for FPS products on other online marketplaces. The MMA induces FPSs to maintain higher prices on other online

marketplaces in order to prevent triggering the MMA and the FPS's requirement to make a "true up" payment to Amazon. Absent this agreement, FPS products could be sold on competing online marketplaces for less.

3. <u>Amazon's Market Power Is Demonstrated by Its Dominant and Durable Market Share.</u>

52. Amazon accounts for as much 70% of all online marketplace sales, and an even larger percentage of sales through multi-seller online marketplaces. Amazon's percentage of online sales among U.S. online marketplaces has grown substantially in recent years. In 2016, Amazon's percentage of online sales was estimated to be 38.1%. More recent estimates place Amazon's percentage of online sales at more than 50%. The House Antitrust Subcommittee estimated that Amazon controls 65% to 70% of U.S. online marketplace sales. By comparison, Amazon's nine closest online marketplace competitors individually have far smaller market shares. For example, Walmart.com and eBay, Amazon's closest online marketplace competitors, have just single-digit shares of the market. Other online marketplace competitors of Amazon have referred to it as an 800-pound tech gorilla.

53. Amazon has millions of TPSs on its online marketplace. Other multi-seller online marketplaces, like Walmart.com, have only a fraction of this number despite lower fees and commissions.

54. Amazon's dominance among online marketplaces is overwhelming. One industry group, the Institute for Local Self-Reliance, noted that online sellers that once drew sufficient consumer traffic to their own self-supplied online websites are now compelled to become sellers on Amazon's online marketplace, or forego access to a majority of online shopping traffic.

55. Amazon's dominance as an online marketplace is not fleeting; instead, as the

House Antitrust Subcommittee concluded, Amazon has significant and durable market power among U.S. online marketplaces.

4. Amazon's Dominance Is Protected by Barriers to Entry.

56. Amazon's dominance is protected by significant barriers to entry, many of which Amazon itself created. For example, Amazon was willing to invest massive sums of money and incur years of staggering financial losses as a first and dominant mover developing an online marketplace. Meaningful entry into the market for online marketplaces with scope and scale similar to Amazon is improbable (or impossible) given the barriers to entry that Amazon has created. Amazon acknowledges that entry by new multi-seller online marketplace participants requires significant incremental investments in brand development, inventory, and marketing/customer acquisition. Commentators recognize that practical barriers to successful and sustained entry as a multi-seller online marketplace are very high, given the data collection and network effects that Amazon enjoys.

57. The most significant barrier to entry in this market is network effects. According to the House Antitrust Subcommittee, digital markets tend to be characterized by strong network effects, making them prone to concentration and monopolization. Because the value of an online marketplace to buyers and sellers increases as more of each of them utilize the marketplace, new entrants into the market find it extremely difficult to gain traction when going up against a large, well-established incumbent like Amazon with hundreds of millions of buyers and millions of sellers. Buyers are more likely to choose Amazon than a competitor because it has amassed millions of sellers from whose products a buyer can choose. Sellers are more likely to choose Amazon to gain access to the hundreds of millions of customers to whom they can sell.

58. Amazon reinforces these network effects in a variety of ways. For example, Amazon's massive customer base is in part the result of its Amazon Prime program, on which Amazon historically has been willing to incur massive financial losses to create barriers against competition. Amazon Prime is a paid annual membership service available to Amazon's customers, which entitles them to certain benefits, including free one or two-day shipping on Prime products. Prime was first offered in 2005, priced at $79/year. The explicit purpose of pricing Prime so low was to change people's mentality so they would not shop on any other online marketplace. Over the years, Prime has expanded to include other benefits, including an e-book lending library, Prime Video (with original programming and access to movies and tv shows), and Prime Music, all of which further lock-in customers to Amazon (referred to as "consumer viscosity"). While Amazon has lost money on Prime, Prime has enabled Amazon to build a massive customer base, enhancing the network effects that favor Amazon's online marketplace. Amazon was willing to incur those substantial losses on Prime in exchange for acquiring substantial market power as an online marketplace.

