

Docket No. 23-35584

In the
United States Court of Appeals
For the
Ninth Circuit

NICHOLAS MCCARTHY and MARTINIQUE MAYNOR, individually and
NICHOLAS MCCARTHY as successor-in-interest to ETHAN MCCARTHY
a deceased individual; LAURA JÓNSSON and STEINN JÓNSSON,
individually, and LAURA JÓNSSON as successor-in-interest to
KRISTINE JÓNSSON, a deceased individual,

Plaintiffs-Appellants,

v.

AMAZON.COM, INC.,

Defendant-Appellee.

*Appeal from a Decision of the United States District Court
for the Western District of Washington, Seattle
No. 2:23-cv-00263-JLR · Honorable James L. Robart*

EXCERPTS OF RECORD

PHILIP A. TALMADGE
GARY W. MANCA
TALMADGE/FITZPATRICK
2775 Harbor Avenue SW, 3rd Floor
Suite C
Seattle, Washington 98126
(206) 574-6661

CARRIE GOLDBERG
NAOMI E. LEEDS
HANNAH C. MEROPOL
C.A. GOLDBERG, PLLC
16 Court Street, 33rd Floor
Brooklyn, New York 11241
(646) 666-8908

CORRIE J. YACKULIC
CORRIE YACKULIC LAW FIRM, PLLC
110 Prefontaine Place, S Suite 304
Seattle, Washington 98104
(206) 787-1915

Attorneys for Plaintiffs-Appellants



TABLE OF CONTENTS

Docket Entry	Description	Page
68	Order Denying Plaintiffs’ Motion to Amend Judgment, to Grant Plaintiffs Leave to File a Second Amended Complaint, or, in the Alternative, to Certify Questions to the Washington State Supreme Court Filed August 25, 2023	4
61	Judgment in a Civil Case Filed June 27, 2023	24
60	Order Granting Defendant’s Motion to Dismiss; Dismissing Plaintiffs’ Amended Complaint with Prejudice and Without Leave to Amend Filed June 27, 2023	25
58	Defendant Amazon.Com, Inc.’s Supplemental Response in Support of its Motion to Dismiss for Failure to State a Claim Filed May 9, 2023	59
57	Plaintiff’s Supplemental Briefing in Opposition to Defendant Amazon.Com, Inc.’s Motion to Dismiss for Failure to State a Claim Filed May 9, 2023	70
56	Minute Order for Parties to File Supplemental Briefing to Defendant Amazon.com, Inc.’s Motion to Dismiss Plaintiffs’ First Amended Complaint Filed May 4, 2023	78
54	Defendant Amazon.Com, Inc.’s Reply in Support of its Motion to Dismiss for Failure to State a Claim Filed April 21, 2023	80
52	Declaration of Corrie J. Yackulic in Support of Plaintiffs’ Opposition to Defendant Amazon.Com, Inc.’s Motion to Dismiss for Failure to State a Claim Filed April 19, 2023	97
50	Plaintiffs’ Opposition to Defendant Amazon.Com, Inc.’s Motion to Dismiss for Failure to State a Claim Filed April 17, 2023	103

47	Defendant Amazon.Com, Inc.'s Motion to Dismiss for Failure to State a Claim Filed March 30, 2023	133
35	Transfer Order Filed February 17, 2023	167
34	Minute Entry for Proceedings Held before Judge James Donato: Motion Hearing Held on February 16, 2023 Filed February 17, 2023	168
15	First Amended Complaint for Civil Penalties and Demand for a Jury Trial Filed December 12, 2022	170
69	Plaintiffs' Notice of Appeal from a Judgment or Order of a United States District Court Filed September 5, 2023	212
--	Civil Docket, United States District Court for the Western District of Washington (Seattle), Case No. 2:23-cv-00263-JLR	215

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICOLAS MCCARTHY, et al.,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO. C23-0263JLR

ORDER

I. INTRODUCTION

Before the court is Plaintiffs Nicholas McCarthy, Martinique Maynor, Laura Jónsson, and Steinn Jónsson’s¹ (collectively, “Plaintiffs”) motion to (1) amend the June 27, 2023 final judgment granting Defendant Amazon.com, Inc.’s (“Amazon”) motion to dismiss and dismissing Plaintiffs’ first amended complaint with prejudice, (2) grant

¹ Ms. Maynor and Mr. Jónsson bring claims individually, whereas Mr. McCarthy brings claims both individually and as a successor-in-interest to Ethan McCarthy, a deceased individual, and Ms. Jónsson brings claims both individually and as a successor-in-interest to Kristine Jónsson, a deceased individual. (Am. Compl. (Dkt. # 15) at 1.)

1 Plaintiffs’ leave to file a second amended complaint, or, in the alternative, (3) certify
2 questions to the Washington State Supreme Court. (Mot. (Dkt. # 62); Reply (Dkt. # 66).)
3 Amazon opposes the motion. (Resp. (Dkt. # 65); *see also* Def. Not. (Dkt. # 67).) The
4 court has reviewed the parties’ submissions, the balance of the record, and applicable
5 law. Being fully advised,² the court DENIES Plaintiffs’ motion.

6 II. ANALYSIS³

7 This case arises from the deaths by suicide of two teenagers, Ethan McCarthy and
8 Kristine Jónsson, caused by intentionally ingesting sodium nitrite sold by Loudwolf, Inc.
9 (“Loudwolf Sodium Nitrite” or “Sodium Nitrite”) on Amazon.com. (*See generally* Am.
10 Compl.) The court construed Plaintiffs’ first amended complaint to alleges the following
11 claims against Amazon: negligent product liability and intentional concealment under
12 the Washington Product Liability Act (“WPLA”), RCW 7.72.010, *et seq.*; common law
13 negligence; and common law negligent infliction of emotional distress (“NIED”).⁴ (*See*
14 6/27/23 Order at 9-11; Am. Compl. ¶¶ 232-51 (alleging negligent and strict product
15

16 ² Plaintiffs request oral argument. (*See* Mot. at 1.) The court, however, concludes that
17 oral argument would not be helpful to its disposition of the motion. *See* Local Rules W.D.
Wash. LCR 7(b)(4).

18 ³ The court detailed the factual background of this case in its June 27, 2023 order and
19 does not repeat that background here. (*See* 6/27/23 Order (Dkt. # 60) at 2-6.)

20 ⁴ In its June 27, 2023 order, the court construed Plaintiffs’ claims in this manner after it
21 determined that Washington law applied and that Plaintiffs could not allege strict product
22 liability claims against Amazon. (*See* 6/27/23 Order at 9-11 & n.4.) Additionally, the court
concluded that the common law negligence and NIED claims alleged in Counts II and III of
Plaintiffs’ first amended complaint are preempted or subsumed by the WPLA and therefore
construed those claims as negligent product liability claims under the WPLA. (*Id.* at 25-32; *see*
also infra n.13.)

1 liability, common law negligence, and common law NIED claims against Loudwolf and
2 Amazon).) On June 27, 2023, the court granted Amazon’s motion to dismiss and
3 dismissed Plaintiffs’ first amended complaint with prejudice and without leave to amend
4 pursuant to Federal Rule of Civil Procedure 12(b)(6). (*See generally* 6/27/23 Order;
5 Judgment (Dkt. # 61).)

6 Plaintiffs’ instant motion asks the court to amend the June 27, 2023 final judgment
7 entered in favor of Amazon pursuant to Federal Rule of Civil Procedure 59(e) and to
8 grant them leave to amend their first amended complaint. (*See generally* Mot.)

9 Alternatively, Plaintiffs ask the court to certify two questions to the Washington State
10 Supreme Court. (*See generally id.*) The court begins by setting forth the standard of
11 review governing Federal Rule of Civil Procedure 59(e) motions before turning to its
12 analysis of Plaintiffs’ Rule 59(e) motion and other requests.

13 **A. Standard of Review for Rule 59(e) Motions**

14 Altering or amending a judgment under Rule 59(e) is an “extraordinary remedy, to
15 be used sparingly in the interests of finality and conservation of judicial resources.”

16 *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). A rule 59(e) motion “should not
17 be granted, absent highly unusual circumstances.” *Orange St. Partners v. Arnold*, 179
18 F.3d 656, 665 (9th Cir. 1999). There are four circumstances that generally qualify:

19 “(1) the motion is necessary to correct manifest errors of law or fact upon which the
20 judgment is based; (2) the moving party presents newly discovered or previously
21 unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or
22 (4) there is an intervening change in controlling law.” *Turner v. Burlington N. Santa Fe*

1 | *R.R Co.*, 338 F.3d 1058, 1063 (9th Cir. 2003) (quoting *McDowell v. Calderon*, 197 F.3d
2 | 1253, 1254 n.1 (9th Cir. 1999)). This is a “high hurdle” for the moving party to meet.
3 | *Weeks v. Bayer*, 246 F.3d 1231, 1236 (9th Cir. 2001).

4 | In the absence of new evidence or a change in controlling law, a “Rule 59(e)
5 | motion may *not* be used to raise arguments or present evidence for the first time when
6 | they could reasonably have been raised earlier in the litigation.” *Kona Enters., Inc. v.*
7 | *Est. of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (emphasis in original); *Exxon Shipping*
8 | *Co. v. Baker*, 554 U.S. 471, 485 n.5 (2008); *City of Fresno v. United States*, 709 F. Supp.
9 | 2d 888, 916 (E.D. Cal. 2010) (“Rule 59(e) ‘does not provide a vehicle for a party to undo
10 | its own procedural failures’” (quoting *DiMarco-Zappa v. Cabanillas*, 238 F.3d 25,
11 | 34 (1st Cir. 2001))). Rule 59(e) motions are also “not vehicles permitting the
12 | unsuccessful party to ‘rehash’ arguments previously presented.” *Cachil Dehe Band of*
13 | *Wintun Indians v. California*, 649 F. Supp. 2d 1063, 1070-71 (E.D. Cal. 2009) (quoting
14 | *United States v. Navarro*, 972 F. Supp. 1296, 1299 (E.D. Cal. 1997), *rev’d on other*
15 | *grounds*, 160 F.3d 1254 (9th Cir. 1998)). “Ultimately, a party seeking reconsideration
16 | must show more than a disagreement with the Court’s decision, and recapitulation of the
17 | cases and arguments considered by the court before rendering its original decision fails to
18 | carry the moving party’s burden.” *Id.* at 1071 (internal quotation marks omitted)
19 | (quoting *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131 (E.D. Cal.
20 | 2001)).

21 | //

22 | //

1 **B. Plaintiffs' Rule 59(e) Motion to Amend the Judgment**

2 Plaintiffs assert that the court should amend the judgment because (1) the
3 judgment is based on manifest errors of law and fact and (2) newly discovered evidence
4 justifies amendment.⁵ (*See* Mot. at 8-18; Reply at 1-4.)

5 1. Whether the Court Committed Manifest Errors of Law

6 Plaintiffs contend that the court committed manifest errors of law by (1) holding
7 that Plaintiffs must show the Sodium Nitrite was a defective product before Amazon can
8 be held liable for seller negligence under the WPLA (Mot. at 9-11; Reply at 1-2), and
9 (2) “assum[ing] that Amazon’s removal of product reviews was the sole basis for”
10 Plaintiffs’ WPLA intentional concealment claim (Mot. at 11 (contending that the claim is
11 based on other facts that do not treat Amazon as a publisher, and thus, should not have
12 been dismissed under Section 230 of the Communications Decency Act (“CDA”), 47
13 U.S.C. § 230); Reply at 2-3). Amazon argues that Plaintiffs’ arguments fail because
14 (1) Plaintiffs could have raised these arguments in their opposition to Amazon’s motion
15 to dismiss and (2) Plaintiffs’ criticisms do not rise to the level of manifest error. (Resp. at
16 2-4.)

17
18 ⁵ Plaintiffs’ motion also includes a conclusory, single sentence contention that leave to
19 amend must be given to prevent manifest injustice. (*See* Mot. at 14; *see also* Resp. at 7
20 (challenging this contention).) In their reply brief, however, Plaintiffs do not reraise or discuss
21 this argument. (*See generally* Reply.) Accordingly, because this argument was unsupported and
22 essentially abandoned on reply, the court does not address it in this order. *See Indep. Towers cf*
Wash. v. Wash., 350 F.3d 925, 929 (9th Cir .2003) (“Our adversarial system relies on the
advocates to inform the discussion and raise the issues to the court.”); *Cal. Expanded Metal*
Prod. Co. v. Klein, No. C18-0659JLR, 2018 WL 6249793, at *10 (W.D. Wash. Nov. 29, 2018)
(declining to address conclusory argument for which plaintiffs provided no legal or evidentiary
support).

1 Plaintiffs fail to meet Rule 59(e)'s demanding standard. First, Plaintiffs'
2 arguments regarding the WPLA's standard for seller negligence claims are improperly
3 raised under Rule 59(e) because they either "relitigate old matters" or make new
4 "arguments . . . that could have been raised" in the prior briefing. *Guenther v. Lockheed*
5 *Martin Corp.*, 972 F.3d 1043, 1058 (9th Cir. 2020); *Kona Enterps.*, 229 F.3d at 890 ("A
6 Rule 59(e) motion may not be used to raise arguments [that] could reasonably have been
7 raised earlier."). In its motion to dismiss, Amazon argued that the "text, history, and
8 purpose of the WPLA make clear that a 'seller' cannot be liable in 'negligence' unless
9 the product at issue was defective." (MTD (Dkt. # 47) at 11.) Instead of disputing
10 Amazon's argument, Plaintiffs merely stated that "the Complaint alleges product defects:
11 that the Sodium Nitrite had inadequate warnings." (MTD Resp. (Dkt. # 50) at 17.) The
12 court treated Plaintiffs' response as effectively conceding the issue and, after considering
13 the case law and legislative history cited by Amazon, independently reached the same
14 conclusion. (6/27/23 Order at 12.) Accordingly, the court has already thoroughly
15 considered this issue and Plaintiffs cannot claim manifest error based on their
16 "disagreement with the [c]ourt's decision," *Westlands Water Dist.*, 134 F. Supp. 2d at
17 1131, and "arguments [they] could have raised in their opposition to the motion" to
18 dismiss. *Anglin v. Merchants Credit Corp.*, No. C18-0507BJR, 2020 WL 4816025, at *1
19 (W.D. Wash. Aug. 19, 2020), *aff'd*, No. 20-35820, 2022 WL 964216 (9th Cir. Mar. 30,
20 2022); *see also Zimmerman v. City of Oakland*, 255 F.3d 734, 740 (9th Cir. 2001) ("A
21 district court does not abuse its discretion when it disregards legal arguments made for
22 the first time on a motion to amend . . .").

1 Second, Plaintiffs’ arguments regarding their intentional concealment claim
2 similarly fail because they “could have [been] raised in [Plaintiffs’] opposition to the
3 motion” to dismiss. *Anglin*, 2020 WL 4816025, at *1. In response to Amazon’s motion
4 to dismiss, which argued that the WPLA intentional concealment claim was based solely
5 on Amazon’s removal of negative product reviews and was therefore barred by Section
6 230 of the CDA (*see* MTD at 16-17), Plaintiffs could have identified the other bases of
7 their WPLA intentional concealment claim and explained why Section 230 of the CDA
8 would not bar such claims. Instead, Plaintiffs’ response to Amazon’s argument simply
9 stated, without citations to the first amended complaint, that the “facts pertaining to the
10 product page” “are not themselves elements compromising the claims” but “illustrate
11 Amazon’s notice, failure to act, noncompliance with its own safety standards, and design
12 features that normalize and push the product for suicide.” (*See* MTD Resp. at 28-29.)

13 Given Plaintiffs’ failure to specifically identify any other basis for their intentional
14 concealment claim, the court properly analyzed the intentional concealment claim as
15 based solely on the removal of product reviews because that was the only intentional
16 conduct alleged in the product liability claim section of the first amended complaint.⁶

17
18 ⁶ In their reply brief, Plaintiffs argue that Amazon “incorrectly asserts that its removal of
19 reviews was the only conduct alleged as a basis for” their intentional concealment claim because
20 the product liability section of the first amended complaint “incorporates by reference the
21 preceding 202 allegations underlying the intentional concealment cause of action.” (*See* Reply at
22 3.) Such a statement, however, erroneously implies that the court should have sorted through
those 202 factual allegations to identify which allegations were intended to support which of
Plaintiffs’ various claims for relief. The court had no such obligation. *See Indep. Towers of
Wash.*, 350 F.3d at 929 (“Judges are not like pigs, hunting for truffles buried in briefs.” (quoting
United States v. Dunkel, 927 F.2d 955, 956 (7th Cir. 1991)); *Zunum Aero, Inc. v. Boeing Co.*, No.
C21-0896JLR, 2022 WL 3346398, at *6 n.10 (W.D. Wash. Aug. 12, 2022) (stating that the court
is not required to search for the facts that support plaintiff’s theory of liability).

1 (See Am. Compl. ¶ 241.j.) Because a Rule 59(e) motion is not properly granted where
2 the argument is one that could have been raised, but was not raised, before judgment was
3 entered, the court denies Plaintiffs' Rule 59(e) motion on this ground. *See Marlyn*
4 *Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)
5 (“A motion for reconsideration may not be used to raise arguments or present evidence
6 for the first time when they could reasonably have been raised earlier in the litigation.”);
7 *Blakeney v. Ascension Servs., L.P.*, No. 15-CV-05544-LHK, 2016 WL 6804603, at *5
8 (N.D. Cal. Nov. 17, 2016) (“Plaintiff’s failure to previously raise an argument or theory
9 of relief does not require the Court to grant a motion under Rule 59(e).”).

10 2. Whether the Court Committed Manifest Errors of Fact

11 Plaintiffs assert that the court made manifest errors of fact when it stated that:

12 (1) Ethan and Kristine consumed “large doses” of sodium nitrite; (2) the sodium nitrite
13 was “not marketed ‘as safe for human consumption or ingestion’”; and (3) the sodium
14 nitrite label “warns that the product is a toxic, reagent grade chemical.” (Mot. at 12
15 (contending that the court erroneously “rel[ied] on three key statements of fact not
16 alleged in the complaint”); Reply at 3-4.) Amazon again argues that Plaintiffs’
17 arguments fail because (1) Plaintiffs could have raised these arguments in their
18 opposition to Amazon’s motion to dismiss and (2) Plaintiffs’ criticisms do not rise to the
19 level of manifest error. (Resp. at 4-5.)

20 The court agrees with Amazon. The court’s use of these three statements of fact in
21 its analysis of Plaintiffs’ WPLA negligent product liability claim does not rise to the level
22 of manifest error. *See, e.g., Garcia v. Biter*, 195 F. Supp. 3d 1131, 1132-33 (E.D. Cal.

1 2016) (“‘Mere doubts or disagreement about the wisdom of a prior decision’ is
2 insufficient to warrant granting a Rule 59(e) motion. For a decision to be considered
3 ‘clearly erroneous’ it must be ‘more than just maybe or probably wrong; it must be dead
4 wrong.’” (citations omitted) (quoting *Campion v. Old Repub. Home Prot. Co., Inc.*,
5 No. 09-CV-00748-JMA(NLS), 2011 WL 1935967, at *1 (S.D. Cal. May 20, 2011)));
6 *Teamsters Loc. 617 Pension & Welfare Funds v. Apollo Grp., Inc.*, 282 F.R.D. 216,
7 231-32 (D. Ariz. 2012) (“‘[A] manifest error of fact or law must be one ‘that is plain and
8 indisputable, and that amounts to a complete disregard of the controlling law or the
9 credible evidence in the record.’” (quoting *In re Wahlin*, No. 10-20479-TLM, 2011 WL
10 1063196, at *2 (Bankr. D. Idaho Mar. 21, 2011))). First, the court’s characterization of
11 the size of the dose is irrelevant to its analysis; instead, the court’s analysis turned on the
12 allegations that established that “Kristine and Ethan deliberately sought out the Sodium
13 Nitrite for its fatal properties, intentionally mixed . . . it with water, and swallowed it to
14 commit suicide.” (6/27/23 Order at 14-15.) Second, the court’s statement that the
15 Sodium Nitrite at issue in this case “was not marketed for human consumption” is a
16 plausible reading of and is not contradicted by the allegations in the first amended
17 complaint.⁷ (*See, e.g.*, Am. Compl. ¶¶ 73, 77 (implying that the Loudwolf Sodium Nitrite

18
19 _____
20 ⁷ Even the allegation in the first amended complaint that Plaintiffs cite supports the
21 court’s prior characterization. (Mot. at 12 (citing Am. Compl. ¶ 135); Reply at 3 (same).)
22 Specifically, paragraph 135 of the first amended complaint alleges that sodium nitrite used in
food preservatives are marketed and packaged differently than the Loudwolf Sodium Nitrite at
issue here. (*See* Am. Compl. ¶ 135 (describing sodium nitrite used in curing salts as “dyed
bright pink” and sold at a diluted level of about 6%, whereas the Sodium Nitrite at issue here was
not dyed and “contained about 99.6% pure Sodium Nitrite”).) Accordingly, the first amended
complaint’s acknowledgement of the “contrast” between Loudwolf’s high-purity Sodium Nitrite

1 was categorized as “Business, Industrial, and Scientific Supplies”), 97 (“Loudwolf
2 Sodium Nitrite was sold on Amazon at 99.6% purity– a purity level for which there is no
3 non-institutional or household use.”), 98 (Loudwolf Sodium Nitrite bottle with the words
4 “INDUSTRIAL & SCIENTIFIC” on the front.) Third, court statement that the Sodium
5 Nitrite at issue in this case “warns that the product is toxic” is plausibly derived from the
6 bold TOX label on the Loudwolf Sodium Nitrite bottle. (*See id.* ¶ 98 (showing the letters
7 TOX contained inside of a large letter X).⁸)

8 Accordingly, Plaintiffs’ arguments do not present the “highly unusual
9 circumstances” that Rule 59(e) requires to amend a judgment and the court denies
10 Plaintiffs’ Rule 59(e) motion on this ground. *Kona Enterprs.*, 229 F.3d at 890; *Teamsters*
11 *Loc. 617*, 282 F.R.D. at 232 (“[S]imply stating, as plaintiff does, that a given finding was
12 ‘manifestly erroneous,’ does not make it so.”).

13 3. Whether Plaintiffs Present Newly Discovered Evidence that Justifies
14 Amendment of the Judgment

15 Plaintiffs claim to have two pieces of “newly discovered evidence” that justify
16 amendment of the judgment. (Mot. 12-14; Reply at 4.) The purportedly new evidence
17 includes: (1) communications between Amazon customer service representatives and
18 Meredith Mitchel, in which Ms. Mitchel told Amazon that her son had purchased
19 Duda-brand sodium nitrite on Amazon.com and “used [it] to end his life” and that there

20 _____
21 and products with “lower concentration” (*id.*) further supports the court’s reading of the first
22 amended complaint.

⁸ The first amended complaint does not offer any contrary allegations regarding the
meaning of the TOX label on the Loudwolf Sodium Nitrite bottle. (*See generally* Am. Compl.)

1 “is a website touting [sodium nitrite] as a peaceful way to kill yourself” (Mitchel Decl.
2 (Dkt. # 63) ¶ 7, Ex. A (initial messages between Ms. Mitchel and Amazon) at 1, 3; *see*
3 *also id.* ¶¶ 8-9, Exs. B-G (follow-up emails between Ms. Mitchel and Amazon regarding
4 Amazon’s investigation into the product sold to her son); Mot. at 13-14); and (2) a U.S.
5 Surgeon General Advisory (the “Advisory”) about the effects of social media on youth
6 mental health (Mot. at 14 (noting that the Advisory states, among other things, that
7 mental health challenges, such as depression, typically emerge during adolescents’
8 sensitive period of brain development (citing *Social Media and Youth Mental Health: the*
9 *U.S. Surgeon General’s Advisory*, U.S. Dep’t Health & Hum. Servs. (May 23, 2023),
10 <https://www.hhs.gov/sites/default/files/sg-youth-mental-health-social-media-advisory.pdf>
11 [hereinafter *SG Advisory*])).

12 To justify amendment under Rule 59(e) based on newly discovered evidence, a
13 party must “show that the evidence was discovered after the judgment, that the evidence
14 could not be discovered earlier through due diligence, and that the newly discovered
15 evidence is of such a magnitude that had the court known of it earlier, the outcome would
16 likely have been different.” *Dixon v. Wallowa Cnty.*, 336 F.3d 1013, 1022 (9th Cir.
17 2003). Additionally, evidence that that is merely cumulative of other information
18 available prior to judgment is not new evidence under Rule 59(e). *See, e.g., HT-Seattle*
19 *Owner, LLC v. Am. Guarantee & Liab. Ins. Co.*, No. C21-0048BJR, 2021 WL 4636924,
20 at *2 (W.D. Wash. Oct. 7, 2021), *aff’d*, No. 21-35916, 2023 WL 3562996 (9th Cir. May
21 19, 2023); *Arnett Facial Reconstruction Courses, Inc. v. Patterson Dental Supply, Inc.*,
22 No. CV 11-06929 CBM (EX), 2013 WL 12246259, at *4 (C.D. Cal. Apr. 8, 2013)

1 (“Newly discovered evidence must be material and cannot be merely cumulative or
2 impeaching.” (citing *Feature Realty, Inc. v. City of Spokane*, 331 F.3d 1082, 1093 (9th
3 Cir. 2003))).

4 Neither of the two pieces of evidence cited by Plaintiffs justify amendment of the
5 judgment under Rule 59(e)’s demanding standard. First, the information Plaintiffs
6 reference from the Advisory and Ms. Mitchel’s communications is cumulative of the
7 facts alleged in and does not introduce information that could not have been ascertained
8 from the first amended complaint. (*See Mot.* at 13-14.) For example, the first amended
9 complaint already alleges that Amazon was selling sodium nitrite to vulnerable
10 individuals, that there was a spike in teenage suicide and mental health crises during the
11 coronavirus pandemic, and that Amazon was on notice—as early as 2018—that teenagers
12 were committing suicide using sodium nitrite purchased on Amazon.com. (*See, e.g., Am.*
13 *Compl.* ¶¶ 7, 11, 15, 18, 28, 87, 102, 110-16, 122, 125, 139-47, 151-54, 211, 226-27,
14 241.) Accordingly, the Advisory and communications between Ms. Mitchel and Amazon
15 “merely reframe[], clarif[y], and expand[] upon facts” that were present in the first
16 amended complaint.⁹ *HT-Seattle Owner*, 2021 WL 4636924 at *2.

