

INTRODUCTION

Amazon is the world’s largest online marketplace. But it has achieved that distinction, and maintains it, through anticompetitive conduct that destroys its competitors and raises prices for consumers everywhere. Indeed, after extensive investigations, the Federal Trade Commission (“FTC”) and seventeen states have concluded that Amazon has committed *per se* illegal antitrust violations and has abused its monopoly power as an online superstore to immunize itself from competition from all other online retailers. *Federal Trade Commission, et al. v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wash. filed Sept. 26, 2023) (“FTC Compl.”); *See also State of Cal. v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct. filed Sept. 15, 2022) (“Cal. Compl.”).

Zulily, an online retailer dedicated to offering consumers low prices, is one of Amazon’s victims. The FTC Complaint alleges that, since at least 2019, Amazon specifically targeted Zulily as an emerging online superstore. Amazon could not tolerate Zulily’s “primary strategy” to offer consumers the “lowest price online” or its displaying Amazon’s prices next to Zulily’s to show consumers that Zulily’s were better. FTC Compl. ¶343. But rather than compete on the merits, Amazon set out to “destroy” Zulily instead, by coercing third-party retailers and wholesale suppliers to agree to “price parity,” i.e., to artificially raise Zulily prices at or above Amazon’s, and to punish any sellers who cheated. *Id.* ¶¶276, 345. Punishments ranged from disqualifying a seller from the “Buy Box”—the mechanism most consumers use to buy an item or add it to their cart—to “total

1 banishment from Amazon’s Marketplace.” *Id.* ¶269. For many sellers, these
2 punishments, if carried out, threatened their very survival.

3
4 The plot against Zulily was part of Amazon’s overall scheme to eliminate
5 horizontal price competition among all online retailers marketwide; to make
6 Amazon’s prices appear—falsely—to be the lowest without Amazon having to
7 really compete; and to groom consumers not to look anywhere besides Amazon
8 for the best retail pricing.

9
10 The result is what Amazon intended: Zulily’s suppliers, who could not
11 afford to lose Amazon sales, had no choice but to abide by Amazon’s price-fixing
12 terms and were forced to (i) instruct Zulily to increase its list prices for the at-
13 issue goods to be at least as high as Amazon’s, (ii) pull the offending product(s)
14 from Zulily, (iii) leave Zulily altogether; and (iv) sometimes not even contact
15 Zulily. Indeed, in just one year’s time, Amazon’s conduct resulted in nearly half
16 of the suppliers who sold to both Amazon and Zulily to end their relationships
17 with Zulily.

18
19 After only a few months of being targeted by Amazon’s exclusionary
20 conduct, Zulily was forced to discard the “Best Price Promise” it made to
21 consumers and to remove all Amazon price comparisons from its website—
22 effectively abandoning its strategy to gain scale through discount pricing. The
23 conduct has caused Zulily substantial revenue losses and reduced traffic to
24 Zulily’s website. It denies Zulily the scale necessary to compete in the market,
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1 “stifles [competition], deadens price competition, reduces output, and deprives
2 the American public of lower prices.” *Id.* ¶350.

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4 Accordingly, Zulily brings this action under federal and state antitrust
5 laws against Amazon, seeking damages and other relief as recompense for
6 Amazon’s anticompetitive conduct.

7 **JURISDICTION AND VENUE**

8 1. This Court has federal question jurisdiction (28 U.S.C. § 1331) over
9 Plaintiff’s federal-law claims and supplemental jurisdiction (28 U.S.C. § 1367)
10 over Plaintiff’s state-law claims.

11
12 2. This Court has personal jurisdiction over Amazon because at all
13 relevant times, Amazon did and does substantial business in or affecting the
14 State of Washington, its principal headquarters are in Washington, it has
15 registered with the Washington Secretary of State, and the injuries that have
16 been sustained because of Amazon’s illegal conduct occurred in the State
17 of Washington.

18
19 3. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because
20 Amazon’s principal place of business is in this district and a substantial part of
21 the events or omissions giving rise to the claims occurred in this district.

22 **PARTIES**

23
24 4. Plaintiff Zulily, LLC (“Zulily”) is organized under the corporate laws
25 of the State of Delaware and has its principal place of business in the State of
26

1 Washington. Zulily is an online retail marketplace for clothes, toys, and home
2 decor, among other things.

3
4 5. Defendant Amazon.com, Inc. (“Amazon”) is organized under the
5 corporate laws of the State of Delaware and has its principal place of business in
6 the State of Washington. Amazon is the nation’s largest online retailer selling
7 almost all categories of consumer goods imaginable.

8
9 **BACKGROUND**

10 6. Amazon is the “everything store”—it is the largest online retailer in
11 the United States offering a broad array of consumer goods across multiple
12 product categories: books, clothing, home goods, pet supplies, toys, and more.

13 7. Amazon sales account for more than 50% of all online retail sales
14 revenue in the United States while Amazon’s two closest competitors—eBay and
15 Walmart—account for only 6.1% and 4.6%, respectively.

16
17 8. Amazon is a retailer, selling goods itself on the Amazon platform
18 directly to consumers, and it hosts other retailers (“third-party retailers”) who
19 sell their goods on the Amazon platform in exchange for paying Amazon fees.

20 9. While Zulily does not host third-party retailers, Amazon and Zulily
21 share and compete for relationships with many of the same merchants. For
22 example, some merchants who sell products on Amazon as third-party retailers
23 and/or sell products wholesale to Amazon also sell products wholesale to Zulily.

24
25 **Amazon Controls Merchants**

26 10. Although some of Amazon’s third-party retailers also sell their
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1 products “off Amazon” (on their own websites and on other online stores),
2 Amazon is critical to the survival of most third-party retailers.

3
4 11. Almost half of Amazon’s third-party retailers generate 81% to 100%
5 of their revenues from sales on Amazon—making Amazon their most important
6 distribution channel by far.

7
8 12. According to California’s Attorney General, a third-party seller
9 explained: “We have nowhere else to go and Amazon knows it.” “If we lose 90
10 percent of our sales because we get suspended from Amazon, the business ceases
11 to exist, basically. It doesn’t work basically anymore.” *Id.* ¶42.

12
13 13. Amazon is equally critical to wholesalers. Amazon sales account for
14 20% to 30% of all sales of third-party retailers and wholesalers (combined)—sales
15 which cannot be replicated on non-Amazon channels.

16
17 14. “As a well-known consumer electronics device brand that sells
18 wholesale to Amazon reported, ‘It would be very harmful to our business if we
19 were to stop selling our products on Amazon.com. Not only do a large and growing
20 proportion of our sales take place on Amazon.com, but a majority of our
21 customers also are members of Amazon Prime. A substantial portion of our sales
22 take place on Amazon.com. Indeed, as of the third quarter of 2022, approximately
23 75% of our online device sales in the U.S. take place on Amazon.’” *Id.* ¶40.

24
25 15. An internal document of a competitor (or would-be competitor) of
26 Amazon’s reportedly says: “Amazon is not loved by sellers, but sellers are locked
27 into their platform.” “You have no choice but to make a deal with the devil.” “You

1 are one notice away from being shut down and losing your livelihood.” “Amazon
2 doesn’t care about you.” “We want Amazon’s competitor to win because they
3 aren’t bullies.” *Id.* ¶44.

4
5 16. One reason for the bad blood is that Amazon charges both its third-
6 party sellers and its wholesale suppliers supracompetitive fees to deal with
7 Amazon. The FTC and California’s Attorney General allege that Amazon’s fees
8 are inflated and higher than the fees charged by most or all of Amazon’s online
9 marketplace competitors, including Walmart.com and eBay.com.

10
11 17. It is not Zulily’s standard business model to charge suppliers fees at
12 all. Zulily buys products wholesale at bargained-for prices and suppliers are
13 charged nothing by way of service or advertising fees.

14
15 18. A third-party seller reported to California’s Attorney General that
16 “the total fees it incurs to sell its products on Amazon [50%] have increased over
17 time, to the point where the margins it earns on Amazon sales are lower than the
18 margins it earns on sales through any other channels.” *Id.* ¶58.

19
20 19. Merchants have no power to negotiate fees or other conditions of
21 dealing with Amazon: “Amazon’s power over online merchants is not just in sales,
22 but also in the way that sellers are treated.” The typical seller on Amazon “has
23 zero bargaining power whatsoever in their negotiations with Amazon.
24 Everything is take it or leave it. All of the bargaining power rests with Amazon.”
25 *Id.* ¶66.

1 20. Another seller reported that it has no ability to negotiate the terms
2 of its relationship with Amazon, and Amazon “changes its policies for sellers
3 regularly and with little notice.” “As a company whose whole business is
4 dependent on sales on Amazon, when Amazon makes a policy change with little
5 to no notice, it dramatically impacts this seller’s business in a negative way.”