59. It is estimated that there are 126 million Prime members in America – virtually one per each of the 128.5 million households in the U.S. A survey found that an astonishing 96% of all Prime members are more likely to buy products from Amazon's online marketplace than any other online marketplace.

60. Another barrier to entry is the massive quantity of data about its buyers and sellers that Amazon collects through its online marketplace. Amazon collects detailed pricing and revenue data, along with customer reviews, information on what customers viewed but did not purchase, and how long they viewed items. Amazon uses this data to target products for individual users, enticing customers to spend more on Amazon's online marketplace. Faced

with such an insurmountable barrier to entry, market entrants find it difficult to compete.

61. Another barrier to entry is Amazon's use of its delivery and logistics services to entrench its online marketplace dominance. Sellers need access to the huge number of regular buyers who are members of Amazon Prime. Sellers generally cannot be successful without access to those buyers. The easiest way to become "Prime eligible" is for sellers to pay Amazon for its FBA logistics and delivery services. Eighty-five percent of the top 10,000 TPSs use FBA, up from 56% in the last four years. Amazon now delivers nearly two-thirds of the products purchased through its online marketplace. It is the fourth-largest package delivery company in the United States. The market power it has in the delivery services market provides Amazon with another barrier to entry against current or potential online marketplace competitors. Jeff Bezos stated in 2015 that "FBA is so important because it is glue that inextricably links Marketplace and Prime. Thanks to FBA, Marketplace and Prime are no longer two things. Their economics . . . are now happily and deeply intertwined."

5. **Amazon's Anticompetitive Agreements Reinforce and Maintain Its Dominant Market Position.**

62. Amazon's MFNs and MMA entrench Amazon as the dominant online marketplace. While TPSs, absent Amazon's pricing constraints, would be incentivized to avail themselves of alternative online marketplaces—like Walmart.com, eBay, and their own online marketplaces, which have significantly lower or no fees, and in turn provide their products for lower prices to consumers to increase sales, they are unable to sell their products for less through those other online marketplaces. For example, Walmart routinely fields requests from TPSs to raise prices on Walmart's online marketplace because TPSs worry that a lower price on Walmart's online marketplace will jeopardize their status on Amazon's marketplace. Fear of Amazon may even cause sellers to remove listings from other online marketplaces entirely. The

MMA similarly enables Amazon to maintain dominance among online marketplaces by creating a disincentive for FPSs to sell their products (or allow them to be sold by others) through competing online marketplaces for less than they are sold on Amazon's online marketplace.

63. Competing online marketplaces have vocally condemned Amazon's anticompetitive practices. For example, one of Amazon's competitors told the House Antitrust Subcommittee that "as Amazon raises the costs to sellers, and requires that Amazon have the lowest prices available, for a seller to be able to make significant sales on [Amazon's] marketplace, these sellers will raise the price on competitor sites to match Amazon's price."[1] Given that price is online shoppers' most important criteria for purchasing, this severely handicaps the ability of other online marketplaces to gain market share.

64. Amazon's anticompetitive agreements with TPSs and FPSs ensure that existing or potential online marketplace competitors cannot effectively gain market share or enter, which in turn reinforces Amazon's monopoly and ability to dictate fees, commissions, and prices. The House Antitrust Subcommittee's investigation confirms that Amazon's "history of using MFN clauses" ensures that none of its "TPSs can collaborate with an existing or potential competitor to make lower-priced or innovative product offerings available to consumers."[2] Similarly, European investigators noted that when sellers cannot offer lower prices to Amazon's online marketplace competitors, "it can be difficult for other internet marketplaces that compete with Amazon, especially new platforms entering the market, to reach a large

---

[1] House Antitrust Subcommittee, *Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations,* 296 (Oct. 6, 2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf
[2] *Id*. at 295.

number of customers."[3]

F. AMAZON SUPPRESSES PRICE COMPETITION IN ONLINE RETAIL PRODUCT MARKETS THROUGH ITS MFNS.

65. Amazon also competes with more than 50 percent of its TPSs to sell products directly to online consumers at retail.

66. For example, Amazon sells its own brand of batteries in competition with TPSs that sell their own batteries through Amazon's and other online marketplaces. Amazon-branded batteries are reasonable substitutes for batteries sold by TPSs on Amazon's and other online marketplaces. Thus, given these products' substitutability and online purchasers' price sensitivity, consumers would likely purchase more TPS batteries if they were offered on an online marketplace for a lower price or on better terms than the Amazon retail products.