17
18 ⁹ The court also rejects Plaintiffs’ contention that the communications are not cumulative
19 of the evidence in the first amended complaint because they relate to Plaintiffs’ proposed WPLA
20 intentional concealment claim based on Amazon’s knowledge that teens were committing
21 suicide using sodium nitrite. (Reply at 4; Goldberg Decl. (Dkt. # 64) ¶ 3, Ex. A (proposed
22 second amended complaint) at 60.) The first amended complaint already alleged that Amazon
knew that teens were committing suicide using sodium nitrite and the communications simply
“clarify [Plaintiffs’] legal theory” and “add additional textual context.” *See In re Netflix, Inc.*
Secs. Litig., 647 F. App’x 813, 817 (9th Cir. 2016) (affirming denial of motion to amend
judgment and complaint where plaintiff’s new evidence merely “clarif[ied] the legal theory,
streamline[d] the complaint, and add[ed] additional textual context”). Plaintiffs cannot use Rule
59(e) to refashion existing allegations under the guise of “newly discovered evidence.” *Id.*

1 Second, the Advisory could have been discovered and produced earlier through
2 reasonable diligence. The Advisory was issued on May 23, 2023, *SG Advisory, supra*,
3 which is more than a month before the court granted Amazon’s motion to dismiss and
4 entered the final judgment dismissing Plaintiffs’ first amended complaint (*see generally*
5 Dkt.). As such, Plaintiffs could have submitted the Advisory to the court prior to the
6 entry of judgment by filing a notice of supplemental authority, *see* Local Rules W.D.
7 Wash. LCR 7(n), a practice they are familiar with (*see, e.g.*, Pl. Not. (Dkt. # 59)). *See*
8 *Frederick S. Wyle Pro. Corp. v. Texaco, Inc.*, 764 F.2d 604, 609 (9th Cir. 1985) (stating
9 that party must show that they could not reasonably “have discovered and produced such
10 evidence” before the entry of judgment). Moreover, the studies cited in the portions of
11 the Advisory that Plaintiffs quote from were published between 2007 and 2019. (*See*
12 Mot. at 14 (quoting *SG Advisory, supra*, at 4¹⁰); *SG Advisory, supra*, at 21 (providing
13 citations for footnotes 10 to 14, which are the footnotes listed on the sentences Plaintiffs
14 reference from page four). Accordingly, the “underlying . . . findings” were “available
15 from other sources before” Plaintiffs filed their amended complaint and opposition to
16 Amazon’s motion to dismiss. *HT-Seattle Owner*, 2021 WL 4636924, at *2.

17 Third, even if the communications between Ms. Mitchel and Amazon could not
18 have been discovered with reasonable diligence prior to the entry of final judgment,¹¹
19

20 _____
21 ¹⁰ Although Plaintiffs cite to page five of the Advisory (*see* Mot. at 14), the quoted
language appears on page four of the Advisory.

22 ¹¹ The court assumes without deciding that this evidence could not have been discovered
with reasonable diligence prior to the entry of final judgment.

1 those communications are not “of such a magnitude that had the court known of it earlier,
2 the outcome would likely have been different.” *Dixon*, 336 F.3d at 1022. In its June 27,
3 2023 order, the court dismissed Plaintiffs’ negligence-based claims because Plaintiffs
4 failed to allege the product was defective and because Kristine and Ethan intentionally
5 misused the product. (*See* 6/27/23 Order at 13-19 (dismissing WPLA seller negligence
6 claim), 30-32 (construing Plaintiffs’ common law negligence and NIED claims under the
7 WPLA’s seller negligence cause of action and dismissing them because the Sodium
8 Nitrite is not defective).) The court dismissed Plaintiffs’ intentional concealment claim
9 as barred by Section 230 of the CDA. (*See id.* at 19-23 (dismissing only WPLA
10 intentional concealment claim, which was based on Amazon’s removal of negative
11 product reviews).¹²) These conclusions are wholly unaffected by the communications
12 between Ms. Mitchel and Amazon. In other words, even if the communications establish
13 that Amazon knew teens were using sodium nitrite to commit suicide and could or should
14 have foreseen Kristine and Ethan’s suicides, the court would still dismiss the claims for
15 the reasons identified in its June 27, 2023 order. *See, e.g., HT-Seattle Owner*, 2021 WL
16 4636924, at *3 (concluding that plaintiff failed to meet Rule 59(e)’s standard because
17 even if plaintiff had presented newly discovered evidence, the information derived from
18 that evidence is immaterial to and would not alter court’s prior analysis of plaintiff’s
19 complaint).

20
21
22 ¹² The court has already rejected Plaintiffs’ contention that the court manifestly erred by
construing their WPLA intentional concealment claim as arising solely from Amazon’s removal
of negative product reviews. (*See supra* § III.B.1.)

1 In sum, the two pieces of evidence cited by Plaintiffs do not satisfy Rule 59(e)'s
2 newly discovered evidence standard because the evidence is either cumulative of the
3 allegations in Plaintiffs' first amended complaint, could have been discovered and
4 produced with reasonable diligence prior to the entry of judgment, or is not material to
5 the court's prior conclusions. Accordingly, the court denies Plaintiffs' Rule 59(e) motion
6 on this ground.

7 **C. Plaintiffs' Request for Leave to File a Second Amended Complaint**

8 Plaintiffs also seek leave to file a second amended complaint with new claims and
9 modified allegations. (Mot. at 15-17; Reply at 5-6.) Although Plaintiffs rely on Rule
10 15(a)'s liberal standard when discussing their request for leave to amend (*see* Mot. at 15),
11 Plaintiffs' request is governed by Rule 59(e) because they must "seek vacation of the
12 order of dismissal" before they can "obtain leave to file another amended complaint."
13 *Mir v. Fosburg*, 646 F.2d 342, 344 (9th Cir. 1980); *Weeks*, 246 F.3d at 1236 ("It is clear
14 in the first instance that the judgment would have to be reopened, under Federal Rule of
15 Civil Procedure 59(e), before the district court could entertain Weeks's motion to amend
16 his complaint."). Accordingly, Rule 15(a)'s liberal standards do not apply, and the court
17 must instead determine whether it was manifest error to dismiss Plaintiffs' first amended
18 complaint with prejudice and without leave to amend under Rule 59(e). *See, e.g.*,
19 *Teamsters Loc. 617*, 282 F.R.D. at 234; *Weeks*, 246 F.3d at 1236 ("The question is
20 whether the court, when it dismissed the case, committed some clear error that required it
21 to reopen that judgment."). To establish manifest error, Plaintiffs must show, "based
22 upon the entire record before the court when it denied . . . leave to amend, that the alleged

1 clear error was ‘one that is plain and indisputable, and that amounts to a complete
2 disregard of the controlling law.’” *Teamsters Loc. 617*, 282 F.R.D. at 241 (quoting *In re*
3 *Wahlin*, 2011 WL 1063196, at *2).

4 In its June 27, 2023 order, the court dismissed Plaintiffs’ first amended complaint
5 without leave to amend for the following reasons. First, the court concluded that granting
6 leave to amend Plaintiffs’ negligence-based product liability claims under the WPLA¹³
7 would be futile because “Plaintiffs cannot possibly make out a plausible negligence claim
8 against Amazon under the WPLA given the court’s conclusions that (1) Amazon, as a
9 product seller, can only be held liable for negligence under the WPLA if the Sodium
10 Nitrite was defective, (2) that the Sodium Nitrite was not defective with respect to its
11 warnings, and (3) Kristine and Ethan intentionally misused the Sodium Nitrite to commit
12 suicide.” (6/27/23 Order at 34.) Second, the court concluded that granting leave to
13 amend Plaintiffs’ intentional concealment claim under the WPLA, “which is premised on
14 Amazon’s removal of product reviews,” would be futile because that claim “is barred by
15 the CDA.” (*Id.*)

16 Plaintiffs have not satisfied the stringent standards for establishing manifest error
17 with respect to the court’s decision to deny leave to amend. First, the Ninth Circuit
18 grants courts “particularly broad” discretion to deny leave to amend “[w]here the plaintiff
19

20 ¹³ Before reaching this conclusion, the court stated that “it is clear from the [first]
21 amended complaint that . . . Plaintiffs’ [negligence-based] claims are premised on allegations
22 that Kristine and Ethan’s deaths were caused by ingesting the Sodium Nitrite and seek to hold
Amazon liable for negligently ‘marketing’ the Sodium Nitrite.” (6/27/23 Order at 33.) “Such
negligence-based product liability claims,” the court stated, “must be pled under the WPLA,
which imposes liability on product sellers in limited circumstances.” (*Id.* at 33-34.)

1 has previously filed an amended complaint,” whether by stipulation of the parties, as
2 Plaintiffs did here (*see* Mot. at 16; Dkt.), or with leave of court. *Miller v. Yokohama Tire*
3 *Corp.*, 358 F.3d 616, 622 (9th Cir. 2004) (quoting *Chodos v. W. Publ’g Co.*, 292 F.3d
4 992, 1003 (9th Cir. 2002)); *Chang v. Noh*, 787 F. App’x 466, 467-68 (9th Cir. 2019)
5 (holding that district court did “not abuse its discretion by denying [a plaintiff’s] request
6 for leave to amend a second time” where the plaintiff “had previously amended his
7 complaint once by stipulation of the parties” (citing *Miller*, 358 F.3d at 622)).

8 Second, in making their conclusory request for leave to amend in their opposition
9 to Amazon’s motion to dismiss,¹⁴ Plaintiffs failed to identify what additional facts they
10 would plead if given leave to amend. (MTD Resp. at 29 (“[T]he Court should permit
11 Plaintiffs to amend the Complaint to address any deficiencies identified by the Court
12 because amendment would not be futile.”).) A district court does “not abuse its
13 discretion in denying [a plaintiff] leave to amend [their] complaint” if the plaintiff merely
14 requests leave to amend, without identifying what additional facts they would include or
15 “otherwise explain[ing] why the amendment would not be futile.” *Foskaris v. Experian*
16 *Info. Sols., Inc.*, 808 F. App’x 436, 439-40 (9th Cir. 2020) (“It is not the court’s duty,
17 however, to peruse the record to formulate the parties’ arguments.”); *see also Chang*, 787
18 F. App’x at 467 (holding that district court did “not abuse its discretion by denying [a
19 plaintiff’s] request for leave to amend a second time” if the plaintiff merely requested

20
21
22

¹⁴ The court acknowledges that its June 27, 2023 order mistakenly stated that Plaintiffs had not asked for leave to amend in their opposition to Amazon’s motion to dismiss. (*See* 6/27/23 Order at 33.) However, for the reasons stated above, this minor misstatement does not serve as a basis to find that the court manifestly erred by denying leave to amend.

1 leave “in his opposition to the Rule 12(b)(6) motion” and “provided no supporting
2 argument or authority for why leave to amend should be granted”); *Kendall v. Visa*
3 *U.S.A., Inc.*, 518 F.3d 1042, 1052 (9th Cir. 2008) (“Appellants fail to state what
4 additional facts they would plead if given leave to amend Accordingly, amendment
5 would be futile.”).

6 Third, Plaintiffs fail to show that the court’s reasoning for finding that leave to
7 amend would be futile constitutes manifest error.¹⁵ (*See supra* §§ III.B.1 (finding no
8 manifest errors of law with respect to the court’s conclusion’s regarding Plaintiffs’
9 WPLA intentional concealment claim and the WPLA’s defective product requirement),
10 III.B.2 (finding no manifest errors of fact underlying the court’s defective product and
11 intentional misuse findings), III.B.3 (finding no newly discovered evidence that would
12 change the analysis or conclusions in the court’s June 27, 2023 order)); *see also*
13 *Westlands Water Dist.*, 134 F. Supp. 2d at 1131 (stating that manifest error requires more
14 than disagreement with the court’s decision).

15 In sum, with respect to the amendment issue, Plaintiffs have not met the “very
16 exacting standard” necessary to show manifest error and justify amending the final

17 _____
18 ¹⁵ Plaintiffs cannot challenge the court’s futility determination by proposing to add new,
19 previously unmentioned claims and allegations. First, the court has already concluded that the
20 alleged newly discovered evidence referred to by Plaintiffs does not justify amendment of the
21 judgment. (*See supra* § III.B.3.) Second, without newly discovered, material evidence, the party
22 seeking leave to amend must establish that the court manifestly erred in denying leave to amend
based on the record as it was when it denied leave to amend. *Teamsters Loc. 617*, 282 F.R.D. at
240-41. In such circumstances, the party cannot rely on claims and allegations raised for the first
time on a Rule 59(e) motion. *See id.*; *Marlyn Nutraceuticals*, 571 F.3d at 877; *Cook, Perkiss &*
Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911 F.2d 242, 247 (9th Cir. 1990) (holding district
court did not abuse its discretion by dismissing complaint without leave to amend where plaintiff
did not indicate it had additional claims to bring prior to dismissal).

1 judgment under Rule 59(e). *See Campion*, 2011 WL 1935967, at *1. Between the time
2 Amazon filed its motion to dismiss and the court’s entry of final judgment, Plaintiffs had
3 nearly three months to move to amend their first amended complaint. To permit
4 Plaintiffs to amend their first amended complaint post-judgment “would simply grant
5 [them] the forbidden second bite at the apple,” *Weeks*, 246 F.3d at 1236, and “defeat the
6 sound limits on reopening judgments under Rule 59,” *Plestina v. Baetz*, 225 F. App’x
7 470, 471 (9th Cir. 2007). Accordingly, the court denies Plaintiffs’ request for leave to
8 file a second amended complaint.

9 **D. Plaintiffs’ Certification Request**

10 Plaintiffs asks the court to certify two questions to the Washington Supreme
11 Court, pursuant to RCW 2.60.020, as an “alternative[.]” to amending the June 27, 2023
12 final judgment. (Mot. at 17-18; Reply at 6-7.) Specifically, Plaintiffs state that the court
13 “should grant certification to obtain guidance from the Washington Supreme Court on the
14 following questions:”

15 1. Under the WPLA, must a plaintiff show a product was “defective” to
16 bring negligence (or negligent infliction of emotional distress) claims against
a product seller?

17 2. Are e-commerce sellers immune under Section 230 of the
18 Communications Decency Act for conduct involving intentional
concealment when the claim does not involve the publication of third-party
19 content or editorial decision-making?

20 (Mot. at 18.) Amazon argues that the court should deny this request because

21 “certification is unavailable post-judgment,” and “even if certification were available,
22 //

1 their request is an abuse of the procedure and does not meet the substantive statutory
2 criteria.” (Resp. at 10-12.)

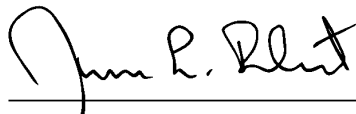
3 The court agrees with Amazon. RCW 2.60.020, the source of the court’s statutory
4 authority to certify questions, applies only when “a proceeding is pending” before the
5 “federal court.” RCW 2.60.020. The court entered a final judgment dismissing this case
6 with prejudice on June 27, 2023 (*see* Judgment), and the docket reflects that the case has
7 been “[t]erminated” (*see* Dkt.). Additionally, the court has denied Plaintiffs’ Rule 59(e)
8 motion to amend the judgment and reopen the case. (*See supra* §§ III.B, C.)

9 Accordingly, certification is not an option because “[t]he case is . . . not ‘pending’—it is
10 closed.”¹⁶ *Drammeh v. Uber Techs. Inc.*, No. C21-0202BJR, 2022 WL 17764004, at *1
11 (W.D. Wash. Dec. 19, 2022).

12 III. CONCLUSION

13 For the foregoing reasons, the court DENIES Plaintiffs’ motion to amend the
14 judgment, to grant Plaintiffs leave to file a second amended complaint, or, in the
15 alternative, to certify questions to the Washington State Supreme Court (Dkt. # 62).

16 Dated this 25th day of August, 2023.

17
18 

19 JAMES L. ROBART
United States District Judge

20 _____
21 ¹⁶ The cases cited by Plaintiffs support this conclusion; in those cases, the Ninth Circuit
22 certified questions to the Washington State Supreme Court while the case was pending on
appeal. (*See* Reply at 6 (first citing *Bylsma v. Burger King Corp.*, 676 F.3d 779, 781 (9th Cir.
2012); then citing *Potter v. City of Lacy*, 46 F.4th 787, 794 (9th Cir. 2022); and then citing
Barlow v. Washington, 38 F.4th 62 (9th Cir. 2022)).)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICOLAS MCCARTHY, et al.,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

JUDGMENT IN A CIVIL CASE

CASE NO. C23-0263JLR

 Jury Verdict. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

 X **Decision by Court.** This action came to consideration before the court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT

Defendant's motion to dismiss (Dkt. # 47) is GRANTED and Plaintiffs' amended complaint (Dkt. # 15) is DISMISSED with prejudice and without leave to amend. (*See* Order (Dkt. # 60).)

Filed this 27th day of June, 2023.

RAVI SUBRAMANIAN
Clerk of Court

s/ Ashleigh Drecktrah
Deputy Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICOLAS MCCARTHY, et al.,

Plaintiffs,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO. C23-0263JLR

ORDER

I. INTRODUCTION

Before the court is Defendant Amazon.com, Inc.’s (“Amazon”) motion to dismiss Plaintiffs Nicholas McCarthy, Martinique Maynor, Laura Jónsson, and Steinn Jónsson’s (collectively, “Plaintiffs”)¹ amended complaint for failure to state a claim. (MTD (Dkt. # 47); Reply (Dkt. # 54).) Plaintiffs oppose the motion. (Resp. (Dkt. # 50).) The parties

¹ Ms. Maynor and Mr. Jónsson bring claims individually, whereas Mr. McCarthy brings claims both individually and as a successor-in-interest to Ethan McCarthy, a deceased individual, and Ms. Jónsson brings claims both individually and as a successor-in-interest to Kristine Jónsson, a deceased individual. (Am. Compl. (Dkt. # 15) at 1.)

1 also filed supplemental briefing at the direction of the court. (Pls. Supp. (Dkt. # 57); Def.
2 Supp. (Dkt. # 58); *see also* 5/4/23 Min. Order (Dkt. # 56).) The court has considered the
3 motion, all materials submitted in support of and in opposition to the motion, and the
4 governing law. Being fully advised,² the court GRANTS Amazon’s motion to dismiss
5 and DISMISSES Plaintiffs’ amended complaint.

6 II. BACKGROUND

7 Below, the court discusses the relevant factual and procedural background.

8 A. Factual Background

9 This case arises from the death by suicide of two teenagers, Ethan McCarthy and
10 Kristine Jónsson, caused by intentionally ingesting sodium nitrite manufactured and sold
11 by a third party on Amazon’s website. (*See generally* Am. Compl. (Dkt. # 15).) Sodium
12 nitrite is a “water soluble . . . yellowish crystalline powder.” (*Id.* ¶ 130.) It is used
13 “mainly as a corrosion inhibitor . . . , an antidote to cyanide poisoning, and as a
14 microbial.” (*Id.* ¶ 131.) At a diluted level, sodium nitrite can be found in food
15 preservatives. (*Id.* ¶ 135.) Where sodium nitrite exceeds 95% purity, it is considered a
16 “reagent chemical,” and a trace amount can “make a person extremely ill.” (*Id.*
17 ¶¶ 135-36.) “When sodium nitrite is used for suicide, it is mixed with a glass of water
18 and consumed orally”; “[o]ne gulp” is, according to Plaintiffs, enough to kill an
19 individual. (*Id.* ¶ 132.)

20
21 _____
22 ² Plaintiffs and Amazon both request oral argument. (MTD at 1; Resp. at 1.) The court,
however, concludes that oral argument would not be helpful to its disposition of the motion. *See*
Local Rules W.D. Wash. LCR 7(b)(4).

1 The sodium nitrite at issue in this case was sold by Loudwolf, Inc. (“Loudwolf”), a
2 third-party seller of industrial chemicals on Amazon. (*Id.* ¶¶ 90, 96.) Loudwolf sold the
3 sodium nitrite under its own brand name on Amazon.com at 99.6% purity, rendering it a
4 reagent grade chemical. (*Id.* ¶¶ 95, 97 (alleging that sodium nitrite has “no
5 non-institutional or household use” at this purity level).) The Loudwolf Sodium Nitrite
6 (the “Sodium Nitrite”) sold on Amazon.com was labeled as being “suitable for most
7 experimental and analytical applications, as well as many technical and household
8 purposes.” (*Id.* ¶ 98.) However, the label also directed users to “do [their] own research
9 regarding its application to [their] specific purpose.” (*Id.* (including the words
10 “INDUSTRIAL & SCIENTIFIC” on the top of the bottle).) The label warns that the
11 Sodium Nitrite is a “high purity, reagent grade chemical” and is toxic. (*Id.* ¶ 98.) It also
12 includes the warning: “HAZARD Oxidizer. Irritant.” (*Id.* ¶ 99.) The label did not, as
13 Plaintiffs claim, warn users of “how deadly the product is or how to reverse the effects.”
14 (*Id.*; *see also id.* ¶ 101 (alleging that “[n]either the product label nor the Amazon product
15 page for Loudwolf Sodium Nitrite mentioned a proven antidote to suicide attempts via
16 [s]odium [n]itrite”).)

17 According to Plaintiffs, in recent years, sodium nitrite has “become a highly
18 recommended suicide method on the pro-suicide website Sanctioned Suicide.” (*Id.*
19 ¶¶ 139-40 (“Sanctioned Suicide specifically recommends [s]odium [n]itrite as an
20 effective method of completing a suicide that is cheap and easy and . . . difficult for
21 family members and professionals to stop.”).) Sanctioned Suicide and its users allegedly
22 recommend that individuals purchase sodium nitrite from Amazon.com and Loudwolf.

1 (*Id.* ¶¶ 141-42, 116.) Sanction Suicide’s website also “provides threads of instructions
2 specifying dosages and methods of dissolving the substance in water prior to
3 consumption” and “recommends supplementing the [s]odium [n]itrite with antacid
4 medication like Tagamet to ensure the poison can be digested without vomiting.” (*Id.*
5 ¶ 143.)

6 Plaintiffs allege that Amazon has “received dozens of notices that its various
7 brands of [s]odium [n]itrite were being used for suicide, dating back to at least 2018.”
8 (*Id.* ¶¶ 102, 110, 115, 11.) Despite these notices, Amazon allegedly continued to sell
9 sodium nitrite on its website, according to Plaintiffs, until December 2022. (*Id.* ¶¶ 100,
10 102, 121; *see also id.* ¶ 8 (noting that Amazon disabled sales of sodium nitrite to
11 individuals in December 2022).) Additionally, Plaintiffs allege that when Amazon
12 encountered one-star reviews for sodium nitrite “relating to the deadliness of the product
13 and its use for suicide,” Amazon removed the reviews containing the word suicide,
14 stating that such reviews violated its community guidelines, and banned those individuals
15 from leaving future reviews. (*Id.* ¶¶ 122, 144-45.)

16 On September 9, 2020, Kristine Jónsson, a 16-year-old living in Ohio, registered
17 for an account on Sanctioned Suicide. (*Id.* ¶¶ 157, 161; *see also id.* ¶¶ 160-72 (alleging
18 that Kristine became “resolute about dying” during the COVID-19 pandemic).) She took
19 notes regarding “the four steps to death by [s]odium [n]itrite” and “calculated that for her
20 body size, she would need 20 grams of [s]odium [n]itrite and 200 mg of Tagamet so she
21 would not throw up.” (*Id.* ¶¶ 171-72.) On September 24, 2020, Kristine purchased
22 Loudwolf Sodium Nitrite on Amazon.com using her personal account. (*Id.* ¶ 173; *see*

1 *also id.* ¶ 179 (noting that Kristine purchased Tagamet from a CVS pharmacy, rather than
2 Amazon.com).) The product arrived at her home two days later. (*Id.* ¶¶ 174-75.) On
3 September 30, 2020, police found Kristine dead in a parked vehicle near her home. (*Id.*
4 ¶¶ 180-85.) The police found a bottle of Sodium Nitrite in the car with Kristine, and
5 Kristine’s mother, Ms. Jónsson, found a “pile of letters” in Kristine’s room that “looked
6 like suicide notes.” (*Id.* ¶¶ 183-85.) According to the Coroner’s Report, Kristine’s cause
7 of death was “Sodium Nitrite Toxicity,” and the manner of death was “Suicide.” (*Id.*
8 ¶ 186.)

9 On January 1, 2021, Ethan McCarthy, a 17-year-old living in West Virginia,
10 placed an order for Loudwolf Sodium Nitrite on Amazon.com using his mother’s
11 account. (*Id.* ¶¶ 187-88, 22, 26.) Ethan’s mother, Ms. Maynor, received an email
12 confirmation from Amazon that the Sodium Nitrite would arrive between January 13 and
13 January 15, 2021. (*Id.* ¶ 190.) After asking her children if anyone had ordered the
14 product, and being told they had not, she contacted Amazon and requested they cancel
15 the order, at which point Amazon told her it was canceling the order and informing the
16 manufacturer. (*Id.* ¶¶ 190-91.) Although Ms. Maynor believed the order was canceled,
17 the Sodium Nitrite arrived at their home several days later. (*Id.* ¶¶ 193-95 (stating that
18 Ms. Maynor noticed that some Amazon packages had arrived and brought them inside,
19 assuming they contained items from her other recent Amazon purchases).) On January 7,
20 2021, Ms. Maynor found Ethan dead in his bed. (*Id.* ¶¶ 196-99, 201.) When first
21 responders arrived, Ms. Maynor noticed a bottle labeled Sodium Nitrite and a glass with
22 white dried powder and a spoon on his desk. (*Id.* ¶¶ 196-200 (stating that the Sodium

1 Nitrite “was the same item for which she had received the Amazon receipt, the purchase
2 that Amazon assured her was canceled”).) Ethan’s “cause of death was ruled a suicide,
3 by ingestion of Sodium Nitrite.” (*Id.* ¶ 201 (“Per the Death Certificate, Ethan’s cause of
4 death was ‘Sodium Nitrite Intoxication.’”)*see also id.* ¶ 202 (stating that Ms. Maynor
5 found a deleted folder on Ethan’s computer labeled “my hopes and dreams.”).)

6 **B. Procedural Background**

7 Plaintiffs filed their original complaint against Amazon and Loudwolf in
8 California state court, and Amazon removed the case to the Northern District of
9 California. (*See generally* NOR (Dkt. # 1-1).) The first amended complaint alleges the
10 following claims against Loudwolf and Amazon: negligent and strict product liability
11 claims (Am. Compl. ¶¶ 34-36, 232-43 (Count I)); common law negligence claims (*id.*
12 ¶¶ 244-47 (Count II)); and a negligent infliction of emotional distress (“NIED”) claim
13 brought solely by Ms. Maynor (*id.* ¶¶ 248-51 (Count III)).

