C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

Nº 500-06-

S U P E R I O R C O U R T
(Class Action)

AUDREY WELLS, an individual residing and domiciled at [redacted] Montreal, Province of Quebec, [redacted]

Applicant

v.

AMAZON.COM, INC., a legal person having its principal place of business at 440 Terry Avenue North, in the city of Seattle, state of Washington, 98109, USA

- and -

AMAZON.COM.CA, INC., a legal person having its principal place of business at 440 Terry Avenue North, in the city of Seattle, state of Washington, 98109, USA

- and -

AMAZON.COM SERVICES LLC, a legal person having its principal place of business at 440 Terry Avenue North, in the city of Seattle, state of Washington, 98109, USA

- and -

AMAZON SERVICES INTERNATIONAL, INC., a legal person having its principal place of business at 440 Terry Avenue North, in the city of Seattle, state of Washington, 98109, USA

- and -

AMAZON SERVICES CONTRACTS, INC.,
a legal person having its principal place of business at 440 Terry Avenue North, in the city of Seattle, state of Washington, 98109, USA

Respondents

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF
(Arts. 574 *ff*. C.C.P.)

TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY SUBMITS THE FOLLOWING:

I. INTRODUCTION

1. Collectively, the Respondents Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc. are referred to as "**Amazon**".

2. Amazon, the largest online retailer in Canada and in the world, is one of the "Big Four" technology companies, also known as FANG (Facebook, Amazon, Netflix and Google).

3. This proposed class action concerns the anticompetitive agreements systematically entered by Amazon to set a price floor and restrict price competition for retail e-commerce.

4. Since its humbler beginnings as an online retailer of books, Amazon has grown into the world's largest online retailer for all varieties of products. Amazon operates the websites www.amazon.ca and www.amazon.com. Retailers use these websites to sell products to consumers, and consumers can go to the websites to buy products from retailers. This is what is known as the Amazon "platform." The number of products sold on Amazon's platform, and the number of consumers who

use this platform to purchase products, makes Amazon the "must use" e-commerce platform for most online sellers.

5. More than simply operating its platform, however, Amazon is also a retailer. Amazon sells a great many products on the Amazon platform as the seller of record. Amazon also permits other retailers, which it calls "third-party sellers," to use its platform to sell products to consumers. Within these product categories, Amazon as the seller of record is in fact a direct competitor or potential competitor of the third-party sellers.

6. During the period relevant to this proposed class action, Amazon and its competitor third-party sellers entered two separate anticompetitive agreements to fix retail e-commerce prices.

7. First, Amazon and third-party sellers agreed on a most favoured nation provision ("**MFN**"). The MFN provided that third-party sellers would not sell products to consumers on any e-commerce website for a price that was lower than the price charged to consumers on Amazon's platform. As a tacit admission of its wrongdoing, Amazon withdrew the MFN in March 2019 in the face of a threatened antitrust investigation by the United States Federal Trade Commission ("**FTC**").

8. Second, Amazon and third-party sellers agreed that these sellers will comply with Amazon's program policies. These policies included a so-called "fair pricing" policy, which imposes costly penalties on third-party sellers if they sell products to consumers on any e-commerce website for a price that is lower than the price charged to consumers on Amazon's platform.

9. These anticompetitive agreements permit Amazon to shelter its online retail business from price competition. By limiting price competition, Amazon has maintained an illegal competitive advantage that has enabled it and the third-party sellers to sell products to consumers at higher than competitive prices.

10. These agreements unlawfully restricted price competition by all sellers of products on Amazon's platform and other e-commerce websites, leading to inflated prices

of products sold in retail e-commerce to consumers who used the Amazon platform and other e-commerce websites to purchase products.

11. The cost to Canadian consumers from Amazon's anticompetitive agreements has been staggeringly high – upwards of CAD $12 billion.

12. The Applicant consequently requests this Court's permission to institute a class action against Amazon in order to seek redress for the damages caused to the proposed class members by Amazon's anticompetitive conduct.

