

The Honorable Richard A. Jones

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEBORAH FRAME-WILSON, CHRISTIAN
SABOL, SAMANTHIA RUSSELL, ARTHUR
SCHAREIN, LIONEL KEROS, NATHAN
CHANEY, CHRIS GULLEY, SHERYL
TAYLOR-HOLLY, ANTHONY COURTNEY,
DAVE WESTROPE, STACY DUTILL, SARAH
ARRINGTON, MARY ELLIOT, HEATHER
GEESEY, STEVE MORTILLARO, CHAUNDA
LEWIS, ADRIAN HENNEN, GLENDA R.
HILL, GAIL MURPHY, PHYLLIS HUSTER,
and GERRY KOCHENDORFER, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

No. 2:20-CV-00424-RAJ

AMAZON.COM, INC.'S
MOTION TO CLARIFY OR
RECONSIDER PORTIONS OF
THE COURT'S MARCH 11, 2022
ORDER

NOTE ON MOTION CALENDAR:
March 25, 2022

Oral Argument Requested

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INTRODUCTION

Clarification or reconsideration of the Court’s motion to dismiss Order (Dkt. 48) is warranted because the Court’s Order addressed the issue of antitrust standing for only a subset of Plaintiffs and claims. A complete ruling on antitrust standing is particularly important because antitrust standing “is a threshold requirement that every plaintiff must satisfy to bring a private suit under the federal antitrust laws.” *Lorenzo v. Qualcomm Inc.*, 603 F. Supp. 2d 1291, 1300 (S.D. Cal. 2009).

The Court found that Plaintiffs have antitrust standing to pursue claims “as direct purchasers of alleged antitrust co-conspirators” and, “[b]ased on this,” concluded that it “need not address Plaintiffs’ standing under an umbrella theory.” Dkt. 48 at 8. But Plaintiffs admit that they did not all purchase from alleged “co-conspirators,” nor are their claims as pled limited to such purchases. As a result, the co-conspirator standing doctrine does not provide a basis for permitting all Plaintiffs, or the Complaint as a whole, to proceed. To be clear, Amazon strenuously disagrees with the notion that sellers in its store are “co-conspirators,” and will show why that allegation by Plaintiffs is baseless. But recognizing that, for purposes of this motion, Plaintiffs’ allegations must be accepted as true, they do not resolve the antitrust standing issue.

Plaintiffs’ brief incorrectly treated co-conspirator and umbrella standing theories as if they were interchangeable and did not clearly distinguish between those Plaintiffs who purchased from third-party sellers who sell on Amazon—the sellers who Plaintiffs label as alleged “co-conspirators”—and those who purchased from other e-commerce retailers. Dkt. 19 at 5–7. But at least fifteen of the twenty-one named Plaintiffs assert claims based solely on purchases from e-commerce retailers who even Plaintiffs admit were *not* co-conspirators. The Court’s Order did not address the antitrust standing of these fifteen Plaintiffs. And their ability to proceed with their claims depends entirely on an umbrella theory which Plaintiffs acknowledge the Ninth Circuit has never before recognized.

1 Further, while there are six Plaintiffs who do allege that they made purchases from
2 alleged “co-conspirators,” these Plaintiffs also have not met the pleading requirements to
3 establish antitrust standing, given that the only conspiracy claims left in this case following the
4 Court’s ruling are claims of separate vertical conspiracies. To proceed with such claims on the
5 basis of co-conspirator standing, Ninth Circuit law requires Plaintiffs to join as defendants the
6 alleged “co-conspirator” sellers. Plaintiffs’ Complaint fails to do that.

7 Finally, co-conspirator standing provides no basis for Plaintiffs to proceed on their
8 monopolization and attempted monopolization claims, which are not conspiracy claims.
9 Because the Court’s Order found standing based only on alleged “co-conspirator” purchases, it
10 did not address whether any Plaintiffs have antitrust standing to assert Sherman Act, Section 2
11 claims. Because co-conspirator standing cannot apply to Section 2 claims, which are based on
12 unilateral conduct by a single firm, the direct purchaser rule is a bar to Plaintiffs’ antitrust
13 standing for their Section 2 claims.

14 For these reasons, and as explained more fully below, Amazon respectfully requests that
15 the Court clarify or reconsider its Order on antitrust standing.

16 **I. Plaintiffs Lack Standing for Claims Based on Purchases from “Non-Conspiring
17 Retailers,” and Plaintiffs Failed to Join as Defendants “Co-Conspirator” Sellers.**

18 **A. Most Plaintiffs Lack Standing Based on Purchases from “Non-Conspiring
19 Retailers.”**

20 In the Ninth Circuit, antitrust standing based on the co-conspirator exception to *Illinois*
21 *Brick* does not apply to customers who purchase from “non-conspiring retailers” because “the
22 price paid by a plaintiff must be set by the conspiracy and not merely affected by the setting of
23 another price.” *In re ATM Fee Antitrust Litig.*, 686 F.3d 741, 754 (9th Cir. 2012); *see also* Dkt.
24 29 at 2–4. Plaintiffs allege third-party sellers on Amazon are its co-conspirators, and the Court
25 concluded that Plaintiffs pleaded standing to sue Amazon on that basis alone. Amazon strongly
26 disagrees that its sellers are co-conspirators, but recognizes that the Court must accept Plaintiffs’
27 allegation as true for purposes of this Motion. Even so, unless the Court also rules on umbrella
standing, its opinion would permit certain named Plaintiffs (and proposed class members) to

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