



4. The Subject Products listed in the Complaint – comprised of the children’s sleepwear garments, carbon monoxide detectors, and hair dryers defined in the Complaint at ¶ 47 and discussed throughout Section V – “were sold by third-party sellers on Amazon.com and the orders for the Subject Products were fulfilled by Amazon” through its’ FBA program, “except for a limited number of units of the Subject Products that were transferred from third-party sellers to Amazon and later sold through the ‘Amazon Warehouse’ program.” Answer at ¶ 1.

5. Participation in Amazon’s FBA program “is governed by a Business Services Agreement and other policies.” Answer at ¶ 9. Products on Amazon.com are assigned Amazon Standard Identification Numbers (“ASINs”). *Id.*

6. Through its Business Services Agreement (“BSA”), titled “Business Solutions Agreement” in its sellercentral portal, Amazon requires that third-party sellers represent and warrant to Amazon that they have “all necessary rights to distribute” the products that they list on Amazon.com. *See Amazon Services Business Solutions Agreement at Provision F-15 Additional Representation*

[https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en\\_US&ref=efph\\_1791\\_cont\\_SNV3657R94YP9DZ](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ)).<sup>2</sup>

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<sup>2</sup> Amazon cites to the same “sellercentral.amazon.com” web domain cited here in its Answer for its “FBA features, services, and fees.” *See* Answer ¶ 16. Because the Amazon Services BSA is found on the same web domain, and because it contains the same distinctive characteristics as the “FBA features” cited to by Amazon in its Answer, the court should accept the authenticity of the cited BSA. *Klayman v. Jud. Watch, Inc.*, 299 F. Supp. 3d 141, 147 (D.D.C. 2018) (ruling that certain screenshots of a website were authenticated where they contained the same “distinctive characteristics” made known to the court through other authenticated exhibits); *see also Premier Nutrition, Inc. v. Organic Food Bar, Inc.*, No. SACV06-0827 AGRNBX, 2008 WL 1913163, at \*5 (C.D. Cal. Mar. 27, 2008), *aff’d*, 327 F. App’x 723 (9th Cir. 2009) (finding at summary judgment stage that printout bore Patent and Trade Office seal made known to the court in other exhibits, and together with website address was authenticated, citing *Perfect 10 v. Cybernet Ventures, Inc.*, 213 F.Supp.2d 1146, 1154 (C.D.Cal.2002), for proposition that web addresses were sufficient indicia of authenticity for admission of website printouts).

7. Through Amazon’s FBA program, however, the third-party seller does not send their products to customers who order them through Amazon.com. Answer at ¶ 11. Instead, the third-party sellers send their products to Amazon. *Id.*

8. Amazon provides services to third-party sellers through its FBA program, including “storing third-party sellers’ products in Amazon fulfillment centers; using technology to track, move, and ship products to customers; processing product returns; and delivering or arranging for delivery to customers.” Answer at ¶ 11.

9. Amazon has also, at times, “provided certain labeling services to some third-party sellers for some products for which Amazon fulfills orders through the FBA” program. Answer at ¶ 11.

10. Amazon “generally maintains electronic records to track products, including products belonging to third-party sellers, at Amazon warehouses and facilities.” Answer at ¶ 12. This tracking facilitates Amazon’s provision of services through its FBA program. *Id.*

11. After receiving and storing third-party sellers’ products, Amazon “fulfills orders placed by customers for products sold by third-party sellers on Amazon.com.” Answer at ¶ 13.

12. When fulfilling orders, “multiple products ordered by a customer from different third-party sellers may be combined in one shipment to that customer.” Answer at ¶ 13.

13. Amazon “employees and equipment may be used to fulfill orders for products sold by third-party sellers.” Answer at ¶ 13.

14. Amazon provides 24/7 customer service as part of its FBA program. *See* Amazon.com’s Seller Central web page cited at Answer ¶ 16 (<https://sellercentral.amazon.com/gp/help/external/201074400>). Specifically, Amazon promises to its third-party sellers that “[i]f there are any issues, Amazon’s top-rated customer service staff

is standing by 24/7 to support all FBA orders.” *Id.* at Customer service for FBA orders, Customer Experience for Products Fulfilled by Amazon ([https://sellercentral.amazon.com/gp/help/external/help.html?itemID=201229050&language=en\\_US&ref=efph\\_201229050\\_cont\\_200298130](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=201229050&language=en_US&ref=efph_201229050_cont_200298130)); *see also* Amazon Services BSA at Provision F-8.2 (“We will be responsible for all customer service issues relating to packaging, handling and shipment, and customer returns, refunds, and adjustments related to Amazon Fulfillment Units. We will determine whether a customer will receive a refund, adjustment or replacement for any Amazon Fulfillment Unit and we will require you to reimburse us where we determine you have responsibility in accordance with the Agreement (including these FBA Service Terms and the Program Policies).” ([https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en\\_US&ref=efph\\_1791\\_cont\\_SNV3657R94YP9DZ](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ))).

