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

_____, Individually and On
Behalf of All Others Similarly Situated,

Plaintiff,

v.

AMAZON.COM, INC., ANDREW R.
JASSY, JEFFREY P. BEZOS, BRIAN T.
OLSAVKSY, DAVID A. ZAPOLSKY, and
NATE SUTTON,

Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff _____ (“Plaintiff”), individually and on behalf of all others similarly
2 situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants,
3 alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own
4 acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation
5 conducted by and through Plaintiff’s attorneys, which included, among other things, a
6 review of the Defendants’ public documents, conference calls and announcements made by
7 Defendants, United States (“U.S.”) Securities and Exchange Commission (“SEC”) filings,
8 wire and press releases published by and regarding Amazon.com, Inc. (“Amazon” or the
9 “Company”), analysts’ reports and advisories about the Company, and information readily
10 obtainable on the Internet. Plaintiff believes that substantial additional evidentiary support will
11 exist for the allegations set forth herein after a reasonable opportunity for discovery.
12

13 **NATURE OF THE ACTION**
14

15 1. This is a federal securities class action on behalf of a class consisting of all persons
16 and entities other than Defendants that purchased or otherwise acquired Amazon stock between
17 February 1, 2019 and April 5, 2022, both dates inclusive (the “Class Period”). Plaintiff pursues
18 claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).
19

20 2. Amazon is a multinational technology company that engages primarily in the
21 businesses of e-commerce, cloud computing, digital streaming, and artificial intelligence. The
22 Company was founded in 1994 and is headquartered in Seattle, Washington. Amazon’s common
23 shares trade on the NASDAQ under the ticker symbol “AMZN”.

24 3. On the Company’s Amazon.com e-commerce platform, Amazon sells both third-
25 party merchandise and Amazon’s own private-label products. As the owner and operator of the
26

1 Amazon.com e-commerce platform, Amazon has access to certain non-public data of the third-
2 party sellers that use the Amazon.com platform.

3 4. On or around June 3, 2019, the U.S. House Committee on the Judiciary (the “House
4 Judiciary Committee”) initiated a bipartisan investigation into the state of competition online. The
5 investigation, led by the Subcommittee on Antitrust, Commercial and Administrative Law (the
6 “Subcommittee”), examined the business practices and market dominance of Facebook, Google,
7 Apple, and, of particular relevance, Amazon (the “Subcommittee Investigation”).
8

9 5. In the course of the Subcommittee Investigation, the Subcommittee held several
10 oversight hearings in which various officers of the above referenced companies, including their
11 respective Chief Executive Officers (“CEOs”), offered witness testimony on topics such as the
12 effect of market power on the press, innovation, and privacy, and the market dominance of the
13 firms under investigation. After each of the hearings, members of the Subcommittee submitted
14 questions for the record to the witnesses.
15

16 6. Throughout the Class Period, Defendants made materially false and misleading
17 statements regarding the Company’s business, operations, and compliance policies. Specifically,
18 Defendants made false and/or misleading statements and/or failed to disclose that: (i) Amazon
19 engaged in anticompetitive conduct in its private-label business practices, including giving
20 Amazon products preference over those of its competitors and using third-party sellers’ non-public
21 data to compete with them; (ii) the foregoing exposed Amazon to a heightened risk of regulatory
22 scrutiny and/or enforcement actions; (iii) Amazon’s revenues derived from its private-label
23 business were in part the product of impermissible conduct and thus unsustainable; and (iv) as a
24 result, the Defendants’ public statements throughout the Class Period were materially false and/or
25 misleading.
26
27

1 Defendants conduct business in this Judicial District, and a significant portion of Defendants'
2 actions took place within this Judicial District.

3 15. In connection with the acts alleged in this Complaint, Defendants, directly or
4 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited
5 to, the mails, interstate telephone communications, and the facilities of the national securities
6 markets.
7

8 **PARTIES**

9 16. Plaintiff, as set forth in the attached Certification, purchased or otherwise acquired
10 Amazon common stock at artificially inflated prices during the Class Period, and suffered
11 damages as a result of the federal securities law violations and false and/or misleading statements
12 and/or material omissions alleged herein.
13

14 17. Defendant Amazon is a Delaware corporation with principal executive offices
15 located at 410 Terry Avenue North, Seattle, Washington 98109. The Company's common stock
16 trades in an efficient market on the NASDAQ under the ticker symbol "AMZN."

17 18. Defendant Andrew "Andy" R. Jassy ("Jassy") has served as Amazon's CEO since
18 July 2021.

19 19. Defendant Jeffrey P. Bezos ("Bezos") served as Amazon's CEO at all relevant
20 times until July 2021.
21

22 20. Defendant Brian T. Olsavsky ("Olsavksy") has served as Amazon's Chief
23 Financial Officer at all relevant times.

24 21. Defendant David A. Zapolsky ("Zapolsky") has served as Amazon's General
25 Counsel at all relevant times.
26
27

1 27. On the Company’s Amazon.com e-commerce platform, Amazon sells both third-
2 party merchandise and Amazon’s own private-label products. As the owner and operator of the
3 Amazon.com e-commerce platform, Amazon has access to certain non-public data of the third-
4 party sellers that use the Amazon.com platform.