II. DESCRIPTION OF THE CLASS

13. The Applicant wishes to institute a class action, on her own behalf and on behalf of the members forming part of the two following Classes:

> All persons residing in Quebec, both physical and legal, who, from June 1, 2010 to the present (the "**Class Period**"), purchased products on www.amazon.ca or www.amazon.com (the "**Amazon E-Commerce Class**").
>
> - and -
>
> All persons residing in Quebec, both physical and legal, who, from June 1, 2010 to the present, purchased Amazon Products on any website other than www.amazon.ca or www.amazon.com (the "**Other E-Commerce Class**").
>
> "**Amazon Products**" means all categories of products that are sold by third-party sellers on www.amazon.ca or www.amazon.com.

III. THE RESPONDENTS

14. Respondent **Amazon.com, Inc.** is a publicly traded Delaware corporation with its head office in Seattle, Washington. Amazon.com, Inc. owns and controls the respondent Amazon.com.ca, Inc.

15. Respondent **Amazon.com.ca, Inc.** is a Delaware corporation with its head office in Seattle, Washington. Amazon.com.ca, Inc. is a subsidiary of Amazon.com, Inc. and carries on business using the trading name Amazon.ca. During the Class Period, Amazon.com.ca, Inc. operated the website www.amazon.ca and offered for sale, and sold, products on www.amazon.ca.

16. Respondent **Amazon.com Services LLC** is a Delaware limited liability company with its head office in Seattle, Washington. Amazon.com Services LCC is a subsidiary of Amazon.com, Inc. and carries on business using the trading name Amazon.com. During the Class Period, Amazon.com Services LLC operated the website www.amazon.com, offered for sale, and sold, products on www.amazon.com, and entered agreements with third-party sellers to authorize the third-party sellers to sell their products on www.amazon.com.

17. Respondent **Amazon Services International, Inc.** is a Delaware corporation with its head office in Seattle, Washington. Amazon Services International Inc. is a subsidiary of Amazon.com, Inc. During the Class Period, Amazon Services International Inc. entered agreements with third-party sellers to authorize the third-party sellers to sell their products on www.amazon.ca.

18. Respondent **Amazon Services Contracts, Inc.** is a Delaware corporation with its head office in Seattle, Washington. Amazon Services Contracts, Inc. is a subsidiary of Amazon.com, Inc. During the Class Period, Amazon Services Contracts, Inc. entered agreements with third-party sellers to authorize the third-party sellers to sell their goods on www.amazon.ca and/or www.amazon.com.

19. Throughout the Class Period, Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc., and Amazon Services Contracts, Inc., under the direction of Amazon.com, Inc., directly participated in the agreements to fix retail e-commerce prices.

20. Various other entities, persons, firms, and corporations, that are unknown and not named as respondents, have participated as co-conspirators with Amazon and have performed acts or made statements in furtherance of the conspiracy. The

Respondents are solidarily liable for the acts of their co-conspirators whether named or not named as respondents in these proceedings.

IV. AMAZON ENTERED INTO ANTICOMPETTITIVE AGREEMENTS

a) Amazon Has A Dominant Position in Retail E-Commerce

21. Since its beginnings as an online bookseller, Amazon has grown into the world's largest online retailer.

22. Amazon operates the websites www.amazon.ca and www.amazon.com. These websites are used by retailers to sell products and by consumers to buy products. This is known as Amazon's "platform."

23. Amazon does not simply operate the platform. Amazon is also a retailer. As a retailer, Amazon sells products on the Amazon platform as the seller of record.

24. The products Amazon sells as a retailer take one of two forms. A small percentage of products that Amazon sells are products that are made or branded by Amazon. Most products that Amazon sells are made and branded by other producers.

25. During the Class Period, Amazon's sales as the seller of record have accounted for approximately 40 to 66 percent of sales on the Amazon platform, the whole as appears from Amazon’s 2018 Annual Report, communicated as **Exhibit R-1**.

26. Amazon permits, for a fee, other retailers to market and sell products on Amazon's platform to customers who buy those products. Amazon calls these other retailers “third-party sellers.” Amazon as a seller is in direct competition or potential competition with the third-party sellers.

27. Almost 50 percent of e-commerce retail purchases in Canada are made by consumers who purchase products from the Amazon platform, the whole as appears from the IBISWorld report on e-commerce in Canada communicated as **Exhibit R-2**.