15. To the extent that third-party sellers need to communicate with customers regarding orders on Amazon.com, they must do so exclusively through the Amazon platform. *See* Amazon.com’s Seller Central web page cited at Answer ¶ 16 (<https://sellercentral.amazon.com/gp/help/external/201074400>). “For FBA orders, the Buyer-Seller Messages service is for product inquiries only. Any customer service inquiries should be directed to Amazon customer service.” *Id.* at How Amazon handles FBA returns, refunds, and inquiries ([https://sellercentral.amazon.com/gp/help/external/200298130?language=en\\_US&ref=efph\\_200298130\\_cont\\_201074400](https://sellercentral.amazon.com/gp/help/external/200298130?language=en_US&ref=efph_200298130_cont_201074400)).

16. Some “customer returns of third-party sellers’ goods are shipped to Amazon for processing, and thereafter may be returned to the third-party seller, handled by Amazon in

accordance with the third-party seller's instructions, or transferred by the third-party seller to Amazon for later sale through the 'Amazon Warehouse' program." Answer at ¶ 14.

17. Amazon is the seller or retailer for sales of products through its Amazon Warehouse program. *See* Answer, Additional and Affirmative Defenses ¶ 3. Accordingly, Amazon has the contractual authority to receive a product through a customer return, handle the product, and sell it on Amazon.com as the seller or retailer. *See* Amazon Services BSA at Provision F-9.3 ("We may as appropriate keep part of or all proceeds of any Units that we are entitled to dispose of pursuant to F-7 above, or to which title transfers, including returned, damaged, or abandoned Units. You will have no security interest, lien, or other claim to the proceeds that we receive in connection with the sale, fulfillment, and/or shipment of these Units.")

([https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en\\_US&ref=efph\\_1791\\_cont\\_SNV3657R94YP9DZ](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ)).

18. Third-party sellers pay Amazon fees for the services Amazon provides through its FBA program. Answer at ¶ 16.

19. Amazon's "FBA fulfillment fee" information provided via link in its Answer lists at least 6 different categories of fees that may be charged through Amazon's FBA program.

Amazon.com's Seller Central web page cited at Answer ¶ 16

(<https://sellercentral.amazon.com/gp/help/external/201074400>). These fee categories include Fulfillment fees for FBA orders, Monthly inventory storage fees, Long-term storage fees, Removal order fees, Returns processing fees, and Unplanned service fees. *Id.*

20. Amazon processes customer payments, charging the payment instrument designated in the customer's account, and remits the agreed-upon monies to the third-party seller

minus the FBA program fees set forth in the applicable contract. *See* Amazon Services BSA at Provisions P-1 (“you authorize Amazon Payments, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf”) and P-2 (“the applicable Amazon Payments Agents will remit funds to you in accordance with Section S-5 of the Agreement and these Transaction Processing Service Terms”)

[https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en\\_US&ref=efph\\_1791\\_cont\\_SNV3657R94YP9DZ](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ)).

21. Amazon also applies a Fair Pricing Policy to prices charged by third-party sellers using its FBA program, and that Policy allows Amazon to take action against third-party sellers whose pricing practices may harm customer trust. “Pricing practices that harm customer trust include, but are not limited to: . . . setting a price on a product or service [on amazon.com] that is significantly higher than recent prices offered on or off Amazon.” Answer at ¶ 17 (admitting the accuracy of the quotation in Complaint ¶ 17).

22. Amazon has the contractual authority to force third-party sellers to notify Amazon of any safety alerts, recalls, or potential recalls of its products. *See* Amazon Services BSA at Provision F-7.4 [https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en\\_US&ref=efph\\_1791\\_cont\\_SNV3657R94YP9DZ](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ref=efph_1791_cont_SNV3657R94YP9DZ)). Accordingly, Amazon may cut off its relationship with a third-party seller if it violates this provision. *Id.*

23. Amazon also possesses the authority to “refuse registration in FBA of any product, including on the basis that it is an FBA Excluded Product or that it violates applicable Program Policies.” Amazon Services BSA at Provision F-1

[https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en\\_US&ef=efph\\_1791\\_cont\\_SNV3657R94YP9DZ](https://sellercentral.amazon.com/gp/help/external/help.html?itemID=1791&language=en_US&ef=efph_1791_cont_SNV3657R94YP9DZ)).

24. A CPSC Internet Investigative Analyst purchased three units of one of the Subject Products in this case in July 2020. *See* Affidavit of Renee Morelli-Linen and Exhibits A through F attached thereto.

