UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIZABETH DE COSTER *et al.*, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

CASE NO. 2:21-cv-00693-JHC

~~SEALED~~ ORDER GRANTING MOTION FOR CLASS CERTIFICATION

I

INTRODUCTION

This matter comes before the Court on Plaintiffs' Motion for Class Certification. Dkt. # 180 (sealed). Plaintiffs, who are consumers, claim that Defendant, Amazon.com, Inc., uses its significant market power in the Online Retail Marketplaces Market to impose inflated fees on third-party sellers. Dkt. # 126 at 58 ¶ 170. Plaintiffs say that third-party sellers increase the prices of their goods on Amazon to offset these high fees. *Id.* at 8–9 ¶¶ 13–14. And they allege that Amazon can maintain these inflated fees because the company has implemented and actively enforced certain policies that prevent third-party sellers from offering lower prices for their goods on competing platforms. *Id.* at 9 ¶ 15. They say that these policies have anticompetitive effects because they eliminate price competition across United States online retail platforms. *Id.* at 48 ¶ 130. They also say that these policies lead third-party sellers to list their products at inflated prices on other online platforms as well; thus resulting in higher prices throughout the market. *Id.* Plaintiffs contend that they, and the class of consumers they seek to represent, have been harmed by Amazon's actions because they paid more for goods on Amazon's Marketplace that they would have paid absent Amazon's allegedly anticompetitive conduct. *Id.* at 61 ¶ 189.

The Court has considered the materials filed in support of and in opposition to the motion, the rest of the file, and the governing law. The Court has also considered the presentations of counsel at oral argument on August 1, 2025. As reflected below, the core of this class certification dispute concerns commonality and predominance. Being fully advised, upon engaging in the rigorous analysis Rule 23 requires, the Court finds that Plaintiffs have met their burden, by a preponderance of the evidence, regarding commonality, predominance, and the rule's other requirements. For these reasons, which are explained in detail below, the Court GRANTS the motion.

II

BACKGROUND[1]

Amazon operates an online retail marketplace and sells around 237 million products[2] on its platform. *See* Dkt. ## 125 (sealed), 126 (redacted) at 5 ¶¶ 3–5; 232 at 37. Third-party sellers can register with Amazon and list their goods for sale on the Amazon Marketplace. Dkt. # 126 at 5 ¶¶ 3–5. Sellers "post their products on the platform, which Amazon presents to users together

[1] Unless otherwise indicated, the information in this section derives from Plaintiffs' Second Consolidated Amended Complaint. *See* Dkt. ## 125 (sealed), 126 (redacted). Except as noted, the Court cites the public version of the document.

[2] In its Opposition brief, Amazon notes that it sells around 237 million products. *See* Dkt. # 232 at 37.

with its own goods according to a certain algorithm that takes the form of a ranking list." *Id.* at 5 ¶ 5. Many third-party sellers that list their products on Amazon also sell the same products on other platforms, including their own websites and other competing online marketplaces, such as eBay or Walmart Marketplace. *Id.* at 6 ¶ 7. According to Plaintiffs, however, Amazon surpasses these competing marketplaces in breadth and size: for example, Amazon hosts about 2.3 million active third-party sellers, about 45 times more than the 52,000 sellers that Walmart hosts on its online platform. *Id.*

Plaintiffs assert that Amazon uses its market power in the Online Retail Marketplaces Market "to impose significant fees on customers and on third-party merchants for the use of its marketplace." *Id.* at 7 ¶ 10. They say that for third-party sellers to list their goods on Amazon, they must select one of the selling plans the company offers. *Id.* They must either pay a flat monthly fee of $39.99 or a per-sale fee of $0.99. *Id.* Amazon also retains a portion of each completed sale as a "referral fee." [3] *Id.* Rival online marketplaces, like eBay, impose "significantly lower" fees on third-party sellers. *Id.* Plaintiffs assert that third-party sellers inflate the prices of their goods on Amazon to offset Amazon's fees. *Id.* at 8 ¶ 13.