28. The number of products sold on Amazon’s platform, and the number of consumers who use this platform to purchase products, relative to other e-commerce

platforms, makes Amazon's platform the "must use" e-commerce platform for most sellers that sell products on e-commerce websites in Canada.

29. Amazon and third-party sellers agree to certain fees to enable those sellers to use Amazon's platform to sell products to consumers:

    a. A commission, or "referral fee," that Amazon charges for each item sold by a third-party seller on Amazon's platform. The referral fee is typically 15 percent for the majority of product categories.

    b. A registration fee.

    c. A per-item fee or a monthly subscription, which Amazon charges the third-party sellers for other costs,

    the whole as appears from the Amazon Fee Schedule detailing the various applicable fees, communicated as **Exhibit R-3**.

30. The referral fees are not paid up-front, but they are taken out of the third-party seller's Amazon account after the sale is made. The referral fees mean that when a sale is made on Amazon's platform by a third-party seller, Amazon keeps the referral fees (for example 15 percent) and that seller keeps the remainder (for example 85 percent). Both Amazon and the third-party seller profit, at the same time, from sales made on Amazon's platform by the seller.

31. Optionally, and for an additional fee, Amazon will store, pick, pack, ship orders, and manage customer service and returns for third-party sellers, the whole as appears from a document detailing the Amazon fulfillment fees, communicated as **Exhibit R-4**.

32. In order to achieve their own margins, the third-party sellers must account for Amazon's fees, and in particular the referral fees, in the prices they charge consumers. Amazon's fees are thus baked into the prices of retail e-commerce.

b) Amazon and Third-Party Sellers Are Competitors in Retail E-Commerce

33. Amazon and third-party sellers who use its platform are competitors in retail e-commerce, because Amazon sells products as the seller of record that third-party sellers also sell, either on the Amazon platform, their own e-commerce websites, or other e-commerce websites, including other retail e-commerce platforms.

34. Amazon and third-party sellers who use its platform are potential competitors in retail e-commerce, because Amazon or the sellers may choose to sell the same products in the future, either on the Amazon platform, the sellers' own retail e-commerce websites, or other e-commerce websites, including other retail e-commerce platforms.

35. The third-party sellers who use Amazon's platform are competitors in the same product categories listed on Amazon's website in which these sellers list products for sale (for example, "Home and Kitchen"), because within these product categories, these sellers are competing with each other to sell products to consumers.

36. The third-party sellers who use Amazon's platform are potential competitors in the same product categories listed on Amazon's website in which these sellers list products for sale (for example, "Home and Kitchen"), because they may choose to compete with each other in the future to sell products that these sellers or some of them do not currently sell.

c) Amazon's MFN Provision was Anticompetitive

37. When a third-party seller registers with Amazon, it agrees to the terms of the Amazon Services Business Solutions Agreement ("**BSA**"), the whole as appears from a copy of the BSA communicated as **Exhibit R-5**.

38. From at least June 1, 2010 until February 2019, in the BSA, Amazon and third-party sellers agreed with each other that the sellers would exercise "price parity," the whole as appears from a copy of the BSA applicable prior to March 2019, communicated as **Exhibit R-6**.

39. The price parity clause was otherwise known as the "most favoured nation" provision. Amazon and third-party sellers agreed pursuant to the MFN that the sellers would:

> maintain parity between the products you [the third-party seller] offer through Your Sales Channels and the products you list on any Amazon Site by ensuring that [. . .] the purchase price and every other term of sale [. . .] is at least as favorable to Amazon Site users as the most favorable terms via Your Sales Channels (excluding consideration of Excluded Offers),

as appears from Exhibit R-6.

40. In other words, Amazon and third-party sellers agreed – expressly and in writing – to limit price competition by setting a floor price based on the price at which the third-party sellers sell products on the Amazon platform.

41. This agreement was made between Amazon and the third-party sellers. This arrangement was also reached by the third-party sellers among each other by their jointly agreeing with Amazon to limit price competition on all e-commerce websites in accordance with the MFN.

42. In March 2019, under threat of an investigation by the FTC, Amazon officially withdrew its MFN from the BSA, as appears from the current version of the BSA (Exhibit R-5) and from news articles communicated, *en liasse*, as **Exhibit R-7**.