14 Amazon subsequently moved to dismiss or transfer the case, arguing that the
15 California district court lacked personal jurisdiction over it and that Plaintiffs failed to
16 state a claim under California, Ohio, or West Virginia law. (*See* MTD/MTT (Dkt. # 25)
17 at 12-28.) The court concluded that it lacked personal jurisdiction over Amazon and
18 transferred the case to the Western District of Washington. (2/17/23 Min. Entry (Dkt.
19 # 34) at 1-2.) The court also granted Plaintiffs’ request to dismiss Loudwolf from the
20 case. (*See id.* at 2.) Thereafter, Amazon filed the instant motion to dismiss. (MTD.)

21 //

22 //

III. ANALYSIS

1
2 The court sets forth the relevant standard of review before turning to address
3 choice-of-law issues and Amazon’s motion to dismiss.

4 A. Standard of Review

5 Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint
6 “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6).

7 Under this standard, dismissal is appropriate if the complaint fails to state a cognizable
8 legal theory, *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th
9 Cir. 2010), or fails to provide “sufficient factual matter, accepted as true, to ‘state a claim
10 to relief that is plausible on its face,’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

11 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial
12 plausibility when the plaintiff pleads factual content that allows the court to draw the
13 reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556
14 U.S. at 678; *see also Somers v. Apple, Inc.*, 729 F.3d 953, 965 (9th Cir. 2013) (stating that
15 the allegations must “rise beyond mere conceivability or possibility” to meet the
16 plausibility standard). The court construes the complaint in the light most favorable to
17 the nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940,
18 946 (9th Cir. 2005), and is not required to accept as true legal conclusions or “formulaic
19 recitation[s] of the legal elements of a cause of action,” *Chavez v. United States*, 683 F.3d
20 1102, 1008 (9th Cir. 2012).

21 //

22 //

1 **B. Choice of Law**

2 As an initial matter, the court must determine the state law applicable to Plaintiffs’
3 claims. This court, sitting in diversity, applies the choice-of-law rules of Washington.
4 *See Downing v. Abercrombie & Fitch*, 265 F.3d 994, 1005 (9th Cir. 2001). Under
5 Washington law, when parties dispute choice of law, there must be an actual conflict
6 between the laws or interests of Washington and the laws or interests of another state
7 before the court will engage in a conflict-of-laws analysis. *Erwin v. Cotter Health Ctrs.*,
8 167 P.3d 1112, 1120 (Wash. 2007). An “actual conflict” exists where the result of a
9 particular issue would be different under the law of the two states. *Id.* (citing *Seizer v.*
10 *Sessions*, 940 P.2d 261, 264 (Wash. 1997)). Absent an actual conflict, Washington law
11 applies. *Id.*; *Burnside v. Simpson Paper Co.*, 864 P.2d 937, 942 (Wash. 1994) (affirming
12 application of Washington law where defendant failed to show conflict between
13 Washington and California law).

14 Amazon evaluates Plaintiffs’ claims under Washington, Ohio, and West Virginia
15 law, and argues, “a conflict does not exist, and cannot be identified, unless this [c]ourt
16 adopts one of Plaintiffs’ novel theories for expanding Washington tort law.” (Reply at
17 11; *see also* MTD at 18-25 (laying out the applicable law in Ohio and West Virginia “in
18 the event of a conflict” or “if [t]here [w]ere a [c]onflict”).) Plaintiffs argue that
19 Washington law should apply because there is no “actual conflict” between the laws of
20 Washington and the laws of Ohio and West Virginia. (Resp. at 11-12 (contending that
21 Amazon failed to identify any real conflict of law).)

22 //

1 Here, the court need not conduct a choice-of-law analysis because Plaintiffs' novel
2 legal theories are not cognizable under Washington law or otherwise. Accordingly, there
3 is no "actual conflict" between Ohio and West Virginia law and Washington law, and the
4 court applies Washington law to Plaintiffs' claims. *See, e.g., DP Aviation v. Smiths*
5 *Indus. Aerospace & Def. Sys. Ltd.*, 268 F.3d 829, 845 (9th Cir. 2001) (applying
6 Washington law where no conflict was shown); *Erwin*, 167 P.3d at 1120 (explaining that
7 there is only an actual conflict if Washington law compels a different result than the law
8 of the other state).

9 Applying Washington law, Plaintiffs allege three causes of action: (1) product
10 liability under the Washington Product Liability Act ("WPLA"), RCW 7.72.010, *et seq.*;
11 (2) common law negligence; and (3) common law NIED. (Am. Compl. ¶¶ 232-51.) The
12 court will address each in turn.

13 **C. Product Liability Claims**

14 The WPLA, which is the exclusive remedy for product liability claims in
15 Washington, "creates a single cause of action for product-related harm with specified
16 statutory requirements for proof." *Kirkland v. Emhart Glass S.A.*, 805 F. Supp. 2d 1072,
17 1076 (W.D. Wash. 2011); *see also Wash. State Physicians Ins. Exch. & Ass'n v. Fisons*
18 *Corp.*, 858 P.2d 1054, 1066 (Wash. 1993). The WPLA distinguishes between and
19 imposes different standards of liability on (1) manufacturers and (2) product sellers for
20 harm caused by defective products. *See* RCW 7.72.030-.040. Manufacturers are strictly
21 liable for products that are not reasonably safe due to the design, to inadequate warnings,

22 //

1 to a manufacturing defect, or to failure to conform to express or implied warranties.³
2 RCW 7.72.030; *see also Macias v. Saberhagen Holdings, Inc.*, 282 P.3d 1069, 1074
3 (Wash. 2012) (clarifying that strict liability, not negligence, principles apply to product
4 liability claims against manufacturers under the WPLA). In contrast, absent certain
5 circumstances,⁴ product sellers are liable under the WPLA only if the plaintiff's harm
6 was proximately caused by the (1) the negligence of the product seller, (2) the breach of
7 an express warranty made by the product seller, or (3) the intentional misrepresentation
8 of facts or intentional concealment of information by the product seller. RCW
9 7.72.040(1).

10 The parties do not dispute, and the court agrees, that Amazon is not a
11 manufacturer of Sodium Nitrite for purposes of the WPLA. (*See* Am. Compl. ¶¶ 233-34
12 (alleging that only Loudwolf is a seller and manufacturer of the Sodium Nitrite); MTD at
13 5-6; Reply at 2; Resp. at 18 (implying that Amazon is not a manufacturer of Sodium
14 Nitrite by conceding that strict product liability for the Sodium Nitrite is not at issue
15 here)); *see also* RCW 7.72.010(2) (defining “manufacturer”). As such, to the extent
16 Count I alleges strict product liability claims against Amazon based on its sales of
17 Sodium Nitrite, such claims fail. *See Macias*, 282 P.3d at 1074; RCW 7.72.030.

18
19 _____
20 ³ Manufacturers are not strictly liable, however, for post-manufacture failure to warn
claims. RCW 7.72.030(1)(c).

21 ⁴ RCW 7.72.040(2) lists the circumstances under which a product seller may also be held
22 liable as a manufacturer. The parties appear to agree that no such circumstances apply in this
case. (*See* MTD at 5-6 (arguing why such circumstances do not apply); Reply at 2; *see generally*
Resp. (declining to address the issue).)

1 Accordingly, the court must determine whether Plaintiffs have plausibly alleged a
2 claim for seller liability under the WPLA. Assuming that Amazon meets the WPLA’s
3 definition of a product seller,⁵ RCW 7.72.010(1), Amazon can only be held liable as a
4 seller of Sodium Nitrite under on one of the three above-mentioned theories of liability.
5 *See* RCW 7.72.040(1). Plaintiffs appear to allege product liability claims against
6 Amazon under two of those theories: (1) Amazon’s negligence proximately caused
7 Ethan and Kristine’s deaths, and (2) Amazon’s intentional concealment of information
8 about the Sodium Nitrite proximately caused Ethan and Kristine’s deaths. (*See* Am.
9 Compl. ¶ 241; MTD at 10-13, 16-17 (characterizing Plaintiffs’ amended complaint as
10 stating claims based on these two theories); Resp. at 17-20 (not disputing this
11 characterization).) The court addresses each theory below.

12 1. Seller Liability Under the WPLA Based on Negligent Conduct

13 To state a claim for negligence under the WPLA, a plaintiff must establish duty,
14 breach, causation, and damages. *Huntington v. Smoke City for Less LLC*, No.
15 4:22-CV-05014-MKD, 2023 WL 2031423, at *3-4 (E.D. Wash. Jan. 11, 2023); *Pereira v.*
16 *Cocoa Invs., Inc.*, No. 56024–7–I, 2005 WL 3032900, at *2 (Wash. Ct. App. Nov. 14,
17 2005) (unpublished). Amazon contends, and Plaintiffs do not dispute, that a plaintiff
18 must show that the injury-causing product was defective before a seller can be held liable

19
20 ⁵ For the purposes of the instant motion, Amazon does not dispute Plaintiffs’ assertion
21 that Amazon meets the WPLA’s definition of a product seller. (*See* Am. Compl. ¶ 233 (alleging
22 that Amazon is a product seller); Resp. at 17 (treating Amazon as a product seller); MTD at 11
n.2 (“While Amazon’s position is that it is not a ‘seller’ under the WPLA in cases involving
third-party sellers’ products, it does not raise the issue at the Rule 12(b)(6) stage.”).)
Accordingly, the court treats Amazon as a seller for the purpose of the instant motion.

1 for negligence under the WPLA. (See MTD at 11-13 (providing judicial and legislative
2 support for this position); Reply at 2-3 (restating the same); Resp. at 17 (failing to dispute
3 this point and arguing that the amended complaint establishes that the Sodium Nitrite was
4 defective).) In light of the case law and legislative history cited by Amazon,⁶ and
5 Plaintiffs' failure to dispute the issue,⁷ the court agrees that the "text, history, and
6 purpose" of the WPLA establishes that a seller cannot be liable in negligence unless the
7 product at issue was defective.

8 Under the WPLA, a product is defective if it is not reasonably safe in design,
9 manufacture, or warnings. See RCW 7.72.010, *et seq.*; *Anderson v. Dreis & Krump Mfg.*
10 *Corp.*, 739 P.2d 1177, 1182 (Wash. Ct. App. 1987) (noting that in the failure to warn
11 context, a product may be found defective, "though faultlessly designed and
12 manufactured," if it is not reasonably safe to the user due to a lack of adequate warnings);
13 (*see also* Resp. at 6 n.1). Plaintiffs allege that Amazon was negligent under RCW

15 ⁶ See, e.g., *Knott v. Liberty Jewelry & Loan, Inc.*, 748 P.2d 661, 664-65 (Wash. Ct. App.
16 1988) (discussing such a limitation in case involving negligent and strict product liability); RCW
17 7.72.020(1) (stating that "[t]he previously existing applicable law of this state on product liability
18 is modified only to the extent set forth in"); S. Journal, 47th Leg., Reg. Sess. 625 (Wash. 1981)
19 (intending RCW 7.72.040 to provide the same "protection afforded to the non-manufacturing
20 product seller in Section 105 of the" Model Uniform Product Liability Act ("UPLA")); Model
Uniform Product Liability Act, 44 Fed. Reg. 62,714, 62,726-27 (Oct. 31, 1979) (clarifying that
sellers' negligence-based liability is limited to: (1) "such product seller's own conduct with
respect to the design, construction, inspection, or condition of the product"; and (2) "any failure
of such product seller to transmit adequate warnings or instructions about the danger or proper
use of the product").

21 ⁷ See, e.g., *Citizens for Free Speech, LLC v. Cnty. of Alameda*, 338 F. Supp. 3d 995, 1005
22 (N.D. Cal. 2018) ("By failing to respond to the County's contention, Plaintiffs have effectively
conceded its validity."), *cf. id.*, 953 F.3d 655 (9th Cir. 2020); Local Rules W.D. Wash. LCR
7(b)(2).

1 7.72.040(1)(a) because: (1) the Sodium Nitrite was defective due to inadequate warnings
2 regarding, for example, how deadly the product is; (2) Amazon owed a duty to exercise
3 reasonable care to warn of known hazards and not sell defective products; (3) Amazon
4 breached this duty by selling Sodium Nitrite to Kristine and Ethan when Amazon knew it
5 would likely be used for suicide; and (4) Amazon’s breach was the proximate cause of
6 Kristine and Ethan’s deaths.⁸ (*See Resp.* at 17-20; *see also Am. Compl.* ¶¶ 99, 241(e)-(f)
7 (alleging that the warnings should have also described “the painful death Sodium Nitrite
8 causes,” provided more “information on how to counteract Sodium Nitrite’s poisonous
9 affects [sic],” and “indicate[d] antidotes”).) Amazon argues that it cannot be liable for
10 negligence under RCW 7.72.040(1)(a) because: (1) the danger of ingesting Sodium
11 Nitrite was known or obvious and the product’s warnings were adequate; (2) Amazon
12 had no duty to provide additional warnings; and (3) in any event, Amazon’s alleged
13 negligent failure to warn did not proximately cause Kristine and Ethan’s deaths. (*See*
14 *MTD* at 7-11, 13; *Reply* at 2-5.)

15 Plaintiffs’ WPLA negligent product liability claim fails for a number of reasons.
16 First, the court concludes that the Sodium Nitrite was not defective, and that Amazon
17 thus did not owe a duty to warn. Under Washington law, “no warning need be given
18

19 ⁸ Although the amended complaint lists Sodium Nitrite as the only defective product at
20 issue in this case (*see Am. Compl.* ¶¶ 233-43), in opposing Amazon’s motion to dismiss,
21 Plaintiffs also assert that “Amazon.com itself is [a] defective” product (*Resp.* at 18). However,
22 Plaintiffs cannot oppose dismissal by presenting and relying on allegations that are not in their
amended complaint. *See, e.g., Evalobo v. Aldridge Pite, LLP*, No. 216CV00539APGVCF, 2016
WL 7379021, at *5 n.3 (D. Nev. Dec. 20, 2016). Additionally, the court agrees with Amazon’s
contention that Amazon.com, which is a website, “is not a ‘product’ because it is not a tangible
‘object’ that is ‘capable of delivery.’” (*Reply* at 2 (quoting RCW 7.72.010(3)).)

1 where the danger is obvious or known to the operator.” *Dreis*, 739 P.2d at 1182 (noting
2 that this is true under negligence and strict liability theories); *Anderson v. Weslo, Inc.*,
3 906 P.2d 336, 340-42 (Wash. Ct. App. 1995) (noting that the risk of falling and getting
4 hurt while jumping on a trampoline is obvious and a manufacturer/seller need not warn of
5 such obvious dangers); *Mele v. Turner*, 720 P.2d 787, 789-90 (Wash. 1986) (finding
6 neighbors were not required to warn teenager regarding lawnmower’s dangers—e.g.,
7 putting hands under running lawnmower—where the allegedly dangerous condition was
8 obvious and known to plaintiff).⁹ In line with this principle, Washington courts
9 consistently hold that a warning label need not warn of “every possible injury.”
10 *Anderson*, 906 P.2d 341-42; *Baughn v. Honda Motor Co.*, 727 P.2d 655, 661-64 (Wash.
11 1986) (finding sufficient Honda’s warning that bikes were intended for “off-the-road use
12 only” and that riders should wear helmets; no warning required as to risk of getting hit by
13 car, the precise danger eventually encountered); *Novak v. Piggly Wiggly Puget Sound*
14 *Co.*, 591 P.2d 791, 795-96 (Wash. Ct. App. 1979) (finding general warnings about
15 ricochet sufficient to inform child that a BB gun, if fired at a person, could injure an eye).

16 Here, the Sodium Nitrite’s warnings were sufficient because the label identified
17 the product’s general dangers and uses, and the dangers of ingesting Sodium Nitrite were
18 both known and obvious. The allegations in the amended complaint establish that
19 Kristine and Ethan deliberately sought out Sodium Nitrite for its fatal properties,
20

21 _____
22 ⁹ See also, e.g., *Duncan v. Kelsey Hayes, Inc.*, 855 F.2d 861 (9th Cir. 1988) (concluding
that the “obvious or known” common law exception to negligent and strict product liability in
the failure to warn context appears to still be in force after the passage of the WPLA).

1 | intentionally mixed large doses of it with water, and swallowed it to commit suicide.
2 | (*See, e.g.*, Am. Compl. ¶¶ 161-72, 178-79, 183, 185-86, 190-202, 20-23, 116, 139-43.)
3 | Kristine and Ethan’s fates were undisputedly tragic, but the court can only conclude that
4 | they necessarily knew the dangers of bodily injury and death associated with ingesting
5 | Sodium Nitrite. *See Webstad v. Stortini*, 924 P.2d 940, 945 (Wash. Ct. App. 1996)
6 | (noting that under Washington law, suicide is “a voluntary willful choice” by a person
7 | who “knows the purpose and the physical effect of the suicidal act”). Additionally, the
8 | risk associated with intentionally ingesting a large dose of an industrial grade chemical is
9 | also obvious. *See, e.g., Greene v. A.P. Prods., Ltd.*, 717 N.W.2d 855, 861-62 (Mich.
10 | 2006) (holding that the risk of ingesting hair oil was “obvious” where its label listed
11 | “ingredients . . . which would be unfamiliar to the average product user”); *Miles v. S.C.*
12 | *Johnson & Son, Inc.*, No. 00 C 3278, 2002 WL 1303131, at *4-5 (N.D. Ill. June 12, 2002)
13 | (“The dangers of ingesting Drano are obvious to the ordinary consumer, who presumably
14 | purchases the product with knowledge of—and in fact because of—its caustic
15 | properties.”). In this case, the danger was particularly obvious because the Sodium
16 | Nitrite “was not marketed as safe for human consumption or ingestion,” *Greene*, 717
17 | N.W.2d at 861, and appears to have been categorized as “Business, Industrial, and
18 | Scientific Supplies” (Am. Compl. ¶¶ 73, 77). The Sodium Nitrite bottle also bears the
19 | words “INDUSTRIAL & SCIENTIFIC” on the front. (*See id.* at ¶ 98 (stating on label
20 | that Sodium Nitrite has numerous known uses and directing users to first do their own
21 | research regarding Sodium Nitrite’s “application to [their] specific purpose”).) Further,
22 | //

1 the label on the Sodium Nitrite warns that the product is a toxic, reagent grade chemical
2 and also states: “HAZARD Oxidizer. Irritant.” (*Id.* ¶¶ 98-99.)

3 Plaintiffs do not allege any facts that contradict the clear implications that Ethan
4 and Kristine were well aware of the dangers of ingesting Sodium Nitrite and intentionally
5 purchased the chemical because of those known and obvious dangers. (*See, e.g., id.*
6 ¶¶ 161-72, 178-79, 183, 185-86, 190-202, 20-23, 116, 139-43; *see generally* Resp. at
7 17-18.) Nor do they present any case law that would hold Amazon liable for negligent
8 product liability under these circumstances.¹⁰ (*See* Resp.) Accordingly, given Kristine
9 and Ethan’s knowledge regarding the dangers of ingesting Sodium Nitrite as well as the
10 general warnings provided on the bottle and the obvious dangers associated with
11 ingesting industrial-grade chemicals, the court concludes that the Sodium Nitrite’s
12 warnings were not defective. Amazon therefore had no duty to provide additional
13 warnings regarding the dangers of ingesting Sodium Nitrite.¹¹ *See, e.g., Dreis*, 739 P.2d
14 at 1182 (“The warning’s contents, combined with the obviousness of the press’
15 dangerous characteristics, indicate that any reasonable operator would have recognized
16 the consequences of placing one’s hands in the point-of-operation area.”).

17
18 ¹⁰ The fact that Amazon allegedly continued to sell the Sodium Nitrite to “children” after
19 it “knew [the Sodium Nitrite] was used for suicide” does not change this conclusion. (Resp. at
20 18.) “[L]iability is not imposed simply because a product causes harm,” even with “products
21 used by children.” *Baughn*, 727 P.2d at 660-67; *Knott*, 748 P.2d at 664-65.

22 ¹¹ In reaching this conclusion, the court rejects Plaintiffs’ assertion that whether “the
warnings were adequate or the risks obvious and known . . . are issues of fact and not law.”
(Resp. at 18.) Plaintiff provides no authority to support this position. (*Id.*) Regardless, the court
concludes that the factual allegations in the complaint, accepted as true, establish that the
warnings were adequate for the reasons articulated above.

1 Second, Plaintiffs' WPLA negligent product liability claim also fails because,
2 even if Amazon owed a duty to provide additional warnings as to the dangers of ingesting
3 sodium nitrite, its failure to do so was not the proximate cause of Kristine and Ethan's
4 deaths. "Proximate cause is an essential element" of both negligence and strict liability
5 theories.¹² *Baughn*, 727 P.2d at 664. "If an event would have occurred regardless of a
6 defendant's conduct, that conduct is not the proximate cause of the plaintiff's injury."
7 *Davis v. Globe Mach. Mfg. Co.*, 684 P.2d 692, 696 (Wash. 1984). Under Washington
8 law, if the product's user knows there is a risk, but chooses to act without regard to it, the
9 warning "serves no purpose in preventing the harm." *Lunt*, 814 P.2d at 1194 (concluding
10 that defendants alleged failure to warn plaintiff of specific dangers associated with skiing
11 and bindings was not proximate cause of injuries because plaintiff would have kept
12 skiing regardless); *Baughn*, 727 P.2d at 664-65 (concluding that allegedly inadequate
13 warnings were not proximate cause of harm where victim knew the risk and ignored the
14 warnings; the harm would have occurred even with more vivid warnings of risk of death
15 or serious injury). A product user's "deliberate disregard" for a product's warnings is a
16 "superseding cause that breaks the chain of proximate causation." *Beard v. Mighty Lift,*
17 *Inc.*, 224 F. Supp. 3d 1131, 1138 (W.D. Wash. 2016) (stating that "a seller may
18 reasonably assume that the user of its product will read and heed the warnings . . . on the
19 product" (citing *Baughn*, 727 P.2d at 661)).

20
21
22 ¹² "Proximate cause can be resolved as a matter of law when no reasonable persons
would differ." *Lunt v. Mount Spokane Skiing Corp.*, 814 P.2d 1189, 1194 (Wash. Ct. App. 1991)
(collecting cases).

1 Here, the court concludes that additional warnings would not have prevented
2 Kristine and Ethan’s deaths. The allegations in the amended complaint establish that
3 Kristine and Ethan sought the Sodium Nitrite out for the purpose of committing suicide
4 and intentionally subjected themselves to the Sodium Nitrite’s obvious and known
5 dangerous and those described in the warnings on the label. (*See, e.g.*, Am. Compl.
6 ¶¶ 161-72, 178-79, 183, 185-86, 190-202, 20-23, 116, 139-43.) Plaintiffs do not
7 plausibly allege that better warnings from Amazon would have discouraged Ethan and
8 Kristine from ingesting sodium nitrite. (*See generally id.*; Resp.) Accordingly, Plaintiffs
9 have failed to plausibly allege that Amazon’s failure to provide additional warnings about
10 the dangers of ingesting Sodium Nitrite proximately caused Kristine and Ethan’s
11 deaths.¹³ *See, e.g., Anderson*, 906 P.2d at 341-42 (finding no proximate cause,
12 concluding that “it is unlikely that [plaintiff] would have changed his behavior in
13 response to even more detailed warnings” because plaintiff “was aware of the risks of
14 injury, yet paid so little attention to the warnings that were given”).

15 In sum, Plaintiffs have failed to establish that the Sodium Nitrite was defective,
16 that Amazon had a duty to provide additional warnings regarding the dangers of ingesting
17 Sodium Nitrite, or that Amazon’s alleged failure to provide such additional warnings was

18 ¹³ Plaintiffs’ arguments to the contrary are unavailing. (Resp. at 19-20.) First, Plaintiffs
19 provide no authority to support their contention that expert testimony is required to establish
20 proximate causation. To the contrary, numerous courts have dealt with the issue of proximate
21 causation in product liability cases without relying on expert testimony. *See, e.g., Lunt*, 814 P.2d
22 at 1194; *Anderson*, 906 P.2d at 341-42; *Pardo v. Olson & Sons, Inc.*, 106 F.3d 408 (Table), 1996
WL 772631, at *1-2 (9th Cir. 1996). Second, the cases Plaintiffs cite to regarding foreseeability
and superseding causes are inapposite because they do not address the test for foreseeability with
respect to failure to warn claims and a plaintiff’s refusal to heed warnings. (*Compare* Resp. at
19-20, *with* Reply at 5); *see Beard*, 224 F. Supp. 3d at 1137-38.

1 the proximate cause of Ethan and Kristine’s deaths. As such, the allegations in Count I
2 fail to state a plausible claim for negligent product liability under RCW 7.72.040(1)(a).

3 2. Seller Liability Under the WPLA Based on Intentional Concealment

4 Within their product liability cause of action (Count I), Plaintiffs allege that
5 Amazon intentionally concealed “information” about the Sodium Nitrite by “remov[ing]
6 and conceal[ing] negative product reviews that warned consumers of the product[’]s use
7 for death by suicide.” (Am. Compl. ¶ 241(j); *see id.* ¶¶ 122, 145-47 (alleging that
8 Amazon removed a review in which a parent stated that their son bought Sodium Nitrite
9 to commit suicide because “the review violated its community guidelines” and suspended
10 account’s ability to “contribute reviews and other content on Amazon”).) The court
11 construes this allegation as a claim for product seller liability under the WPLA based on
12 intentional concealment. *See* RCW 7.72.040(1)(c); (*see also* MTD at 16 (characterizing
13 it as the same); Resp. at 27-29 (not disputing this characterization)). To prevail on this
14 claim, Plaintiffs must establish that Ethan and Kristine’s deaths were “proximately
15 caused” by Amazon’s “intentional concealment of information about the [Sodium
16 Nitrite].” RCW 7.72.040(1)(c).