5 **Materially False and Misleading Statements Issued During the Class Period**

6 28. The Class Period begins on February 1, 2019, when Amazon filed an Annual Report
7 on Form 10-K with the SEC, reporting the Company’s financial and operating results for the year
8 ended December 31, 2018 (the “2018 10-K”). In the 2018 10-K, Amazon failed to disclose that it
9 was engaged in anticompetitive conduct with respect to its private-label business. Rather, the
10 report contained only a generic, highly general risk disclaimer to the effect that Amazon was
11 “subject to general business regulations and laws, as well as regulations and laws specifically
12 governing the Internet[] [and] e-commerce” and that these laws covered competition, among other
13 things. Amazon merely advised its investors that “[e]xisting and future laws and regulations may
14 impede our growth” and failed to disclose the specific and known risks arising from the Company’s
15 anticompetitive business practices.

16 29. In the 2018 10-K, Amazon reported net sales of \$232.89 billion for the year.
17 Amazon failed to disclose, however, that these sales figures were unsustainable to the extent that
18 they were derived from impermissible anticompetitive conduct.

19 30. Appended to the 2018 10-K as exhibits were signed Certifications pursuant to
20 Sarbanes-Oxley Act of 2002 (“SOX”) by Defendants Bezos and Olsavsky, attesting that “the [2018
21 10-K] fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange
22 Act of 1934” and that “[t]he information contained in the [2018 10-K] fairly presents, in all
23 material respects, the financial condition and results of operations of the Company.”

1 31. On April 25, 2019, Amazon hosted an earnings call with investors and analysts to
2 discuss the Company’s Q1 2019 results (the “Q1 2019 Earnings Call”). When asked to comment
3 on Amazon’s efforts to sustain its growth rate in the third-party marketplace business, Defendant
4 Olsavsky responded, in relevant part:

5 So again, let me reiterate our approach. *So main goal here is that it will allow*
6 *customers to have the broadest selection, the best available price and also the*
7 *most convenient options on how they receive the item. If we're delivering on those*
8 *three elements, we're indifferent as to whether it's sold by us or a third-party. We*
9 *actively recruit sellers to sell on our platform, it's because it adds selection.* It adds
- if it's in the FBA program, it adds Prime eligible selection.

10 *We spend billions of dollars a year, as Jeff said, on infrastructure, tools and*
11 *services, not only to allow sellers to sell, but to help themselves more successfully.*
12 So we have a vested interest in the success of our sellers. Any growth acceleration
or deceleration that you see can be very much tied to the total sales of the customer
- that we have the customers in any country.

13 So you'll still see the percentage of third-party units increased and has been steadily
14 over the last few years. So again, the sellers are as important to us as anything for
servicing the customers' need for price selection and convenience.

15 (Emphasis added.)

16 32. On or around June 3, 2019, the House Judiciary Committee initiated a bipartisan
17 investigation into the state of competition online. The Subcommittee Investigation examined the
18 business practices and market dominance of Facebook, Google, Apple, and, of particular
19 relevance, Amazon.
20

21 33. In the course of the Subcommittee Investigation, the Subcommittee held several
22 oversight hearings in which various officers of the above referenced companies, including their
23 respective CEOs, offered witness testimony on topics such as the effect of market power on the
24 press, innovation, and privacy, and the market dominance of the firms under investigation. After
25 each of the hearings, members of the Subcommittee submitted questions for the record to the
26 witnesses.
27

1 34. On July 16, 2019, Defendant Sutton testified before the House Judiciary
2 Committee alongside executives from Google, Facebook, and Apple (the “July 16, 2019
3 Hearing”).¹ When asked by Representative Pramila Jayapal whether Amazon “track[s] [the data]
4 and create[s] products that directly compete with those most popular brands that are out there,”
5 Defendant Sutton responded, in relevant part, that “data on popularity of products like much retail
6 data is actually public data,” but “[Amazon] do[es] not use any of that specific seller data in
7 creating our own private brand products.”

9 35. At the same hearing, when asked by Subcommittee Chairman David N. Cicilline
10 whether Amazon’s algorithm for collecting data is used to support the sale of Amazon branded
11 products, Defendant Sutton responded, in relevant part, “[o]ur algorithms, such as the buy box, is
12 [sic] aimed to predict what customers want to buy [. . .] [a]nd we apply the same criteria whether
13 you’re a third-party seller or Amazon to that because we want customers to make the right purchase
14 regardless of whether it’s a seller or Amazon.”

16 36. As the Subcommittee Investigation proceeded, various reputable media outlets
17 published reports that seemingly contradicted the testimony offered by Amazon’s witnesses at the
18 Subcommittee hearings. For example, on July 18, 2019, the investigative news organization
19 *Capitol Forum* published an article entitled, “Amazon: Former Employee Challenges Executive’s
20

24 ¹ *Online Platforms and Market Power, Part 2: Innovation and Entrepreneurship: Hearing Before*
25 *the Subcomm. on Antitrust, Com., & Admin. L. of the H. Comm. on the Judiciary*, 116th Cong. 5-
26 6, 23-24, 38-44, 46-47, 49-51, 64, 66-67, 70-71 (2019) (testimony of Nate Sutton, Assoc. Gen.
27 Couns., Competition, Amazon.com, Inc.), <https://www.govinfo.gov/content/pkg/CHRG-116hhrg39901/pdf/CHRG-116hhrg39901.pdf>.