43. Amazon's withdrawal of its MFN provision under the threat of an FTC investigation constituted a tacit admission of its wrongdoing that the MFN was an unlawful agreement on price that was neither directly related to, nor reasonably necessary for giving effect to, the objectives of the BSA.

d) Amazon's Fair Pricing Policy is Anticompetitive

44. After it withdrew the MFN in March 2019, Amazon and third-party sellers achieved price parity pursuant to a different anticompetitive agreement.

45. Amazon and third-party sellers agreed pursuant to the BSA that these sellers will comply with Amazon's program policies. One of Amazon's policies is the

"Marketplace Fair Pricing Policy" (the "**FPP**"), the whole as appears from a copy of said policy, communicated as **Exhibit R-8**.

46. The FPP states that "Amazon regularly monitors the prices of items on our marketplaces," and that if it sees "pricing practices" on www.amazon.ca or www.amazon.com "that harm[] customer trust, Amazon may remove the Buy Box, remove the offer, or in serious or repeated cases, suspend or terminate selling privileges," as appears from Exhibit R-8.

47. According to the FPP, one of the pricing practices that "harm customer trust" is "[s]etting a price on a product or service that is significantly higher than recent prices offered *on or off* Amazon," as appears from Exhibit R-8.

48. Because of the FPP, third-party sellers continue to maintain price parity across competing retail e-commerce websites.

49. The FPP is an agreement or arrangement between Amazon and third-party sellers. It is also an arrangement by third-party sellers with each other by their jointly agreeing with Amazon to set the prices at which they sell their products on all e-commerce websites in accordance with this policy.

e) The MFN and the FPP Have Increased Retail E-Commerce Prices

50. Amazon's anticompetitive agreements with third-party sellers have limited price competition for products sold on retail e-commerce websites in Canada and thus increased the prices for retail e-commerce on Amazon's platform and on other e-commerce websites.

51. Third-party sellers on Amazon's platform are not able to compete by selling products on other e-commerce websites, including their own websites or e-commerce websites, including other e-commerce platforms, at lower prices than the prices they charge consumers who purchase products from the Amazon platform.

52. In addition, Amazon charges referral fees for each item sold on its platform. Most categories of items are subject to a 15 percent referral fee. The referral and other

fees Amazon charges third-party sellers are substantial, the whole as appears from Exhibit R-3.

53. The sellers build those fees into the prices they charge customers for products purchased on Amazon's platform. Because the agreements between Amazon and third-party sellers do not permit the sellers to sell at lower prices on other e-commerce websites, the referral fees are incorporated into the prices those sellers offer throughout the rest of retail e-commerce, thus inflating prices across retail e-commerce outside of Amazon.

54. For retail e-commerce on Amazon's platform, Amazon and third-party sellers are able to set prices on Amazon's platform without the competitive threat of lower prices being set on other retail e-commerce websites. Without the threat of price competition outside of Amazon's platform, Amazon and third-party sellers are not compelled to lower prices on Amazon's platform in response to competitive pressure from e-commerce sales from other platforms or websites, and the Amazon platform prices remain inflated. Amazon and third-party sellers are enriched through higher prices for the products they sell; Amazon is enriched through higher referral fees, and consumers are harmed.

55. For retail e-commerce outside of Amazon's platform, third-party sellers must sell products at prices that are the same as or higher than the prices set for the products on the Amazon platform. Third-party sellers are not able to engage in price competition to set lower prices than the Amazon platform price off of Amazon's platform. Thus, the price inflation resulting from the fees Amazon charges for products sold on the Amazon platform must necessarily be carried over to the prices of products sold off the Amazon platform.

56. Accordingly, third-party sellers of products on Amazon's platform have not been competing freely during the Class Period because they are prevented from engaging in price competition *on or off* Amazon's platform. Class members paid illegally inflated retail e-commerce prices on products they purchased from Amazon's platform and on other retail e-commerce websites.

f) Amazon is Under Government Investigation for Possible Antitrust Violations

57. In December 2018, United States Senator Richard Blumenthal called for an FTC investigation of Amazon's practices, stating that he was "deeply concerned that the price parity provisions in Amazon's contracts with third-party sellers could stifle market competition and artificially inflate prices on consumer goods," the whole as appears from a letter dated December 19, 2018, communicated as **Exhibit R-9**.