6 *Id.* ¶67.

7
8 21. But despite the bullying and the increasing expense of dealing with
9 Amazon, Amazon’s market power over merchants has only grown because
10 merchants require access to Amazon’s vast customer network.

11 **Amazon Controls Consumers**

12
13 22. Amazon enjoys market power over online retail consumers—and in
14 particular—over its 160 million Prime-member households.

15 23. Prime members pay a flat membership fee (today \$139/year) for free
16 unlimited 2-day shipping. Roughly 96% of all Prime members are more likely to
17 buy products from Amazon than any other online store, and 74% of all consumers
18 go directly to Amazon when they are ready to buy a specific product.

19
20 24. Prime households are particularly lucrative to Amazon, with over
21 55% of U.S. households with income over \$75,000.¹ Amazon uses Prime
22 Membership to increase customers’ engagement and drive them to Amazon

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1. See Stephanie Chevalier, *Share of online consumers in the United States who are Amazon Prime members as of August 2018, by household income*, Statista (June 15, 2022), <https://www.statista.com/statistics/610070/amazon-prime-reach-usa-income>.

1 rather than online competitors. According to Amazon, Prime subscription fees
2 “make[] subscribers feel as though they must make the subscription fee worth it
3 by making more purchases on Amazon.” Prime subscribers spend an average of
4 \$1,400 per year on Amazon, compared to non-Prime customers, who spend an
5 average of \$600 per year.²
6

7 25. Even when Amazon raises prices or lowers its quality, Prime
8 customers generally have not switched to competing sites.
9

10 26. When Amazon, for example, reduced the value of its platform to
11 consumers by eliminating organic searches and relying on paid advertisements
12 instead, Amazon only gained market share.

13 27. When consumer prices on Amazon increased because sellers had to
14 pay for the ads and passed through at least some of the advertising costs to
15 consumers, Amazon only gained market share.
16

17 28. Indeed, an estimated 90% of Prime customers renew their
18 membership and more consumers join Prime each year, spending increasingly
19 more on Amazon than any other online store.

20 29. Due to Amazon’s misleading practices that condition Prime and
21 other customers to believe that the lowest total prices are on Amazon, competing
22 online retailers would have to be able to offer better discounts and/or better
23 product selection to incentivize Prime customers to shop elsewhere. Amazon,
24

25
26 2. Matthew Woodward, *Amazon Prime Statistics: Subscribers, Usage &*
27 *Revenue 2023*, <https://www.searchlogistics.com/learn/statistics/amazon-prime-statistics/>.

1 however, has foreclosed that possibility through collusion and monopoly
2 power abuses.

3
4 **AMAZON’S MONOPOLY POWER
IN THE RELEVANT ANTITRUST MARKETS**

5 30. Amazon has monopoly power in the market for online superstores
6 (the “Online Superstore Market”). *See generally* FTC Compl. ¶¶117–183. Online
7 superstores compete for online consumer sales across multiple categories of new
8 retail goods—through a unique set of features that increase efficiencies for
9 shoppers, including custom delivery.
10

11 31. Online superstores also compete for sellers (third-party retailers
12 and/or wholesalers) that want to reach consumers.
13

14 32. Amazon abused its monopoly power in the relevant market Amazon
15 abused its monopoly power in the relevant market to, among other things,
16 implement a conspiratorial scheme to eliminate retail price competition in online
17 superstores and in all online retail stores across-the-board.
18

19 **A. The Online Superstore Market**

20 33. *The online superstore is a relevant product market with no*
21 *reasonably interchangeable substitute.* For consumers, it has no or low cross-
22 elasticity of demand with any other shopping experience. The relevant market,
23 for example, excludes:

- 24 a. Retail sales made offline, such as in brick-and-mortar
25 locations that require shoppers to travel to a specific location
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1 with limited physical shelf space and a corresponding need to
2 curate.

3 b. Online sales made on limited-selection or specialized stores
4 that serve consumers looking for a specific product or
5 category of products.
6

7 c. Online sales of perishable groceries.

8 34. The features of online superstores that are not reasonably
9 interchangeable with, and cannot be replicated by, brick-and-mortar stores are:

10 a. An “extensive breadth and depth of product selection,” that
11 cannot be replicated in a physical store, i.e., the available
12 products span multiple categories (e.g., clothes, toys, home
13 decor) and there are a range of different brands available
14 within each category.
15

16 b. 24/7 access to shopping with the ability to pause a “shopping
17 trip” and return to it later when convenient.
18

19 c. “[S]ophisticated filtering and discovery tools” that enable
20 shoppers to find the desired product(s) quickly and
21 efficiently.
22

23 d. Easy comparison shopping, i.e., the ability to compare
24 features and prices of similar products made by the same
25 brand and/or by different brands without leaving the
26 platform.
27

- 1 e. Historical data regarding individual consumer’s prior
- 2 searches and purchases used to provide repeat visitors with
- 3 custom shopping experiences, i.e., tailored recommendations
- 4 based on previously viewed items, past purchases and
- 5 “reminde[rs]” that it is time to replenish a previously
- 6 purchased consumable.
- 7
- 8 f. Realtime shopping recommendations, including across
- 9 product categories, based on items as they are browsed such
- 10 as “Frequently Bought Together.”
- 11
- 12 g. Product research tools that may include ratings and reviews,
- 13 text descriptions, photos and videos.
- 14
- 15 h. An efficient checkout experience where a consumer’s
- 16 payment and shipping information is pre-stored for easy use.
- 17
- 18 i. Shopping from home or anyplace else, including while
- 19 traveling, on a laptop or mobile phone.
- 20
- 21 j. On the other hand, brick-and-mortar shoppers can see and
- 22 touch a product while browsing and can discuss choices with
- 23 in-store employees.

24 35. The following are examples of features of Online Superstores that
25 are not easily interchangeable with, and cannot be replicated by, limited-
26 selection online stores:
27

- 1 a. An “extensive breadth and depth of product selection,” that is
2 unavailable at limited-selection online stores. A single
3 limited-selection online store cannot become a shopper’s
4 preferred destination for purchasing an array of products.
5 And there are inefficiencies and increased shipping costs in
6 visiting and purchasing from multiple limited-selection
7 stores versus one superstore.
8
9 b. Valuable cross-category consumer data that limited-selection
10 online stores do not have. The data offers shoppers a more
11 personalized shopping experience. Amazon attributed more
12 than a billion in sales to this capability special to online
13 superstores.
14
15 c. Limited-selection online stores cannot make cross-category
16 shopping recommendations.
17
18 d. Limited-selection online stores do not offer easy comparison
19 shopping across multiple brands and/or product categories.
20
21 e. On the other hand, a limited-selection online store may offer
22 greater expertise in a particular brand or product category,
23 more reliability in terms of quality due to curation and/or
24 screening for counterfeit goods or fake reviews, or an appeal
25 to customer loyalty to purchase directly from a particular
26 online store or brand for a particular product or product
27

1 type—including loyalty based on personal relationships or
2 personal history with a brand.

3
4 36. The online perishable grocery category is properly excluded from
5 the Online Superstore Market. Perishable groceries are foods that cannot be
6 safely stored at room temperature, including fresh fruits and vegetables, meat
7 and frozen items. For various reasons, this is a distinct business line that is not
8 part of the relevant market.

9
10 a. Perishable groceries that are delivered (and not picked up
11 curbside, for example) are delivered at a particular time or
12 during a particular time slot—often requiring the customer
13 to be present at delivery for prompt storage.

14 b. During packaging and delivery, perishable groceries require
15 specialized storage and delivery facilities with refrigeration
16 or freezing that serve a smaller geographic area.

17
18 c. Competition for perishable grocery sales is more localized
19 because quality and shelf life are seasonal and regional.
20 Amazon generally sets regional prices for perishable grocery
21 items, whereas online-superstore items compete nationally
22 and usually have a single, nationwide price.

23
24 37. For sellers (third-party retailers and/or wholesale suppliers), the
25 Online Superstore Market has no or low cross-elasticity of demand with any
26 other online sales outlet. Primarily, this is due to the ability of online superstores
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1 to reach the most online consumers, the most lucrative online consumers, and
2 the online consumers who are shopping across multiple retail categories at once
3 who may (even inadvertently) discover a seller’s product when shopping for
4 another product—even in another product category.
5

6 38. ***The relevant geographic market is the United States.*** Online
7 superstores that serve consumers shopping for items for U.S. delivery generally
8 do not compete for sales to consumers shopping for items to be delivered outside
9 the United States.
10

11 39. Consumers shopping online for items to be delivered within the
12 United States generally make purchases from U.S. businesses and U.S.-facing
13 online stores. For example, Amazon’s online storefront for shoppers in the United
14 States (Amazon.com) is separate from its storefront for shoppers in the United
15 Kingdom (Amazon.co.uk). They offer different products, at different prices, under
16 different shipping terms, and present unique search results and advertisements.
17

18 40. Online superstores that primarily serve shoppers seeking delivery
19 abroad offer a shopping experience tailored to each individual country: different
20 currencies, prices, customs and border control conditions, and shipping terms.
21

22 41. Industry participants identify competitors for U.S. shoppers
23 separately from competitors that serve shoppers seeking items to be delivered to
24 other countries.