67. Similarly, Amazon also sells its own brand of mattresses, light bulbs, cookware, computer accessories, luggage, exercise equipment, and motor oil in competition with TPSs that sell their own mattresses, light bulbs, cookware, computer accessories, luggage, exercise equipment, and motor oil through Amazon's and other online marketplaces. Each one of these Amazon-branded products are reasonable substitutes for other brands of each one of these products sold by TPSs on Amazon's and other online marketplaces. Thus, given these products' substitutability and online purchasers' price sensitivity, consumers would likely purchase more of each of these products sold by TPSs if they were offered on an online marketplace for a lower price or on better terms than the Amazon retail products.

68. Amazon's MFNs insulate Amazon's retail products from this competition and consumer switching by fixing and maintaining the prices of TPS competing products across

---

[3] European Commission, *Germany and United Kingdom: Antitrust Cases against Amazon formally closed*, https://ec.europa.eu/competition/ecn/brief/05_2013/amaz_deuk.pdf.

online marketplaces. Absent the MFNs, TPSs could and would offer their products that compete with Amazon retail products for lower prices on competing online marketplaces, because they could profitably do so and gain additional volume and sales.

G. AMAZON'S ANTICOMPETITIVE CONDUCT HARMS CONSUMERS, TPSs, FPSs, AND COMPETITION THROUGH HIGHER CONSUMER PRICES, HIGHER TPS FEES, LOWER FPS PROFITS, LESS CHOICE AND LESS INNOVATION.

69. Amazon's MFNs penalize TPSs for selling their products for lower prices or better terms on other online marketplaces, even when TPSs could profitably do so and gain volume. These restrictions also cause customers to pay higher prices for a wide variety of goods purchased through online marketplaces. In setting their prices on other online marketplaces, TPSs must incorporate Amazon's high fees and commissions into their sales prices. The real-world impact of Amazon's MFNs is higher prices for online consumers.

70. TPSs also are harmed because the MFNs entrench and maintain Amazon's monopoly, enabling Amazon to continue charging high fees and commissions and reducing competing online marketplaces' incentive and ability to attract TPSs with lower fees and commissions and consumers (and market share) with lower prices. TPSs also must devote substantial resources to monitoring online marketplaces to be sure that their products are not being sold by another seller for less than TPSs are selling their products on Amazon, in order to avoid sanctions by Amazon on its online marketplace.

71. These price controls also disincentivize new entry and innovation in online marketplaces to the detriment of competition and consumers.

72. A recent article by two highly respected economists explains this anticompetitive conduct and its effects:

> The potential competitive dangers from platform MFNs call for antitrust scrutiny. . . . The setting we analyze has vendors selling goods or services through online

> platforms. The vendors set the sales price for their customers and pay the platform a transaction fee built into the price. The platform in turn requires vendors not to sell for less on other sites or platforms. This platform MFN prevents the vendor from allowing its product to be offered at a lower price on its own website (if any) or on a rival platform. As a result, entrants are excluded, allowing the platform . . . imposing the MFN to charge supra-competitive prices.[4]

73. It is exactly this impact on pricing that caused the British and German regulators to investigate Amazon's MFNs in 2013. In their investigations, those European authorities noted that Amazon's MFN clause "soften[s] competition between Amazon and other internet marketplace operators, leading to increased seller fees and generally higher retail prices with insufficient countervailing benefits, to the detriment of consumers."[5] The German Cartel Office went on to say that it found the MFN to "constitute[] a horizontal trade cooperation between Amazon and third party sellers that has as its object and effect various restrictions of competition." Amazon's MFN in the United States has the same effect, allowing Amazon to maintain high TPS fees, increasing prices on online marketplaces, reducing choice for consumers, and stifling competition and innovation among online marketplaces and for a number of retail products.