58. In June 2019, it was reported that Amazon would face greater antitrust scrutiny from the FTC, the whole as appears from an article published in the Washington Post, communicated as **Exhibit R-10**.

59. In September 2019, Bloomberg reported that FTC investigators had begun interviewing Amazon third-party sellers to inquire into whether Amazon was using its market power to hurt competition, the whole as appears from an article published by Bloomberg, communicated as **Exhibit R-11**.

60. Bloomberg also reported that the United States House Judiciary Committee was investigating whether Amazon has an unfair advantage over third-party sellers when it competes with them to sell similar products on its own platform, the whole as appears from Exhibit R-11.

61. Also in September 2019, the House Judiciary Committee requested from Amazon, in the context of its investigation focusing in part on "whether dominant firms are engaging in anti-competitive conduct online," documents and information on Amazon's market share in retail e-commerce markets in the United States, the whole as appears from a letter dated September 13, 2019, communicated as **Exhibit R-12**.

V. AMAZON BREACHED THE *COMPETITION ACT,* THE *CIVIL CODE OF QUEBEC* AND THE *CONSUMER PROTECTION ACT*

62. The Respondents conspired, agreed, or arranged with third-party sellers, and the third-party sellers conspired, agreed, or arranged with each other:

a) to fix, maintain, increase, or control retail e-commerce prices;

b) to allocate sales, territories, customers, or markets for retail e-commerce; and

c) to fix, maintain, control, prevent, lessen, or eliminate the production or supply of retail e-commerce.

63. The Respondents' conspiracy, agreement, or arrangement with third-party sellers under Amazon's MFN not to lower prices of competing retail e-commerce contravened section 45 of the *Competition Act*.

64. The Respondents' conspiracy, agreement, or arrangement with third-party sellers under the FPP that selling at lower prices through competing retail e-commerce will subject sellers to costly penalties contravenes section 45 of the *Competition Act*.

65. The Respondents implemented a foreign directive, instruction, intimation of policy, or other communication, which communication was for the purpose of giving effect to a conspiracy, combination, agreement, or arrangement entered outside Canada that, if entered in Canada, would have been in contravention of section 45 of the *Competition Act*.

66. The Respondents' actions described herein are in breach of sections 45 and 46 of part VI of the *Competition Act*.

67. The Respondents' actions described herein are also in breach of the *Civil Code of Quebec*, namely, but not limited to, the duty of good faith.

68. The Respondents' have also breached sections 12 and 219 of the *Consumer Protection Act* by making false or misleading representations regarding the true price of products sold on Amazon's platform and by failing to disclose to consumers the fees incorporated into the price of products sold on the Amazon platform.

VI. THE BASIS OF APPLICANT'S PERSONAL CLAIM

69. The Applicant, Audrey Wells, is a resident of Quebec.

70. During the Class Period, Ms. Wells has purchased various products from different e-commerce websites, including from Amazon's platform.

71. Ms. Wells is a member of the proposed Amazon E-Commerce Class because she purchased products on www.amazon.ca, the whole as appears from an excerpt of

her order history, communicated as **Exhibit R-13**. Following are a few examples of the purchases she made.

72. On September 30, 2018, she purchased a USB C HDMI HUB Adapter for MacBook Pro from a third-party seller, namely MOKiN, on the www.amazon.ca website, as appears from Exhibit R-13.

73. As part of the same order, she purchased an OXO Good Grips Silicone Drying Mat from Respondent Amazon.com.ca, Inc., as appears from Exhibit R-13.

74. On March 29, 2020, she purchased a USB C to Mini Displayport cable from a third-party seller, namely US-Answin, on the www.amazon.ca website, as appears from Exhibit R-13.

75. During the Class Period, Ms. Wells also purchased items from www.amazon.com, the whole as appears from an order confirmation communicated as **Exhibit R-14**.