25 42. ***There is direct and indirect evidence of Amazon’s monopoly***
26 ***power in the relevant antitrust market.***
27

1 43. Despite the already-inflated and increasing cost of doing business
2 with Amazon, and despite sellers' dislike of Amazon's way of doing business,
3 Amazon's network of third-party retailers and wholesale suppliers has
4 only grown.
5

6 44. Despite Amazon's reduced value to shoppers (e.g., by substituting
7 paid ads for relevance-based search results), Amazon's customer network has
8 only grown.
9

10 45. Despite Amazon consumer prices growing increasingly higher (e.g.,
11 as sellers pass through the increasing cost of doing business with Amazon to
12 consumers), Amazon's customer network has only grown.

13 46. Amazon's ability, through the illegal scheme alleged here, to
14 artificially raise the prices charged on Amazon *and* the prices charged by its
15 online superstore competitors establishes Amazon's monopoly power in the
16 relevant market.
17

18 47. Additionally, the FTC has concluded that—based on “documents
19 and data, both from Amazon and industry analysts”—Amazon's share of the
20 overall value of goods sold by online superstores is higher than 60% and rising.
21 FTC Compl. ¶166.
22

23 48. Gross Merchandise Value (“GMV”) measures the total sales value
24 of goods sold to customers during a given time and is commonly used to track the
25 market share of online stores. Amazon's GMV captures the total value of goods
26
27
28

1 sold on the Amazon platform—by Amazon as a retailer or by third-
2 party retailers.

3 49. The FTC cites third-party reports that assess market share across
4 the “top-4 general merchandise platforms,” i.e., Amazon, Walmart, Target and
5 eBay, Amazon has maintained an estimated market share of more than 69% of
6 GMV since 2015, with that share growing to 77% as of 2021. *Id.*

7 8 50. Other data cited by the FTC puts Amazon’s market share at more
9 than 82% of GMV in 2022.

10 11 51. Amazon’s internal documents reportedly put its own market share
12 at 72.5%, even if the market were to include stores that lack the breadth and/or
13 depth of online superstores.

14 52. ***Amazon’s dominant share in the Online Superstore Market is***
15 ***protected by significant barriers to entry.*** Chief among them is scale—made
16 all the more difficult to achieve given Amazon’s network effects. There are also
17 reputational barriers, switching costs, and feedback loops.

18 19 53. The FTC alleges that scale is a “critical factor for success” in the
20 Online Superstore Market. “Amazon itself has touted its scale as a key
21 differentiator from medium-sized or single-category online stores.” Jeff Bezos,
22 Executive Chairman of Amazon, wrote that “online selling (relative to traditional
23 retailing) is a scale business characterized by high fixed costs and relatively low
24 variable costs. This makes it difficult to be a medium-sized e-commerce
25 company,” and “difficult for single-category e-commerce companies to achieve the
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1 scale necessary to succeed.” According to Mr. Bezos, “building an important and
2 lasting company in e-commerce” simply “isn’t going to work in small volumes.”
3 *Id.* ¶177.

4
5 54. In a market with network effects, the value of the service increases
6 as more people use it. For example, the more consumers who shop on Amazon,
7 the more valuable the platform becomes to merchants. The more consumers leave
8 reviews for products on Amazon, the more useful the platform becomes to other
9 shoppers. As with other network effects, the more scale an online superstore
10 gains, the more powerful this effect becomes. Prospective and emerging entrants
11 lack the network effects that contribute to scale.

12
13 55. Reputational barriers require prospective and emerging entrants to
14 establish a relationship of trust with customers to compete.

15
16 56. Switching costs are a barrier to entry in the Online Superstore
17 Market. Mr. Bezos has stated that “switching costs long-term should actually be
18 higher in the online world than in the physical world” because “in the online
19 world, businesses have the opportunity to develop very deep relationships with
20 customers, both through accepting preferences of customers and then observing
21 their purchase behavior over time, so that you can get that individualized
22 knowledge of the customer and use that individualized knowledge of the
23 customer to accelerate their discovery process.” *Id.* ¶182.

1 57. Finally, Amazon engages in the illegal conduct alleged here that
2 bars entry and forecloses competition, making it very difficult for would-be
3 competitors to enter and/or expand in the Online Superstore Market.
4

5 58. At least in part due to these barriers to entry, there are few
6 competitors or potential competitors in the relevant market: Amazon, eBay,
7 Walmart and Target are the “big 4.”
8

9 59. Zulily also competes in the relevant market as an online retailer
10 offering a “breadth and depth” of product selection that cannot be replicated in a
11 physical store and that limited-selection online stores lack. The products
12 available on Zulily span multiple categories, including clothes, beauty, toys,
13 home decor, and electronics. FTC Compl. ¶158.
14

15 60. The FTC identified Zulily as an “emerging” competitor in the
16 relevant market since at least 2019.
17

18 61. Amazon, too, recognized Zulily as an emerging competitor in the
19 relevant market around that same time, as Amazon started scraping Zulily to
20 check its pricing and punishing suppliers whose products were being offered on
21 Zulily for prices that Amazon did not like.
22

23 **B. Online Retail Product Markets**

24 62. Amazon’s anticompetitive conduct is not confined to the Online
25 Superstore Market. It extends to essentially every online retail market that
26 Amazon participates in. Zulily competes in many of these same markets and has
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28

1 been harmed by Amazon’s anticompetitive conduct and agreements in
2 those markets.

3
4 63. Government agencies, economists, customers and retailers alike
5 recognize online retail markets as distinct from the U.S. retail market. Industry
6 recognition of distinct online retail markets is relevant because economic actors
7 usually have accurate perceptions of economic realities and the parties active in
8 the market understand its function and demarcation.

9
10 64. For example, the U.S. Census Bureau and Bureau of Labor
11 Statistics each separately define, track, and report on online retail markets.

12 65. Retailers also recognize online retail markets as a separate
13 economic reality. Most small retailers do not sell online. Online retailers
14 commonly advertise only online, whereas brick-and-mortar retailers advertise
15 both online and through other means.

16
17 66. Online retail markets have unique characteristics, including
18 superior methods for transmitting information, effective asynchronous
19 communication, and greater interactivity and search capability. Online retail
20 markets also have unique cost savings relative to brick-and-mortar retail
21 markets, due to lower transaction costs while supplying goods directly to
22 a consumer.

23
24 67. The shopping experience in online retail markets is substantially
25 different as well. For example, online shoppers can more easily compare prices,
26 consider alternative products, and delay purchases until they are ready to buy.
27

1 However, online shoppers cannot pay through cash or check. Customer service in
2 online retail markets is different as well, as it is typically less comprehensive or
3 effective without live employees to interact with.
4

5 68. While discovery may reveal additional relevant markets, Zulily has
6 suffered anticompetitive harm in at least the following online retail markets:
7 women's clothing; beauty and wellness; home and garden; children's clothing;
8 baby and maternity; footwear; toys and games; men's clothing; and electronics.
9

10 **AMAZON'S ANTICOMPETITIVE CONDUCT**

11 69. One reason why Amazon enjoys monopoly power is Amazon's price-
12 fixing agreements. Zulily and other competitors generally cannot win customers
13 from Amazon with lower prices because Amazon has developed a system to fix
14 retail prices across all online superstores and other online retailers so that the
15 prices listed on Amazon are always the lowest, though still supracompetitive.
16 That horizontal price-fixing effect is Amazon's overall objective.
17

18 70. Indeed, Amazon could suppress online retail price competition only
19 by price fixing with its third-party retailers and its wholesale suppliers—but all
20 with the same intent to price-fix at the retail level.
21

22 71. Some Amazon wholesalers, for example, sell off Amazon at retail.
23 Notably, Amazon did not limit its price-fixing agreement with wholesalers to
24 cover only wholesale pricing: it fixes price at the retail level. Wholesalers then
25 affect retail prices off Amazon by imposing minimum-advertised-price
26 agreements—all in compliance with Amazon's retail price fix.
27

1 72. Similarly, some of Amazon’s third-party retailers sell wholesale off
2 Amazon, including to Zulily. To fill this potential gap in its price-fixing scheme,
3 Amazon’s price-fixing agreements with its retailers broadly prohibit **any**
4 **products** that are being sold on Amazon from being sold off Amazon at prices
5 that Amazon thinks are too low—even if, off Amazon, the seller is playing the
6 role of a wholesaler and not setting retail prices.
7

8 73. The fact that Amazon strategically placed its price-fixing
9 agreements, that cover online retail prices marketwide, into some contracts that
10 are otherwise vertical does not immunize Amazon from *per se* liability.
11

12 74. At least some of the conspiratorial agreements are between and
13 among horizontally-situated firms—regardless of how the surrounding
14 paperwork is styled—and the economic reality is what Amazon intended: the
15 elimination of horizontal price competition.
16

17 75. Amazon uses its invaluable access to Prime and other customers as
18 a bargaining chip to induce third-party retailers and wholesale suppliers to
19 participate in the conscious commitment to that objective.
20

21 **Price-Parity Retail Agreements**

22 76. Amazon requires each of its third-party retailers to agree to set off-
23 Amazon prices equal to or higher than Amazon prices.