1 Denial About Company’s Use of Independent Sellers’ Data.”² The former Amazon employee
2 stated that Amazon “routinely tracked the popularity of independent sellers’ products sold through
3 its website,” and that “[the former employee] used to pull sellers’ data to look at what the best
4 products were [. . .]” Accordingly, *Capitol Forum*’s reporting appeared to directly contradict
5 Defendant Sutton’s testimony.
6

7 37. On July 23, 2019, in response to the publication of the *Capitol Forum* article and
8 similar reporting by other media outlets, Chairman Cicilline sent Amazon a letter requesting that
9 the Company supplement Defendant Sutton’s responses to questions at the July 16, 2019 Hearing
10 because “[i]n several instances, Mr. Sutton responded to questions from [the Subcommittee] by
11 offering other ancillary information or partial and selective responses.”³ Moreover, Chairman
12 Cicilline’s letter stated that “[i]n one instance, [Defendant Sutton’s] answer has been contested by
13 a former Amazon employee, raising questions about the veracity of his responses under oath.”
14

15 38. On July 25, 2019, Amazon hosted an earnings call with investors and analysts to
16 discuss the Company’s Q2 2019 results (the “Q2 2019 Earnings Call”). When questioned whether
17 there would be any change in Amazon’s business to focus “more towards third-party from first-
18 party,” Defendant Olsavsky stated, in relevant part:

19 On your comment, I assume you meant vendors not merchants, but on the move
20 from 1P to 3P, but no there shouldn't be -- I can't highlight anything related shifting
21 in channel there, but I would say that we remain in different on whether -- *we're*
22 *focused on price convenience and selection for our customers. And whether*
23 *product is a retail offering or third-party offering is not that important to us. As*
long as it's in stock, as long as it's priced competitively.

24 ² *Amazon: Former Employee Challenges Executive’s Denial About Company’s Use of*
25 *Independent Sellers’ Data*, THE CAPITOL FORUM (July 18, 2019).

26 ³ [https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/7.22.19%20letter%20to%20amazon%20\(dnc\).pdf](https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/7.22.19%20letter%20to%20amazon%20(dnc).pdf).
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1
2 So, as you know our 3P selection has -- our 3P percent of units has been increasing
3 over time and increased again in this quarter to 54% of units. *We continue to invest*
4 *very heavily in our systems both for retail vendors and also for third-party*
5 *merchants invest billions of dollars a year on behalf of then making Amazon a*
6 *better place for customers to buy and increasingly not only vendor sales, but also*
7 *third-party merchant sales.*

8 (Emphasis added.)

9 39. On July 26, 2019, Defendant Zapolsky sent a letter⁴ in response to Chairman
10 Cicilline's July 23, 2019 letter, which stated, in relevant part:

11 [. . .] while we prohibit in our private label strategy the use of data related
12 specifically to individual sellers, like other retailers we use aggregated store data
13 (e.g., total sales) and customer shopping behavior (e.g., search volume) to identify
14 categories and products with high customer demand over a given time period. Use
15 of aggregated store data about customers' shopping behavior is far from novel
16 among retailers with a private label business. Many retailers, including large
17 retailers with extensive private brand offerings and retailers with marketplaces,
18 know the sales volume for products in their stores.[] Customers' shopping behavior
19 in our store is just one of many inputs to Amazon's private label strategy. We also
20 use other factors employed across the retail industry, such as fashion and shopping
21 trends highlighted in the press and on social media, suggestions from our
22 manufacturers for new or complementary product lines, and gaps in our product
23 assortment relative to our competitors.

24 * * * * *

25 [W]e use aggregated store data on total sales and search volume for categories and
26 products (unless the product is only offered by a single seller, in which case we do
27 not use that data).

28 * * * * *

[T]he featured offer algorithm does not favor any particular type of offer, but rather
seeks to determine which offer to highlight based on a prediction of which offer
customers would choose if they were to compare all offers in detail. If our
prediction is that the customer would likely prefer a product from a Marketplace
seller over the offer from Amazon, then we feature the product from the

⁴ <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/07.26.19%20-%20amazon%20response.pdf>.

1 Marketplace seller. We constantly refine our predictions to reflect customer
2 preferences, and look to factors beyond price, including fulfillment speed, delivery
3 speed, Prime eligibility, and seller performance.² In the rare instances that our
4 algorithmic weighting of these factors results in a tie in our prediction between an
5 offer from Amazon retail and a product in Fulfillment by Amazon, we again
6 endeavor to predict accurately customers' demonstrated preferences and feature the
7 Amazon retail offer because our customers show a preference for products sold
8 directly by Amazon.

9 Moreover, we make all offers easily available for all customers to shop. Customers
10 may compare the closest competing offers and add them directly to their shopping
11 cart via the "Other Sellers on Amazon" option [. . .], which is displayed on the
12 product detail page directly below the featured offer. Customers may also browse
13 all offers via the offer listing page, accessible via a hyperlink below the featured
14 offer. There, customers may compare offers, sellers, shipping speeds, and prices.
15 Our data also demonstrate that customers who compare the available offers
16 overwhelmingly ultimately select the featured offer, further confirming that our
17 criteria for selecting the featured offer accurately predict customer preference.

18 40. On October 24, 2019, Amazon hosted an earnings call with investors and analysts
19 to discuss the Company's Q3 2019 results (the "Q3 2019 Earnings Call"). When asked to comment
20 on the opportunities and competitiveness for third-party sellers, Defendant Olsavsky responded,
21 in relevant part, "[o]n third party I would say we only succeed if the third party sellers succeeds.
22 So we're heavily invested in them as they are in us. So we are constantly investing on their behalf,
23 adding new products and features and you know we are cognizant of their economics as well and
24 we want a business that works for both of us and we set our fees accordingly."