76. For example, on November 20, 2019, she purchased a SAWNZC Reflective Vest from a third-party seller, namely Hancelant, on the www.amazon.com website, as appears from Exhibit R-14.

77. Ms. Wells is also a member of the proposed Other E-Commerce Class because she purchased Amazon Products on websites other than www.amazon.ca and www.amazon.com during the Class Period.

78. For example, on March 6, 2020, she purchased buffing wax and wood wax finish from the website ardec.ca, the whole as appears from an order confirmation communicated as **Exhibit R-15**.

79. When she purchased products on www.amazon.ca, www.amazon.com or other websites during the Class Period, the Applicant paid artificially inflated prices for those products as a result of Amazon’s anticompetitive actions.

VII. DAMAGES TO THE CLASS MEMBERS

80. As a result of the Respondents' anticompetitive agreements, the prices for products sold by Amazon and by the third-party sellers to consumers, including the Applicant and Class members, who used www.amazon.ca or www.amazon.com and other e-commerce websites to purchase these products, was fixed, maintained, increased, or controlled.

81. During the Class Period, the Applicant and Class members purchased products and services sold on the Amazon platform and other e-commerce websites for prices higher than they would have paid in the absence of the illegal agreements. As a result, the Applicant and Class members suffered damages.

82. The overcharge to the Applicant and Class members is the difference between the price actually paid as a result of the anticompetitive agreements and the price that would have been paid by consumers in the absence of the agreements.

83. The Respondents are solidarily liable to pay compensatory damages to the Applicant and the Class members, as well as the full cost of the investigation, pursuant to section 36 of the *Competition Act*.

84. The Respondents are also solidarily liable to pay compensatory damages to the Applicant and the Class members, pursuant to section 272 of the *Consumer Protection Act*.

85. Finally, the Applicant and Class members are entitled to claim punitive damages from the Respondents pursuant to section 272 of the *Consumer Protection Act,* given the Respondents' intentional, persistent and systematic illegal actions.

VIII. THE COMPOSITION OF THE CLASSES MAKES THE APPLICATION OF THE RULES GOVERNING MANDATE AND CONSOLIDATION OF PROCEEDINGS DIFFICULT AND IMPRACTICAL

86. The proposed Classes cover hundreds of thousands of members across Quebec. The exact number of Class members is not yet known.

87. Moreover, because of the nature of the price fixing alleged, most Class members will necessarily not be aware that they are members of the Classes. Indeed, the very nature of anticompetitive agreements implies that the consumers are not informed that they are paying artificially inflated prices.

88. It is consequently difficult if not impossible, as well as impractical, for the Applicant to locate and contact all members of the proposed Classes and to obtain a mandate to institute proceedings on their behalf.

89. For these reasons and given the difficulty, costs, and personal toll of bringing an individual action, the institution of a class action is the only means of providing Class members with reasonable access to justice in this particular case.

IX. ISSUES TO BE DETERMINED ON A COLLECTIVE BASIS

90. The identical, similar or related questions of fact and law that unite each Class member and that the Applicant wishes to have decided in the proposed class action are as follows:

i. Did Amazon breach the *Competition Act* by entering agreements with third-party sellers that included most favoured nation or price parity provisions?

ii. Did Amazon breach the *Competition Act* by entering agreements with third-party sellers that incorporated its Fair Pricing Policy?

iii. Did Amazon commit a fault under the *Civil Code of Quebec* by entering agreements with third-party sellers that included most favoured nation or price parity provisions?

iv. Did Amazon commit a fault under the *Civil Code of Quebec* by entering agreements with third-party sellers that incorporated its Fair Pricing Policy?

v. Did Amazon’s agreements with third-party sellers artificially increase the price of products sold in retail e-commerce?

vi. If so, what is the amount of damages caused to Class members?

vii. Are the Class members entitled to punitive damages, and if so, in what amount?

X. THE NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

91. The nature of the action the Applicant intends to bring on behalf of the Class members is an action in compensatory and punitive damages for breaches of the *Competition Act*, the *Consumer Protection Act* and the *Civil Code of Quebec*.