24 77. Historically, Amazon strategically placed these price-parity
25 agreements in its Amazon’s Business Solutions Agreement (“BSA”), a contract
26 that every third-party retailer must agree to and comply.
27

1 78. Each third-party retailer knows that all other third-party retailers
2 must agree to the BSA and each has access to the terms of the BSA online
3 through Amazon Seller Central.
4

5 79. When the price-parity agreement was contained in the BSA itself
6 and (fittingly) was called the “Price Parity Provision,” it required third-party
7 sellers to list their lowest price for any particular item on Amazon.
8

9 80. The FTC alleges that sellers understood this to be an agreement—
10 that sellers followed—not to list products off Amazon for a lower price than the
11 price listed on Amazon.

12 81. Even though Amazon eliminated the “Price Parity Provision,”
13 sometime in 2019, due to foreign antitrust proceedings where at least one
14 regulator found that it resulted in artificially inflated consumer prices, Amazon
15 has continuously enforced the same agreement with the same intent and effects
16 in the United States.
17

18 82. Sellers, for example, now agree through the BSA to Amazon’s “Fair
19 Pricing Policy.” That policy provides that “Amazon regularly monitors the prices
20 of items on our marketplaces, including shipping costs, and compares them with
21 other prices available to our customers. If we see pricing practices on a
22 marketplace offer that harms customer trust, Amazon can remove the Buy Box,
23 remove the offer, suspend the ship option, or, in serious or repeated cases,
24 suspending or terminating selling privilege.” *Id.* ¶118.
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1 83. A merchant’s goods being listed off-Amazon at prices below
2 Amazon’s is a “pricing practice[] . . . that harms consumer trust.” *Id.*

3
4 84. As with the Price Parity Provision, the Fair Pricing Policy prevents
5 merchants from listing their goods at lower prices on other platforms, including
6 other platforms that charge lower (or no) merchant fees.

7 85. Through the BSA, each of Amazon’s third-party resellers also agree
8 to “Amazon Standards for Brands Selling in the Amazon Store” (“ASB”), i.e., to
9 “maintain Amazon’s standards for customer experience,” including “price
10 competitiveness.” *Id.* ¶116. To Amazon, “price competitiveness” means that
11 third-party retailers must keep off-Amazon prices higher than they otherwise
12 would in a competitive market—to make Amazon’s prices falsely appear to be
13 “competitive” without actual competition.

14
15 86. Through the BSA, each third-party seller also agrees to the
16 “Seller[s] Code of Conduct,” which requires sellers to “act fairly.” While Amazon
17 touts that sellers purportedly are “welcome” to advertise the “same pricing and
18 discounts off-Amazon as they offer in our store,” the Code also requires sellers to
19 agree not to divert Amazon customers to other websites: “You may not attempt
20 to circumvent the Amazon sales process or divert Amazon customers to
21 another website.”
22

23
24 87. One obvious way to divert Amazon customers away from Amazon is
25 to list lower prices off-Amazon—an option that Amazon forecloses.
26
27

1 88. Finally, there is a relatively new 2022 “Account Health Rating
2 Policy,” which “indicates [a seller’s] risk of deactivation due to policy non-
3 compliance” The rating is affected by a seller’s compliance (or lack thereof)
4 with price parity and the policy provides potential penalties for “cheating” or non-
5 compliance.
6

7 89. At least one seller has confirmed that even though Amazon got rid
8 of the specific Price Parity Provision in March 2019, “the policy continued.”
9 Similarly, another merchant reported it “understands that Amazon maintains a
10 strict policy”—to this day—“that a company may not sell a product anywhere,
11 including on its own website, for a lower price than the company sells for on
12 Amazon.com.” Cal. Compl. ¶126.
13

14 90. Importantly, when Amazon retired the Price Parity Provision from
15 its BSA in 2019, Amazon chose not to inform retailers that price parity was no
16 longer required. Amazon did not want its retailers to think that anything had
17 changed, because nothing had: Amazon continued to require that off-Amazon
18 prices remain artificially high.
19

20 91. Ecommerce consultants, who are aware of Amazon’s policies and the
21 effect they will have on their clients’ businesses, counsel their third-party seller
22 (and wholesale supplier) clients not to offer or allow lower prices than are offered
23 to Amazon, even where their clients might prefer alternatives.
24

25 92. Such ecommerce consultants have confirmed that the cost to clients
26 of selling on Amazon is higher than the cost to sell through any other online sales
27

1 channel. Still, one such ecommerce consultant that has advised numerous
2 Amazon third-party sellers recognized that the sellers must sell on Amazon to be
3 successful in the ecommerce space.
4

5 93. Ecommerce consultants have confirmed to the California Attorney
6 General's Office that their clients would offer more selection and permit greater
7 discounting off Amazon but for Amazon's price parity policies.

8 94. In addition to communications facilitated by ecommerce
9 consultants, other communications between and among third-party retailers and
10 wholesalers about compliance with Amazon's price-parity agreements occur in
11 the normal course. Third-party retailers, for example, communicate with (at least
12 their own) wholesalers about how to comply with Amazon's agreement not to
13 allow online retail price competition. Those wholesalers have the same
14 discussions with other retailers to whom they supply—creating an
15 interconnected web of communications about compliance with Amazon's price-
16 fixing.
17

18
19 95. There is a YouTube video created by a former Amazon executive
20 (and current ecommerce consultant) instructing wholesale suppliers how
21 everyone can comply with Amazon's price-parity agreements.
22

23 96. Compliance with the price-parity agreements is not in the
24 respective individual interests of sellers. One third-party retailer reported that
25 it might charge higher prices on Amazon than prices on other sells channels in
26
27

1 order to offset the high Amazon fees that cause it to have lower sales margins on
2 sales through Amazon than through any other channel.

3
4 97. An ecommerce consultant, formerly a third-party seller, who
5 advises sellers who also sell to Amazon's online competitors, including
6 Walmart.com, eBay.com, and Wayfair.com, confirms that due to the lower cost to
7 sell on these sites, the clients would like to offer lower pricing on them than they
8 offer on Amazon, but that none will do so because it would result in the
9 suppression of the Buy Box for their Amazon listings.

10
11 98. California's Attorney General additionally alleges that third-party
12 sellers (and wholesale suppliers) would offer lower prices and allow discounting
13 on competing sites if Amazon did not demand price parity.

14 **Wholesale Minimum Margin Agreements**

15
16 99. On the wholesale side, Amazon forces its suppliers to agree to
17 "formalized minimum margin[s]," sometimes also called "wholesale price-parity
18 agreements." Cal. Compl. ¶175. These agreements state that if Amazon lowers
19 the on-Amazon price to "price match" an off-Amazon price, the wholesaler must
20 make "true-up payments" to Amazon so that Amazon continues to make a
21 "Guaranteed Minimum Margin." *Id.*

22
23 100. The FTC has concluded that these agreements allow "Amazon to
24 take control of pricing (and discounting) away from wholesaler suppliers. If the
25 product of a wholesale supplier is offered for a lower price off Amazon, Amazon
26 proactively lowers the on-Amazon price and then demands the seller make up
27

1 the difference. This hurts sellers' profits, so the effect is not lower prices, but a
2 disincentive to offer lower prices off Amazon." *Id.* ¶176.

3
4 101. As the California Attorney General explains, "The result is
5 straightforward" in that wholesalers do not allow the offending products to
6 continue to be sold at competitive retail prices off Amazon, triggering a
7 wholesaler's "true-up" obligation. *Id.* ¶177. Instead, the wholesalers impose a
8 requirement on Amazon's competition to raise prices and/or the wholesalers
9 remove the product from Amazon's competition altogether.

10
11 102. Ultimately, the competing online store cannot use its efficiencies or
12 willingness to accept a lower profit margin to attract customers and take market
13 share away from Amazon.