17 Amazon argues that Plaintiffs’ WPLA intentional concealment claim fails
18 because, among other things, it is barred by the Communications Decency Act (“CDA”),
19 47 U.S.C. § 230. (*See* Reply at 9; MTD at 16-17 (contending the claim also fails because
20 Plaintiffs do not identify any facts about the product that Amazon intentionally concealed
21 and do not plausibly allege intent to induce suicide or that Amazon’s “intentional
22 concealment” of reviews “proximately caused” Ethan and Kristine’s deaths).) In

1 response, Plaintiffs do not discuss whether the CDA bars this specific claim; instead, they
2 mischaracterize Amazon’s CDA immunity argument as seeking complete immunity from
3 all of Plaintiffs’ claims and argue against such broad immunity. (Resp. at 27-29.) In its
4 reply brief, Amazon clarifies that it only seeks CDA immunity for the claim of
5 intentional concealment under the WPLA based on its handling of product reviews.
6 (Reply at 9.)

7 “Section 230 of the CDA immunizes providers of interactive computer services
8 against liability arising from content created by third parties.” *Fair Hous. Council of San*
9 *Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1162 (9th Cir. 2008). Section
10 230(c)(1) provides that “[n]o provider or user of an interactive computer service shall be
11 treated as the publisher or speaker of any information provided by another information
12 content provider.” 47 U.S.C. § 230(c)(1). Additionally, Section 230(e)(3) provides that
13 “[n]o cause of action may be brought and no liability may be imposed under any State or
14 local law that is inconsistent with this section.” *Id.* § 230(e)(3). In the Ninth Circuit,
15 immunity applies under Section 230(c)(1) if three criteria are met: (1) “the provider is an
16 interactive computer service”; (2) “the plaintiff is treating the entity as the publisher or
17 speaker”; and (3) “the information is provided by another information content provider.”
18 *Rigsby v. GoDaddy Inc.*, 59 F.4th 998, 1007 (9th Cir. 2023) (citing *Dyroff v. Ultimate*
19 *Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019)).

20 The court finds that all three criteria for Section 230(c)(1) immunity are met with
21 respect to Plaintiffs’ intentional concealment claim under the WPLA. First, under
22 Section 230, “[t]he term ‘interactive computer service’ means any information service,

1 system, or access software provider that provides or enables computer access by multiple
2 users to a computer server.” 47 U.S.C. § 230(f)(2). Amazon asserts, and Plaintiffs do not
3 contest, that Amazon is a provider of interactive computer services within the meaning of
4 Section 230. (*See generally* MTD at 16; Resp. at 27-29.) The court agrees. *See, e.g.,*
5 *Joseph v. Amazon.com, Inc.*, 46 F. Supp. 3d 1095, 1105 (W.D. Wash. 2014) (holding that
6 Amazon is an interactive service provider because Amazon “operates a website that
7 allows consumers to purchase items online”); *Roommates*, 521 F.3d at 1162 n.6 (“[T]he
8 most common interactive computer services are websites.”).

9 Second, the court concludes that Plaintiffs’ WPLA intentional concealment claim
10 “inherently requires the court to treat the defendant as the ‘publisher or speaker’ of
11 content provided by another.” *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir.), *as*
12 *amended* (Sept. 28, 2009). “[P]ublication involves reviewing, editing, and deciding
13 whether to publish or to withdraw from publication third-party content.” *Id.* at 1102-03
14 (noting that defendant cannot be held liable for decision whether to publish or remove
15 third-party content). In other words, “[p]ublishing encompasses ‘any activity that can be
16 boiled down to deciding whether to exclude material that third parties seek to post
17 online.’” *Gonzalez v. Google LLC*, 2 F.4th 871, 894 (9th Cir. 2021) (quoting
18 *Roommates*, 521 F.3d at 1170-71), *rev’d on other grounds by Twitter, Inc., v. Taamneh*,
19 ___ U.S. ___, 143 S. Ct. 1206 (2023). If “the duty that the plaintiff alleges the defendant
20 violated derives from the defendant’s status or conduct as a ‘publisher or speaker,’”
21 Section 230(c)(1) “precludes liability.” *Barnes*, 570 F.3d at 1102. The court agrees with
22 Amazon’s contention that Plaintiffs’ WPLA intentional concealment claim seeks to treat

1 Amazon as a publisher by imputing liability for Amazon’s decision to exclude certain
2 reviews posted by third parties from publication on its website. *See, e.g., Rangel v.*
3 *Dorsey*, No. 21-CV-08062-CRB, 2022 WL 2820107, at *2 (N.D. Cal. July 19, 2022)
4 (“Rangel seeks to ‘treat [Twitter] as the publisher’ because his claims derive entirely
5 from Twitter’s decision to exclude his content and suspend his account—that is,
6 traditional publishing functions.”); *Riggs v. MySpace, Inc.*, 444 F. App’x 986, 987 (9th
7 Cir. 2011) (affirming dismissal of claims involving “MySpace’s decisions to delete
8 Riggs’s user profiles on its social networking website yet not delete other profiles Riggs
9 alleged were created by celebrity imposters”).

10 Third, the court concludes that Plaintiffs’ WPLA intentional concealment claim is
11 based on “information provided by another information content provider,” rather than
12 information provided by Amazon. *Barnes*, 570 F.3d at 1102. Section 230(c)(1) “cuts off
13 liability only when a plaintiff’s claim faults the defendant for information provided by
14 third parties.” *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1093 (9th Cir. 2021). Thus,
15 “internet companies remain on the hook when they create or develop” the content at issue
16 or are “responsible . . . in part, for the creation or the development of” the offending
17 content.” *Id.* (quoting *Roommates*, 521 F.3d at 1162); *see also Kimzey v. Yelp! Inc.*, 836
18 F.3d 1263, 1269 & n.4 (9th Cir. 2016) (asking whether a defendant “ma[de] a material
19 contribution to the creation or development of [the] content”).

20 Here, the “information” at issue in Plaintiffs’ WPLA intentional concealment
21 claim is the “negative product reviews that warned consumers of [Sodium Nitrite’s] use
22 for death by suicide.” (Am. Compl. ¶ 241(j).) This “information” was, as Plaintiffs

1 admit, provided by the users of Amazon.com. (*See id.* ¶¶ 122, 144-45.) Indeed, the
2 amended complaint does not allege that Amazon provided, created, or developed any
3 portion of the negative product reviews. (*See generally id.*) Accordingly, only the users
4 of Amazon.com, not Amazon, acted as information content providers with respect to
5 Plaintiffs’ WPLA intentional concealment claim. *See, e.g., Fed. Agency of News LLC v.*
6 *Facebook, Inc.*, 432 F. Supp. 3d 1107, 1117-19 (N.D. Cal. 2020) (concluding that
7 Facebook was not an information content provider where plaintiffs sought to hold
8 Facebook liable for removing a plaintiff’s Facebook account, posts, and content); *Joseph*,
9 46 F. Supp. 3d at 1106-07 (concluding that Amazon was not acting as an information
10 content provider where plaintiff’s claims arose from the allegedly defamatory statements
11 in reviews posted by third parties).

12 Accordingly, construing the facts in Plaintiffs’ favor, the court concludes that the
13 allegations in Count I of the amended complaint fail to state a claim for intentional
14 concealment claim under the WPLA based on Amazon’s removal of customer reviews
15 because the CDA bars such a claim. *See, e.g., Levitt v. Yelp! Inc.*, No. C-10-1321 EMC,
16 2011 WL 5079526, at *6 (N.D. Cal. Oct. 26, 2011) (“Plaintiffs’ allegations of extortion
17 based on Yelp’s alleged manipulation of their review pages—by removing certain
18 reviews and publishing others or changing their order of appearance—falls within the
19 conduct immunized by § 230(c)(1).”), *aff’d*, 765 F.3d 1123 (9th Cir. 2014).¹⁴

20
21
22

¹⁴ Because Amazon does not seek CDA immunity with respect to the rest of Plaintiffs’
claims (Reply at 9), the court does not address Plaintiffs’ arguments as to why Amazon is not
entitled to CDA immunity with respect to their negligent product liability and common law

1 **D. Common Law Negligence and NIED Claims**

2 In Count II of the amended complaint, Plaintiffs allege common law negligence
3 claims against Amazon based on the following theories of liability: (1) breach of duty
4 “[t]o not assist or aid in a suicide attempt” and (2) breach of duty “[t]o not supply a
5 substance for the use of another whom it knew or had reason to know to be likely to use it
6 in a manner involving unreasonable risk of physical harm to himself.” (Am. Compl.
7 ¶ 245(b)-(c); *see also id.* ¶¶ 246-47 (alleging that Amazon’s breach of such duties caused
8 Kristine and Ethan’s deaths).) In Count III of the amended complaint, Ms. Maynor
9 brings a common law NIED claim against Amazon, alleging that Amazon breached the
10 above-listed duties, as well as a duty to warn, and that Amazon’s negligence caused Ms.
11 Maynor to suffer severe emotional distress. (*Id.* ¶¶ 249-61.)

12 Amazon argues that Plaintiffs’ common law negligence and NIED claims must be
13 dismissed because (1) they are preempted by the WPLA and (2) they fail to state a
14 plausible claim for relief. (*See* MTD at 10-11, 13-16; Reply at 2-9; Def. Supp. at 1-6.)
15 The court first addresses whether Plaintiffs’ common law negligence-based claims
16 (Counts II and III) are preempted by the WPLA. The court then considers whether the
17 allegations in Counts II and III are sufficient to state plausible claims for relief under the
18 WPLA’s negligent product liability cause of action, RCW 7.72.040(1)(a).

19 //

20 //

21 _____
22 negligence claims. (*See, e.g.*, Resp. at 27-29 (collecting cases and contending that these claims
do not seek to hold Amazon liable as a publisher or for content provided by others).)

1 1. Preemption

2 When enacted in 1981, the WPLA “created a single cause of action for
3 product-related harms.” *Fisons*, 858 P.2d at 1067 (stating that the WPLA replaced
4 “previously existing common law remedies, including common law actions for
5 negligence”). The WPLA is “the exclusive remedy for product liability claims” as it
6 “supplants all common law claims or actions based on harm caused by a product.”
7 *Macias*, 282 P.3d at 1073-74; *Am. Fam. Mut. Ins. Co. v. Wood Stoves Etc., Inc.*, 518 P.3d
8 666, 668 (Wash. Ct. App. 2022) (stating that the WPLA “preempts common law
9 liability” for product-related harms). The WPLA defines a “product liability claim,” in
10 relevant part, to include “any claim or action brought for harm caused by the
11 manufacture, . . . warnings, instructions, marketing, packaging, . . . or labeling of the
12 relevant product.” RCW 7.72.010(4). The WPLA’s statutory product liability cause of
13 action preempts or subsumes all product-related common law claims “based on any
14 substantive legal theory except fraud, intentionally caused harm,” or claims under
15 Washington’s “[C]onsumer [P]rotection [A]ct.” RCW 7.72.010(4) (noting that the
16 phrase “product liability claim” includes claims previously based on negligence, strict
17 liability, and breach of a duty to warn, among other things); *Wash. Water Power Co. v.*
18 *Graybar Elec. Co.*, 774 P.2d 1199, 1204 (Wash.) (“The scope of the statute could not
19 have been stated more broadly.”), *amended sub nom. Wash. Power Co. v. Graybar Elec.*
20 *Co.*, 779 P.2d 697 (Wash. 1989). Because the WPLA allows a plaintiff to sue a product
21 seller for product-related harms under a negligence theory, RCW 7.72.040(1)(a), when a
22 plaintiff attempts to sue a seller for product-related harms under common law negligence,

1 the WPLA preempts or subsumes such claims by requiring the claims to be analyzed
2 under the WPLA.¹⁵ *See, e.g., Huntington*, 2023 WL 2031423, at *4 (declining to find
3 common law negligent product liability claim against seller barred by WPLA and
4 construing the claim as a negligence claim under the WPLA).

5 The court begins by addressing whether Plaintiffs' common law negligence claims
6 (Count II) are preempted or subsumed by the WPLA. Plaintiffs argue such claims are not
7 subsumed under the WPLA because they are not "product-based" and do not concern any
8 of the things listed in the WPLA's definition of a "product liability claim." (Resp. at
9 25-26 (claiming that such claims have "nothing to do with failing to warn of specific
10 Sodium Nitrite dangers or how Amazon marketed the product".) Rather, Plaintiffs
11 contend that their claims relate to "Amazon's platform itself and how the services
12 uniquely offered by Amazon to Loudwolf, Ethan, and Kristine to get the suicide chemical
13 into the hands of these teenagers." (*Id.*)

14 The court disagrees with this portrayal and concludes that the common law
15 negligence claims in Count II fall within the WPLA's preemptive scope. As noted above,
16 the WPLA defines a "product liability claim," in relevant part, to include "any claim or

17
18 ¹⁵ Amazon is incorrect to the extent it implies that the WPLA's preemption bars any
19 common law negligence-based claims against product sellers. (*See generally* MTD at 10-11;
20 Reply at 6-7; Def. Supp.) Preemption works differently with respect to common law negligence
21 claims for product-related harms asserted against a product manufacturer. Because the WPLA
22 only allows plaintiffs to sue product manufacturers under strict liability theories, RCW 7.72.030;
Macias, 282 P.3d at 1074, except in the case of a post-manufacture failure to warn, a plaintiff is
barred from asserting a negligence claim for product-related harms against a product
manufacturer under both common law and the WPLA. *See, e.g., Mar. v. Ethicon, Inc.*, No. C20-
5032BHS, 2021 WL 719261, at *3 (W.D. Wash. Feb. 24, 2021) (dismissing with prejudice
plaintiff's common law negligence-based claims against manufacturer as preempted by the
WPLA).

1 | action brought for harm caused by the . . . marketing . . . of the relevant product.” RCW
2 | 7.72.010(4). The WPLA does not, however, define “marketing.” When a statute does
3 | not define a term, courts “typically ‘give the phrase its ordinary meaning.’” *Animal*
4 | *Legal Def. Fund v. U.S. Dep’t of Agric.*, 933 F.3d 1088, 1093 (9th Cir. 2019) (quoting
5 | *FCC v. AT & T Inc.*, 562 U.S. 397, 403 (2011)); *Garrison v. Wash. State Nursing Bd.*,
6 | 550 P.2d 7, 8 (Wash. 1976) (“Words in a statute should be given their ordinary meaning
7 | absent ambiguity and/or a statutory definition.”). The court may look to a word’s
8 | dictionary definition to determine its ordinary meaning. *See LaCoursiere v. Camwest*
9 | *Dev., Inc.*, 339 P.3d 963, 967 (Wash. 2014) (“To give undefined terms meaning, this
10 | court may look to dictionary definitions and related statutes.”); *Transwestern Pipeline*
11 | *Co., LLC v. 17.19 Acres of Prop. Located in Maricopa Cnty.*, 627 F.3d 1268, 1270 (9th
12 | Cir. 2010) (stating that courts can consult dictionary definitions to determine ordinary
13 | meaning of undefined words). Black’s Law Dictionary defines “marketing” as “[t]he act
14 | or process of promoting and selling, leasing, or licensing products.” *Marketing*, Black’s
15 | Law Dictionary (11th ed. 2019); *see also Marketing*, Merriam-Webster,
16 | <https://www.merriam-webster.com/dictionary/marketing> (last visited June 23, 2023)
17 | (defining marketing as “the act or process of selling or purchasing in a market” or “the
18 | process or technique of promoting, selling, and distributing a product or service”).
19 | Plaintiffs fail to identify anything indicating that the legislature intended the word
20 | “marketing” to mean something different than its ordinary meaning under the WPLA.
21 | (*See generally* Resp.)
22 |

1 Because Plaintiffs seek to hold Amazon liable for its role in facilitating the sale of
2 Sodium Nitrite to Kristine and Ethan through Amazon.com, the court concludes that
3 Amazon’s conduct falls squarely within the ordinary meaning of “marketing.” (*See, e.g.,*
4 *Am. Compl.* ¶¶ 1, 7-14, 18-28, 99-102, 121-22, 125-26, 205, 211-14, 221-23, 226-27,
5 241, 245-46); *Marketing*, Black’s Law Dictionary, *supra*; *Marketing*, Merriam-Webster,
6 *supra*. Moreover, Plaintiffs’ allegations that Kristine and Ethan’s deaths were caused by
7 ingesting the Sodium Nitrite involve “product-related” harms. (*See, e.g., Am. Compl.*
8 ¶¶ 173-74, 183-86, 190, 198-201, 243, 247; *see also id.* ¶¶ 228-31 (describing harm
9 Plaintiffs suffered as a result of experiencing Kristine and Ethan’s deaths)); *see Fisons*,
10 858 P.2d at 1067. Because Plaintiffs’ common law negligence claims are
11 negligence-based claims for “harm caused by the . . . marketing” of the Sodium Nitrite,
12 RCW 7.72.010(4), they fall within the WPLA’s preemptive scope.¹⁶

13 Plaintiffs contend that Ms. Maynor’s NIED claim, in which she seeks to hold
14 Amazon liable for the emotional distress she suffered from experiencing Ethan’s death, is
15 not preempted or subsumed by the WPLA. (*See, e.g., Pls. Supp.*; *Am. Compl.* ¶¶ 22-24,
16

17 ¹⁶ In reaching this conclusion, the court also rejects Plaintiffs’ mistaken reliance on
18 *Louisiana-Pacific Corp. v. ASARCO, Inc.*, 24 F.3d 1565 (9th Cir. 1994). (*See Resp.* at 26-27.)
19 The *ASARCO* court held that an “intentional nuisance claim” falls under the WPLA’s exclusion
20 for “claims based on ‘intentionally caused harm.’” *ASARCO*, 24 F.3d at 1584 (quoting RCW
21 7.72.010(4)). *ASARCO* is inapposite because the plaintiff there alleged an intentional tort. *See*
22 *id.*; RCW 7.72.010(4) (carving out exception for claims based on a substantive legal theory of
“intentionally caused harm”); S. Journal, 47th Leg., Reg. Sess. 635 (Wash. 1981) (noting that the
WPLA’s “intentionally caused harm” exception applies only to “intentional tort[s].”). Here,
Plaintiffs’ causes of action are negligence-based (*see generally* *Am. Compl.*), and therefore
preempted by the WPLA irrespective of Amazon’s knowledge. *See, e.g., City of Seattle v.*
Monsanto Co., 237 F. Supp. 3d 1096, 1102-03 (W.D. Wash. 2017) (rejecting a similar
argument).

1 26, 190-204, 230, 241, 243, 245, 247, 248-51, 258.) Plaintiffs so argue because “no court
2 to consider bystander NIED claims in a product liability action has found the claims to be
3 preempted or subsumed by the WPLA.” (Pls. Supp. at 3.) However, the authorities
4 Plaintiffs cite are unavailing because the cases either did not have occasion to address
5 preemption, an affirmative defense, or relied on other cases that did not address
6 preemption. *See, e.g., Colbert v. Moomba Sports, Inc.*, 176 P.3d 497 (Wash. 2008) (not
7 addressing preemption); *Percival v. General Electric Co.*, 708 F. Supp. 2d 1171 (W.D.
8 Wash. 2010) (same); *Davis v. Edgewell Pers. Care Brands, LLC*, No.
9 2:18-CV-00057-SAB, 2018 WL 1975685 (E.D. Wash. Apr. 26, 2018) (relying on
10 *Colbert*). Accordingly, Plaintiffs’ proffered authorities fail to support their argument that
11 Ms. Maynor’s NIED claim is not preempted or subsumed by the WPLA.

12 The court concludes that Ms. Maynor’s NIED claim (Count III) falls within the
13 WPLA’s preemptive scope. First, Ms. Maynor’s NIED claim targets the same
14 “marketing” conduct by Amazon as Plaintiffs’ common law negligence claim and is thus
15 a negligence-based “product liability claim.” (*See, e.g., supra*; Am. Compl. ¶¶ 22-24, 26,
16 190-204, 230, 241, 243, 245, 247, 248-51, 258); RCW 7.72.010(4); *see also Snyder v.*
17 *Med. Serv. Corp. of E. Wash.*, 35 P.3d 1158, 1164 (Wash. 2001) (noting that NIED
18 claims “sound[] in negligence”). Second, Ms. Maynor is a “claimant” under the WPLA’s
19 broad definition, although she did not purchase the Sodium Nitrite. *See* RCW
20 7.72.010(5) (defining “claimant” as “any person . . . that suffers harm,” and conferring
21 standing to sue “even though the claimant did not buy the product from, or enter into any
22 contractual relationship with, the product seller”); (*see also* Def. Supp. at 2). Finally, Ms.

1 Ms. Maynor’s alleged emotional distress “damages, if proved, are recoverable under the
2 WPLA.” *See Bylsma v. Burger King Corp.*, 293 P.3d 1168, 1171 (Wash. 2013)
3 (concluding that emotional distress damages in the absence of physical injury, if proved,
4 meet the WPLA’s broad definition of “harm”). That is because the WPLA broadly
5 defines “harm” as “any damages recognized by the courts of [Washington]” except for
6 “direct or consequential economic loss,” RCW 7.72.010(6), and Washington courts have
7 recognized that, under certain conditions, bystanders can recover damages for emotional
8 distress caused by experiencing “the negligent bodily injury of a family member.”
9 *Colbert*, 176 P.3d at 500-07 (quoting *Gain v. Carroll Mill Co.*, 787 P.2d 553, 557 (Wash.
10 1990)) (discussing some of the limitations on bystander NIED claims). For these
11 reasons, Ms. Maynor’s NIED claim is also preempted or subsumed by the WPLA. *See*
12 *Graybar*, 774 P.2d at 1203 (noting that the WPLA’s broad definition of a product liability
13 claim “counsels in favor of preemption, not against it”).

14 In sum, the common law negligence and NIED claims alleged in Counts II and III
15 of Plaintiffs’ amended complaint are preempted or subsumed by the WPLA. Because the
16 WPLA provides a cause of action against sellers for negligent product liability, the court
17 will construe Plaintiffs’ common law negligence-based claims as negligent product
18 liability claims under RCW 7.72.040(1)(a) and will evaluate whether the allegations in
19 Counts II and III state plausible claims for relief under RCW 7.72.040(1)(a).

20 //

21 //

22 //

1 2. Whether the Allegations in Counts II and III State Plausible Claims for Relief
2 Under RCW 7.72.040(1)(a)

3 The allegations in Count II (common law negligence) fail to state a plausible claim
4 for relief under RCW 7.72.040(1)(a). As discussed above, a plaintiff must establish that
5 the injury-causing product is defective in order to recover against a negligent product
6 seller under the WPLA. (*See supra* § III.C.1.) The court has already rejected Plaintiffs’
7 argument that the Sodium Nitrite was defective on the basis of inadequate warnings. (*See*
8 *id.*) Accordingly, the allegations in Count II fail to state plausible negligent product
9 liability claims under the WPLA because, as a threshold point, the Sodium Nitrite is not
10 defective. Because Plaintiffs fail to meet this threshold requirement, the court need not
11 address their remaining arguments or the other elements of this claim.

12 Ms. Maynor also fails to allege a plausible claim for NIED (Count III) under the
13 WPLA because she cannot establish, as a threshold point, a predicate claim of negligence
14 against Amazon under the WPLA. “Bystander negligent infliction of emotional distress
15 claims involve emotional trauma resulting from one person’s observation or discovery of
16 another’s *negligently* inflicted physical injury.” *Hegel v. McMahon*, 960 P.2d 424, 426
17 (Wash. 1998) (emphasis added). “The bystander theory of recovery is a collateral claim
18 for damages suffered indirectly as the result of the defendant’s breach of a duty owed to
19 the decedent.”¹⁷ *Est. of Lee ex rel. Lee v. City of Spokane*, 2 P.3d 979, 990 (Wash. Ct.

20 _____
21 ¹⁷ Plaintiffs failed to offer any meaningful response to Amazon’s argument that Ms.
22 Maynor’s NIED claim fails because it is collateral to Plaintiffs’ failed negligence claims.
 (*Compare* MTD at 25, and Reply at 9-10, with Resp. at 24 (claiming only that even if the NIED
 claim is collateral of Plaintiffs’ negligence claims, the NIED claim survives because Plaintiffs
 sufficiently alleged that Amazon negligently caused Ethan’s death).)

1 App. 2000) (“To recover under the bystander theory, the Lees would have to establish
2 that the defendants breached a duty owed to Mr. Lee.”). Because the allegations in
3 Counts I and II fail to state plausible negligence claims against Amazon under the
4 WPLA, Ms. Maynor’s bystander NIED claim under the WPLA, which is premised on
5 Amazon’s alleged negligence as a seller of Sodium Nitrite, also fails. *See id.*
6 Accordingly, the allegations in Counts II and III fail to state a plausible claim for relief
7 under RCW 7.72.040(1)(a).

8 In sum, the court GRANTS Amazon’s motion to dismiss Plaintiffs’ amended
9 complaint for failure to state a plausible claim for relief against Amazon.¹⁸ (*See supra*
10 § III.C n.6 (strict product liability allegations in Count I fail); *id.* § III.C.1 (negligent
11 product liability allegations in Count I fail); *id.* § III.C.2 (intentional concealment
12 allegation in Count I fails); *id.* § III.D.1-.2 (common law negligence and NIED
13 allegations in Counts II and III fail).)

14 //

15 //

16
17 ¹⁸ In opposing Amazon’s motion to dismiss, Plaintiffs wrongly urge the court to rely on
18 two unreasoned, unpublished King County Superior Court orders denying Amazon’s motions to
19 dismiss in *Scott v. Amazon.com, Inc.*, No. 22-2-01739-2 SEA (K.C. Sup. Ct.) and *Viglis v.*
20 *Amazon.com, Inc.*, No. 23-2-05719-8 SEA (K.C. Sup. Ct.). (*See Resp.* at 6, 16-17; Yackulic
21 (Dkt. # 52); Not. of Supp. Authority (Dkt. # 59).) Those orders have no impact on the court’s
22 conclusion or analysis. The Ninth Circuit instructs federal courts to “attach no weight to
unreasoned conclusions in unpublished state decisions” when resolving questions of state law.
Flowers v. Carville, 310 F.3d 1118, 1125 (9th Cir. 2002). “The unreported decision of a state
trial court” is not binding and may be relied on only “to the extent its reasoning is persuasive.”
Spinner Corp. v. Princeville Dev. Corp., 849 F.2d 388, 390 n.2 (9th Cir. 1988). Thus, these
unpublished state court decisions that “fail to offer any reasoning” have no persuasive weight
here. *Flowers*, 310 F.3d at 1125.