25. The FBA product ordered by the Analyst was a “Combination Smoke and Carbon Monoxide Detector Alarm Digital Display for Travel Home Bedroom and Kitchen 9V Battery Operated” (ASIN B07MPP42GT, CPSC Sample Number 20-800-1837). Affidavit of Renee Morelli-Linen ¶ 5.

26. The product was listed as “Sold by TJTQQZHZ and Fulfilled by Amazon.” *Id.* ¶ 7.

27. After purchasing the carbon monoxide detector, the Analyst received an email from Amazon ([auto-confirm@amazon.com](mailto:auto-confirm@amazon.com)) confirming the order and stating “[t]he payment for your invoice is processed by Amazon Payments, Inc. P.O. Box 81226 Seattle, Washington 98108-1226.” *Id.* ¶ 10.

28. When the Analyst clicked on the hyperlink provided in the email to “View or manage order,” it brought her to an “Order Details” web page with her Amazon.com Order number. *Id.* ¶ 11 (citing Exhibit D (screenshot of “Order Details” web page on Amazon.com)). This page included pictures of and links to five products she had recently purchased under bold letters stating “Buy it again,” pictures of and links to five additional products under bold letters stating “Recommended based on your shopping trends Sponsored,” and six pictures of additional products she had recently viewed on Amazon under the heading “Your Browsing History.” *Id.*

29. The carbon monoxide detectors were delivered to the Analyst's local UPS Store, where she picked them up on August 5, 2020. *Id.* ¶ 13.

30. On June 11, 2021, at 2:15 PM EDT, the Analyst received an email from Amazon Product Safety ([order-update@amazon.com](mailto:order-update@amazon.com)) with the Subject Line "Attention: Important safety notice about your past Amazon order." *Id.* ¶ 14 (citing Exhibit E (Friday, June 11, 2021, 2:15 PM EDT email from [order-update@amazon.com](mailto:order-update@amazon.com) to her email address)).

31. The message informed the Analyst that "We [Amazon] have learned of a potential safety issue that may impact your Amazon purchase(s) below:" and then listed the Order IDs of the affected purchases. *Id.* ¶ 16 (citing Exhibit E). The message further stated that the product she had ordered was "either a product that the U.S. Consumer Product Safety Commission (CPSC) has informed us [Amazon] about, or our Product Safety team has identified, that may fail to alarm on time, posing a risk of exposure to potentially dangerous levels of Carbon Monoxide." *Id.*

32. The notice further stated that there was no need for the Analyst to return the product, and that Amazon was applying a refund in the form of a gift card to her Amazon Account. *Id.* ¶ 18. It included a link to view her available balance and activity on Amazon.com. *Id.* The message was signed "Sincerely, Customer Service, Amazon.com." *Id.*

33. At no point did Amazon refer to or involve the third-party seller or manufacturer, BQQZHZ or TJTQQZHZ, in the process of the Analyst's purchase or the notification and refund. *Id.* ¶ 19.

## **II. AMAZON'S ACTIONS WITH RESPECT TO THE SUBJECT PRODUCTS**

34. The children's sleepwear garments identified in the Complaint are consumer products. Answer ¶ 22.



35. The children's sleepwear garments corresponding to the ASINs identified in Paragraph 21 of the Complaint were sold by third-party sellers and those orders were "fulfilled by Amazon." Answer ¶ 21.

36. The third-party sellers of the children's sleepwear garments sold them on Amazon.com and "elected to have Amazon fulfill orders for the identified children's sleepwear garments between June 2019 to February 2020." Answer ¶ 25.

37. The carbon monoxide detectors identified in the Complaint are consumer products. Answer ¶ 31.

38. The carbon monoxide detectors corresponding to the ASINs identified in Paragraph 30 of the Complaint were sold via Amazon's FBA program in which Amazon stored and delivered them. Answer at ¶ 30.

39. The carbon monoxide detectors were sold on Amazon.com via Amazon's FBA program between July 2019 and August 2020. Answer at ¶ 34.

40. The hair dryers identified in the Complaint are consumer products. Answer ¶ 40.

41. Orders for the hair dryers corresponding to the ASINs identified in Paragraph 39 of the Complaint were "fulfilled by Amazon." Answer at ¶ 39.

42. The hair dryers were on Amazon.com via Amazon's FBA program between June 10, 2019 and March 9, 2021. Answer at ¶ 43.

43. Amazon sold approximately 28 units of the carbon monoxide detectors and approximately 4 units of the hair dryers on Amazon.com through the "Amazon Warehouse" program. Answer at Additional and Affirmative Defenses, ¶ 3.

Dated this 13th day of October, 2021,

*John C. Eustice*

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 13, 2021, a copy of the foregoing was served upon all parties and participants of record in these proceedings as follows:

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