74. Amazon's MMA similarly harms FPSs, consumers and competition. The MMA penalizes FPSs for selling their products—or allowing their products to be sold—through other online marketplaces at lower prices than offered on Amazon. Thus, FPSs are incentivized to and do raise and maintain higher prices to and on competing marketplaces than would otherwise exist absent these agreements in order to avoid triggering the requirement to pay "true-up" payments to Amazon. These higher prices harm consumers. FPSs' profits and ability

---

[4] Jonathan Baker & Fiona Scott Morton, *Antitrust Enforcement Against Platform MFNs*, 127 Yale L. J. 2176 (2018).

[5] European Commission, *Germany and United Kingdom: Antitrust Cases against Amazon formally closed*, https://ec.europa.eu/competition/ecn/brief/05_2013/amaz_deuk.pdf.

to maintain and grow their businesses are reduced by virtue of their requirement to ensure and supplement Amazon's profits. FPSs also devote substantial resources to aggressively monitor the prices of their products on other online marketplaces to avoid triggering the MMA's terms. The MMA reduces competition among online marketplaces, increasing consumer prices, limiting consumer choice, and decreasing competitive innovation.

COUNT I

AGREEMENTS IN RESTRAINT OF TRADE (MFNs) IN VIOLATION OF D.C. CODE § 28-4502

75. The District hereby incorporates each preceding and succeeding paragraph as though fully set forth herein.

76. Amazon sells access to its online marketplace and related services to TPSs to sell their products online, but Amazon's online marketplace ultimately competes directly against other multi-seller and single-seller online marketplaces, including TPSs' own websites to attract consumer traffic and sales. Amazon also directly competes with the majority of its TPSs as a retailer to sell goods to consumers that directly compete with goods that many of its TPSs offer through Amazon's online marketplace and on competing online marketplaces. These products include at least batteries, mattresses, light bulbs, cookware, computer accessories, luggage, exercise equipment, and motor oil.

77. Through the MFNs, Amazon and its TPSs unlawfully agree that TPSs will not offer their products through other competing online marketplaces at prices lower than the prices they offer them on Amazon's online marketplace, setting a price floor below which the product will not be sold online. This conduct causes prices to District residents to be higher than they otherwise would be, inhibits TPSs' ability to compete at retail with Amazon products, reduces entry and growth of competitor online marketplaces, and decreases innovation and consumer

choice.

78. As a direct and proximate cause of these agreements, District residents have been injured because they have been denied competitive online marketplaces and paid higher prices for products purchased online than they would have paid absent Amazon's anticompetitive agreements. District consumers are deprived of choosing from a full, competitive range of online marketplaces which would have offered lower prices.

79. Amazon's MFNs violate D.C. Code § 28-4502.

COUNT II

AGREEMENTS IN RESTRAINT OF TRADE (MMA) IN VIOLATION OF D.C. CODE § 28-4502

80. The District hereby incorporates each preceding and succeeding paragraph as though fully set forth herein.

81. Amazon purchases products from FPSs that it sells at retail directly to consumers through its online marketplace. Amazon and FPSs execute the MMA, by which FPSs agree to guarantee Amazon a certain minimum profit margin on those products. If Amazon elects to sell the products at a lower price than anticipated at the time it purchased them from the FPSs because Amazon has identified a lower price on a competing online marketplace, the FPS agrees to compensate Amazon for any lost anticipated profits. These agreements cause FPSs to either raise their prices to and on other online marketplaces or not to offer their products to other online marketplaces at all in order to avoid owing "true up" payments to Amazon.

82. As a direct and proximate cause of Amazon's anticompetitive conduct, District residents have been injured because they have been denied competitive online marketplaces and paid higher prices for products than they would have paid absent Amazon's anticompetitive

acts. District consumers are deprived of choosing from a full, competitive range of online marketplaces which could have offered lower prices.