1 **E. Leave to Amend**

2 On a Rule 12(b)(6) motion, “a district court should grant leave to amend even if no
3 request to amend the pleading was made, unless it determines that the pleading could not
4 possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal.*
5 *Collection Serv.*, 911 F.2d 242, 247 (9th Cir. 1990); *see DeSoto v. Yellow Freight Sys.,*
6 *Inc.*, 957 F.2d 655, 658 (9th Cir. 1992) (“A district court does not err in denying leave to
7 amend where the amendment would be futile.”). The court’s discretion to grant leave to
8 amend is particularly broad where the plaintiff has previously filed an amended
9 complaint. *Sisseton-Wahpeton Sioux Tribe v. United States*, 90 F.3d 351, 355 (9th Cir.
10 1996); *Turner v. Cnty. of Los Angeles*, 18 F. App’x 592, 597 (9th Cir. 2001) (concluding
11 that the court did not abuse its discretion in denying the second amended complaint with
12 prejudice and without leave to amend where the court had already allowed the plaintiff to
13 amend their complaint); *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042, 1052 (9th Cir. 2008)
14 (“Appellants fail to state what additional facts they would plead if given leave to
15 amend Accordingly, amendment would be futile.”).

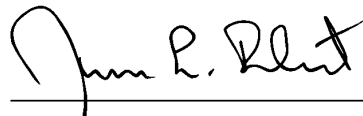
16 Here, Plaintiffs have not asked for leave to amend, nor have they stated what
17 additional facts they would plead if given leave to amend. (*See generally* Resp.) The
18 court concludes that granting leave to amend would be futile because it is clear from the
19 amended complaint that all of Plaintiffs’ claims are premised on allegations that Kristine
20 and Ethan’s deaths were caused by ingesting the Sodium Nitrite and seek to hold Amazon
21 liable for negligently “marketing” the Sodium Nitrite. (*See generally* Am. Compl.; *supra*
22 §§ III.C.1-2, D.1-2; *id.* § III.D.1 (defining marketing under the WPLA).) Such

1 negligence-based product liability claims must be pled under the WPLA, which imposes
2 liability on product sellers in limited circumstances. (*See supra* § III.D.1; *id.* § III.C);
3 RCW 7.72.040(1). However, Plaintiffs cannot possibly make out a plausible negligence
4 claim against Amazon under the WPLA given the court's conclusions that (1) Amazon,
5 as a product seller, can only be held liable for negligence under the WPLA if the Sodium
6 Nitrite was defective, (2) that the Sodium Nitrite was not defective with respect to its
7 warnings, and (3) Kristine and Ethan intentionally misused the Sodium Nitrite to commit
8 suicide. (*See supra* § III.C.1, D.2.) Additionally, Plaintiffs' intentional concealment
9 claim under the WPLA, which is premised on Amazon's removal of product reviews, is
10 barred by the CDA. (*See supra* § III.C.2.) Accordingly, the court concludes that the
11 amended complaint's deficiencies cannot be cured by the allegation of other facts and
12 DENIES leave to amend. *See Cook*, 911 F.2d at 247.

13 IV. CONCLUSION

14 For the foregoing reasons, the court GRANTS Amazon's motion to dismiss (Dkt.
15 # 47) and DISMISSES Plaintiffs' amended complaint with prejudice and without leave to
16 amend.

17 Dated this 27th day of June, 2023.

18
19 

20 JAMES L. ROBART
21 United States District Judge
22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICHOLAS MCCARTHY and MARTINIQUE
MAYNOR, individually and NICHOLAS
MCCARTHY as successor-in-interest to ETHAN
MCCARTHY a deceased individual; LAURA
JÓNSSON and STEINN JÓNSSON,
individually, and LAURA JÓNSSON as
successor-in-interest to KRISTINE JÓNSSON, a
deceased individual,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

No. 2:23-cv-00263

DEFENDANT AMAZON.COM,
INC.'S SUPPLEMENTAL RESPONSE
IN SUPPORT OF ITS MOTION TO
DISMISS

ORAL ARGUMENT REQUESTED

AMAZON'S SUPPLEMENTAL RESPONSE IN
SUPPORT OF ITS MOTION TO DISMISS
(No. 2:23-cv-00263)

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	1
A. The WPLA preempts Count III.....	1
1. The WPLA’s text covers Count III.....	1
2. Precedent confirms that the WPLA preempts Count III.....	3
3. The WPLA’s purpose confirms that it preempts Count III.....	5
B. Count III’s failure to state an NIED Claim does not affect preemption.	5
CONCLUSION.....	6

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES

Page(s)

CASES

Blackwell v. Ethicon, Inc.,
2017 WL 2884531 (S.D. W. Va. July 6, 2017)3

Buttelo v. S.A. Woods-Yates Am. Mach. Co.,
864 P.2d 948 (Wash. Ct. App. 1993).....5

Bylsma v. Burger King Corp.,
293 P.3d 1168 (Wash. 2013).....4

Cotton v. Ethicon, Inc.,
2021 WL 736211 (N.D. Ind. Feb. 25, 2021).....3

Hunsley v. Giard,
553 P.2d 1096 (Wash. 1976).....2

Kaspers v. Howmedica Osteonics Corp.,
2015 WL 12085853 (W.D. Wash. Oct. 23, 2015)3

Kiker v. Smithkline Beecham Corp.,
2015 WL 5768389 (S.D. Ohio Sept. 30, 2015)3

Laisure-Radke v. Par Pharm., Inc.,
426 F. Supp. 2d 1163 (W.D. Wash. 2006).....2

Macias v. Saberhagen Holdings, Inc.,
282 P.3d 1069 (Wash. 2012).....4

March v. Ethicon, Inc.,
2021 WL 719261 (W.D. Wash. Feb. 24, 2021).....3

Rodman v. Ethicon, Inc.,
2021 WL 2434521 (W.D. Wash. June 15, 2021).....1, 3

Snyder v. Med. Serv. Corp. cf E. Washington,
35 P.3d 1158 (Wash. 2001).....2

Thibodeaux Billodeaux v. Ethicon Inc.,
2020 WL 557724 (W.D. La. Feb. 3, 2020).....3

Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.,
858 P.2d 1054 (Wash. 1993).....1, 3, 4, 5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES (continued)

Page(s)

Wash. Water Power Co. v. Graybar Elec. Co.,
774 P.2d 1199 (Wash. 1989).....2, 3, 4, 5

STATUTES

Philip A. Talmadge, *Washington's Product Liability Act*, 5 U. Puget Sound L.
Rev. 1 (1981)5

RCW 7.72.010(4).....1, 2

RCW 7.72.010(5).....1, 2

INTRODUCTION

1
2 This Court requested briefing on “whether the Washington Product Liability Act can
3 preempt negligent infliction of emotional distress claims, such as the one brought in this action by
4 Plaintiff Martinique Maynor.” Dkt. #56 at 1-2. The WPLA does preempt Plaintiff’s claim. The
5 text, precedent, and legislative purpose confirm that “a claim for negligent infliction of emotional
6 distress falls within the WPLA’s scope of preemption.” *Rodman v. Ethicon, Inc.*, 2021 WL
7 2434521, at *3 (W.D. Wash. June 15, 2021). The fact that Count III does not state a cognizable
8 NIED claim does not affect preemption. The Washington Supreme Court has held that a claim for
9 “emotional pain and suffering” under the WPLA was “not recoverable under” the Act, and that
10 “any negligence cause of action” for that same emotional harm was “preempted by the [W]PLA.”
11 *Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 858 P.2d 1054, 1066 (Wash. 1993).
12 This Court should therefore dismiss Count III.

ARGUMENT

A. The WPLA preempts Count III.

14 As Amazon previously argued, the WPLA preempts Count III’s common-law NIED claim.
15 See Mot. 5. The WPLA’s text, precedent, and purpose confirm this conclusion.

1. The WPLA’s text covers Count III.

17 Count III falls within the WPLA’s preemptive scope. Count III is a “product liability claim”
18 as defined in RCW 7.72.010(4). And Plaintiff is a “claimant” as defined in RCW 7.72.010(5).

19 **RCW 7.72.010(4).** Count III falls within the definition of “product liability claim” because
20 it is a negligence-based claim for emotional harm that Plaintiff suffered as a result of sodium nitrite
21 allegedly being marketed to her son. The WPLA supplants “any claim or action brought for harm
22 caused by the ... marketing ... of the relevant product” and includes “any claim or action previously
23 based on ... negligence” or “any other substantive legal theory” that is not expressly excepted.
24 RCW 7.72.010(4) (emphasis added). As the Washington Supreme Court has noted: “The scope of
25 the statute could not have been stated more broadly.” *Wash. Water Power Co. v. Graybar Elec.*
26

1 Co., 774 P.2d 1199, 1204 (Wash. 1989). The Act “broadly defines” its scope “to include any
2 product-related claim ‘previously based on ... any other substantive legal theory except fraud,
3 intentionally caused harm or ... the consumer protection act.’” *Id.* at 1202 (quoting RCW
4 7.72.010(4)).

5 Count III easily fits that definition. It asserts liability based on Amazon’s alleged marketing
6 of a product (sodium nitrite) that was sold to Ethan on Amazon.com and caused him physical
7 injury—resulting in emotional harm to Plaintiff. *See* FAC ¶¶ 248-51, 258. A *negligent* infliction
8 of emotional distress claim obviously “sound[s] in” negligence. *Snyder v. Med. Serv. Corp. cf E.*
9 *Washington*, 35 P.3d 1158, 1164 (Wash. 2001). And NIED claims were recognized years before
10 the WPLA’s passage. *See Hunsley v. Giard*, 553 P.2d 1096, 1102-03 (Wash. 1976). Such a claim
11 is clearly “based on ... negligence,” RCW 7.72.010(4), and, by the statute’s plain text, is preempted
12 by the WPLA, *see Laisure-Radke v. Par Pharm., Inc.*, 426 F. Supp. 2d 1163, 1168 (W.D. Wash.
13 2006) (claims “based on common law negligence theories” are preempted by the WPLA).

14 **RCW 7.72.010(5)**. The fact that Plaintiff brings Count III on her own behalf, and not on
15 Ethan’s behalf, does not alter that conclusion. The WPLA’s plain text extends its preemptive scope
16 beyond claims by the actual product purchaser or user. The WPLA broadly defines “claimant” as
17 “any person ... that suffers harm.” RCW 7.72.010(5) (emphasis added). It specifically covers
18 “wrongful death action[s]” and claims brought “through or on behalf of an estate.” *Id.* The phrase
19 “any person” is expansive, and the mention of wrongful-death and survival actions clearly
20 contemplates family members being WPLA “claimants.” The WPLA also eliminated any privity
21 requirement, so the fact Plaintiff “did not buy the product ... or enter into any contractual
22 relationship with” Amazon does not exempt her claim from the WPLA’s scope. *Id.*

23 In sum, the WPLA’s broad definitions “counsel[] in favor of preemption, not against it.”
24 *Graybar*, 774 P.2d at 1203.

1 **2. Precedent confirms that the WPLA preempts Count III.**

2 Precedent confirms that the WPLA—which was intended to preempt the field of product-
3 related common-law claims—preempts Count III.

4 Courts in the Western District have consistently concluded that “a claim for negligent
5 infliction of emotional distress falls within the WPLA’s scope of preemption.” *Rodman*, 2021 WL
6 2434521, at *3; *March v. Ethicon, Inc.*, 2021 WL 719261, at *3 (W.D. Wash. Feb. 24, 2021).¹
7 This Court has previously held that “negligence-based claims” are “preempted by the WPLA,”
8 and let a “claim for infliction of emotional distress” proceed only because the alleged distress was
9 “intentional” and fell within the WPLA’s exception for “intentionally caused harm.” *Kaspers v.*
10 *Howmedica Osteonics Corp.*, 2015 WL 12085853, at *6 (W.D. Wash. Oct. 23, 2015) (Robart, J.).

11 Washington Supreme Court precedent confirms that Count III is preempted. In its most
12 analogous decision, it held that the WPLA preempted a doctor’s negligence-based claim seeking
13 “damages for emotional distress.” *Fisons*, 858 P.2d at 1058. In *Fisons*, a doctor alleged that a drug
14 company failed to warn him about its drug’s risks, which led him to prescribe the drug to a patient
15 who suffered injury, causing financial and emotional harms to the doctor. *Id.* at 1058-59. In
16 addressing the doctor’s WPLA claim, the court held that “the physician’s emotional pain and
17 suffering are not recoverable under ... the product liability act” because his claim did not fit under
18 the “very limited circumstances” in which Washington courts had recognized liability for
19 “[e]motional damages caused by a plaintiff witnessing, or learning of, a third person’s physical
20 injuries.” *Id.* at 1065-66. The court then turned to the doctor’s negligence claim. It held that it
21 could not “allow a negligence claim” for the same alleged emotional harm because “any negligence
22 cause of action ... is now preempted by the [W]PLA.” *Id.* at 1066. The same logic applies here.

23
24 ¹ Courts have held that similar state product-liability statutes preempt common-law NIED
25 claims. *See, e.g., Cotton v. Ethicon, Inc.*, 2021 WL 736211, at *3 (N.D. Ind. Feb. 25, 2021);
26 *Thibodeaux Billodeaux v. Ethicon Inc.*, 2020 WL 557724, at *2 (W.D. La. Feb. 3, 2020);
Blackwell v. Ethicon, Inc., 2017 WL 2884531, at *2 (S.D. W. Va. July 6, 2017); *Kiker v.*
Smithkline Beecham Corp., 2015 WL 5768389, at *3 (S.D. Ohio Sept. 30, 2015).

1 Count III is based on the same underlying conduct as Counts I and II, so it is likewise preempted
2 by the WPLA.

3 Dismissing Count III is consistent with *Bylsma v. Burger King Corp.*, 293 P.3d 1168, 1171
4 (Wash. 2013), another case addressing emotional-distress damages under the WPLA. The court’s
5 holding that “emotional distress ... damages ... are recoverable under the WPLA,” *id.*, confirms
6 that product-related claims seeking emotional-distress damages are within the WPLA’s scope, *see*
7 *supra* at 1-2. Denying recovery under Count III is consistent with *Bylsma* because: (a) the “food
8 product” was “contaminated” and thus defective under the WPLA, whereas the sodium nitrite was
9 not; and (b) the *Bylsma* plaintiff was “the direct purchaser being served,” while Plaintiff does not
10 meet the present-at-the-scene requirement and thus is outside the “class of plaintiffs who can
11 recover.” 293 P.3d at 1171.

12 Other Washington Supreme Court precedents reinforce this conclusion. The *Graybar* court
13 held that “[t]he WPLA’s definition of ‘product liability claim’” is “the operative centerpiece of the
14 statute.” 774 P.2d at 1204. The court held that one “cannot dilute this definition without frustrating
15 the entire scheme of the statute.” *Id.* The court expressly rejected a narrow interpretation of the
16 WPLA “as [a] preservation of common law remedies;” instead, the court held that “the WPLA
17 means nothing if it does not preempt common law product liability remedies.” *Id.* at 1203.
18 Accordingly, the Washington Supreme Court has repeatedly refused to allow plaintiffs to avoid
19 the WPLA’s preemptive effect by characterizing their claims for product-based harms as
20 something other than a product-liability claim. *See Macias v. Saberhagen Holdings, Inc.*, 282 P.3d
21 1069, 1073-74 (Wash. 2012) (collecting cases). It would be contrary to Washington Supreme
22 Court precedent to conclude that an expansive theory and claim such as that in Count III was not
23 preempted by the WPLA.

24 Plaintiffs’ authorities do not support a contrary conclusion. The *Colbert* and *Percival*
25 defendants did not raise preemption (which is an affirmative defense), so those courts had no
26

1 occasion to address it. *See* Dkt. #57 at 5-6. And the nonbinding *Davis* decision—which cannot be
2 squared with *Fisons* or RCW 7.72.010(5)—provides no reasoning to justify its result. *See id.*

3 **3. The WPLA’s purpose confirms that it preempts Count III.**

4 The WPLA’s purpose confirms that it subsumes claims such as Count III. The Legislature
5 passed the WPLA in 1981 to reform Washington’s product-liability law. The Legislature’s primary
6 goals in passing the WPLA were “delimiting the substantive liabilities of manufacturers and
7 product sellers” and reducing “uncertainty in tort litigation.” *Graybar*, 774 P.2d at 1202. The
8 WPLA was “designed to address a liability insurance crisis which the Legislature felt threatened
9 the availability of socially beneficial products and services.” *Fisons*, 858 P.2d at 1066. The
10 Legislature was especially concerned with reducing liability for nonmanufacturing defendants. *See*
11 Philip A. Talmadge, *Washington’s Product Liability Act*, 5 U. Puget Sound L. Rev. 1, 10 (1981).
12 Washington courts have therefore consistently recognized that the “Legislature’s intent” in passing
13 the WPLA was “to limit, rather than to expand, liability” and have construed the statute
14 accordingly. *Buttelo v. S.A. Woods-Yates Am. Mach. Co.*, 864 P.2d 948, 952 (Wash. Ct. App.
15 1993).

16 This Court should conclude that Count III is preempted by the WPLA, as that is the only
17 result that is consistent with the Legislature’s “clear desire.” *Id.* Permitting Plaintiffs to proceed
18 on a common-law claim would also be inconsistent with common-law precedents, which generally
19 “have been cautious about extending a right to recovery, especially when the distress is the
20 consequence of an injury suffered by a third person.” *Fisons*, 858 P.2d at 1065.

21 **B. Count III’s failure to state an NIED claim does not affect preemption.**

22 As Amazon pointed out, and Plaintiffs did not dispute, Count III fails to meet the present-
23 at-the-scene requirement for Washington NIED claims. *See* Reply 9-10. That should not change
24 the preemption analysis. As explained above, *Fisons* held that “the physician’s emotional pain and
25 suffering are not recoverable” under the WPLA based on the “circumstances” of the case, while
26

1 also holding that “a negligence claim” for those same damages was “preempted by the [W]PLA.”
2 858 P.2d at 1066. The same dynamic applies here.

3 **CONCLUSION**

4 This Court should dismiss Count III as preempted by the WPLA.

5 Dated: May 9, 2023

By: s/ Gregory F. Miller

6 I certify that this brief contains 1,750
7 words, in compliance with the Court’s
8 order.

Gregory F. Miller, Bar No. 56466
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone: +1.206.359.8000
GMiller@perkinscoie.com

9 Steven Williamson, Bar No. 343842
Perkins Coie LLP
10 1888 Century Park East, Suite 1700
11 Los Angeles, California 90067-1721
12 Telephone: +1.310.788.9900
SWilliamson@perkinscoie.com
Pro hac vice application pending

13 *Attorneys for Defendant Amazon.com, Inc.*

14
15
16
17
18
19
20
21
22
23
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on May 9, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court's Electronic Mail Notice List.

s/ Gregory F. Miller
Gregory F. Miller

CERTIFICATE OF SERVICE
(No. 2:23-cv-00263)

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

THE HONORABLE JAMES L. ROBERT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICHOLAS MCCARTHY and
MARTINIQUE MAYNOR, individually and
NICHOLAS MCCARTHY as successor-in-
interest to ETHAN MCCARTHY a deceased
individual; LAURA JÓNSSON and STEINN
JÓNSSON, individually, and LAURA
JÓNSSON as successor-in-interest to
KRISTINE JÓNSSON, a deceased individual,

Plaintiffs,

- vs -

AMAZON.COM, INC, a Delaware
corporation,

Defendant.

No. 2:23-cv-00263

PLAINTIFFS' SUPPLEMENTAL
BRIEFING IN OPPOSITION TO
AMAZON.COM, INC.'S MOTION TO
DISMISS

ORAL ARGUMENT REQUESTED

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Cases

Ayers v. Johnson & Johnson Baby Prods. Co., 117 Wn.2d 747 (1991).6

Colbert v. Moomba Sports, Inc., 163 Wash.2d 43 (2008).3, 5

Davis v. Edgewell Pers. Care Brands, LLC,
 No. 2:18-CV-00057-SAB, (E.D. Wash. 2018).3, 5, 6

Falk v. Keene Corp., 113 Wn.2d 654 (1989).6

Hegel v. McMahon, 136 Wn.2d 122 (1998).....4

Macias v. Saberhagen Holdings, Inc., et al., 175 Wn.2d 402 (2012).5

Percival v. General Electric Co., 708 F.Supp.2d 1171 (W.D. Wash. 2010).3, 6

Taylor v. Intuitive Surgical, Inc., 187 Wn.2d 743 (2017).5, 6

Statutes

RCW 7.72.040(a).3, 6

I. INTRODUCTION

Plaintiffs submit this supplemental brief in opposition to Defendant Amazon’s Motion to Dismiss to address the issue posed by the Court on May 4, 2023, specifically, whether the Washington Product Liability Act can preempt negligent infliction of emotional distress (“NIED”) claims, such as the one brought by Plaintiff Martinique Maynor (“Nikki”) against Amazon. The answer is no, the WPLA does not “preempt” or “subsume” a bystander’s NIED claim. No Washington court to consider an NIED claim in the context of a product liability suit has held that the WPLA preempts such claim. *See Colbert v. Moomba Sports, Inc.*, 163 Wash.2d 43 (2008); *Davis v. Edgewell Pers. Care Brands, LLC*, No. 2:18-CV-00057-SAB, (E.D. Wash. 2018); *Percival v. General Electric Co.*, 708 F.Supp.2d 1171 (W.D. Wash. 2010). *Percival v. General Electric Co.*, 708 F.Supp.2d 1171 (W.D. Wash. 2010).

Plaintiffs here have alleged, *inter alia*, negligence against Amazon as “seller” of Sodium Nitrite—a claim that falls within the WPLA. RCW 7.72.040(a). (Amazon does not here dispute that it is a product seller under the WPLA. *See* Mot. at 11 n.2.) Plaintiffs have additionally alleged negligence for Amazon’s affirmative acts to assist in suicide. This claim falls outside the scope of the WPLA. Martinique Maynor’s (“Nikki’s”) NIED claim arises as the foreseeable result of a family member witnessing the injury and death of a loved one due to Amazon’s tortious acts. This is a stand-alone cause of action.

II. FACTS

Amazon sold 99.6% pure Loudwolf Sodium Nitrite to 17-year-old Ethan McCarthy on January 2, 2021. First Amended Complaint (“FAC”) ¶¶ 97, 190. As with all products on its website, Amazon offered, displayed, and promoted Loudwolf; entered into seller agreements dictating Amazon’s terms, received a commission for each unit sold, handled purchasers’ payments, engaged in customer service, and had the power to cancel orders and remove product listings. FAC ¶¶ 65-81, 232-43.

1 At the time of sale to Ethan, the Loudwolf Sodium Nitrite was mislabeled and contained
2 inadequate warnings. FAC ¶¶ 98-99. Amazon did not enforce its own standards for how Sodium
3 Nitrite, an industrial chemical, was to be displayed, it manipulated product reviews and rankings,
4 and delivered Sodium Nitrite to Ethan even after Nikki reached out to customer service to cancel
5 the shipment. FAC ¶¶ 123, 190-95.

6 Amazon knew that Loudwolf – along with other brands of pure Sodium Nitrite it sold –
7 was regularly used for suicide, but nonetheless bundled it with other suicide implements
8 including an instructional manual and put it in the hands of children knowing the high risk of
9 death. FAC ¶¶ 106-10, 126-29, 244-47. Amazon concealed from third-party vendors, including
10 Loudwolf, its knowledge of Sodium Nitrite deaths. FAC ¶ 31.

11 The morning of January 7, 2021, Nikki went to Ethan’s bedroom to wake him up and
12 discovered his body stiff with one arm raised in the air. FAC ¶¶ 196, 198. She ran to him, put her
13 head on his chest, touched his face. FAC ¶ 198. She saw thick reddish-brown liquid coming out
14 of his mouth. FAC ¶ 198. Nikki screamed for her other son to help and called 911. FAC ¶ 199.
15 Soon after, she blacked out. FAC ¶ 203. She and her two kids never slept another night in their
16 home. *Id.* Their family broke up. *Id.* Nikki sold the house and moved out of state, while the other
17 kids lived with her mom. *Id.* Nikki experienced such overwhelming grief she was prescribed
18 Xanax, upon which she became dependent. FAC ¶ 204. She was unable to work regularly for
19 months. *Id.*

20 III. ARGUMENT

21 A. The Tort of Negligent Infliction of Emotional Distress: An Independent, 22 Stand-Alone Cause of Action.

23 The tort of negligent infliction of emotional distress allows close family members to
24 recover for their own emotional injury from observing a loved one’s “*negligently* inflicted
25 physical injury.” *Hegel v. McMahon*, 136 Wn.2d 122, 126 (1998) (emphasis added). The claim
26 incorporates the negligence concept of foreseeability – albeit narrowed – thus allowing family
27

1 members “recovery for ‘foreseeable’ intangible injuries caused by viewing a physically injured
2 loved one shortly after a traumatic accident.” *Colbert*, 163 Wash. 2d at 49.

3 **B. WPLA “Preemption” Does Not Apply to NIED Claims.**

4 The WPLA is said to “preempt” or “subsume” common-law product-based claims. *See*,
5 *e.g.*, *Taylor v. Intuitive Surgical, Inc.*, 187 Wn.2d 743, 754 (2017); *Macias v. Saberhagen*
6 *Holdings, Inc., et al.*, 175 Wn.2d 402, 409 (2012); *Davis*, 2018 WL 1975685, at *3. In other
7 words, the statute supplies the claims that may be brought against product “manufacturers” or
8 “sellers” – as defined in the WPLA – for product-based harms *to consumers*. However, no court
9 to consider bystander NIED claims in a product liability action has found the claims to be
10 preempted or subsumed by the WPLA.

11 The Washington Supreme Court has most recently addressed the bystander NIED cause
12 of action in a WPLA case in *Colbert v. Moomba Sports, Inc.* There, the father of a girl who
13 drowned after inhaling deadly fumes from a motorboat sued the boat manufacturers and others
14 under the WPLA. 163 Wash.2d at 48. The father also asserted his own NIED claim. *Id.* at 47.
15 In a lengthy decision addressing the nature, scope, and viability of the NIED claim, the Court
16 never entertained WPLA preemption, even though it treated the product manufacturer (Skier’s
17 Choice, Inc.) – subject only to strict liability claims, *see infra* – as the principal defendant. *Id.* at
18 47. Although the Court held the NIED claim was properly dismissed because the father “did not
19 suffer the trauma of seeing the accident or the suffering of his daughter,” *id.* at 62, the Court did
20 not discuss or intimate in any way that the father’s NIED claim was subsumed under the WPLA
21 and thus not available against the product manufacturers as a negligence-based theory of
22 recovery.