92. The conclusions sought by the Applicant on the proposed class action are the following:

I. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc., solidarily, to pay to each Class member an amount equivalent to the artificially inflated portion of the price of retail products purchased, and **ORDER** collective recovery of these sums;

II. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc., solidarily, to pay to each Class member an amount to be determined for punitive damages, and **ORDER** collective recovery of these sums;

III. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc., solidarily, to pay legal interest and additional indemnity on the above amounts from the date of service of the *Application for Authorization to Institute a Class Action*;

IV. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc., solidarily, to bear the costs of the present action including expert fees and the costs associated with all notices;

V. **RENDER** any other order that the Court shall determine and that is in the best interests of the Class members.

XI. THE APPLICANT IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

93. The Applicant is in a position to properly represent the Class members for the following reasons.

94. She is a member of the two proposed Classes.

95. She is not aware of any conflict of interest with other Class members.

96. She has the time, will, and determination to assume all responsibilities incumbent upon her in order to diligently carry out the proposed class action.

97. She is acting in good faith with the goal of obtaining justice and reparation for herself and each Class member.

98. She is well informed of and understands the facts giving rise to the proposed class action.

99. She is represented by an experienced law firm, with expertise in class actions and competition law.

100. She has fully and diligently cooperated with her attorneys in order to prepare this *Application for Authorization to Institute a Class Action* and is committed to continue doing so in the future.

XII. PROPOSED JUDICIAL DISTRICT

101. The Applicant proposes that the class action be brought in the judicial district of Montreal for the following reasons:

a. The Applicant resides in the district of Montreal;

b. The Applicant's attorneys practice their profession in the district of Montreal.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative Plaintiff*;

AUTHORIZE the bringing of a class action on behalf of the two following Classes:

> All persons residing in Quebec, both physical and legal, who, from June 1, 2010 to the present (the "**Class Period**"), purchased products on www.amazon.ca or www.amazon.com (the "**Amazon E-Commerce Class**").
>
> - and -
>
> All persons residing in Quebec, both physical and legal, who, from June 1, 2010 to the present, purchased Amazon Products on any website other than www.amazon.ca or www.amazon.com (the "**Other E-Commerce Class**").
>
> "**Amazon Products**" means all categories of products that are sold by third-party sellers on www.amazon.ca or www.amazon.com.

APPOINT the Applicant, Audrey Wells, as Representative Plaintiff for the Amazon E-Commerce Class and the Other E-Commerce Class;

IDENTIFY the principal questions of law and fact to be dealt with collectively as follows:

i. Did Amazon breach the *Competition Act* by entering agreements with third-party sellers that included most favoured nation or price parity provisions?

ii. Did Amazon breach the *Competition Act* by entering agreements with third-party sellers that incorporated its Fair Pricing Policy?

iii. Did Amazon commit a fault under the *Civil Code of Quebec* by entering agreements with third-party sellers that included most favoured nation or price parity provisions?

iv. Did Amazon commit a fault under the *Civil Code of Quebec* by entering agreements with third-party sellers that incorporated its Fair Pricing Policy?

v. Did Amazon's agreements with third-party sellers artificially increase the price of goods sold in retail e-commerce?

vi. If so, what is the amount of damages caused to Class members?

vii. Are the Class members entitled to punitive damages, and if so, in what amount?

IDENTIFY the conclusions sought by the class action as follows:

I. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc., solidarily, to pay to each Class member an amount equivalent to the artificially inflated portion of the price of retail products purchased, and **ORDER** collective recovery of these sums;

II. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services

Contracts, Inc., solidarily, to pay to each Class member an amount to be determined for punitive damages, and **ORDER** collective recovery of these sums;

III. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc., solidarily, to pay legal interest and additional indemnity on the above amounts from the date of service of the *Application for Authorization to Institute a Class Action*;

IV. **CONDEMN** Amazon.com, Inc., Amazon.com.ca, Inc., Amazon.com Services LLC, Amazon Services International, Inc. and Amazon Services Contracts, Inc., solidarily, to bear the costs of the present action including expert fees and the costs associated with all notices;

V. **RENDER** any other order that the Court shall determine and that is in the best interests of the Class members.

DECLARE that any Class member who has not requested his/her exclusion from the Classes be bound by any judgment to be rendered on the class action, in accordance with law;

FIX the deadline for exclusion from the Classes at sixty (60) days from the date of the notice to the members, after which time those members who did not request exclusion from the Classes shall be bound by all judgments to be rendered with respect to the class action;

ORDER the publication of a notice to the Class members drafted according to the terms of form VI of the Rules of Practice of the Superior Court of Quebec in the manner and locations to be determined by the Court;

REFER the present file to the Chief Justice for determination of the district in which the class action should be brought and designation of the Judge before whom it will be heard;

THE WHOLE with costs, including the costs of publication of all notices.