83. Amazon's MMAs violate D.C. Code § 28-4502.

COUNT III

ILLEGAL MAINTENANCE OF MONOPOLY IN VIOLATION OF D.C. CODE § 28-4503

84. The District hereby incorporates each preceding and succeeding paragraph as though fully set forth herein.

85. At all relevant times, Amazon has possessed monopoly power among online marketplaces in the United States. Amazon's online marketplace accounts for between 50-70% of all online sales. Amazon accounts for an even larger share of multi-seller online marketplace sales. Amazon's online marketplace also hosts millions of TPSs on its online marketplace, substantially more TPSs than any other online marketplace. Amazon's monopoly power is further demonstrated by its ability to control prices on competing online marketplaces, its ability to charge its TPSs high fees for access to its online marketplace, and its ability to negotiate the MMA with FPSs that cause the FPSs to bear the risk of sales price deviations.

86. Amazon's monopoly power is protected through barriers to entry, including the network effects created by its massive number of customers and sellers; its unparalleled collection of buyer and seller data; and its delivery and logistics capabilities.

87. Amazon has willfully maintained and enhanced its market power through its anticompetitive and exclusionary conduct. Amazon has used its MFNs to ensure that TPSs will not offer products for a lower price or on better terms on a competing online marketplace. Amazon similarly uses the MMA to ensure that FPSs do not sell their products for less through online marketplaces that compete with Amazon. Amazon's MFNs and MMA effectively reduce

and foreclose competition from other online marketplaces.

88. Through Amazon's agreements with its TPSs and FPSs to price their products at artificially high levels on other online marketplaces, Amazon forecloses its online marketplace competitors' (including TPSs' self-supplied online marketplaces) ability to compete and gain market share, enabling Amazon to maintain its dominance among online marketplaces.

89. Amazon's conduct has harmed and continues to harm consumers, TPSs, FPSs, and competition in the District. As a direct and proximate cause of Amazon's anticompetitive conduct, District residents have been injured because they have been denied competitive online marketplaces and paid higher prices for products than they would have paid absent Amazon's anticompetitive agreements. District consumers are deprived of choosing from a full, competitive range of online marketplaces in which prices could have been lower. TPSs and FPSs have been injured because they have been required to expend significant resources to monitor prices on online marketplaces and could have made and kept more profits and a greater ability to maintain and grow their businesses (many of which compete in individual retail product markets with Amazon) if they had the ability to adjust prices on other online marketplaces to implement their individual sales strategies.

90. Amazon's anticompetitive conduct constitutes unlawful monopoly maintenance in violation of D.C. Code § 28-4503.

COUNT IV

ATTEMPTED MONOPOLIZATION
IN VIOLATION OF D.C. CODE § 28-4503

91. The District hereby incorporates each preceding and succeeding paragraph as though fully set forth herein.

92. Amazon accounts for between 50-70% of all online sales. Amazon accounts for

an even larger percent of sales through multi-seller online marketplaces. By comparison, Amazon's closest competitor online marketplaces control only single-digit percentages of online sales.

93. Amazon has engaged in anti-competitive conduct, including through its institution, implementation, and enforcement of its MFNs and MMA. Through those restraints, Amazon has demonstrated its intent to monopolize the market for online marketplaces, control prices, exclude competitors, and suppress competition and innovation among online marketplaces.

94. There is a dangerous probability that Amazon will be successful in achieving its goal of obtaining monopoly power among online marketplaces (if it has not already done so). In 2016, Amazon accounted for 38% of sales through online marketplaces. It now accounts for over 50%, and possibly as high as 70%, of all online sales. Its percentage of multi-seller online marketplaces is even higher.

95. As a direct and proximate cause of Amazon's anticompetitive conduct, District residents have been injured because they have been denied competitive online marketplaces and paid higher prices for products than they would have paid absent Amazon's anticompetitive acts. District consumers are deprived of choosing from a full, competitive range of online marketplaces that could have offered lower prices. TPSs and FPSs have been injured because they could have made and kept more profits and a greater ability to maintain and grow their businesses (many of which compete directly with Amazon at retail in individual product markets) if they had the ability to adjust prices on other online marketplaces to implement their individual sales strategies.

96. Amazon's anticompetitive conduct constitutes an attempt to achieve a monopoly

in violation of D.C. Code § 28-4503.