25 41. On January 31, 2020, Amazon filed an Annual Report on Form 10-K with the SEC,
26 reporting the Company's financial and operating results for the year ended December 31, 2019
27 (the "2019 10-K"). In the 2019 10-K, Amazon failed to disclose that it was engaged in
28 anticompetitive conduct with respect to its private-label business. Rather, the report contained
only a generic, highly general risk disclaimer to the effect that Amazon was "subject to general
business regulations and laws, as well as regulations and laws specifically governing the Internet[]
[and] e-commerce" and that these laws covered competition, among other things. Accordingly,

1 Amazon failed to disclose the specific and known risks arising from the Company's
2 anticompetitive business practices.

3 42. In the 2019 10-K, Amazon reported net sales of \$280.52 billion for the year.
4 Amazon failed to disclose, however, that these sales figures were unsustainable to the extent that
5 they were derived from impermissible anticompetitive conduct.

6 43. Appended to the 2019 10-K as exhibits were signed Certifications pursuant to SOX
7 by Defendants Bezos and Olsavsky, attesting that “the [2019 10-K] fully complies with the
8 requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934” and that “[t]he
9 information contained in the [2019 10-K] fairly presents, in all material respects, the financial
10 condition and results of operations of the Company.”

11 44. On May 1, 2020, members of the Subcommittee sent Defendant Bezos a letter⁵ in
12 response to an April 23, 2020 *Wall Street Journal* article which alleged that Amazon employees
13 used sensitive business information from third-party sellers on its platform to develop competing
14 products. The letter stated that “[i]f these allegations are true, then Amazon exploited its role as
15 the largest online marketplace in the U.S. to appropriate the sensitive commercial data of
16 individual marketplace sellers and then used that data to compete directly with those sellers,” and
17 encouraged Defendant Bezos to testify before the Subcommittee.

18 45. On May 15, 2020, Amazon sent a letter⁶ in response to the Subcommittee’s May
19 1, 2020 letter to Defendant Bezos, stating, in relevant part:

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24 ⁵ https://judiciary.house.gov/uploadedfiles/2020-05-01_letter_to_amazon_ceo_bezos.pdf?utm_campaign=2719-519.

25
26 ⁶ https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_may_15_2020.pdf.

1 Because Amazon is privileged to have third-party sellers who now account for the
2 great majority of sales of physical goods in Amazon’s store, we determined years
3 ago to take additional steps to give sellers comfort regarding their individual data.
4 It was purely for that reason that we went beyond any legal requirement—and
5 beyond the protections in place at any other store we are aware of—to begin to
6 implement internal policies to restrict the use of non-public data specific to one
7 particular selling partner to compete directly with sellers. We did this because we
8 thought it was the right thing to do for our selling partners, who are also critical
9 customers of Amazon—we wanted to go the extra mile to protect the trust of third
10 parties selling in our stores. This policy, known internally at Amazon as our Seller
11 Data Protection Policy, prohibits the use of nonpublic, seller-specific data to
12 compete against our selling partners. As with any other employee policy at
13 Amazon, we take the policy seriously, we train extensively on it, leadership
14 reinforces that training, we audit for compliance, we examine allegations of
15 breaches of the policy, and we iterate and improve based on what we learn. We do
16 all of this solely in order to promote and enhance third party sellers’ trust in
17 Amazon, trust that we know is essential to our business.

11 * * * * *

12 In particular, on the issue of our use of data, the Committee asked in July 2019
13 whether Amazon uses “any of the data (including aggregate data on specific
14 product categories) it collects on Marketplace transactions to inform its private
15 label strategy?” We responded clearly: “Yes, while we prohibit in our private label
16 strategy the use of data related specifically to individual sellers, like other retailers
17 we use aggregated store data (e.g., total sales) and customer shopping behavior
18 (e.g., search volume) to identify categories and products with high customer
19 demand over a given time period.” [] In response to the Committee’s written
20 questions for the record last fall, we elaborated that the policy prohibits “Amazon’s
21 private brand products business from using individual sellers’ data to decide which
22 products to launch” and that the business is prohibited from using such data “to
23 make sourcing, pricing, or inventory decisions for its private brand products.” []
24 Our testimony at the Subcommittee’s July 16, 2019 hearing about our company
25 policy reaffirmed our policy and is consistent with the written record. As even the
26 former employee quoted in the Wall Street Journal made clear, our seller data
27 protection policy is well known to our employees, and using individual seller data
28 to aid the private label business would be a clear violation of that policy.

1 46. On July 29, 2020, Defendant Bezos testified before the Subcommittee.⁷ During
2 the hearing, when asked by Representative Jayapal whether Amazon “ever access[ed] and use[d]
3 third-party seller data when making business decisions,” Defendant Bezos responded, in relevant
4 part, “I can’t answer that question yes or no. What I can tell you is we have a policy against using
5 seller-specific data to aid our private label business, but I can’t guarantee you that that policy has
6 never been violated.”

7
8 47. On September 4, 2020, Amazon submitted responses to the Subcommittee’s post-
9 July 29, 2020 hearing requests.⁸ In response to a request from Chairman Cicilline regarding
10 Amazon employees’ access to third-party seller data, Amazon stated:

11 Amazon first learned about the alleged violations of Amazon’s voluntarily adopted
12 Seller Data Protection Policy recently reported in *The Wall Street Journal* from *The*
13 *Wall Street Journal*. The *Journal*’s reporting conflates product-pricing and top-
14 seller data—both of which are publicly displayed in Amazon’s store—with the
15 individual seller data protected by Amazon’s Seller Data Protection Policy.
16 Amazon encourages employees to report any indication of potential lack of
17 compliance with all internal policies, including the Seller Data Protection Policy,
18 and Amazon responds appropriately to any such reports.