MONTRÉAL, April 1, 2020

(S) IMK LLP

TRUE COPY

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T: 514 934-7740 | F: 514 935-2999
Lawyers for the Applicant
Our file: 5472-1
BI0080

NOTICE OF PRESENTATION

TO: **AMAZON.COM, INC.**
440 Terry Avenue North
Seattle, Washington 98109
United States of America

AMAZON.COM.CA, INC.
440 Terry Avenue North,
Seattle, Washington 98109
United States of America

AMAZON.COM SERVICES LLC
440 Terry Avenue North
Seattle, Washington 98109
United States of America

AMAZON SERVICES INTERNATIONAL, INC.
440 Terry Avenue North
Seattle, Washington 98109
United States of America

AMAZON SERVICES CONTRACTS, INC.
440 Terry Avenue North
Seattle, Washington 98109
United States of America

TAKE NOTICE that the *Application for Authorization to Institute a Class Action and to Obtain the Status of Representative Plaintiff* will be presented before one of the Honourable Judges of the Superior Court of Quebec, at the Montreal courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec, on the date set by the coordinator of the class actions chamber.

DO GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, April 1, 2020

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SUMMONS
(Articles 145 and following C.C.P.)

Filing of a Judicial Application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Obtain the Status of Representative in the office of the Superior Court of Quebec in the judicial district of Montreal.

Respondent's Answer

You must answer the application in writing, personally or through a lawyer, at the Montreal Courthouse situated at 1 Notre-Dame Street Est, Montréal, Québec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to Answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of Application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the Application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, the Applicant intends to use the following exhibit:

Exhibit R-1:	Amazon's 2018 Annual Report;
Exhibit R-2:	IBISWorld Industry Report on E-Commerce & Online Auctions in Canada, August 2019;
Exhibit R-3:	Selling on Amazon Fee Schedule, March 2020;
Exhibit R-4:	FBA fulfillment fees for Amazon.ca orders, March 2020;
Exhibit R-5:	Amazon Services Business Solutions Agreement, March 2020;
Exhibit R-6:	Amazon Services Business Solutions Agreement, with MFN;
Exhibit R-7:	News articles from March 2019, *en liasse;*
Exhibit R-8:	Amazon Marketplace Fair Pricing Policy, March 2020;
Exhibit R-9:	Letter from Senator Richard Blumenthal to United States Federal Trade Commission, December 19, 2018;
Exhibit R-10:	News article from the Washington Post, June 1, 2019;
Exhibit R-11:	News article from Bloomberg, September 11, 2019;
Exhibit R-12:	Letter from the United States House of Representatives Judiciary Committee to Amazon, September 13, 2019;
Exhibit R-13:	Excerpts of Audrey Well's Amazon order history;
Exhibit R-14:	Order from www.amazon.com, November 2019;
Exhibit R-15:	Order confirmation from Ardec, March 6, 2020.

These Exhibits are available upon request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

MONTRÉAL, April 1, 2020

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Our file: 5472-1
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Nº 500-06-

SUPERIOR COURT (Class Action)
DISTRICT MONTRÉAL
PROVINCE QUÉBEC

AUDREY WELLS

Petitioner

v.

AMAZON.COM, INC.,
and
AMAZON.COM.CA, INC.,
and
AMAZON.COM SERVICES LLC,
and
AMAZON SERVICES INTERNATIONAL, INC. ,
and
AMAZON SERVICES CONTRACTS, INC.

Respondents

APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION AND TO OBTAIN THE STATUS OF REPRESENTATIVE PLAINTIFF (Arts. 574 ff. C.C.P.)

ORIGINAL

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