23 In *Davis v. Edgewell Pers. Care Brands, LLC*, the court squarely addressed the defendant
24 seller’s and manufacturer’s WPLA preemption challenge to the parents’ NIED claim, which
25 arose from witnessing their daughter’s severe complications of Toxic Shock Syndrome caused
26 by the defendants’ tampon products. No. 2:18-CV-00057-SAB, (E.D. Wash. 2018). Relying on
27

1 *Colbert*, the court refused to find the NIED claims against the seller *or the manufacturer*
 2 preempted by the WPLA. It noted that in *Colbert*, “[t]here is no mention of preemption in the
 3 opinion. Instead, the focus of the opinion was on the foreseeability requirement for a bystander
 4 NIED claim.” 2018 WL 1975685, at *3. *Accord Percival*, 708 F.Supp.2d at 1174-77 (denying
 5 stove and griddle manufacturers’ motion for dismissal of NIED claims of grandchildren who
 6 witnessed grandmother’s clothing on fire; no mention that NIED claims were preempted or
 7 subsumed by strict liability standard governing manufacturer liability under WPLA).

8 Like the NIED claims in *Colbert*, *Davis*, and *Percival*, Nikki’s stand-alone well-pleaded
 9 NIED claim against Amazon exists apart from Plaintiffs’ WPLA claims and is not subsumed or
 10 preempted by those claims.

11 **C. Even If Bystander NIED Claims Were Subsumed By the WPLA—Though**
 12 **They Are Not—Nikki’s Claim Would Not Be Barred Because the Estate’s**
 13 **Claims Against Amazon Sound in Negligence, As Does Her NIED Claim.**

14 The WPLA does not recognize a claim for negligence against *man.facturers*, except for
 15 claims of post-manufacture failure to warn. Instead, “strict liability generally governs product
 16 liability claims” against manufacturers. *Taylor*, 187 Wn.2d at 760-61; *accord Falk v. Keene*
 17 *Corp.*, 113 Wn.2d 654, 653 (1989) (design defect); *Ayers v. Johnson & Johnson Baby Prods.*
 18 *Co.*, 117 Wn.2d 747 (1991) (warnings claim); RCW 7.72.030(1). Thus, negligence claims against
 19 a product *man.facturer* are said to be “preempted” or “subsumed” by the WPLA.

20 On the other hand, the WPLA specifically provides that sellers (other than
 21 manufacturers) *are* subject to liability for *negligence* in the sale of dangerous or not-reasonably-
 22 safe products. RCW 7.72.040(a).¹ Plaintiffs have alleged that Amazon was a seller of Loudwolf

23 ¹RCW 7.72.040(a) provides:

24 A product seller other than a manufacturer is liable to the claimant only if the claimant’s harm was
 25 proximately caused by:

26 (a) The *negligence* of such product seller; or

(b) Breach of an express warranty made by such product seller; or

(c) The intentional misrepresentation of facts about the product by such product seller
 or the intentional concealment of information about the product by such product seller.

27 (Emphasis added.)

1 Sodium Nitrite, and that Amazon was negligent as a seller because the chemical was mislabeled,
2 deceptively promoted, and unreasonably dangerous. *See* FAC ¶¶ 98-99, 236-37.

3 Thus, even if bystander NIED claims were governed by the WPLA, such claims should
4 be permitted to proceed against sellers – like Amazon – since product-based claims against sellers
5 sound in negligence, which is expressly authorized under the WPLA.

6 **CONCLUSION**

7 For the foregoing reasons, the Court should find WPLA preemption does not apply to
8 NIED claims, including Nikki’s.

9
10 DATED this 9th day of May, 2023.

11 **CORRIE YACKULIC LAW FIRM, PLLC**

CA GOLDBERG, PLLC

12 /s/ Corrie Yackulic
13 CORRIE YACKULIC, WSBA 16063
14 110 Prefontaine Place South, Suite 304
15 Seattle, Washington 98104
16 corrie@cjylaw.com

/s/ Carrie Goldberg
17 CARRIE GOLDBERG, *pro hac vice*
18 NAOMI LEEDS, *pro hac vice*
19 HANNAH MEROPOL, *pro hac vice*
20 16 Court Street
21 Brooklyn, New York 11241
22 carrie@cagoldberglaw.com
23 naomi@cagoldberglaw.com
24 hannah@cagoldberglaw.com

25 *Attorneys for Plaintiff,*

26 **CERTIFICATION**

27 I certify this memorandum contains 1,510 words, in compliance with Local Civil Rules.

/s/ Carrie A. Goldberg
Carrie Goldberg

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on May 9, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court’s Electronic Mail Notice List.

/s/ Hannah Meropol

Hannah Meropol

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICOLAS MCCARTHY, et al., Plaintiffs, v. AMAZON.COM, INC., Defendant.	CASE NO. C23-0263JLR MINUTE ORDER
---	--

The following minute order is made by the direction of the court, the Honorable James L. Robart:

Before the court is Defendant Amazon.com, Inc.'s ("Amazon") motion to dismiss Plaintiffs' first amended complaint. (Mot. (Dkt. # 47); *see also* Reply (Dkt. # 54); Resp. (Dkt. # 50).) The court ORDERS the parties to file, by no later than **May 9, 2023**, supplemental briefing addressing whether the Washington Product Liability Act can preempt negligent infliction of emotional distress claims, such as the one brought in this

//

1 | action by Plaintiff Martinique Maynor. (FAC (Dkt. # 15) ¶¶ 248-51.) The parties' briefs
2 | are limited to 1,750 words.

3 | Filed and entered this 4th day of May, 2023.

4 | RAVI SUBRAMANIAN
5 | Clerk of Court

6 | s/ Ashleigh Drecktrah
7 | Deputy Clerk

8 |

9 |

10 |

11 |

12 |

13 |

14 |

15 |

16 |

17 |

18 |

19 |

20 |

21 |

22 |

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICHOLAS MCCARTHY and MARTINIQUE
MAYNOR, individually and NICHOLAS
MCCARTHY as successor-in-interest to ETHAN
MCCARTHY a deceased individual; LAURA
JÓNSSON and STEINN JÓNSSON,
individually, and LAURA JÓNSSON as
successor-in-interest to KRISTINE JÓNSSON, a
deceased individual,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

No. 2:23-cv-00263

DEFENDANT AMAZON.COM,
INC.'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS

NOTE ON MOTION CALENDAR:
APRIL 21, 2023

ORAL ARGUMENT REQUESTED

AMAZON'S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS
(No. 2:23-cv-00263)

161925244

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	2
A. Plaintiffs fail to allege a plausible claim for relief under Washington law.	2
1. Amazon Is Not Subject to Manufacturer Liability.	2
2. Plaintiffs Do Not Plausibly Allege that a Defect Proximately Caused Their Injuries.	2
a. The Danger of Ingesting Sodium Nitrite Was Known and Obvious.	3
b. Loudwolf’s warnings were not a proximate cause of the suicides.	5
3. Plaintiffs fail to state a plausible negligence claim against Amazon.	5
a. Count I fails to state a viable negligence claim under the WPLA.	5
b. Count II fails to state a claim for common-law negligence.	6
i. The WPLA preempts Count II.	6
ii. Count II fails under Washington common law.	7
4. Count I’s review-based claim is preempted by the CDA.	9
5. Count III fails to state a claim.	9
6. This Court should not consider the unreasoned, unpublished King County Superior Court orders.	10
B. If this Court Recognizes a Novel Duty under Washington law, then It Must Dismiss Under Ohio and West Virginia law.	11
CONCLUSION	13

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES

Page(s)

CASES

Anderson v. Dreis & Krump Mfg. Corp.,
739 P.2d 1177 (Wash. Ct. App. 1987).....3

Anderson v. Weslo, Inc.,
906 P.2d 336 (Wash. Ct. App. 1995).....3, 4

Baughn v. Honda Motor Co.,
727 P.2d 655 (Wash. 1986).....3, 4, 5, 9

Beard v. Mighty Lift, Inc.,
224 F. Supp. 3d 1131 (W.D. Wash. 2016).....5

Bernethy v. Walt Failor’s Inc.,
653 P.2d 280 (Wash. 1982).....8, 9

Buttelo v. S.A. Woods-Yates Am. Mach. Co.,
864 P.2d 948 (Wash. Ct. App. 1993).....6, 7

Chen v. D’Amico,
2019 WL 3564648 (W.D. Wash. Aug. 6, 2019).....10

Flowers v. Carville,
310 F.3d 1118 (9th Cir. 2002)10

Gregoire v. City of Oak Harbor,
244 P.3d 924 (Wash. 2010).....8

Knott v. Liberty Jewelry & Loan, Inc.,
748 P.2d 661 (Wash. Ct. App. 1988).....1, 3, 4, 5, 7, 10

Lcpienski v. Centocor, Inc.,
2008 WL 2565065 (D.N.J. June 25, 2008).....7

Louisiana-Pacific Corp. v. ASARCO, Inc.,
24 F.3d 1565 (9th Cir. 1994)7

Martin v. Goodyear Tire & Rubber Co.,
61 P.3d 1196 (Wash. Ct. App. 2003).....12

Mele v. Turner,
720 P.2d 787 (Wash. 1986).....9

AMAZON’S REPLY IN SUPPORT OF ITS
MOTION TO DISMISS - ii
(No. 2:23-cv-00263)

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

	Page(s)
TABLE OF AUTHORITIES (continued)	
<i>Miles v. S.C. Johnson & Son, Inc.</i> , 2002 WL 1303131 (N.D. Ill. June 12, 2002).....	4
<i>Nelson v. Sandvik Mining & Constr., Inc.</i> , 2012 WL 4846251 (W.D. Wash. Oct. 11, 2012).....	7
<i>Rice v. Dow Chem. Co.</i> , 875 P.2d 1213 (Wash. 1994).....	12
<i>Simonetta v. Viad Corp.</i> , 197 P.3d 127 (Wash. 2008).....	4
<i>Spinner Corp. v. Princeville Dev. Corp.</i> , 849 F.2d 388 (9th Cir. 1988)	10, 11
<i>Webstad v. Stortini</i> , 924 P.2d 940 (Wash. Ct. App. 1996).....	1, 3, 6, 7, 8, 9, 10
<i>Woodward v. Taylor</i> , 366 P.3d 432 (Wash. 2016).....	12
STATUTES	
RCW 7.72.010(1).....	7
RCW 7.72.010(3).....	2
RCW 7.72.010(4).....	6, 7
RCW 9A.36.060.....	8
RCW 70.245.200	8
RCW 70.245.200(3).....	8
RULES	
Fed. R. Civ. P. 12(b)(6).....	6, 11
OTHER AUTHORITIES	
2d Rest. Torts § 390	8, 9
Senate Journal, 47th Leg., Reg. Sess., at 635 (Wash. 1981).....	7

INTRODUCTION

1
2 This Court should dismiss the Complaint. Plaintiffs have not identified any appellate
3 authority—in Washington, Ohio, West Virginia, or elsewhere—imposing liability for a
4 purchaser’s intentional misuse of a nondefective product to commit suicide.

5 Counts I and II fail for multiple reasons. Most obviously, Plaintiffs ignore the two
6 Washington precedents foreclosing their claims. The first is *Knott v. Liberty Jewelry & Loan,*
7 *Inc.*, which held that various defendants could not be liable for “the marketing and sale of Saturday
8 Night Specials” unless there was “something wrong with the product.” 748 P.2d 661, 664, 665
9 (Wash. Ct. App. 1988) (cleaned up). Like Plaintiffs here, the *Knott* plaintiffs alleged that the
10 “guns” had “no legitimate purpose,” and that the defendants “knew or should have known these
11 guns would be used to harm innocent parties.” *Id.* at 664; *see* Dkt. #50 at 18 (“Opp. ___”) (claiming
12 sodium nitrite has “no legitimate household purpose” and “Amazon knew [it] was used for
13 suicide”). The *Knott* court rejected their claims under the WPLA, common-law negligence, and
14 other common-law doctrines, because Washington Supreme Court precedent “requires a showing
15 that the injury-causing product was defective before liability can be imposed.” 748 P.2d at 665.
16 That rule compels dismissal. Plaintiffs’ only defect theory is that the Loudwolf sodium nitrite
17 lacked adequate warnings. That theory is foreclosed by Plaintiffs’ own allegations, which make
18 clear that the danger of ingesting the sodium nitrite was both known and obvious. The second case
19 is *Webstad v. Stortini*, which held that “no duty exists to avoid acts or omissions that lead another
20 person to commit suicide.” 924 P.2d 940, 945 (Wash. Ct. App. 1996). *Webstad* undercuts
21 Plaintiffs’ attempt to create a novel common-law duty to ensure that purchasers are not using a
22 nondefective product to commit suicide.

23 Plaintiffs rely on an unpublished, unreasoned decision from King County Superior Court
24 in a case involving sodium nitrite purchased directly from Amazon. *See* Opp. 6, 16-17; Dkt. #52.
25 But Ninth Circuit precedent precludes reliance on unpublished, unreasoned trial-court opinions.
26 What’s more, the Superior Court’s explanation at a later hearing indicates the only reason the court

1 denied the motion was because the sales at issue involved “bundling” of other suicide-related items
2 with the sodium nitrite. *Infra* at 10-11. There was no “bundling” here because Kristine and Ethan
3 bought only the sodium nitrite on Amazon.com. Mot. 3-4 n.1.

4 Count III’s NIED claim should also be dismissed. Plaintiffs do not meaningfully dispute
5 that Count III is derivative. And they do not address Count III’s failure to satisfy the requirement
6 of contemporaneous presence and awareness of the injury-producing event.

7 Finally, choice-of-law precedent requires applying Ohio and West Virginia law to dismiss
8 the claims if this Court were to adopt Plaintiffs’ proposed expansion of Washington tort law.

9 ARGUMENT

10 A. Plaintiffs fail to allege a plausible claim for relief under Washington law.

11 Counts I, II, and III all fail under Washington law for multiple reasons.

12 1. Amazon Is Not Subject to Manufacturer Liability.

13 Plaintiffs do not address the WPLA provisions precluding liability for Amazon regarding
14 Loudwolf’s labeling of its sodium nitrite. *Compare* Mot. 5-7, *with* Opp. 17-18. They effectively
15 abandon their strict-liability claims, stating that “strict products liability” for the Loudwolf sodium
16 nitrite “is not at issue in the instant matter.” Opp. 18. Count I’s strict-products-liability claims
17 against Amazon should be dismissed. *See* Mot. 5 (listing claims).

18 Plaintiffs assert—without citing the Complaint or supporting authority—that
19 “Amazon.com itself is [a] defective” product. Opp. 18. They cannot oppose dismissal by
20 presenting new theories that are not tethered to the Complaint’s allegations. Also, Amazon.com
21 is a website; it is not a “product” because it is not a tangible “object” that is “capable of delivery.”
22 RCW 7.72.010(3).

23 2. Plaintiffs Do Not Plausibly Allege that a Defect Proximately Caused Their 24 Injuries.

25 Counts I and II should be dismissed because Amazon is not liable for its role in selling the
26 Loudwolf sodium nitrite—either under the WPLA or common-law negligence—because

1 Washington law “requires a showing that the injury-causing product was defective before liability
2 can be imposed.” *Knott*, 748 P.2d at 663-65. Plaintiffs acknowledge this rule. *See* Opp. 17. Yet
3 the only defect they claim is the allegedly “inadequate warnings” on Loudwolf’s bottle. *Id.*
4 Plaintiffs’ own allegations establish that the warnings were not defective and were not a proximate
5 cause of the injuries.

6 **a. The Danger of Ingesting Sodium Nitrite Was Known and Obvious.**

7 There was no defective warning because the “danger” was both “obvious” and “known.”
8 *Baughn v. Honda Motor Co.*, 727 P.2d 655, 662 (Wash. 1986). Plaintiffs allege that Kristine and
9 Ethan specifically sought out sodium nitrite for its deadly properties, mixed large—intentionally
10 fatal—doses of it with water, and swallowed it to commit suicide. *See* FAC ¶¶ 106, 170-72, 190-
11 201. As a matter of Washington law, suicide is “a voluntary willful choice” by a person who
12 “*knows* the purpose and the physical effect of the suicidal act.” *Webstad*, 924 P.2d at 945
13 (emphasis added; cleaned up). So Kristine and Ethan necessarily knew of the danger of bodily
14 injury and death. “The risk associated” with intentionally ingesting a large dose of an industrial
15 grade chemical is also “fairly obvious.” *Anderson v. Weslo, Inc.*, 906 P.2d 336, 339 (Wash. Ct.
16 App. 1995). Plaintiffs’ counter-arguments are unavailing.

17 First, Plaintiffs try to distinguish *Baughn*, *Anderson*, and *Thongchoom* as cases that only
18 addressed “strict products liability.” Opp. 18. Not true. *Baughn* rejected negligence-based claims.
19 727 P.2d at 659, 661-62. So did *Anderson*, 906 P.2d at 339. The distinction is also irrelevant.
20 The general principle, “under both negligence and strict liability theories,” is that “no warning
21 need be given where the danger is obvious or known to the operator.” *Anderson v. Dreis & Krump*
22 *Mfg. Corp.*, 739 P.2d 1177, 1182 (Wash. Ct. App. 1987). So precedent defining an “obvious
23 danger” is equally applicable to both strict-liability and negligence-based claims.

24 Plaintiffs also assert these prior cases did not involve a defendant that sold “the product
25 after it knew it harmed children.” Opp. 18. Plaintiffs’ insinuation that a product is defective
26 simply because individuals are “harmed” when misusing it, *id.*, is contrary to *Baughn*’s holding

1 that “liability is not imposed simply because a product causes harm,” even with “products used by
2 children,” 727 P.2d at 660, 667. Hence, knowingly selling products that children frequently injure
3 themselves using—such as mini-trail bikes, BB guns, and trampolines—is not necessarily
4 negligent. *Id.* at 661, 663; *Anderson*, 906 P.2d at 339. Additionally, *Knott* rejected claims based
5 on “knowledge” that the product would be misused “to harm innocent parties” and had “no
6 legitimate purpose.” 748 P.2d at 664.

7 Second, Plaintiffs assert that whether “the warnings were adequate or the risks obvious and
8 known ... are issues of fact and not law.” Opp. 18. Not so. Washington courts often hold, “as a
9 matter of law,” that defendants “provided sufficient warnings.” *Simonetta v. Viad Corp.*, 197 P.3d
10 127, 132 (Wash. 2008) (collecting cases). The same is true for whether a danger is “obvious or
11 known,” which bears on the legal question of “duty.” *Anderson*, 906 P.2d at 342. Tellingly,
12 Plaintiffs do not attempt to identify any factual allegations that plausibly suggest the danger of
13 ingesting an industrial grade chemical to commit suicide was neither known nor obvious.

14 Finally, Plaintiffs mistakenly contend that whether “the risks” were “obvious and known”
15 is “not appropriate for dispute in a motion to dismiss.” Opp. 18. Dismissal is appropriate because
16 Plaintiffs’ own allegations foreclose the issue. *See supra* at 3. The most on-point precedent is
17 *Miles*, where the plaintiffs whose three-year-old suffered injuries from drinking Drano requested
18 “leave to add to the complaint” a claim for “strict liability.” *Miles v. S.C. Johnson & Son, Inc.*,
19 2002 WL 1303131, at *1 (N.D. Ill. June 12, 2002). The court determined the proposed amendment
20 was “futile” because “[t]he dangers of ingesting Drano are obvious to the ordinary consumer, who
21 presumably purchases the product with knowledge of—and in fact because of—its caustic
22 properties.” *Id.* at *4-5. It found “no support” for the plaintiffs’ position that a chemical “product
23 which is intended to be caustic” can be deemed defective because “it causes injury when ingested.”
24 *Id.* at *5. The same dynamic applies here.

1 Plaintiffs' own allegations preclude them from "showing that the injury-causing product
2 was defective" and therefore no "liability can be imposed" here. *Knott*, 748 P.2d at 665. Counts
3 I and II should be dismissed.

4 **b. Loudwolf's warnings were not a proximate cause of the suicides.**

5 Plaintiffs do not dispute that that Kristine and Ethan acted "without regard to" the bottle's
6 warnings and instructions. Mot. 10 (cleaned up). They cite several inapposite decisions,
7 addressing third-party conduct as a "superseding" cause, and argue that misuse was "foreseeable."
8 Opp. 19-20. Their argument is irrelevant. "The test for foreseeability," with failure-to-warn
9 claims, "is not the unusualness of the intervening act." *Beard v. Mighty Lift, Inc.*, 224 F. Supp. 3d
10 1131, 1137 (W.D. Wash. 2016) (Robart, J.). Because "a seller may reasonably assume that the
11 user of its product will read and heed the warnings ... on the product," a user's "refusal to heed a
12 warning" is "not reasonably foreseeable." *Id.* at 1138 (cleaned up). That principle applies here.

13 Plaintiffs contend that proximate cause requires "expert testimony." Opp. 20. But *Baughn*
14 rejected the notion that "experts testif[ying] that Honda's advertising about the mini-trail bike was
15 inadequate" created a jury question on the factual prong of proximate cause. 727 P.2d at 665.
16 Also, expert testimony is irrelevant for legal proximate cause. *Baughn* held that "the boys' misuse
17 of the mini-trail bike" precluded "a finding" that the lack of "additional warnings" or other
18 supposed defects were a "legal caus[e]" of the injuries. *Id.* at 665-66.

19 **3. Plaintiffs fail to state a plausible negligence claim against Amazon.**

20 Plaintiffs' negligence-based claims in Counts I and II fail for additional reasons.

21 **a. Count I fails to state a viable negligence claim under the WPLA.**

22 Plaintiffs make no effort to defend Count I's seller-negligence claim under the WPLA. *See*
23 FAC ¶¶ 241.a-d, g, k. Instead, they focus exclusively on Count II's common-law negligence claim.
24 *See* Opp. 20-24. Count I's seller-negligence claims should be dismissed based on "[t]he text,
25 history, and purpose of the WPLA." Mot. 11.

1 **b. Count II fails to state a claim for common-law negligence.**

2 **i. The WPLA preempts Count II.**

3 Plaintiffs' own argument inadvertently confirms that Count II is preempted. They claim
4 Count II seeks to hold Amazon liable for the "services" it "offered" that enabled Loudwolf "to get
5 the suicide chemical into the hands of" Kristine and Ethan. Opp. 26. Loudwolf got the sodium
6 nitrite to them through a commercial sale. *See, e.g.*, FAC ¶ 213. So Plaintiffs seek to hold Amazon
7 liable for its role in facilitating the sale of sodium nitrite. That is a claim based on "marketing,"
8 as it asserts liability based on Amazon's role in the "process of promoting and selling" the sodium
9 nitrite, which means Count II is "subsumed under the WPLA." Mot. 11 (cleaned up).

10 Plaintiffs' legislative-history argument is a red herring. There cannot be evidence that "the
11 legislature intended to address claims" based on "self-harm" using a product, Opp. 26, because
12 there was "no duty" under Washington common law "to avoid acts or omissions that lead another
13 person to commit suicide," *Webstad*, 924 P.2d at 945. What matters—and is undisputed—is the
14 Legislature's "intent to limit, rather than to expand," liability. Mot. 13 (cleaned up).

15 Plaintiffs accuse Amazon of "gamesmanship" for not conceding that it is a "seller" of third-
16 party products. Opp. 25. There is no "gamesmanship" exception to Rule 12(b)(6). Nor is there
17 "gamesmanship" here. WPLA preemption does not depend on a defendant's "seller" status. The
18 Act supplants "any claim or action brought for harm caused by the ... marketing ... of the relevant
19 product" and includes "any claim or action previously based on ... negligence" or "any other
20 substantive legal theory." RCW 7.72.010(4) (emphasis added). Preemption is not limited to
21 claims against manufacturers and sellers. Quite the opposite, the WPLA's "statutory scheme ...
22 reflect[s] a clear desire to limit the scope of defendants who are subject to products liability
23 claims." *Buttelo v. S.A. Woods-Yates Am. Mach. Co.*, 864 P.2d 948, 952 (Wash. Ct. App. 1993).
24 The WPLA "differentiates" actual sellers from finance lessors and other "conduits in the chain of
25 distribution," so that claims against those "conduits" are preempted even though they cannot be
26 liable as "sellers" under the Act. *Id.* (citing RCW 7.72.010(1)). Hence, a claim against the

1 company that “installed” the product is preempted, even though it is neither the “manufacturer”
2 nor “the product seller.”¹ *Nelson v. Sandvik Mining & Constr., Inc.*, 2012 WL 4846251, at *1, 3-
3 4 (W.D. Wash. Oct. 11, 2012). Plaintiffs’ assertion that defendants who are not sellers “cannot in
4 good faith claim entitlement to WPLA preemption,” Opp. 25, is contrary to “the statutory scheme”
5 of the WPLA. *Buttelo*, 864 P.2d at 952.

6 Finally, Plaintiffs resist preemption based on a misreading of *Louisiana-Pacific Corp. v.*
7 *ASARCO, Inc.*, 24 F.3d 1565 (9th Cir. 1994). See Opp. 26-27. *ASARCO* held that an “intentional
8 nuisance claim” falls under the WPLA’s exclusion for “claims based on ‘intentionally caused
9 harm.’” 24 F.3d at 1584 (quoting RCW 7.72.010(4)). Selling a product—even with “knowledge”
10 some will use it “to harm”—is not intentionally causing harm for purposes of the WPLA. *Knott*,
11 748 P.2d at 664 (dismissing WPLA claim). The exception applies only to “intentional tort[s],”
12 and Plaintiffs allege none. Senate Journal, 47th Leg., Reg. Sess., at 635 (Wash. 1981).

13 **ii. Count II fails under Washington common law.**

14 WPLA preemption aside, Count II fails under Washington common law. Again, Plaintiffs
15 ignore *Webstad*. There, the plaintiff sought to hold the defendant liable on the theory his “behavior
16 caused” the decedent’s suicide by affirmatively “engag[ing] in activities ... that exacerbated [her]
17 fragile mental state.” 924 P.2d at 946. The court rejected that theory, holding that “no duty exists”
18 under Washington common law “to avoid acts or omissions that lead another person to commit
19 suicide unless those acts or omissions directly or indirectly deprive that person of the command of
20 his or her faculties or the control of his or her conduct.” *Id.* at 945. There is no allegation that
21 Kristine or Ethan lacked such “command” or “control,” *id.*, or that Amazon caused any such
22 condition. So there is no duty here.