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21 48. On October 4, 2020, Amazon sent a letter to the Subcommittee “to follow up to
22 questions related to Amazon’s Seller Data Protection Policy and related internal investigation
23
24
25

26 ⁷ *Online Platforms and Market Power, Part 6: Examining the Dominance of Amazon, Apple,*
27 *Facebook, and Google: Hearing Before the Subcomm. on Antitrust, Com., & Admin. L. of the H.*
28 *Comm. on the Judiciary*, 116th Cong. 11-12, 101-03, 109-11, 113-18, 122-25, 130-33, 138-40,
145-46, 148, 153, 156, 160-61, 164-66 (2020) (testimony of Jeffrey P. Bezos, CEO, Amazon.com,
Inc.), <https://www.govinfo.gov/content/pkg/CHRG-116hhrg41317/pdf/CHRG-116hhrg41317.pdf>.

⁸ <https://docs.house.gov/meetings/JU/JU05/20200729/110883/HHRG-116-JU05-20200729-QFR052.pdf>).

1 raised during the Antitrust Subcommittee’s recent hearing and in response to the October 3 email
2 from Subcommittee staff.”⁹ The October 4, 2020 letter stated, in relevant part:

3 Amazon’s investigation into the *Wall Street Journal*’s allegations that Amazon
4 employees violated the Seller Data Protection Policy is complete, and we are
5 satisfied that the results confirm, as with all our policies, the seriousness with which
6 we take this policy.

7 * * * * *

8 There is some confusion on Amazon’s use of its own store data. Amazon’s data
9 about the costs of selling in its own stores—data like the cost to shelve, handle, and
10 promote a product that all stores have and use to manage their business—does not
11 become secret when it relates to a product sold by a third party in Amazon’s store.
12 Amazon stills needs to process and use this information, like all retailers, to operate
13 its store and better serve customers. In determining whether to launch a new
14 product, including its own private-label products, Amazon takes into account
15 factors such as the costs to shelve, handle, and promote that product. And, like any
16 other retailer, it combines such store data with its own procurement and other costs
17 to determine whether it believes sales of that product will be profitable. But that
18 store data is the same irrespective of the seller. And, we do not receive information
19 on costs incurred to procure or manufacture a product, or related profit data, from
20 third-party sellers.

21 As an additional measure to protect the trust of our selling partners, Amazon’s
22 policy does not permit private brands employees to look at the number of sales
23 made by a single seller. The policy does generally permit employees to look at
24 aggregate sales data for products sold in the Amazon store—that is, data on the
25 number of sales of a product in the Amazon store where there is more than one
26 seller of that product. It is confusion on this point that seems to have animated this
27 year’s *Wall Street Journal* article,^[] which appears to use the generic word “data”
28 to mean both single-seller or aggregate data, resulting in the inaccurate implication
that the use of any sort of Amazon sales data (even aggregate data) would violate
the policy. Indeed, Amazon’s records of past data queries related to the two products
cited in the Wall Street Journal report show that a single former employee pulled
and analyzed only aggregate data for both products in compliance with the Seller
Data Protection Policy. And of course there is nothing novel about a retailer looking
at its own store’s aggregate sales data for a product in this way; retailers have used
aggregate sales data for products sold in their stores for decades.

26 ⁹[https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_oct_04_20](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_oct_04_2020.pdf)
27 [20.pdf](https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_oct_04_2020.pdf).

1 49. On February 3, 2021, Amazon filed an Annual Report on Form 10-K with the SEC,
2 reporting the Company’s financial and operating results for the year ended December 31, 2020
3 (the “2020 10-K”). In the 2020 10-K, Amazon failed to disclose that it was engaged in
4 anticompetitive conduct with respect to its private-label business. Rather, the report contained
5 only a generic, highly general risk disclaimer to the effect that Amazon was “subject to general
6 business regulations and laws, as well as regulations and laws specifically governing the Internet[]
7 [and] e-commerce” and that these laws covered competition, among other things. Accordingly,
8 Amazon failed to disclose the specific and known risks arising from the Company’s
9 anticompetitive business practices.
10

11 50. In the 2020 10-K, Amazon reported net sales of \$386.06 billion for the year.
12 Amazon failed to disclose, however, that these sales figures were unsustainable to the extent that
13 they were derived from impermissible anticompetitive conduct.
14

15 51. Appended to the 2020 10-K as exhibits were signed Certifications pursuant to SOX
16 by Defendants Bezos and Olsavsky, attesting that “the [2020 10-K] fully complies with the
17 requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934” and that “[t]he
18 information contained in the [2020 10-K] fairly presents, in all material respects, the financial
19 condition and results of operations of the Company.”
20

21 52. On October 18, 2021, members of the Subcommittee sent Amazon a letter in
22 response to “recent, credible reporting that directly contradicts the sworn testimony and
23 representations of Amazon’s top executives—including former CEO Jeffrey Bezos—to the
24 Committee about their company’s business practices during our investigation last Congress.”¹⁰
25

26 ¹⁰ [https://judiciary.house.gov/uploadedfiles/letter - amazon misrepresentations - 10.18.21.pdf](https://judiciary.house.gov/uploadedfiles/letter_-_amazon_misrepresentations_-_10.18.21.pdf).
27