14
15 103. On top of these formalized agreements, Amazon also imposes
16 informal or *de facto* price-parity agreements on wholesalers whereby Amazon
17 and its suppliers jointly set profitability targets, and the suppliers agree to make
18 true-up payments after the fact if Amazon fails to meet the target because of
19 price-matching.

20
21 104. A "former senior Amazon vendor manager who now operates an
22 ecommerce consulting business advises Amazon suppliers on how to avoid the
23 under-profitability triggers that lead to demands for true-up payments. He
24 advises them to enforce minimum advertised price policies to ensure that their
25 products are not sold elsewhere for a price that would be under-profitable for
26 Amazon to sell at." *Id.* ¶185.

1 105. According to an “industry executive,” competitors of Amazon’s—
2 desperate to retain their sellers and suppliers—have created programs to
3 address the ways in which everyone relevant is complying with Amazon’s price-
4 parity agreements. *See* FTC Compl. ¶323.
5

6 106. Amazon’s internal documents reportedly confirm that the minimum
7 margin agreements caused suppliers to raise their prices marketwide, or enabled
8 Amazon to raise its prices for their products because suppliers had to withhold
9 them from competing retailers (i.e., removing the price-match trigger).
10

11 **Policing and Punishment**

12 107. Amazon’s policing of its price-fixing agreements shows its conscious
13 and active role in organizing the collusion necessary to eliminate horizontal
14 online retail competition.
15

16 108. Amazon aggressively monitors market prices to punish any third-
17 party retailers and/or wholesale suppliers who Amazon perceives to violate its
18 price-parity or minimum-margin agreements by discounting below Amazon’s
19 prices.
20

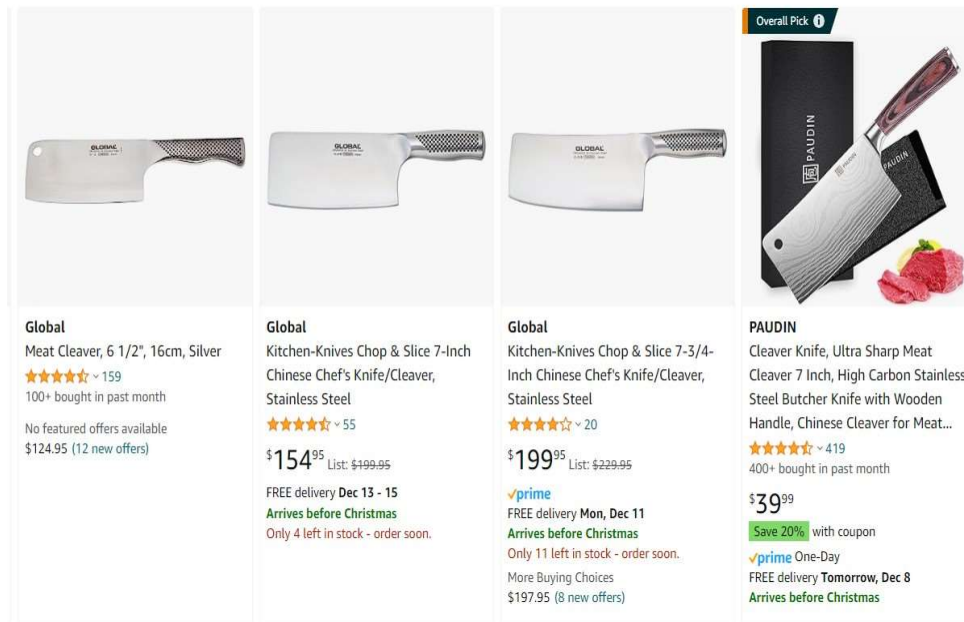
21 109. Amazon has a Competitive Monitoring Team that maintains an
22 extensive price-tracking operation and constantly searches the internet for
23 prices. Amazon estimates that this operation can detect any price change
24 virtually anywhere on the internet within hours.
25

26 110. When Zulily operated its Best Price Promise program (before
27 Amazon’s anticompetitive conduct forced Zulily to end the program), it monitored
28

1 prices on Amazon and other large online retailers to ensure that it was offering
 2 the lowest price. In several instances, due to Amazon’s close monitoring of Zulily’s
 3 prices, Zulily engaged in real-time price wars with Amazon, with each retailer
 4 lowering its price to beat the other multiple times per day.
 5

6 111. Amazon systematically punishes third-party sellers when it detects
 7 a lower price on a competing online retail store. Amazon, for example, commonly
 8 deprives its third-party retailers of the “Buy Box”—the main (and practically
 9 only) mechanism Amazon shoppers use to make purchases.
 10

11 112. From the search results, such as are shown in Figure 1 for a search
 12 for “Global Cleavers,” shoppers who click on one of the products will be brought
 13 to the “Product Detail Page.” *Id.* ¶83. A sample “Detail Page” with a Buy Box is
 14 shown in Figure 2 below.
 15



26 FIGURE 1, Search Results extract

1 113. This takes the shopper to the “Buy Box,” which is the box on the
2 right side of the product detail page where a shopper can click “Add to Cart” or
3 “Buy Now.” Amazon generally includes only one Buy Box on a product detail
4 page, and Amazon decides which seller’s offer to include in the Buy Box. When
5 Amazon is the seller, “Sold by Amazon.com” will appear in the Buy Box. When
6 the seller is a third-party retailer, that seller’s name will appear in the “Sold by”
7 information in the Buy Box.
8

9 114. If more than one third-party retailer is offering the same product
10 (or “ASIN”) at the same time, the offers that Amazon has not selected for the Buy
11 Box are listed on the “All Offers Display.” Shoppers can find the “All Offers
12 Display” only if they click on a link shown beneath the Buy Box that shows other
13 offers (e.g., New (8) from \$197 & Free Shipping, as shown in Figure 2).
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Global Kitchen-Knives Chop & Slice 7-3/4-Inch Chinese Chef's Knife/Cleaver, Stainless Steel

Visit the Global Store
4.2 ★★★★★ 20 ratings

-13% \$199⁹⁵
List Price: ~~\$229.95~~

Or \$33.33 /mo (6 mo). Select from 2 plans

prime
FREE Returns

Or \$33.33/month for 6 months with 0% interest financing on your Prime Store Card


May be available at a lower price from other sellers, potentially without free Prime shipping.

Blade Material	Stainless Steel
Brand	Global
Color	Stainless Steel
Handle Material	Stainless Steel
Blade Edge	Plain

About this item

- CROMOVA 18 stainless steel
- Rust, corrosion, & stain resistant
- Carefully weighted to ensure perfect balance and performance
- Seamless construction ensures food safety & hygiene

Report an issue with this product or seller



JCK ORIGINAL Kagayaki Japanese Chef's Knife, KG-8ES Professional Gyuto Knif...
★★★★★ 41
\$161⁰⁰ prime

Sponsored

Total price: \$279.90
Add both to Cart

\$199⁹⁵
prime
FREE Returns

FREE delivery **Monday, December 11.** Order within 21 hrs 8 mins. Details

Arrives before Christmas

Deliver to James - New York 10003

Only 11 left in stock - order soon.

Qty: 1

Add to Cart

Buy Now

Ships from Cutlery and More
Sold by Cutlery and More
Returns Returnable until Jan 31, 2024
Payment Secure transaction

Add to List

New (8) from \$197⁹⁵ & FREE Shipping

Other Sellers on Amazon


\$199.95 & FREE Shipping
Add to Cart
Sold by: Chefs Corner Store

\$199.95 & FREE Shipping
Add to Cart
Sold by: Whittle Workhorse

\$199.95 prime
Add to Cart
Sold by: Cutlery and More

FIGURE 2, Detail Page with Buy Box

115. The vast majority of shoppers never visit the “All Offers Display” page, as shown in Figure 3, which does *not* allow shoppers to Buy Now, and instead requires that the item first be placed in their shopping cart.