23 _____
24 ¹ Precedent applying similar state product-liability statutes is in accord. For instance, common-
25 law claims against a research-and-development company are “subsumed by” the New Jersey
26 Product Liability Act, even though, as “[n]either a ‘seller’ or ‘manufacturer,’” it is “not a proper
defendant under the NJPLA.” *Lopienski v. Centocor, Inc.*, 2008 WL 2565065, at *1 n.2, *4
(D.N.J. June 25, 2008).

1 Plaintiffs’ attempt to justify a novel duty—without grounding in an actual statutory
2 violation—is unavailing. Plaintiffs repeatedly invoke Washington’s statute criminalizing
3 knowingly aiding a suicide attempt. *See* Opp. 21-23. But they overlook *Webstad*’s rejection of
4 RCW 9A.36.060 as a basis for imposing a common-law duty of care. *See* 924 P.2d at 946. Also,
5 they fail to justify their use of statutes with heightened *mens rea* requirements—actual knowledge
6 in RCW 9A.36.060 and willfulness in RCW 70.245.200—which reflect a clear policy choice
7 precluding those statutes as a basis for implying a negligence-based duty of care. *See* Mot. 15.
8 Plaintiffs fail to cite a single Washington precedent—or any precedent for that matter—using a
9 criminal statute with a heightened *mens rea* to infer a novel duty of care. This Court should not
10 be the first. Additionally, the language in the Death with Dignity Act stating that it “does not limit
11 further liability for civil damages,” RCW 70.245.200(3), simply reflects the fact that hospitals can
12 be civilly liable for a patient’s death—including for “suicide” where “a special relationship” exists,
13 *Gregoire v. City of Oak Harbor*, 244 P.3d 924, 929 (Wash. 2010). There is no such special
14 relationship here, and therefore no “duty” to account for the “self-inflicted harm” of suicide. *Id.*

15 Plaintiffs misread the pre-WPLA decision in *Bernethy v. Walt Failor’s Inc.*, 653 P.2d 280
16 (Wash. 1982). *See* Opp. 17, 21-23. They characterize *Bernethy* as “looking to criminal statutes
17 that prohibited similar conduct and basing a tort duty on that public policy.” Opp. 17. Not so.
18 Because a duty could not “be predicated on violation of a statute,” the court turned to “[c]ommon
19 law principles of negligence” and adopted Section 390 of the Second Restatement of Torts—not a
20 novel statute-derived duty—as the basis of “the duty owed by respondent.” 653 P.2d at 283.
21 What’s more, adopting § 390 was a modest extension of Washington common law, which
22 “previously recognized the analogous cause of action for the negligent entrustment of a motor
23 vehicle to an intoxicated person.” *Id.* Plaintiffs’ inability to cite any post-WPLA case recognizing
24 a negligent-entrustment claim for selling a product, or inferring a common-law duty from the
25 general thrust of statutes, confirms they misread *Bernethy*.

1 Plaintiffs’ defense of their negligent-entrustment theory also fails. For starters, they do not
2 identify any precedent—in Washington or elsewhere—recognizing a negligent-entrustment claim
3 where the trustee intentionally injured himself by misusing the chattel. The doctrine applies
4 where the chattel is “use[d] in a manner involving unreasonable *risk* of bodily harm,” not in a
5 manner *intending* bodily harm. 2d Rest. Torts § 390 (emphasis added). Nor do Plaintiffs account
6 for *Bauhgn*’s teaching that a “sufficient” warning precludes a negligent-entrustment theory. 727
7 P.2d at 663. And their failure to identify a single post-WPLA case recognizing a negligent-
8 entrustment claim based on the sale of a product confirms that the WPLA preempts such claims.

9 Plaintiffs attempt to seize on dicta from *Mele v. Turner*. See Opp. 24 (citing 720 P.2d 787
10 (Wash. 1986)). The *Mele* court “assume[d] that [was] evidence of the plaintiff’s ‘incompetency’
11 to operate a rotary lawn mower” and affirmed on the separate ground that there was “a total dearth
12 of evidence that the defendants knew or should have known of that incompetency.” *Id.* The court
13 had no reason to decide what kind of incompetency is necessary for a negligent-entrustment claim
14 based on an injured trustee. And Plaintiffs’ assertion that committing suicide qualifies as
15 “incompetency,” Opp. 24, is contrary to well-established Washington law establishing suicide as
16 “a voluntary willful choice,” *Webstad*, 924 P.2d at 945.

17 **4. Count I’s review-based claim is preempted by the CDA.**

18 Plaintiffs argue against CDA immunity by mischaracterizing Amazon’s argument as
19 seeking complete immunity. See Opp. 27-28. Amazon argues only that Count I’s review-based
20 claim is preempted. See Mot. 16 (citing FAC ¶ 241.j). And on-point precedent supports that
21 argument. See *id.*

22 **5. Count III fails to state a claim.**

23 Count III must also be dismissed. Plaintiffs address Amazon’s first argument based on the
24 “collateral” nature of the NIED claim—but offer no explanation as to how Count III is not
25 derivative of Count II. Compare Mot. 25, with Opp. 24. And Plaintiffs overlook Amazon’s second
26

1 argument that Count III does not meet Washington law’s requirement that the plaintiff “be present
2 at the scene of the injury-producing event at the time it occurs.” Mot. at 25 (cleaned up).

3 **6. This Court should not consider the unreasoned, unpublished King County
4 Superior Court orders.**

5 Plaintiffs wrongly urge this Court to rely on the unreasoned, unpublished King County
6 Superior Court order denying Amazon’s motion to dismiss in *Scott v. Amazon.com, Inc.* See
7 Opp. 6, 16-17; Dkt. #52. That order has no weight here. Ninth Circuit precedent holds that federal
8 courts should “attach no weight to unreasoned conclusions in unpublished state decisions” when
9 resolving questions of state law. *Flowers v. Carville*, 310 F.3d 1118, 1125 (9th Cir. 2002). “The
10 unreported decision of a state trial court” can be relied on only “to the extent its reasoning is
11 persuasive.” *Spinner Corp. v. Princeville Dev. Corp.*, 849 F.2d 388, 390 n.2 (9th Cir. 1988). So
12 an order that “fail[s] to offer any reasoning” cannot have persuasive weight. *Flowers*, 310 F.3d at
13 1125. Instead of reflexively following the *Scott* order, this Court “is obligated to follow the
14 decisions of the state’s intermediate appellate courts,” including *Knott*, *Webstad*, and the other
15 Washington precedents cited by Amazon. *Chen v. D’Amico*, 2019 WL 3564648, at *4 (W.D.
16 Wash. Aug. 6, 2019) (Robart, J.) (cleaned up).

17 Plaintiffs also cite the Superior Court’s order refusing to grant interlocutory review.
18 See Opp. 16; see also Dkt. #55, Miller Decl., Ex. A. That unreasoned order has no weight
19 here. What’s more, Plaintiffs neglect to mention that, at the hearing on the certification
20 motion, the Superior Court acknowledged that “[this] is an appropriate case for ... discretionary
21 review,” but denied certification because the “two questions” articulated in Amazon’s motion
22 were “not my questions.” See *id.*, Ex. B at 7, 11, 37, 39. Additionally, the Superior Court
23 acknowledged that about “90 percent” or “95 percent” of the complaint—including the claims
24 based on the “label warning”—was not legally viable. *Id.* at 8, 17. The court explained that
25 it did not dismiss the nonviable claims because Amazon sought dismissal of “the whole
26 complaint” without alternatively

1 requesting seriatim dismissal of particular claims.² *Id.* at 17. The court explained “that there’s a
2 narrow part of th[e] complaint that survives a motion to dismiss.” *Id.* at 9. That “thread,” which
3 the court estimated was about “five percent” of the complaint, involved the alleged “bundling” of
4 additional products that the decedents simultaneously purchased on Amazon.com along with the
5 sodium nitrite: “the Tagamet” acid reducer for Tyler Muhleman, and “the scale” by Mikael Scott.
6 *Id.* at 7, 9, 17, 33. That makes the *Scott* order inapplicable here because Kristine and Ethan
7 purchased the sodium nitrite separately, without “bundling” of other products. *See* Mot. 3-4 n.1.
8 So, the available “reasoning”—which came later in a hearing on certifying for interlocutory
9 appeal—precludes relying on the order to deny the motion here. *Cf. Spinner Corp.*, 849 F.2d at
10 390 n.2.

11 **B. If this Court Recognizes a Novel Duty under Washington law, then It Must Dismiss**
12 **Under Ohio and West Virginia law.**

13 As Amazon pointed out, if this Court were to adopt one of Plaintiffs’ novel theories of
14 liability under Washington law, it would create a conflict with the laws of Ohio and West Virginia.
15 *See* Mot. 22. Plaintiffs do not dispute that the substantive laws of Ohio and West Virginia squarely
16 foreclose their claims.³ *Compare* Mot. 18-25, with *Opp.* 10-12. Nor do they address the choice-
17 of-law precedents from the Washington Supreme Court and Ninth Circuit holding that, in product-
18 liability cases, courts should apply the substantive liability law of the state where the product was
19 sold and shipped, the plaintiff resides, and the injury occurred. *See* Mot. 22 (collecting cases). So
20 if this Court were to adopt one of Plaintiffs’ novel theories of liability under Washington law, it
21 would create a conflict requiring application of Ohio and West Virginia law.

22 Plaintiffs wrongly assert that Amazon had the burden to identify specific conflicts in its
23 opening brief. *See Opp.* 11-12. Washington precedent holds that “the court”—not a party—“must

24 ² This Court can obviously grant partial dismissal under federal Rule 12(b)(6).

25 ³ Plaintiffs claim Amazon’s application of *Landis* “assumes a fact outside” the Complaint.
26 *Opp.* 12. But the Complaint alleges that materially altering sodium nitrite by “dissolving [it] in
water” makes it easier to swallow and keep down. FAC ¶¶ 107, 143.

1 identify an actual conflict of law” at the “the first step.” *Woodward v. Taylor*, 366 P.3d 432, 435
2 (Wash. 2016). And here, a conflict does not exist, and cannot be identified, unless this Court
3 adopts one of Plaintiffs’ novel theories for expanding Washington tort law. For instance, if this
4 Court were to (incorrectly) accept Plaintiffs’ argument that Amazon has no “entitlement to WPLA
5 preemption,” Opp. 25, that would squarely conflict with the Ohio Supreme Court’s decision that
6 the OPLA preempts claims against Amazon in third-party-seller cases, *see* Mot. 20.

7 Plaintiffs’ other choice-of-law arguments are meritless. They characterize the place of
8 injury as “not foreseeable” or “fortuitous.” Opp. 13-14. But the place of injury “is not fortuitous”
9 because the decedents “established a relationship with the [allegedly] defective product in the
10 home state” and were injured there. *Martin v. Goodyear Tire & Rubber Co.*, 61 P.3d 1196, 1200
11 n.2 (Wash. Ct. App. 2003). Plaintiffs mischaracterize Amazon’s argument as invoking “Ohio’s
12 limits on wrongful death damages” and cite a pre-WPLA decision addressing damage limits.
13 Opp. 15 (citation omitted). Amazon’s arguments are based on substantive liability rules. *See*
14 Mot. 18-24. So the choice-of-law precedents Amazon cites governs. *See* Mot. 21-22. And
15 Plaintiffs’ concern about “a patchwork of laws,” Opp. 16, contravenes precedent applying the
16 place of injury’s substantive law to “achieve[] a uniform result for injuries caused by products
17 used in the state.” *Rice v. Dow Chem. Co.*, 875 P.2d 1213, 1219 (Wash. 1994)

18 Finally, this Court should reject Plaintiffs’ invocation of the choice-of-law provision in
19 Amazon’s *Conditions of Use*. Opp. 13. Plaintiffs’ prior, binding pleading “expressly disaffirms
20 any and all User Agreements with Amazon.” FAC ¶¶ 37, 44. The choice-of-law provision applies
21 to “dispute[s] between [the user] and Amazon,” not disputes between the user’s parents and
22 Amazon.⁴ Plaintiffs also cannot invoke the *Conditions of Use* because the decedents violated the
23 precondition that minors “us[e] the Amazon Services” with “involvement of a parent or guardian.”
24

25 _____
26 ⁴ <https://www.amazon.com/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQ>
XXM.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CONCLUSION

This Court should grant Amazon’s motion and dismiss the Complaint.

Dated: April 21, 2023

I certify that this motion contains 4,198 words, in compliance with the Local Civil Rules.

By: s/ Gregory F. Miller
Gregory F. Miller, Bar No. 56466
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone: +1.206.359.8000
GMiller@perkinscoie.com

Steven Williamson, Bar No. 343842
Perkins Coie LLP
1888 Century Park East, Suite 1700
Los Angeles, California 90067-1721
Telephone: +1.310.788.9900
SWilliamson@perkinscoie.com
Pro hac vice application pending

Attorneys for Defendant Amazon.com, Inc.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

THE HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICHOLAS MCCARTHY and
MARTINIQUE MAYNOR, individually and
NICHOLAS MCCARTHY as successor-in-
interest to ETHAN MCCARTHY a deceased
individual; LAURA JÓNSSON and STEINN
JÓNSSON, individually, and LAURA
JÓNSSON as successor-in-interest to
KRISTINE JÓNSSON, a deceased individual,

Plaintiffs,

- vs -

AMAZON.COM, INC, a Delaware
corporation,

Defendant.

No. 2:23-cv-00263

DECLARATION OF CORRIE J.
YACKULIC

I, Corrie J. Yackulic, hereby declare as follows:

1. I am an attorney for plaintiffs named above, base this declaration upon personal
knowledge, and am competent to testify to the matters set forth herein.

DECLARATION OF CORRIE J. YACKULIC
(No. 14-2-31832-4 SEA) - 1 of 2


C.A. GOLDBERG
PLLC, NEW YORK
16 COURT STREET, BROOKLYN, NY 11241 | 646.666.8908
WWW.CAGOLDBERGLAW.COM

CORRIE YACKULIC LAW FIRM PLLC
110 PREFONTAINE PLACE SOUTH, SUITE 304
SEATTLE, WASHINGTON 98104
TELEPHONE: (206) 787-1915
FACSIMILE: (206) 299-9725

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

2. Attached as EXHIBIT 1 is a true and correct copy of the Order Denying Defendant's CR 12(b)(6) Motion to Dismiss in the *Scott v. Amazon.com, Inc.*, King County Cause No. 22-2-01739-2 SEA, signed by Judge Josephine Wiggs on December 30, 2022, and filed that date.

I hereby declare under penalty of perjury under the laws of the State of Washington and the United States of America, that the foregoing is true and correct. Executed this 19th day of April, 2023 in Seattle, Washington.



Corrie J. Yackulic, WSBA No. 16063
110 Prefontaine Place S. Ste. 304
Seattle, WA 98104
Tel. 206-787-1915
corrie@cjylaw.com

EXHIBIT 1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

**IN THE SUPERIOUR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY**

RUTH SCOTT, individually, and as personal
representative of the ESTATE OF MIKAEL
SCOTT, a deceased individual; JEFF
MUHLEMAN, individually, and as personal
representative of the ESTATE OF TYLER
MUHLEMAN, a deceased individual; and
CINDY CRUZ, individually,

Plaintiffs,

vs.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

Case No.: 22-2-01739-2 SEA

**ORDER DENYING DEFENDANT'S
CR 12(b)(6) MOTION TO DISMISS**

Amended as to Case Caption

THIS MATTER is before the Court on Defendant's CR 12(b)(6) Motion to Dismiss. The Court is familiar with the records and files in this matter, heard oral argument and has considered the Original and Amended Complaints as well as the following pleadings:

1. Defendant's Motions to Dismiss and Declaration of Brendan Murphy [Docket Nos. 16, 17 and 35];
2. Plaintiffs' Oppositions [Docket Nos. 19 and 37] ; and,
3. Defendant's Replies [Docket Nos. 23 and 38].

It is hereby **ORDERED, ADJUGED and DECREED**

Defendant's CR 12(b)(6) Motion to Dismiss is DENIED.

Order Denying Defendant's
CR 12(b)(6) Motion to Dismiss

1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Dated: 12/30/22

Electronic Signature Attached
JUDGE Wiggs

Order Denying Defendant's
CR 12(b)(6) Motion to Dismiss
2

King County Superior Court
Judicial Electronic Signature Page

Case Number: 22-2-01739-2
Case Title: SCOTT ET AL VS AMAZON.COM INC
Document Title: ORDER
Signed By: Josephine Wiggs
Date: December 30, 2022



Judge: Josephine Wiggs

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 909C46BF1D9D217C3C0226B7205F26FD0A000719
Certificate effective date: 4/26/2022 11:56:20 AM
Certificate expiry date: 4/26/2027 11:56:20 AM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Josephine Wiggs:
dum3wMmN7BGboJP7fRvR+g=="

Page 3 of 3

THE HONORABLE JAMES L. ROBERT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICHOLAS MCCARTHY and
MARTINIQUE MAYNOR, individually and
NICHOLAS MCCARTHY as successor-in-
interest to ETHAN MCCARTHY a deceased
individual; LAURA JÓNSSON and STEINN
JÓNSSON, individually, and LAURA
JÓNSSON as successor-in-interest to
KRISTINE JÓNSSON, a deceased individual,

Plaintiffs,

- vs -

AMAZON.COM, INC, a Delaware
corporation,

Defendant.

No. 2:23-cv-00263

PLAINTIFFS' OPPOSITION TO
DEFENDANT AMAZON.COM,
INC.'S MOTION TO DISMISS

NOTE ON MOTION CALENDAR:
APRIL 21, 2023

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

INTRODUCTION 6

BACKGROUND 7

 A. Facts 7

 B. Procedural History 9

LEGAL STANDARD 9

ARGUMENT 10

 A. Washington law applies to all of Plaintiffs’ claims. 10

 1. Amazon points to no “actual conflict” in law. 10

 2. Washington has the “most significant relationship” to Amazon’s injury-causing conduct. 12

 B. Washington State does not grant Rule 12 motions where plaintiffs properly plead an online marketplace intentionally sold products used for suicide..... 16

 C. Plaintiffs state a claim for products liability under Washington law. 17

 1. Amazon owed a duty to exercise reasonable care and to not sell defective products. 17

 2. Amazon breached its duty by selling Sodium Nitrite to minors Kristine and Ethan when Amazon knew it would likely be used for suicide. 18

 3. Amazon’s breach was a proximate cause in both Kristine’s and Ethan’s deaths. 19

 D. Plaintiffs state a claim for negligence under Washington law. 20

 1. Amazon owed a common-law duty to exercise reasonable care to not aid with a suicide and to not supply a substance to a person it knew or should have known would use the substance for self-harm..... 21

 2. Amazon’s duty arguments to the contrary fail. 22

 E. Plaintiff Nikki Maynor’s negligent infliction of emotional distress claim survives because her other claims survive. 24

 F. WPLA preemption does not apply. 24

 1. Amazon denies it’s a seller. 25

 2. Amazon’s aid in suicides goes beyond product-based activity. 25

 3. Amazon misapplies *Louisiana-Pac. Corp. v. ASARCO Inc.* 26

 G. Amazon is not entitled to Section 230 immunity. 27

CONCLUSION 29

TABLE OF AUTHORITIES

Cases

Albertson v. State, 191 Wn. App. 284 (2015)19
A.M. v. Omegle, 614 F. Supp. 3d 814 (D. Or. 2022).....28
Anderson v. Weslo, Inc., 79 Wn. App. 829 (1995).....18
Ashcroft v. Iqbal, 556 U.S. 662 (2009).....10
Barnes v. Yahoo!, Inc., 570 F.3d 1096 (9th Cir. 2009)27, 28
Baughn v. Honda Motor Co., Ltd., 107 Wn.2d 127 (1986).....17, 18
Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007).....10
Bernethy v. Walt Failor’s, Inc., 97 Wn.2d 929 (1982).....17, 21, 22, 23
Bradley v. Am. Smelting & Refining Co., 104 W.2d 677 (1985).....26
Centurion Procs. III v. Chi. Title Ins., 186 Wn.2d 58 (2016)17
Cramer v. Dep’t of Highways, 73 Wn. App. 516 (1994)19
Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 104 (9th Cir. 2003)29
Erickson v. Pardus, 551 U.S. 89 (2007).....10
Erwin v. Cotter Health Ctrs., 161 Wn.2d 676 (2007)11
F.T.C. v. Accusearch Inc., 570 F.3d 1187 (10th Cir. 2009)27
Gall v. McDonald Indus., 84 Wn. App. 194 (1996).....19
Garner v. Amazon.com, Inc., 603 F.Supp.3d 985 (W.D. Wash. 2022)13, 15
Gonzalez v. Google LLC, 2 F.4th 871 (9th Cir. 2021)27
Hartley v. State, 103 Wn.2d 768 (1985).....19
Hue v. Farmboy Spray Co., 127 Wn.2d 67 (1995).....25
Hurtado v. Superior Court, 11 Cal.3d 574 (1974)15
Interpipe Contracting, Inc. v. Becerra, 898 F.3d 879 (9th Cir. 2018)18
Johnson v. Spider Staging Corp., 87 Wn.2d 577 (1976).....15
Karpenski v. Am. Gen. Life Companies, LLC, 999 F. Supp. 2d 1235 (W.D. Wash. 2014).....11

1 *Kelley v. Microsoft Corp.*, 251 F.R.D. 544 (W.D. Wash. 2008)14, 15
 2 *Lee v. City of Los Angeles*, 250 F.3d 668 (9th Cir. 2001)12
 3 *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021)28
 4 *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d 940 (9th Cir. 2005)10
 5 *Louisiana-Pac. Corp. v. ASARCO Inc.*, 24 F.3d 1565 (9th Cir. 1994). 26-27
 6 *Mele v. Turner*, 106 Wn.2d 73 (1986).....24
 7 *Merriman v. Am. Guarantee. & Liab. Ins. Co.*, 198 Wn. App. 594 (2017)17, 22
 8 *Oberdoif v. Amazon.com, Inc.*, 930 F.3d 136 (3d Cir. 2019).....25, 28
 9 *Patton v. Cox*, 276 F.3d 493 (9th Cir. 2002)10
 10 *Reich v. Purcell*, 67 Cal.2d 556 (1967)15
 11 *Ricjas v. Grant Cnty. Pub. Util. Dist.*, 117 Wn. App. 694 (2003)19
 12 *Schmahl v. Macy's Dep't. Stores, Inc.*, No. CV-09-68-EFS, 2010 WL 3061526 (E.D. Wash.
 13 July 30, 2010) 14-15
 14 *Scott v. Amazon.com, Inc.* No. 22-2-01739-2 SEA (Super. Ct. Wash., King Cnty., Dec. 30,
 2022)..... 6, 16-17
 15 *Smith v. Acme*, 16 Wn. App. 389 (1976).....19
 16 *Somers v. Apple, Inc.*, 729 F.3d 953 (9th Cir. 2013)10
 17 *Southwell v. Widing Transp., Inc.*, 101 Wn.2d 200 (1984)13
 18 *Taggart v. State*, 118 Wn.2d 195 (1992).....19
 19 *Taylor v. Stevens Cnty.*, 111 Wn.2d 159 (1988).....17
 20 *Them v. ManhattanLife Assurance Co. of Am.*, No. 19-CV-06034-RBL, 2020 WL 4788022
 (W.D. Wash. Aug. 18, 2020).....11
 21 *Thongchoom v. Graco Children's Products, Inc.*, 117 Wn. App. 299 (2003)18
 22 *Tilden-Coil Constructors, Inc. v. Landmark Am. Ins. Co.*, 721 F. Supp. 2d 1007 (W.D. Wash.
 23 2010)..... 10-11
 24 *Tincani v. Inland Empire Zool. Soc'y*, 124 Wn.2d 121 (1994)17, 19
 25 *United States v. Boggi*, 74 F.3d 470 (3d Cir.1996)12
 26 *United States v. Bohn*, 956 F.2d 208 (9th Cir.1992)12
 27 *Veridian Credit Union v. Eddie Bauer, LLC*, 295 F. Supp. 3d 1140 (W.D. Wash. 2017)14

1 *Viglis et al., v. Amazon.com*, No. 23-2-05719-8 (Super. Ct. Wash. King Cnty., Mar. 30,
2023).....16

2 *Washington Water Power Co. v. Graybar Elec. Co.*, 112 Wn.2d 847 (1989)26

3 *Woodward v. Taylor*, 184 Wn.2d 911 (2016).....11, 12, 14

4 **Statutes and Rules**

5 47 U.S.C. § 23017, 27, 28

6 Fed. R. Civ. P. 12(b)(2)9

7 Fed. R. Civ. P. 12(b)(6)9, 10

8 Laws of 1981, ch. 27 § 126

9 RCW 70.24521

10 RCW 7.72.010(4)6, 25

11 RCW 7.72.040(1)(a).....17

12 RCW 9A.36.0607, 21, 22, 23

13 Restatement (Second) of Conflict of Laws § 6 (1971).....12, 14

14 Restatement (Second) of Conflict of Laws § 145 (1971).....12, 13

15 Restatement (Second) of Conflict of Laws § 146 (1971).....12

16 Restatement (Second) of Torts § 286 (1965) 22-23

17 Restatement (Second) of Torts § 390 (1965) 21-22, 23

18
19
20
21
22
23
24
25
26
27

INTRODUCTION

1
2 The Court should deny Defendant Amazon.com, Inc.’s (“Amazon”) motion to dismiss
3 (Dkt. #47, “Amazon’s Motion”). Washington’s largest company knowingly provided a suicide
4 product to minors at the height of the coronavirus pandemic. Amazon does not – and cannot –
5 deny it was repeatedly informed that it was peddling a product regularly used for suicide and
6 without any other household utility. Amazon now attempts to skirt liability after providing
7 Loudwolf Sodium Nitrite, a 99.6% pure chemical that when mixed with a cup of water causes an
8 excruciating death within 20 minutes, to 16-year-old Kristine and 17-year-old Ethan resulting in
9 their immediate death.

10 Amazon asks this court for immunity on the basis that courts “do not impose liability for
11 the sale of a non-defective product to legally competent persons who intentionally misuse that
12 product to commit suicide.”

13 The Loudwolf Sodium Nitrite products Amazon sold to Ethan and Kristine were not
14 reasonably safe.¹ Amazon sold them to minors who by definition are not legally competent. At
15 the time of sale, Amazon knew the product’s regular use was for suicide. Amazon’s malfeasance
16 involved not only selling the product but conduct well beyond ordinary commercial behavior
17 such as collecting and deliberately withholding information from Loudwolf about the product’s
18 common use for suicide, retaliating against people who notified them, and overall breaching
19 standards to not aid in suicide and self-harm.