1 The letter stated that the Subcommittee was “providing [the Company] with a final opportunity to
2 provide exculpatory evidence to corroborate the prior testimony and statements on behalf of
3 Amazon to the Committee,” and encouraged Amazon to “provide the Committee with sworn,
4 truthful, and accurate responses to this request as we consider whether a referral of this matter to
5 the Department of Justice for criminal investigation is appropriate.”
6

7 53. On November 1, 2021, Amazon sent a letter¹¹ in response to the Subcommittee’s
8 October 18, 2021 letter, stating that Amazon “ha[d] cooperated fully with the Committee’s
9 inquiries and engaged in good faith throughout this process, and the resulting record fully supports
10 the transparency, candor, accuracy, and truthfulness of all of our statements, including on the
11 topics raised in your letter,” and that the Company “ha[d] in no way lied to or misled the
12 Committee, and any allegation to the contrary is false and unsupported.” Further, Amazon’s
13 response letter stated, in relevant part:
14

15 [Amazon’s] statements to the Committee regarding this policy have been truthful
16 and consistent throughout. At the July 16, 2019, hearing our witness stated that
17 Amazon does not use individual seller data to compete with third party sellers,
18 clarifying specifically that Amazon does not “use any of that specific seller data in
19 creating our own private brand products” and that Amazon does “not use their
20 individual data when we’re making decisions to launch private brands.”[] We
21 confirmed that policy and further elaborated upon our witness’s live testimony in
22 our July 26, 2019, follow-up letter to the Committee, explaining that, “While we
23 prohibit in our private label strategy the use of data related specifically to individual
24 sellers, like other retailers we use aggregated store data (e.g., total sales) and
customer shopping behavior (e.g., search volume) to identify categories and
products with high customer demand over a given time period.”[] And in our
October 11, 2019, response to the Committee’s subsequent written questions for
the record, we again confirmed that “Amazon prohibits Amazon’s private brand
products business from using non-public individual sellers’ data to decide which
products to launch, and Amazon prohibits the use of non-public individual sellers’
data to make sourcing, pricing, or inventory decisions for its private brand

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26 ¹¹ https://judiciary.house.gov/uploadedfiles/letter_from_brian_huseman_to_committee_nov_01_2021.pdf.
27

1 products.”[] In response to Vice Chair Jayapal’s question during the July 29, 2020,
2 hearing referencing our witness’s testimony of a year prior, Mr. Bezos testified,
3 “What I can tell you is we have a policy against using seller-specific data to aid our
4 private label business, but I can’t guarantee you that that policy has never been
5 violated.”[] He also again clarified that using “aggregate data is allowed under our
6 policies,”[] that “aggregate data” refers to more than one seller, and that Amazon’s
7 policy permits the use of aggregate data when there are many or only two or three
8 sellers of a product.[] In written responses to questions for the record after that
9 hearing, Amazon again explained the differences between aggregate versus seller-
10 specific data in the Seller Data Protection Policy, elaborated on our entirely
11 consistent prior testimony, and answered questions about Amazon’s enforcement
12 and auditing of its Seller Data Protection Policy.

13 54. On February 3, 2022, Amazon hosted an earnings call with investors and analysts
14 to discuss the Company’s Q4 2021 results (the “Q4 2021 Earnings Call”). When asked to discuss
15 why third-party seller services experienced less growth, Defendant Olsavsky responded, in
16 relevant part:

17 On 3P, I think what you’re seeing is a decreasing growth rate, much like the rest of
18 the business, as I mentioned earlier, we’re dealing with the very high growth period
19 from Q3 of 2020 through Q1 of 2021. But on a two-year basis, you’re still seeing
20 31% compounded annual growth in the 3P seller services revenue. Granted that was
21 in the -- it was 34% last quarter, but it’s maintaining. I think the bigger point is that
22 sellers are definitely big winners in Q4. The percentage of units up to 56% was a
23 record for 3P. *We continue to invest a lot to make sellers -- help sellers be
24 successful on our site. They’re a big consumer of advertising as well because they
25 use it to build their brands and add -- enable customers to see their selection and
26 make purchases. So we’re very happy with the third-party seller services
27 businesses, and again, looking for ways to help sellers be successful.*

28 (Emphasis added.)

55. On February 4, 2022, Amazon filed an Annual Report on Form 10-K with the SEC,
reporting the Company’s financial and operating results for the year ended December 31, 2021
(the “2021 10-K”). In the 2021 10-K, Amazon failed to disclose that it was engaged in
anticompetitive conduct with respect to its private-label business. Rather, the report contained
only a generic, highly general risk disclaimer to the effect that Amazon was “subject to general
business regulations and laws, as well as regulations and laws specifically governing the Internet[]

1 [and] e-commerce” and that these laws covered competition, among other things. Accordingly,
2 Amazon failed to disclose the specific and known risks arising from the Company’s
3 anticompetitive business practices.

4 56. In the 2021 10-K, Amazon reported net sales of \$469.82 billion for the year.
5 Amazon failed to disclose, however, that these sales figures were unsustainable to the extent that
6 they were derived from impermissible anticompetitive conduct.

7 57. Appended to the 2021 10-K as exhibits were signed Certifications pursuant to SOX
8 by Defendants Jassy and Olsavsky, attesting that “the [2021 10-K] fully complies with the
9 requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934” and that “[t]he
10 information contained in the [2021 10-K] fairly presents, in all material respects, the financial
11 condition and results of operations of the Company.”