1  Global Kitchen-Knives Chop & Slice 7-3/4-Inch Chinese...
 2 ★★★★★ 20 ratings
 3 **New**
 4 -13% \$199⁹⁵ [Add to Cart](#)
 5 List Price: \$229.95 ⓘ
 6 ✓prime
 7 FREE delivery **Monday, December**
 8 **11.** Order within 21 hrs 4 mins.
 9 [Details](#)
 10 **Arrives before Christmas**
 11 [See more](#)

7 **7 other options** [Filter](#) ▾
 8 sorted by price + delivery: low to high

9 **New**
 10 -14% \$197⁹⁵ [Add to Cart](#)
 11 List Price: \$229.95 ⓘ
 12 FREE delivery **December 13 - 15.**
 13 [Details](#)
 14 **Arrives before Christmas**

15 Ships from SmartTradingAtHome
 16 Sold by SmartTradingAtHome
 17 Seller rating ★★★★★ 4.5
 18 83% positive over last 12 months
 19 1171 lifetime rating count

20 **New**
 21 -13% \$199⁹⁵ [Add to Cart](#)
 22 List Price: \$229.95 ⓘ
 23 FREE delivery **December 13 - 14.**
 24 Order within 21 hrs 4 mins.
 25 [Details](#)
 26 **Arrives before Christmas**

27 Ships from Chefs Corner Store
 28 Sold by Chefs Corner Store
 Seller rating ★★★★★ 4.5
 94% positive over last 12 months
 12293 lifetime rating count

29 **New**
 30 \$199⁹⁵ [Add to Cart](#)
 31 ✓ **Sale: \$199.95 — Discount**
 32 **Provided by Amazon. Terms**
 33 [Details](#)
 34 ... [More](#)
 35 FREE delivery **December 13 - 14.**

FIGURE 3

116. Instead, nearly 98% of Amazon sales are made through the Buy Box. Thus, disqualifying a third-party retailer from the Buy Box spells disaster for a

1 company's Amazon sales. For many sellers, losing the Buy Box—and even the
2 ability to qualify for the Buy Box—threatens the survival of their business.

3
4 117. Yet, since 2019, Amazon has increased its use of “Select
5 Competitor – Featured Offer Disqualification,” or “SC-FOD”—an Amazon
6 algorithm that automatically disqualifies a seller from winning the Buy Box if
7 Amazon detects a price that is lower for that product on any online store that
8 Amazon designates as a “Select Competitor.”

9
10 118. In addition to disqualifying sellers from winning the Buy Box,
11 Amazon's punishments also include: moving the offending products so far down
12 in search results that shoppers are unlikely to find them, excluding retailers from
13 sponsored-products advertisements, excluding sellers from “recommended” lists,
14 and/or erasing a product's price from view entirely, even if is the best available
15 on Amazon.

16
17 119. Not only that, Amazon has suspended particular product(s) or a
18 seller's entire line of products from its online store, or even “banish[ed]” sellers
19 from Amazon permanently. FTC Compl. ¶263.

20
21 120. Amazon threatens sellers with punishment not only when their
22 products are being discounted too much on other online stores, but also when
23 sellers offer a different selection of products on other online stores, if they fail to
24 meet the required inventory in-stock levels, or if they do not ensure that most of
25 their products are Prime eligible.

1 121. For retail products that Amazon prices and sells itself (as opposed
2 to the products sold by third-party sellers), Amazon uses its extensive monitoring
3 capabilities to thwart price competition by detecting and deterring discounting,
4 artificially inflating prices on and off Amazon, and depriving rivals of the ability
5 to gain scale by offering lower prices. For these purposes Amazon also utilizes an
6 anti-discounting program that it implements through yet another pricing
7 algorithm, designed to deter other online stores from offering lower prices than
8 those of Amazon's Retail products.
9

10 122. When using this "first-party anti-discounting" algorithm, Amazon
11 disciplines rivals by immediately mirroring, but not undercutting, prices. If the
12 lowest price for a product sold by a monitored online store or marketplace seller
13 increases (or the product goes out of stock), Amazon automatically increases its
14 price to duplicate the new lowest price, whether that is a higher price offered by
15 the same online competitor or marketplace seller it had been copying or a price
16 offered on a different website. If Amazon detects a "lowest price" drop, Amazon
17 automatically copies that move. And if the "lowest price" increases, Amazon
18 automatically copies again without even considering whether it could earn more
19 business by continuing to offer shoppers the lower price. *Id.*
20
21

22 123. The policing and punishments function to ensure that nobody
23 undercuts Amazon's listed retail prices.
24
25
26
27

1 129. A supplier of infant care products, for example, told Zulily that
2 Amazon responded to Zulily’s “Best Price Promise” by removing thousands of the
3 supplier’s products from the Buy Box, substantially reducing the supplier’s
4 Amazon sales.
5

6 130. As another example, in November 2020, a supplier of beauty
7 products asked Zulily if “there is a way you can increase the sale prices? I am
8 receiving complaints from several of my online retail partners (especially the
9 exclusive partner for the Amazon marketplace). . . . When Amazon detects a
10 substantially lower price for the same item, Amazon will automatically reduce
11 traffic and un-feature the item on Amazon. Thus, the sales on Amazon dropped
12 significantly and my Amazon partner was not happy about this.” Zulily pushed
13 back, but the seller insisted, “I don’t think I can allow deep discounts for selling
14 [my] items [on] online channels anymore Can you please raise the prices to
15 at least \$29.98? . . . I am running into a much bigger issue if I can’t solve this
16 matter by next week.” Ultimately, this Amazon third-party seller left Zulily
17 altogether, precluding Zulily from accessing its products.
18
19

20 131. In August 2021, a personal care electronics brand wrote Zulily,
21 “Would it be possible to update the retail on the below [item] to \$19.99
22 ASAP. . . . This is currently below MAP pricing. . . . Unfortunately we will need
23 to have this sku removed if it cannot be increased This caused the amazon
24 listing to be pulled down. We also need the [other item] updated to \$36.95 in all
25 colors.” Zulily said no: “we have to be the lowest retail in the market.” But the
26
27

1 Amazon third-party retailer responded, “Unfortunately Amazon has
2 implemented strict pricing requirements and they will remove any deals with
3 lower pricing elsewhere. We are going to take an extremely big hit to revenue
4 because of this and cannot afford for this to happen again. Previously we were ok
5 to run lower than MAP pricing . . . , but moving forward we need all MAP pricing
6 to be implemented for all skus.”
7

8 132. Zulily tried to work with this supplier to “hide” its prices until the
9 customer added the product to the cart, but a few weeks later, the seller informed
10 Zulily that was not enough to placate Amazon: “It looks like there is an issue here
11 again with items being below MAP/price not hidden At this point [we] want[]
12 to remove all deals and inventory until Q1 since this has happened several times
13 and is causing a big disruption to the Amazon business [W]e . . . have no
14 choice but to remove [our product] from Zulily unless they began to sell at or
15 above MAP permanently going forward We simply cannot afford buy-box
16 shutdowns on Amazon anymore.”
17
18

19 133. That Amazon third-party seller no longer supplies products to
20 Zulily.
21

22 134. Another Amazon third-party seller of apparel emailed Zulily in
23 January 2020, complaining that “we have had almost 2000 skus suppressed on
24 Amazon because of [lower prices on this competing retailer’s site] Amazon
25 has told us indirectly that [you are] the issue with all of their inactive skus
26 As much as I dislike Amazon, and like [you], The fact is we sell more on Amazon
27
28

1 I'm left with [limited] options,” including: “We will have to move up our price
2 on [your site]” [or] “We have to stop selling our best selling styles to [you].”
3

4 135. In another incident in January 2020, a housewares supplier asked
5 Zulily to stop presenting Amazon price comparisons alongside its products. The
6 reason: “Amazon is connecting that the same item is being sold for much less,
7 and we are losing the buy box on Amazon. That results in barely any to no sales,
8 on items we sold 100s before.” The supplier said, “We are trying to figure out how
9 to strategize going forward we keep having to remove items.”
10

11 136. In addition to punishing sellers, Amazon also used its anti-
12 discounting algorithm against Zulily to foreclose future price competition. The
13 algorithm quickly copied Zulily’s prices and made Amazon’s prices lower. In
14 response, Zulily reduced its prices further, and Amazon’s algorithm undercut
15 them again. This resulted in “continuous price spirals,” causing Zulily to drop
16 products from its online store.
17

18 137. Amazon internally acknowledged that its tactics against Zulily had
19 worked: reportedly observing a “consistent drop” in Zulily traffic.
20

21 138. But Amazon’s Vice President of Pricing told his team to “keep going”
22 in an effort to eliminate price competition from Zulily entirely.

23 139. The result: Zulily was forced to abandon its discounting campaign
24 “against a giant sitting on monopoly profits.” After a few months of enduring
25 Amazon’s conduct, Zulily eliminated the “Best Price Promise” program and
26
27
28

1 removed all Amazon price-comparisons from its website—foreclosing Zulily from
2 competing for consumer sales based on better retail prices.