PRAYER FOR RELIEF

97. The District of Columbia respectfully requests that this Court, as authorized by statute and its own equitable powers, enter final judgment against Amazon and:

a. Adjudge and decree that Amazon's actions constitute unreasonable and unlawful restraints of trade in violation of the District of Columbia Antitrust Act, D.C. Code § 28-4502;

b. Adjudge and decree that Amazon acted unlawfully to maintain or attempt to achieve a monopoly among online marketplaces in the United States, in violation of the District of Columbia Antitrust Act, D.C. Code § 28-4503;

c. Enjoin and restrain Amazon, its affiliates, assignees, subsidiaries, successors, and transferees, and its officers, directors, partners, agents and employees, and all other persons acting or claiming to act on Amazon's behalf or in concert with it, from continuing to engage in any anticompetitive conduct and from adopting in the future any agreement, practice, plan, program, or device having a similar purpose or effect to the anticompetitive actions set forth above;

d. As needed, enter such relief to remove any ability of Amazon to harm competition by disadvantaging any current, potential, or nascent threat to its market power, including but not limited to structural relief as well as effective, monitorable, and measurable conduct remedies that eliminate the ability of Amazon to continue to reap benefits from its pattern of competitive harm;

e. Appoint a corporate monitor to ensure implementation of all structural or practice remedies ordered by the Court, as well as to ensure that Amazon does not engage in further anticompetitive conduct, at Amazon's expense;

f. Award to the District any other equitable relief as the Court finds appropriate to redress Amazon's violations of the laws specified above and to restore competitive conditions in the markets affected by Amazon's unlawful conduct and deprive Amazon of any advantages from its unlawful acts;

g. Award to the District the maximum civil penalties as provided by the D.C. Antitrust Act;

h. Award to the District damages on behalf of District residents in the District's parens patriae capacity, and such other relief as provided by the D.C. Antitrust Act;

i. Award pre-judgment and post-judgment interest on such monetary relief;

j. Award to the District statutory or equitable disgorgement, or any other equitable relief for the benefit of the District consumers as appropriate under the D.C. Antitrust Act;

k. Award to the District its costs, including reasonable attorneys' fees; and

l. Order any additional relief that this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: September 10, 2021

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

*/s/ Kathleen Konopka*___________

Kathleen Konopka [D.C. Bar 495257]
kathleen.konopka@dc.gov
Catherine A. Jackson
catherine.jackson@dc.gov
Jennifer C. Jones
jen.jones@dc.gov
David Brunfeld
David.brunfeld@dc.gov
Public Advocacy Division
Office of the Attorney General for the District of Columbia
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
Tel: (202) 442-9853

*/s/ Swathi Bojedla*_______________

Paul T. Gallagher [D.C. Bar 439701]
pgallagher@hausfeld.com
Hilary K. Scherrer [D.C. Bar 481465]
hscherrer@hausfeld.com
Swathi Bojedla [D.C. Bar 1016411]
sbojedla@hausfeld.com
Leland Shelton
lshelton@hausfeld.com
Theodore F. DiSalvo [D.C. Bar 1655516]
tdisalvo@hausfeld.com
Halli Spraggins [D.C. Bar 1671093]
hspraggins@hausfeld.com
HAUSFELD LLP
888 16th Street, NW, Suite 300
Washington, D.C. 20006
Tel: (202) 540-7375

Attorneys for Plaintiff District of Columbia

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September 2021, a true and correct copy of the foregoing was served electronically by operation of the Court's electronic filing system to the following:

Karen L. Dunn (D.C. Bar No. 1002520)
kdunn@paulweiss.com
William A. Isaacson (D.C. Bar No. 414788)
wisaacson@paulweiss.com
Amy J. Mauser (D.C. Bar No. 424065)
amauser@paulweiss.com
Melissa B.F. Zappala (D.C. Bar No. 497459)
mzappala@paulweiss.com
PAUL, WEISS, RIFKIND, WHARTON & GARRISON, LLP

Attorneys for Defendant Amazon.com, Inc.

/s/ Swathi Bojedla
Swathi Bojedla [D.C. Bar 1016411]

Attorney for Plaintiff