12 58. The statements referenced in ¶¶ 28-31, 34-35, 38-43, 45-51, and 53-57 were
13 materially false and misleading because the Defendants made false and/or misleading statements,
14 as well as failed to disclose material adverse facts about the Company’s business, operations, and
15 compliance policies. Specifically, the Defendants made false and/or misleading statements and/or
16 failed to disclose that: (i) Amazon engaged in anticompetitive conduct in its private-label business
17 practices, including giving Amazon products preference over those of its competitors and using
18 third-party sellers’ non-public data to compete with them; (ii) the foregoing exposed Amazon to a
19 heightened risk of regulatory scrutiny and/or enforcement actions; (iii) Amazon’s revenues derived
20 from its private-label business were in part the product of impermissible conduct and thus
21 unsustainable; and (iv) as a result, the Defendants’ public statements throughout the Class Period
22 were materially false and/or misleading.

1 **The Truth Emerges**

2 59. On March 9, 2022, media outlets reported that members of the House Judiciary
3 Committee had requested that the DOJ open a criminal investigation into Amazon and certain of
4 its executives for allegedly lying to Congress about its business practices. As *Bloomberg* reported:

5 “Amazon repeatedly endeavored to thwart the Committee’s efforts to uncover the
6 truth about Amazon’s business practices,” a bipartisan group of lawmakers from
7 the House Judiciary Committee wrote Wednesday in a letter to Attorney General
8 Merrick Garland. “For this, it must be held accountable.”

9 At issue is testimony given by Amazon during a 16-month congressional
10 investigation into anticompetitive practices by tech giants. Amazon
11 representatives, including then Chief Executive Officer Jeff Bezos, told Congress
12 the company forbids employees from using data from third-party sellers to compete
13 against them or craft rival products. But a series of media accounts suggested that
14 Amazon employees have done just that, or at least found workarounds that render
15 the policy useless.

16 This isn’t the first time committee members have raised concerns about Amazon’s
17 testimony. Last October, the lawmakers asked Chief Executive Officer Andy Jassy
18 to “correct the record” as they considered referring the matter to the Justice
19 Department for criminal investigation.

20 Since then, the company has continued to deny it missuses seller data and refused
21 to turn over business records, the lawmakers wrote. “As a result, we have no choice
22 but to refer this matter to the Department of Justice,” they wrote.

23 60. In response, an Amazon spokesperson asserted that there was “no factual basis”
24 for the House Judiciary Committee’s allegations.

25 61. Then, on April 6, 2022, *The Wall Street Journal* published an article entitled “SEC
26 Is Investigating How Amazon Disclosed Business Practices.” The article reported, in relevant
27 part:

28 Federal securities regulators are investigating how Amazon.com Inc. has disclosed
some details of its business practices, including how it uses third-party-seller data
for its private-label business, according to people familiar with the matter.

The Securities and Exchange Commission is probing how the technology giant—
the largest U.S. e-commerce retailer and cloud-computing company—handled

1 disclosures of its employees' use of data from sellers on its e-commerce platform,
2 the people said. The SEC's enforcement division has asked for emails and
3 communications from several senior Amazon executives, according to one of the
4 people.

5 * * * * *

6 As a result of its 16-month investigation into technology companies including
7 Amazon beginning in 2019, the [House Judiciary Committee] proposed a series of
8 bills aimed at reining in tech giants. One of the measures targets Amazon's private-
9 label business, seeking to make it unlawful for the company to give its own products
10 preference over those of competitors, or to use sellers' nonpublic data to compete
11 with them.

12 * * * * *

13 The SEC's probe has been under way for more than a year, one of the people
14 familiar with the matter said.

15 62. On this news, Amazon's stock price fell \$105.98 per share, or 3.2%, to close at
16 \$3,175.12 per share on April 6, 2022.

17 63. As a result of Defendants' wrongful acts and omissions, and the precipitous decline
18 in the market value of Amazon's stock, Plaintiff and other Class members have suffered significant
19 losses and damages.

20 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

21 64. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil
22 Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons and entities other than
23 Defendants that purchased or otherwise acquired Amazon stock during the Class Period; and were
24 damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors
25 of the Company, at all relevant times, members of their immediate families and their legal
26 representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a
27 controlling interest.

1 65. The members of the Class are so numerous that joinder of all members is
2 impracticable. Throughout the Class Period, Amazon stock was actively traded on the NASDAQ.
3 While the exact number of Class members is unknown to Plaintiff at this time and can be
4 ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or
5 thousands of members in the proposed Class. Record owners and other members of the Class may
6 be identified from records maintained by Amazon or its transfer agent and may be notified of the
7 pendency of this action by mail, using the form of notice similar to that customarily used in
8 securities class actions.
9

10 66. Plaintiff's claims are typical of the claims of the members of the Class as all
11 members of the Class are similarly affected by Defendants' wrongful conduct in violation of
12 federal law that is complained of herein.
13

14 67. Plaintiff will fairly and adequately protect the interests of the members of the Class
15 and has retained counsel competent and experienced in class and securities litigation. Plaintiff has
16 no interests antagonistic to or in conflict with those of the Class.