Plaintiffs contend that Amazon denies customers the "benefits of lower prices and fees" that would arise in a competitive market. Dkt. # 126 at 9 ¶ 15. They say Amazon does so by imposing on third-party sellers an anti-discounting policy that causes customers to pay supra-competitive prices. [4] *Id.* Plaintiffs allege that Amazon's pricing restraints prevent "third-party

[3] Plaintiffs' economics expert, Dr. Parag Pathak, Ph.D., notes that Amazon charges a referral fee for each completed transaction between a third-party seller and Amazon customer. Dkt. # 262 at 32 ¶ 64. He says that Amazon sets this referral fee by product category, but that generally the fee is around 15% of the "transaction value," i.e., the value of the sale on Amazon. *Id.* He also says that Amazon charges a fixed minimum referral fee per transaction for "very low-priced goods (less than $2.00)." *Id.*

[4] Plaintiffs refer to the challenged pricing restraints collectively as an "anti-discounting policy." *See* Dkt. ## 126 at 53 ¶ 149; 262 at 18 ¶ 29. They say that Amazon's practices function as a Platform Most Favored Nation (PMFN) restraint. *See* Dkt. ## 126 at 9 ¶ 15; 262 at 18–19 ¶ 30.

sellers from offering lower prices off of Amazon, and punish them for violations, which in turn insulates Amazon from competition from low cost, alternative platforms." *Id.* They say that these restraints "require sellers to keep prices off Amazon as high or higher than prices on Amazon" or (1) a seller's goods will be ineligible for the "Buy Box";[5] (2) their goods will be removed from the Amazon Marketplace; (3) shipping options for the seller's products will be suspended; or (4) "the third-party seller's ability to have any goods sold on Amazon's marketplace" will be terminated or suspended. *Id.* at 17 ¶ 34.

Plaintiffs assert that Amazon has implemented its anti-discounting policy in various ways over time. *Id.* at 9 ¶ 17. These policies and practices are (1) the Price Parity Clause (PPC), (2) the Select Competitor Featured Offer Disqualification program (SC-FOD), (3) Amazon's Standards for Brands (ASB), (4) the Seller Code of Conduct (SCC), and (5) the Marketplace Fair Pricing Provision (MFPP). *Id.* at 9–16.

Until March 2019, Amazon's Business Solutions Agreement (BSA) included the PPC. *Id.* at 9–10 ¶ 17. The PPC prohibited third-party sellers "from listing goods on other online retail platforms—whether marketplace or single-merchant websites—at prices lower than their Amazon list prices." *Id.*

In mid-2015, Amazon introduced the SC-FOD algorithm. Dkt. ## 125 at 12 ¶ 22 (sealed); 126 at 12 ¶ 22 (redacted). Plaintiffs say that Amazon "expanded [SC-FOD] as a tool for securing third-party sellers' price parity after it repealed" the PPC in 2019. *Id.* They also say

[5] The "Buy Box" is the white box on the right side of the product details page in which shoppers can click "Add to Cart" or "Buy Now." Dkt. # 126 at 46 ¶ 125. Plaintiffs describe the "Buy Box" as a "critical listing benefit for third-party merchants: Buy Box goods are the most visible to consumers and the easiest for them to purchase." *Id.* And whether a third-party seller's product is sold via the "Buy Box" depends on factors such as their "reputation, price, efficiency, and whether the merchant is selling its product for a lower price through other online retail platforms. When users click the 'Add to Cart' button on Amazon's marketplace, they are buying from one merchant and one merchant only—the Buy Box winner." *Id.* at 46–47 ¶ 126.

that Amazon currently uses SC-FOD "to disqualify a seller's offer from winning the 'Buy Box' if it detects a price that is lower—even by a penny—for that product on any online store that the company designates as a 'Select Competitor.'" Dkt. ## 125 at 12 ¶ 23 (sealed); 126 at 12 ¶ 23 (redacted).

Plaintiffs also allege that the ASB program, introduced in 2018, "prevents brand owners and their seller representatives from offering a lower price off of Amazon than they offer on Amazon or allowing their distributors to do so." Dkt. # 126 at 14 ¶ 29.

Plaintiffs say that Amazon's 2021 clarification to its SCC states that third-party sellers violate the policy "if off-Amazon rebates, discounts, and other schemes are designed to drive customers to products that are listed and sold without those incentives on Amazon." Dkt. ## 125 at 16 ¶ 32 (sealed); 126 at 16 ¶ 32 (redacted).

Last, the MFPP, incorporated by reference in the BSA, states that if a third-party seller's pricing practices "harms customer trust," then Amazon can sanction the seller. Dkt. # 126 at 16 ¶ 33. Under the MFPP, a pricing practice "harms customer trust" when a seller "lists goods on a competing online retail platform at prices that are significantly below its Amazon list prices." *Id.* at 16 ¶ 33.

In May 2021, Plaintiffs sued Amazon, claiming that the company violated Sections One and Two of the Sherman Act, 15 U.S.C. § 1 *et seq.* Dkt. ## 1, 125 (sealed), 126 (redacted). They now move for class certification. Dkt. # 180 (sealed).[6]

[6] Plaintiffs' motion for class certification relies in significant part on the work of their economics expert, Dr. Pathak. On July 1, 2025, the Court denied Amazon's motion to exclude Dr. Pathak's testimony. Dkt. # 388 (redacted).