3 **ZULILY’S ANTITRUST INJURY**

4 140. Zulily has suffered antitrust injury caused by the competition
5 reducing effects of Amazon’s conduct.
6

7 141. Amazon’s price-fixing agreements and exclusionary conduct
8 requires Zulily merchants *not* to discount or otherwise offer low prices on Zulily,
9 causing Zulily to lose profits, a substantial volume of consumer sales, and web
10 traffic.
11

12 142. By foreclosing retail price competition, Amazon also has prevented
13 Zulily from gaining scale through discounted pricing. The FTC alleges that
14 Amazon’s conduct has made it “virtually impossible for rival online stores to gain
15 any significant market share by providing customers with lower prices.” Cal.
16 Compl. ¶206.
17

18 143. Amazon’s price-fixing agreements and exclusionary conduct caused
19 Zulily to lose profits, a substantial volume of consumer sales, and web traffic due
20 to the loss of suppliers who had no choice but to pull products and/or stop dealing
21 with Zulily entirely in response to Amazon’s punishments and threats even
22 though it is not Zulily’s standard business model to charge merchants fees and
23 merchants generally prefer working with Zulily over Amazon.
24

25 144. That conduct also prevented Zulily from gaining scale. Without
26 merchant scale, i.e., a wider selection of available products, it is increasingly
27

1 difficult to gain consumer scale, and therefore, to compete in the online
2 superstore market.

3
4 145. Indeed, Zulily experienced rapid growth and growing market share
5 for several years before it landed on Amazon’s radar, at which point Amazon’s
6 anticompetitive conduct caused a sharp reduction in Zulily’s sales.

7 **HARM TO COMPETITION**

8 146. The FTC alleges that Amazon’s conduct has harmed competition to
9 all rivals or potential rivals of Amazon’s—not just Zulily. Without the ability to
10 attract shoppers or sellers through lower prices, each of Amazon’s rivals is unable
11 to gain a critical mass of either shoppers or sellers despite needing both to
12 compete against Amazon.
13

14 147. Amazon’s conduct has also caused substantial harm to consumers:

- 15 a. In an open, competitive environment, rival online stores
16 could attract more business by offering shoppers lower prices.
17
18 b. Rival online marketplaces could attract sellers by charging
19 them lower fees, allowing sellers to pass those savings on to
20 shoppers via lower prices.
21
22 c. Amazon suppresses this price competition through collusion
23 and by wielding its monopoly power to prevent sellers and
24 retailers from offering lower prices off Amazon effectively
25 resulting in an inflated Amazon price becoming the price floor
26 everywhere else online.
27

1 d. Amazon suppresses quality, choice and innovation. Amazon's
2 conduct limits the availability of products for customers to
3 choose off-Amazon and prevents them from pursuing
4 differentiated sales strategies tailored to the strengths and
5 weaknesses of rival online superstores.
6

7 148. Amazon's conduct harms third-party resellers and wholesalers who
8 are locked into using Amazon while being threatened and charged
9 supracompetitive fees to do so.
10

11 INTERSTATE COMMERCE

12 149. Amazon's activities as alleged in this complaint were within the flow
13 of, and substantially affected, interstate commerce. Amazon sells goods online
14 across, and without regard to, state lines.
15

16 FIRST CLAIM

17 Hub & Spoke Conspiracy to Restrain Trade – 15 U.S.C. § 1

18 150. Zulily realleges and incorporates all previous paragraphs.

19 151. Amazon orchestrated a hub-and-spoke conspiracy with the illegal
20 object to restrain horizontal retail price competition among online superstores in
21 all product categories.

22 152. Amazon was the hub and organized a series of agreements with
23 the spokes.

24 153. The spokes can be divided into two categories: third-party retailers
25 and wholesale suppliers. However, for purposes of Amazon's objective, i.e., to
26 restrain retail price competition among online superstores and emerging online
27

1 superstores, the fact that third-party retailers and wholesalers are somewhat
2 differently situated, with respect to Amazon, is less important than the fact that
3 Amazon deemed all of them necessary to restrain price competition for
4 all products.
5

6 154. Due to the consumer control Amazon uses as a bargaining chip,
7 Amazon's third-party retailers agreed to Amazon's price-parity provisions and/or
8 policies to raise off-Amazon prices to levels equal to or higher than Amazon prices
9 with the objective to eliminate horizontal retail price competition. This comprises
10 Amazon's agreements with the third-party retailer "spokes."
11

12 155. Due to the consumer control Amazon uses as a bargaining chip,
13 Amazon's wholesale suppliers also agreed to price-parity or minimum margin
14 agreements to raise off-Amazon prices to levels equal to or higher than Amazon
15 prices with the objective to eliminate horizontal retail price competition. This
16 comprises Amazon's agreements with the wholesaler "spokes."
17

18 156. To comprise the "rims," Amazon's third-party retailers tacitly
19 agreed with each other to eliminate horizontal retail price competition. Third-
20 party retailers directly compete with each other within each relevant product
21 market.
22

23 157. Likewise, Amazon's wholesalers tacitly agreed with each other to
24 eliminate horizontal retail price competition. Wholesalers directly compete with
25 each other within each relevant product market.
26
27

1 158. Each third-party retailer (and wholesaler) knew that every other
2 third-party retailer (and wholesaler) was reaching the same, or similar, price-
3 parity agreement with Amazon with the object and effect of restraining online
4 retail price competition.
5

6 159. The third-party retailers acted against their individual interests in
7 agreeing with Amazon to price parity and in complying with the agreement.
8 Third-party retailers would prefer to be free to discount their products off-
9 Amazon (to achieve scale or to unload unpopular or “end of the line” products, for
10 example), to be less reliant on a single marketplace (particularly one that
11 imposes oppressive terms and conditions of doing business), and/or to deal with
12 non-Amazon suppliers as they choose.
13

14 160. The same is true for wholesalers who would prefer to be free to
15 discount their products off-Amazon (to achieve scale or to unload unpopular or
16 “end of the line” products, for example), to be less reliant on a single buyer, and/or
17 to deal with non-Amazon buyers as they choose.
18

19 161. Third-party retailers communicated with one another, at least
20 through ecommerce consultants, to ensure that other third-party retailers and
21 wholesalers had agreed and were complying with the agreement to eliminate
22 online retail price competition. Wholesalers did the same.
23

24 162. Retailers and wholesalers also communicated with and through one
25 another about complying with Amazon’s agreement not to allow online retail
26 price competition.
27

1 163. The third-party retailers and wholesalers relied on the tacit “rim”
2 agreements as important insurance against the risk that competitors would gain
3 market share off Amazon.

4
5 164. In this way, Amazon achieved a series of hub-and-spoke
6 conspiracies affecting each separate retail product category. Adding all the
7 conspiracies together, Amazon was able to suppress horizontal online retail price
8 competition, including among online superstores. This is illegal *per se*.

9
10 165. The scheme is illegal also under a quick look or rule of
11 reason analysis.

12 166. The scheme—taken in parts or as a whole—caused significant harm
13 to competition. Third-party retailers and wholesalers raised their prices
14 marketwide, and enabled Amazon to raise its prices for products by withholding
15 them from competing retailers (removing the price-match trigger). This resulted
16 in artificially inflated consumer prices and suppressed quality, choice
17 and innovation.

18
19 167. The scheme—taken in parts or as a whole—lacks any cognizable
20 procompetitive justification. In any event, the anticompetitive effects
21 substantially outweigh any conceivable procompetitive rationale.

22
23 168. As a proximate result of Amazon’s unlawful conduct, Zulily has
24 suffered (and will continue to suffer) injury to its business or property in an
25 amount to be proven at trial and automatically trebled.

1 176. As a proximate result of Amazon’s unlawful conduct, Zulily has
2 suffered (and will continue to suffer) injury to its business or property in an
3 amount to be proven at trial and automatically trebled.
4

5 **THIRD CLAIM**
6 **Wholesale Supplier Conspiracy to Restrain Trade**
7 **15 U.S.C. § 1**

8 177. Zulily realleges and incorporates all previous paragraphs.

9 178. Amazon and its wholesale suppliers agreed with each of its
10 wholesale suppliers to raise off-Amazon prices to levels equal to or higher than
11 Amazon prices.

12 179. Although for purposes of sales made on Amazon, Amazon and its
13 wholesalers have a vertical relationship, Amazon sometimes competes with its
14 wholesalers horizontally (at the retail level) and Amazon understood that its
15 wholesalers otherwise affect off-Amazon retail prices (through minimum-
16 advertised-price agreements or by pulling product, for example).
17

18 180. The objective and intent behind each agreement—and all the
19 agreements combined—was to restrain horizontal retail competition.

20 181. The market realities are that the agreements obviously functioned
21 together, including with the third-party retailer price-parity agreements, to
22 destroy Amazon’s horizontal retail competition marketwide.
23

24 182. The scheme is illegal under the *per se* rule, under a quick look or
25 under a rule of reason analysis.
26
27

1 183. The conspiracy caused significant harm to competition. Retail prices
2 were raised off Amazon, and Amazon raised its prices for products being withheld
3 from competing retailers. This resulted in artificially inflated consumer prices
4 marketwide and suppressed quality, choice and innovation.
5

6 184. The conspiracy lacks any cognizable procompetitive justification. In
7 any event, the anticompetitive effects substantially outweigh any
8 conceivable procompetitive rationale.
9

10 185. As a proximate result of Amazon's unlawful conduct, Zulily has
11 suffered (and will continue to suffer) injury to its business or property in an
12 amount to be proven at trial and automatically trebled.