17 68. Common questions of law and fact exist as to all members of the Class and
18 predominate over any questions solely affecting individual members of the Class. Among the
19 questions of law and fact common to the Class are:
20

- 21 • whether the federal securities laws were violated by Defendants' acts as alleged
 herein;
- 22 • whether statements made by Defendants to the investing during the Class Period
23 misrepresented material facts about the business, operations and management of
24 Amazon;
- 25 • whether the Individual Defendants caused Amazon to issue false and misleading
26 financial statements during the Class Period;
- 27 • whether certain Defendants acted knowingly or recklessly in issuing false and
28 misleading financial statements;

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- whether the prices of Amazon stock during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
 - whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

5 69. A class action is superior to all other available methods for the fair and efficient
6 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
7 damages suffered by individual Class members may be relatively small, the expense and burden
8 of individual litigation make it impossible for members of the Class to individually redress the
9 wrongs done to them. There will be no difficulty in the management of this action as a class action.
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11 70. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-
12 on-the-market doctrine in that:

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- Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
 - the omissions and misrepresentations were material;
 - Amazon shares are traded in an efficient market;
 - the Company's shares were liquid and traded with moderate to heavy volume during the Class Period;
 - the Company traded on the NASDAQ and was covered by multiple analysts;
 - the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's shares; and
 - Plaintiff and members of the Class purchased, acquired and/or sold Amazon shares between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

24 71. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a
25 presumption of reliance upon the integrity of the market.
26

1 76. Pursuant to the above plan, scheme, conspiracy and course of conduct, each of the
2 Defendants participated directly or indirectly in the preparation and/or issuance of the quarterly
3 and annual reports, SEC filings, press releases and other statements and documents described
4 above, including statements made to securities analysts and the media that were designed to
5 influence the market for Amazon securities. Such reports, filings, releases and statements were
6 materially false and misleading in that they failed to disclose material adverse information and
7 misrepresented the truth about Amazon's finances and business prospects.

9 77. By virtue of their positions at Amazon, the Defendants had actual knowledge of
10 the materially false and misleading statements and material omissions alleged herein and intended
11 thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, the
12 Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and
13 disclose such facts as would reveal the materially false and misleading nature of the statements
14 made, although such facts were readily available to the Defendants. Said acts and omissions of
15 the Defendants were committed willfully or with reckless disregard for the truth. In addition, each
16 of the Defendants knew or recklessly disregarded that material facts were being misrepresented or
17 omitted as described above.

19 78. Information showing that the Defendants acted knowingly or with reckless
20 disregard for the truth is peculiarly within the Defendants' knowledge and control. As the senior
21 managers and/or directors of Amazon, the Individual Defendants had knowledge of the details of
22 Amazon's internal affairs.

24 79. The Individual Defendants are liable both directly and indirectly for the wrongs
25 complained of herein. Because of their positions of control and authority, the Individual
26 Defendants were able to and did, directly or indirectly, control the content of the statements of
27

1 Amazon. As officers and/or directors of a publicly-held company, the Individual Defendants had
2 a duty to disseminate timely, accurate, and truthful information with respect to Amazon's
3 businesses, operations, future financial condition and future prospects. As a result of the
4 dissemination of the aforementioned false and misleading reports, releases and public statements,
5 the market price of Amazon shares was artificially inflated throughout the Class Period. In
6 ignorance of the adverse facts concerning Amazon's business and financial condition which were
7 concealed by the Defendants, Plaintiff and the other members of the Class purchased or otherwise
8 acquired Amazon shares at artificially inflated prices and relied upon the price of the stock, the
9 integrity of the market for the shares and/or upon statements disseminated by the Defendants, and
10 were damaged thereby.
11

12 80. During the Class Period, Amazon shares were traded on an active and efficient
13 market. Plaintiff and the other members of the Class, relying on the materially false and misleading
14 statements described herein, which the Defendants made, issued or caused to be disseminated, or
15 relying upon the integrity of the market, purchased or otherwise acquired shares of Amazon shares
16 at prices artificially inflated by the Defendants' wrongful conduct. Had Plaintiff and the other
17 members of the Class known the truth, they would not have purchased or otherwise acquired said
18 shares, or would not have purchased or otherwise acquired them at the inflated prices that were
19 paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of
20 Amazon shares was substantially lower than the prices paid by Plaintiff and the other members of
21 the Class. The market price of Amazon shares declined sharply upon public disclosure of the facts
22 alleged herein to the injury of Plaintiff and Class members.
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1 Amazon's results of operations. Throughout the Class Period, the Individual Defendants exercised
2 their power and authority to cause Amazon to engage in the wrongful acts complained of herein.
3 The Individual Defendants therefore, were "controlling persons" of Amazon within the meaning
4 of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct
5 alleged which artificially inflated the market price of Amazon stock.
6

7 87. Each of the Individual Defendants, therefore, acted as a controlling person of
8 Amazon. By reason of their senior management positions and/or being directors of Amazon, each
9 of the Individual Defendants had the power to direct the actions of, and exercised the same to
10 cause, Amazon to engage in the unlawful acts and conduct complained of herein. Each of the
11 Individual Defendants exercised control over the general operations of Amazon and possessed the
12 power to control the specific activities which comprise the primary violations about which Plaintiff
13 and the other members of the Class complain.
14

15 88. By reason of the above conduct, the Individual Defendants are liable pursuant to
16 Section 20(a) of the Exchange Act for the violations committed by Amazon.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

19 A. Determining that the instant action may be maintained as a class action under Rule
20 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;
21

22 B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason
23 of the acts and transactions alleged herein;

24 C. Awarding Plaintiff and the other members of the Class prejudgment and post-
25 judgment interest, as well as their reasonable attorneys' fees, expert fees and other costs; and

26 D. Awarding such other and further relief as this Court may deem just and proper.
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DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury.

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