13 186. The harm and damages of the conspiracy were exacerbated by the
14 retailer conspiracy. Working together, the two conspiracies ensured, as Amazon
15 intended, that retail competition among online superstores would be suppressed
16 marketwide and that Zulily—and other online retailers—would be unable to gain
17 the scale necessary to compete against Amazon.
18

19 **FOURTH CLAIM**
20 **Monopolization of the Online Superstore Market**
21 **15 U.S.C. § 2**

22 187. Zulily realleges and incorporates all previous paragraphs.

23 188. Amazon has monopoly power in the Online Superstore Market.
24 Amazon's network of customers, third-party retailers and wholesale suppliers
25 has only grown despite Amazon imposing supracompetitive merchant fees,
26
27

1 oppressive terms and conditions for merchants to deal with Amazon, and
2 supracompetitive consumer prices.

3
4 189. Amazon’s ability to artificially raise Amazon prices *and* the prices
5 charged by its online superstore competitors, through the illegal scheme alleged
6 here, is direct evidence of Amazon’s dominance in the relevant market.

7
8 190. Amazon has at least a 60% share of the Online Superstore Market—
9 a figure that is deceptively low given that Amazon’s dominance is protected by
10 significant barriers to entry. Chief among them is scale—a competitive
11 advantage made very difficult to achieve by Amazon’s network effects. There are
12 also reputational barriers, switching costs, and feedback loops.

13
14 191. The Online Superstore Market has few competitors and entry
15 and/or expansion in the market is forestalled by Amazon’s illegal conduct.

16
17 192. Amazon has willfully acquired and maintained its monopoly power
18 by engaging in an exclusionary scheme with the intent to destroy all price
19 competition in the relevant market.

20
21 193. Amazon coerced its third-party retailers and its wholesale suppliers
22 not to offer products on Zulily (or at any other online retail store) at prices
23 below Amazon’s.

24
25 194. Amazon imposed other oppressive contractual conditions on
26 merchants that make it difficult—if not impossible—for them to do business with
27 online retailers besides Amazon (e.g., required inventory in-stock levels).

1 195. Amazon punished merchants who violate Amazon’s rules—most
2 importantly, by offering products off-Amazon, including on Zulily, at prices
3 below Amazon’s.
4

5 196. Amazon has used anti-discounting algorithms against Zulily (and
6 others) with the anticompetitive intent of destroying Zulily so that Zulily will not
7 be able to compete at all in the relevant market.

8 197. Each of these tactics unreasonably restricts trade or commerce in
9 violation of Section 2 of the Sherman Act (15 U.S.C. § 2), and Section 4 of the
10 Clayton Act (15 U.S.C. § 4).
11

12 198. There are no procompetitive business reasons for Amazon’s conduct
13 other than to eliminate price competition among online superstores.

14 199. Through its exclusionary conduct, Amazon has and will
15 injure competition.
16

17 200. As a proximate result of Amazon’s unlawful conduct, Zulily has
18 suffered (and will continue to suffer) injury to its business or property in an
19 amount to be proven at trial and automatically trebled.
20

21 **FIFTH CLAIM**
22 **Attempted Monopolization of the Online Superstore Market**
23 **15 U.S.C. § 2**

24 201. Zulily realleges and incorporates all previous paragraphs.

25 202. Amazon has at least a 60% share of the Online Superstore Market—
26 a figure that is deceptively low given that Amazon’s dominance is protected by
27 significant barriers to entry. Chief among them is scale—a competitive
28

1 advantage made very difficult to achieve by Amazon’s network effects. There are
2 also reputational barriers, switching costs, and feedback loops.

3
4 203. The Online Superstore Market has few competitors and entry
5 and/or expansion in the market is forestalled by Amazon’s illegal conduct.

6 204. Amazon had a specific intent to monopolize. This is evidenced by
7 Amazon’s internal correspondence, amongst other things, stating that its
8 purpose in pursuing an anti-discounting regime was to destroy competition from
9 emerging competitors like Zulily who threatened Amazon’s
10 supracompetitive prices.
11

12 205. Amazon engaged in exclusionary conduct to achieve this end. It
13 coerced its third-party retailers and its wholesale suppliers not to offer products
14 on Zulily (or at any other online retail store) at prices below Amazon’s.
15

16 206. Amazon imposed other oppressive contractual conditions on
17 merchants that make it difficult—if not impossible—for them to do business with
18 online retailers besides Amazon (e.g., required inventory in-stock levels).

19 207. Amazon punished merchants who violate Amazon’s rules—most
20 importantly, by offering products off-Amazon, including on Zulily, at prices
21 below Amazon’s.
22

23 208. Amazon has used anti-discounting algorithms against Zulily (and
24 others) with the anticompetitive intent of destroying Zulily so that Zulily will not
25 be able to compete at all in the relevant market.
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1 209. Each of these tactics unreasonably restricts trade or commerce in
2 violation of Section 2 of the Sherman Act (15 U.S.C. § 2), and Section 4 of the
3 Clayton Act (15 U.S.C. § 4).
4

5 210. There is a dangerous probability of Amazon achieving monopoly
6 power given its already-dominant share in a relevant market protected by
7 significant barriers to entry.

8 211. Amazon’s own documents evidence its belief that its exclusionary
9 conduct probably would—and did succeed—in achieving greater market power
10 for Amazon by destroying Zulily, e.g., stating that Zulily’s traffic was suffering
11 because of Amazon’s conduct but that Amazon should “keep going” to eliminate
12 Zulily completely.
13

14 212. The probability of Amazon’s success is further shown by Amazon’s
15 investment of significant money and resources in its anti-discounting regime
16 against Zulily and others to ensure its efficacy.
17

18 213. There are no procompetitive business reasons for Amazon’s conduct
19 other than to eliminate price competition among online superstores.

20 214. Through its exclusionary conduct, Amazon has and will
21 injure competition.
22

23 215. As a proximate result of Amazon’s unlawful conduct, Zulily has
24 suffered (and will continue to suffer) injury to its business or property in an
25 amount to be proven at trial and automatically trebled.
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1
2 **SIXTH CLAIM**
3 **Violations of Washington State Antitrust Law**
4 **RCW § 19.86.030**

5 216. Zulily realleges and incorporates all previous paragraphs.

6 217. The First, Second and Third Count (above) each constitutes an
7 independent violation of Wash. Revised Code § 19.86.030, which prohibits any
8 “contract, combination, in the form of trust or otherwise, or conspiracy in
9 restraint of trade or commerce.”

10 218. Amazon’s hub-and-spoke conspiracies are unreasonable restraints
11 of trade.

12 219. Amazon’s horizontal third-party retailer conspiracy is an
13 unreasonable restraint of trade.

14 220. Amazon’s vertical wholesale-supplier conspiracy is an unreasonable
15 restraint of trade.

16 221. Each of the conspiracies affected interstate and
17 intrastate commerce.

18 222. Amazon’s conduct is either *per se* illegal and/or illegal under a quick
19 look or rule of reason analysis.

20 223. Amazon’s conduct caused significant harm to competition. Third-
21 party retailers and wholesalers raised their prices marketwide, and enabled
22 Amazon to raise its prices for products by withholding them from competing
23 retailers (removing the price-match trigger). This resulted in artificially inflated
24 consumer prices and suppressed quality, choice and innovation.
25
26
27

- 1 c. Amazon has imposed other oppressive contractual conditions
2 on merchants that make it difficult—if not impossible—for
3 them to do business with online retailers besides Amazon
4 (e.g., required inventory in-stock levels).
5
- 6 d. Amazon has punished merchants who violate Amazon’s
7 rules—most importantly, by offering products off-Amazon,
8 including on Zulily, at prices below Amazon’s.
9
- 10 e. Amazon has used anti-discounting algorithms against Zulily
11 (and other online retailers) with the anticompetitive intent of
12 destroying Zulily so that Zulily will not be able to compete at
13 all in the relevant market.
14
- 15 f. Amazon has deceived the public to believe that Amazon offers
16 competitively low prices when, in fact, Amazon has
17 immunized itself from meaningful price competition.

18 236. These acts impact the public interest. Amazon has engaged in
19 unfair trade practices that are illegal under Washington State’s antitrust statute
20 RCW § 19.86.020.

21 237. Amazon has also engaged in acts and practices that have the
22 capacity to—and did—deceive a substantial portion of the public, i.e., by falsely
23 representing to consumers that its prices are the lowest and/or competitive
24 leading consumers to believe that they paid fair—and not artificially inflated—
25 prices.
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