20 Amazon has failed before in its attempt to use the Washington Product Liability Act
21 (“WPLA”) as a sword and a shield for its sales of Sodium Nitrite – claiming the WPLA protects
22 it from product liability claims and yet pre-empts negligence claims. *See Order Denying Def’s*
23 *CR 12(b)(6) Mot. to Dismiss (Dkt. #42), Scott et. al. v. Amazon.com*, No. 22-2-01739-2 SEA
24 (Super. Ct. Wash., King Cnty., Dec. 30, 2022). The Court should deny Amazon’s motion in full
25 because Plaintiffs sufficiently pleaded the following causes of actions: products liability,

26 ¹ Under the WPLA, a product is “defective” if it is “not reasonably safe” in design, manufacture, or warnings.
27 RCW 7.72 *et seq.*

1 negligence, and negligent infliction of emotional distress. Amazon’s contention that the WPLA
2 preempts Plaintiff’s negligence claims fail. When Amazon sold Sodium Nitrite to Kristine and
3 Ethan – knowing its primary use is for suicide – Amazon acted in violation Washington’s strong
4 public policy against aiding in suicides, RCW 9A.36.060, and breached the duty to not profit
5 from and aid in suicide. Furthermore, it orchestrated the sales of Loudwolf Sodium Nitrite, which
6 was defectively labeled, to two minors. Amazon’s breach was a proximate cause in both
7 Kristine’s and Ethan’s highly foreseeable deaths.

8 Amazon is negligent under both product liability and common law negligence for distinct
9 reasons. In the former, Amazon was the seller of a not-reasonably-safe product; in the latter,
10 Amazon’s conduct went beyond commercial behavior, breaching its duty to not aid in assisting
11 suicide. To dismiss Plaintiffs’ legitimate, urgent, and catastrophic claims would upend the very
12 purpose of 12(b)(6) and signal to our community that Washington State is a haven for corporate-
13 assisted suicide.

14 BACKGROUND

15 A. Facts

16 Amazon is the number one vendor of Sodium Nitrite used for child suicide. *See* First
17 Amended Complain, Dkt. #15 (hereinafter “FAC”) ¶¶ 62, 88, 112, 114, 155. Mixed with water,
18 Sodium Nitrite can cause death in twenty minutes. *Id.* ¶ 6. Among several listings of high purity
19 Sodium Nitrite, Amazon sold 99.6%-pure Loudwolf brand Sodium Nitrite to its customers—
20 many of whom are children and who purchased the Sodium Nitrite during the height of the
21 Coronavirus pandemic when adolescent mental health was in crisis. *Id.* ¶¶ 1, 5, 10, 97. High
22 purity Sodium Nitrite has legitimate uses only in laboratory, medical, and industrial meat
23 manufacturing settings. *Id.* ¶ 136. For use in more common curing salts, Sodium Nitrite is diluted
24 to potencies of 6% or less and dyed pink for safety reasons. *Id.* ¶ 135. At 99.6% pure, Sodium.
25 Nitrite has zero household use. *Id.* ¶¶ 7, 14, 97. Yet for years, Amazon sold Sodium Nitrite to
26 any consumer that wished to purchase the product – without verification or restriction – and
27

1 delivered it to their residential address. *Id.* ¶¶ 7, 12, 18.

2 Loudwolf Sodium Nitrite is not reasonably safe because it contains no warnings and
3 certainly nothing that warns of the lethality in the event of ingestion or to get immediate medical
4 attention. *Id.* ¶¶ 98-99.

5 Amazon knew the standard use of Sodium Nitrite it sold and delivered to the homes of
6 its child consumers was for death by suicide. *Id.* ¶¶ 1, 2, 27. Since at least 2018, Amazon has
7 received notifications from individuals alerting the company that its Sodium Nitrite killed their
8 family members. *Id.* ¶¶ 7, 11, 102, 144. Amazon ceased all sales of Sodium Nitrite in other
9 international markets due to its use for suicide. *E.g., Id.* ¶¶ 119, 120, 121. Online suicide forums
10 had directed individuals to Amazon as the best place to purchase it. *Id.* ¶ 141. Other large
11 companies, like eBay, stopped selling Sodium Nitrite in 2019 as soon as they were notified of
12 one suicide caused by the product. *Id.* ¶¶ 223-25. Amazon has systematically removed the one-
13 star user reviews left by desperate family members trying to alert the company and others the
14 product causes suicide. Then, rather than pull the product, Amazon punitively revoked these
15 consumers' future ability to review any products. *Id.* ¶¶ 122-24. Equipped with all this
16 knowledge, Amazon promoted additional products to prospective Sodium Nitrite purchasers that
17 encouraged and facilitated suicide. *E.g., id.* ¶¶ 6, 106, 129. Amazon's recommendation features
18 on pages selling Sodium Nitrite (*i.e.*, "Customers who viewed this item also viewed" and
19 "Frequently bought together") suggest Tagamet—an acid reduction medicine that prevents life-
20 saving vomiting—measuring scales, and the Amazon Edition of *The Peaceful Pill Handbook*, a
21 suicide instruction book with a chapter devoted to suicide by Sodium Nitrite. *Id.* ¶¶ 106-08.

22 On September 24, 2020, 16-year-old Kristine Jónsson created an Amazon account under
23 only her first name and purchased Loudwolf Sodium Nitrite. *Id.* ¶¶ 20, 173 She was found dead
24 in her car on September 30, 2021. The cause of death was "Sodium Nitrite Toxicity." *Id.* ¶¶ 21,
25 184-86. On January 1, 2021, 17-year-old Ethan McCarthy purchased Sodium Nitrite using his
26 mom's Amazon account. *Id.* ¶¶ 22, 26, 190. When she saw the mystery purchase, she contacted
27

1 Amazon to cancel it. *Id.* ¶¶ 26, 191-3. Yet the product was delivered anyway. *Id.* ¶¶ 23, 194. On
 2 January 7, 2021, Ethan was found dead in his bedroom. *Id.* ¶¶ 23, 196-200. The cause of death
 3 was “Sodium Nitrite Intoxication.” *Id.* ¶ 201.

4 **B. Procedural History**

5 On September 29, 2022, Plaintiffs brought this action against Amazon and Loudwolf in
 6 California state court where Loudwolf is at home, alleging three causes of action against Amazon.
 7 See Dkt. No. 1-1. Count I is a claim for products liability. *Id.* ¶¶ 232-43. Count II is a claim for
 8 negligence. *Id.* ¶¶ 244-47. And Count III is brought on behalf of Ethan’s mother, Martinique
 9 Maynor (“Nikki”), for negligent infliction of emotional distress. *Id.* ¶¶ 248-51. Amazon
 10 immediately removed the lawsuit to the Northern District of California. *Id.* Plaintiffs
 11 subsequently learned that Loudwolf, a small mom-and-pop store which relies on Amazon for
 12 about 95% of its business, immediately stopped selling Sodium Nitrite in April 2021 upon FDA
 13 notification that it was mislabeled and caused one suicide, whereas Amazon – with similar notice
 14 of the product’s use for suicide – continued selling other brands of Sodium Nitrite. *Id.* ¶¶ 92, 94,
 15 104, 105. Plaintiffs filed the FAC to reflect this new information and allegations that Amazon
 16 knowingly withheld from third party sellers (including Loudwolf) its accumulating knowledge
 17 that high-purity Sodium Nitrite was frequently purchased for suicide. *Id.*

18 On February 16, 2023, on Amazon’s 12(b)(2) motion U.S. District Judge James Donato
 19 transferred the case to the Western District of Washington. Dkt. #34. Plaintiffs also dismissed
 20 Defendant Loudwolf without prejudice. *Id.*

21 Amazon filed the instant motion to dismiss Plaintiffs’ entire lawsuit on March 30, 2023.
 22 Plaintiffs oppose herein.

23 **LEGAL STANDARD**

24 As Amazon failed to set forth the legal standard for which it seeks the extreme relief of
 25 dismissal, Plaintiffs provide it herein. Federal Rule of Civil Procedure 12(b)(6) provides for
 26 dismissal when a complaint “fail[s] to state a claim upon which relief can be
 27

1 granted.” FRCP 12(b)(6). Under this standard, the court construes the complaint in the light most
 2 favorable to the nonmoving party, *Livid Holdings Ltd. v. Salomon Smith Barney, Inc.*, 416 F.3d
 3 940, 946 (9th Cir. 2005), and asks whether the complaint contains “sufficient factual matter,
 4 accepted as true, to ‘state a claim to relief that is plausible on its face,’” *Ashcroft v. Iqbal*, 556
 5 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim
 6 has facial plausibility when the plaintiff pleads factual content that allows the court to draw the
 7 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* The “[f]actual
 8 allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550
 9 U.S. at 555; *see also Somers v. Apple, Inc.*, 729 F.3d 953, 965 (9th Cir. 2013) (stating that the
 10 allegations must “rise beyond mere conceivability or possibility” to meet the plausibility
 11 standard). While plaintiffs do not need to make detailed factual allegations at the pleading stage,
 12 the allegations must be sufficiently specific to give the defendant fair notice of the claim and the
 13 grounds on which it rests. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (citing
 14 *Twombly*, 550 U.S. at 555).

15 Here, Plaintiffs’ allegations accomplish both.

16 ARGUMENT

17 A. Washington law applies to all of Plaintiffs’ claims.

18 In its motion, Amazon skips the necessary first prong of Washington’s two-prong choice
 19 of law analysis and then misrepresents the second prong. Accordingly, the Court should apply
 20 Washington law to all of Plaintiffs’ causes of action and find that Plaintiffs sufficiently state a
 21 claim to avoid dismissal under FRCP 12(b)(6).

22 1. Amazon points to no “actual conflict” in law.

23 A federal court sitting in diversity applies the forum state’s choice-of-law rules. *Patton v.*
 24 *Cox*, 276 F.3d 493, 495 (9th Cir. 2002). In Washington, when parties dispute choice of law, there
 25 must be an actual conflict between the laws or interests of Washington and the laws or interests
 26 of another state before the court will engage in a conflict-of-laws analysis. *Tilden-Coil*
 27

1 *Constructors, Inc. v. Landmark Am. Ins. Co.*, 721 F. Supp. 2d 1007, 1012–13 (W.D. Wash. 2010)
 2 (citing *Erwin v. Cotter Health Ctrs.*, 161 Wn.2d 676, 167 (2007)). **Absent an actual conflict,**
 3 **Washington law presumptively applies.** *Id.* If an actual conflict exists but the parties did not
 4 select the law to govern the issue, the court will determine the controlling law under the “most
 5 significant relationship” test. *Id.* at 1120–21.

6 A “real conflict” exists only where the result of a particular issue would be different under
 7 the law of the two states. *Karpenski v. Am. Gen. Life Companies, LLC*, 999 F. Supp. 2d 1235
 8 (W.D. Wash. 2014). Amazon fails to answer this threshold question because there is no actual
 9 conflict here. Instead, Amazon argues hypothetically for Ohio and West Virginia substantive law
 10 to apply “in the event of a conflict” or “if [t]here [w]ere a [c]onflict.” Dkt. #47 at 18, 21.

11 Because Amazon has only shown that the relevant laws of Ohio and West Virginia are
 12 analogous to those of Washington and has neglected to demonstrate meaningfully different
 13 standards, the Court should find there is no actual conflict. *See Woodward v. Taylor*, 184 Wn.2d
 14 911, 923 (2016) (applying Washington substantive law where there the defendant failed to
 15 identify an actual conflict of law); *see also Them v. Manhattan Life Assurance Co. of Am.*, No. 19-
 16 CV-06034-RBL, 2020 WL 4788022 (W.D. Wash. Aug. 18, 2020) (denying defendant’s motion
 17 for determination of choice of law because defendant failed to identify an actual conflict of law).
 18 Amazon insists that Plaintiffs have no theory of liability against it, due to the same standards
 19 applied under Washington, Ohio, or West Virginia law. Specifically, Amazon argues that in each
 20 jurisdiction, suicide is a partial bar to wrongful death cases, that Washington and Ohio statutes
 21 preempt Plaintiffs’ common law negligence claims, and that Amazon isn’t liable as a
 22 seller/supplier.

23 The only state-differentiating argument Amazon grasps at is its claim that under West
 24 Virginia products liability law Amazon is not liable because it was the addition of water that
 25 made the Sodium Nitrite dangerous. Dkt. #47 at 24. This is not a real conflict that would result
 26 in a different outcome between Washington and West Virginia law because Sodium Nitrite is
 27

1 incredibly lethal on its own, not to mention Amazon knew the product was commonly mixed
 2 with water to effectuate suicides. Amazon’s argument also assumes a fact outside of those alleged
 3 in the FAC, which cannot properly be considered upon a motion to dismiss. *See Lee v. City of*
 4 *Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (reversing a district court’s 12(b)(6) dismissal
 5 where the district court “assumed the existence of facts that favor defendants based on evidence
 6 outside plaintiffs’ pleadings”).

7 Amazon’s use of the same arguments in its analyses of Washington, Ohio, and West
 8 Virginia law is indicative of the absence of an actual conflict. Accordingly, the Court should find
 9 that Amazon fails to satisfy the first prong of the choice of law analysis, and therefore,
 10 Washington law controls.

11 Should Amazon raise the “actual conflict” argument in its reply brief, the Court should
 12 find that its reasoning cannot be properly considered by the Court, as it is improper for
 13 a party to raise a new argument in a reply brief. *See, e.g., United States v. Bohn*, 956 F.2d 208,
 14 209 (9th Cir.1992) (noting that courts generally decline to consider arguments raised for
 15 the first time in a reply brief); *United States v. Boggi*, 74 F.3d 470, 478 (3d Cir.1996).

16 **2. Washington has the “most significant relationship” to Amazon’s injury-**
 17 **causing conduct.**

18 Under the second prong, Washington law applies because it has the “most significant
 19 relationship” to Amazon’s injury-causing conduct. This analysis involves a two-step test set
 20 forth in Restatement (Second) of Conflict of Laws §§ 6, 145, and 146 (1971). *Woodward*, 184
 21 Wn.2d at 917.

22 **a. Step one of the “most significant relationship” test favors application of**
 23 **Washington law.**

24 The first step of the most significant relationship test evaluates the contacts each
 25 interested jurisdiction has with the parties, the occurrence under the factors of section 145 of
 26 the Restatement, and any more specific section of the Restatement that is relevant to the cause
 27 of action. *Id.* “The approach is not merely to count contacts, but rather to consider which

1 contacts are most significant and to determine where these specific contacts are found.” *Id.*
2 (quoting *Southwell v. Widing Transp., Inc.*, 101 Wn.2d 200, 204 (1984)).

3 Pursuant to section 145 of the Restatement, the contacts to be considered when
4 determining which state has the most significant relationship to a tort claim are as follows:
5 (a) the place where the injury occurred,
6 (b) the place where the conduct causing the injury occurred,
7 (c) the domicile, residence, nationality, place of incorporation and place of business
of the parties, and
8 (d) the place where the relationship, if any, between the parties is centered.

9 “These contacts are to be evaluated according to their relative importance with respect to
the particular issue.” Restatement § 145(2).

10 Most importantly, Amazon’s injury causing conduct unequivocally occurred in
11 Washington State, where Amazon is headquartered. The transferor court premised the
12 transfer on the basis that most if not all witnesses were based in Washington
13 acknowledging the case Amazon’s “business practices and operations in Washington.”
14 Dkt. #34 at 2. And the Declaration of Andy Sachs proffered by Amazon states that “[t]he
15 Amazon teams that communicate with third-party sellers regarding product safety issues
16 for products sold in North America are based in Seattle, Washington.” Dkt. #25-1 at 5.

17 Amazon is domiciled in Washington, *FAC* ¶ 49, and the relationship between the
18 parties is centered there. Amazon’s own conditions of use, which govern its relationship
19 with Plaintiffs, states that individuals which use any Amazon Service agree that “the laws
20 of the state of Washington” will govern any dispute which arises.

21 That the deaths occurred outside of Washington is given lesser weight. *Garner v.*
22 *Amazon.com, Inc.*, 603 F.Supp..3d 985, 995 n. 3 (W.D. Wash. 2022) (citing Restatement
23 §§ 145(1), 146). Amazon’s own argument that the suicides were not foreseeable argues for
24 the application of Washington law. Where the defendant has “little, or no, reason to foresee
25 that his act would result in injury in” a particular state, the “lack of foreseeability on the
26 part of the defendant is a factor that will militate against selection of the state of injury as
27

1 the state of the applicable law.” Restatement § 145 cmt. e. Additionally, when the injury
2 occurs in two or more states or the location of the injury is fortuitous, the weight the court
3 gives to the place where the alleged conduct causing the injury occurred increases. *Id. See*
4 *also Kelley v. Microsoft Corp.*, 251 F.R.D. 544, 552 (W.D. Wash. 2008) (“[B]ecause the
5 place of injury is fortuitous the Court gives greater weight to Washington, the location of
6 the source of the injury.”); *Veridian Credit Union v. Eddie Bauer, LLC*, 295 F. Supp. 3d
7 1140, 1154–55 (W.D. Wash. 2017). Amazon’s conduct producing injuries in Ohio and
8 West Virginia is fortuitous because Amazon sold the product in all fifty state and “militate
9 against selection of the state of injury as the state of applicable law.”

10 **b. Step two of the “most significant relationship” test favors application of**
11 **Washington law.**

12 The Court need not analyze step two where Washington law is the clear result of the first
13 step of the most significant relationship analysis. *Veridian*, 295 F. Supp. 3d at 1155. Even if the
14 Court finds that the step one contacts are inconclusive, however, the second step favors
15 application of Washington law.

16 For this step, the Court must “evaluate the interests and policies of the potentially
17 concerned jurisdictions by applying the factors set forth in Restatement section 6.” *Woodward*,
18 184 Wn.2d at 918-19. These factors include: (a) the needs of the interstate and international
19 systems; (b) the relevant policies of the forum; (c) the relevant policies of other interested states
20 and the relative interests of those states in the determination of the particular issue; (d) the
21 protection of justified expectations; (e) the basic policies underlying the particular field of law;
22 (f) certainty, predictability and uniformity of result; and (g) ease in the determination and
23 application of the law to be applied. Restatement § 6.

24 In other words, step two “involves an evaluation of the interests and public policies of the
25 concerned states to determine which state has the greater interest in determination of the
26 particular issue.” *Veridian*, 295 F.Supp.3d at 1155 (quoting *Schmahl v. Macy's Dep't. Stores*,

1 *Inc.*, No. CV-09-68-EFS, 2010 WL 3061526, at *6 (E.D. Wash. July 30, 2010)). This step turns
2 on the purpose of the law and the issues involved. *Kelley*, 251 F.R.D. at 553.

3 Washington has the most significant interest in applying its law to Amazon's conduct in
4 this action. There is no state that comes close to rivaling its connection to this lawsuit and, if
5 there were, it would be the state from which the product was shipped, California. Washington has
6 a legitimate and strong interest in deterring its businesses from engaging in interstate commerce
7 of child suicides. In *Kelley*, under the Washington choice of law analysis, Washington law
8 applied where Washington "had a unique and substantial relationship with Defendant as one
9 of Washington's largest corporate citizens, and the acts complained of by Plaintiffs took place
10 in Washington." *Id.*

11 While Amazon mentions Ohio's limits on wrongful death damages, a state's interest in
12 limiting these damages is to protect defendants from excessive financial burdens. *Johnson v.*
13 *Spider Staging Corp.*, 87 Wn.2d 577, 582-83 (1976). This interest in preventing financial
14 burdens is primarily local; that is, a state by enacting a damage limitation seeks to protect *its own*
15 residents. *Id.* (citing to *Hurtado v. Superior Court*, 11 Cal.3d 574, 580-84 (1974); *Reich v.*
16 *Purcell*, 67 Cal.2d 551, 556 (1967)). Ohio, nor West Virginia, has no interest in applying their
17 own limitations to Amazon, a nonresident corporation.

18 ***

19 This two-part test leads to the conclusion that Washington law applies. In *Garner v.*
20 *Amazon.com, Inc.*, the Court applied Washington law because the "most significant relationship"
21 analysis revealed that Amazon's injury-causing conduct occurred in, or was orchestrated from
22 Washington, the place of injury was fortuitous and widespread, the laws of the other interested
23 states were similar such that the legislative interests of the other states were protected under
24 Washington law, and the application of Washington law was consistent with the expectations of
25 the parties based on their contractual choice-of-law provision. 603 F.Supp.3d 985, 966 (W.D.
26 Wash. 2022). This same analysis is analogous to the instant matter: Amazon's injury-causing
27

1 conduct occurred in and was orchestrated from Washington, the places of injury (where the
2 Sodium Nitrite was shipped and the deaths occurred) were fortuitous and widespread, the laws
3 and consumer safety goals Ohio and West Virginia are similar (as argued in Amazon’s motion
4 to dismiss) such that the legislative interests of other states can be protected under Washington
5 law, and application of Washington law is consistent with the expectations of the parties as
6 indicated in their contractual choice-of-law provision. Beyond this case, Amazon is being held
7 liable for Sodium Nitrite shipped to people throughout the United States and applying a
8 patchwork of laws would lead to inconsistent and unpredictable results (*see, e.g., Scott v.*
9 *Amazon.com*, No. 22-2-01739-2 SEA (2022), with decedents in Texas and California; *Viglis et*
10 *al., v. Amazon.com*, No. 23-2—05719-8 (Super. Ct. Wash., King Cnty., Mar. 30, 2023) with
11 decedents in Virginia and Arizona). Amazon.com operating out of Seattle, Washington is the
12 hub for all these purchases.

13 As such, this Court should reject Amazon’s choice of law arguments for Ohio and West
14 Virginia and, instead, apply Washington law.

15 **B. Washington State does not grant Rule 12 motions where plaintiffs properly plead**
16 **an online marketplace intentionally sold products used for suicide.**

17 A Washington State court has previously denied Amazon’s motion to dismiss where it
18 similarly argued it should not be liable for a buyer’s “intentional misuse” of Sodium Nitrite to
19 commit suicide.

20 In *Scott*, plaintiffs sought to hold Amazon liable for the suicide deaths of a 27-year-old
21 from Texas and a 17-year-old Californian caused by Sodium Nitrite. No. 22-2-01739-2 SEA
22 (2022). Like here, plaintiffs alleged three causes of action – product liability, common law
23 negligence, and negligent infliction of emotional distress. In its motion to dismiss, Amazon
24 relied on the same arguments as here, and the court denied the motion in its entirety. The court
25 also denied Amazon’s later motion to certify the issue for appellate review. *See* Dkt. #42, *Scott*

1 v. *Amazon.com*, No. 22-2-01739-2 SEA (2022). The only additional argument contained in this
2 motion, addressed *infra*, is Amazon’s red herring Section 230 argument.

3 **C. Plaintiffs state a claim for products liability under Washington law.**

4 Plaintiffs properly allege products liability under Washington law. Under the WPLA, a
5 “product seller” is liable for injuries it negligently causes to a claimant. RCW 7.72.040(1)(a). To
6 demonstrate negligence, plaintiffs must establish (1) the existence of a duty, (2) breach of the
7 duty, (3) an injury, and (4) proximate cause between a breach and injury. *Tincani v. Inland*
8 *Empire Zool. Soc’y*, 124 Wn.2d 121, 127 (1994). Plaintiffs allege facts sufficient to meet these
9 elements.

10 **1. Amazon owed a duty to exercise reasonable care and to not sell defective**
11 **products.**

12 In considering a duty’s existence, “the court considers ‘logic, common sense, justice,
13 policy, and precedent, as applied to the facts of the case.’” *Merriman v. Am. Guarantee. & Liab.*
14 *Ins. Co.*, 198 Wn. App. 594, 617 (2017) (quoting *Centurion Props. III v. Chi. Title Ins.*, 186
15 Wn.2d 58, 65 (2016)). Recognition of a tort duty “is a reflection of all those considerations of
16 public policy which lead the law to conclude a plaintiff’s interests are entitled to legal protection
17 against the defendant’s conduct.” *Taylor v. Stevens Cnty.*, 111 Wn.2d 159, 168 (1988). Courts
18 may also look to a legislature’s criminal pronouncements for public policy and determine
19 whether a common law or statutory duty of care exists. *Bernethy v. Walt Failor’s, Inc.*, 97 Wn.2d
20 929, 932 (1982) (looking to criminal statutes that prohibited similar conduct and basing a tort
21 duty on that public policy). Under a negligence theory, a defendant owes a duty to exercise
22 reasonable care and to make known risks known. *Baughn v. Honda Motor Co., Ltd.*, 107 Wn.2d
23 127, 137 (1986).

24 Defendant asserts that the WPLA codifies that “there must be something wrong with the
25 product... or there will be no liability.” Amazon’s Motion at 13. Indeed, the Complaint alleges
26 product defects: that the Sodium Nitrite had inadequate warnings. *FAC* ¶¶ 99, 138, 236, 241(e).

1 Amazon also cites to three cases for the proposition that there is no duty to warn because the
2 product's danger was obvious or known, all of which are readily distinguished from the instant
3 matter. *Anderson v. Weslo, Inc.*, 79 Wn. App. 829 (1995), *Baughn*, and *Thongchoom v. Graco*
4 *Children's Products, Inc.*, 117 Wn. App. 299 (2003), all involved claims based in strict products
5 liability, which is not at issue in the instant matter except to the extent that Amazon itself is
6 defective as manufacturer of itself. Moreover, *Anderson*, *Baughn*, and *Thongchoom* involved
7 injuries resulting from recreational use of a trampoline, a bicycle, and a baby walker,
8 respectively. These cases are fundamentally different in kind from the issue here: selling children
9 an industrial chemical with no legitimate household purpose that Amazon knew was used for
10 suicide. In none of those cases do the plaintiffs allege the defendant continued to sell the product
11 after it knew it harmed children.

12 Amazon's contrary factual claims that the warnings were adequate or the risks obvious
13 and known to Ethan and Kristine are issues of fact and not law and not appropriate for dispute
14 in a motion to dismiss. *Interpipe Contracting, Inc. v. Becerra*, 898 F.3d 879, 886 (9th Cir. 2018)
15 (facts alleged in the complaint must be accepted as true). Even less compelling is Amazon's
16 unsupported conjecture that proper warnings would have been useless in preventing the deaths.

17 Irrespective of the defects of Loudwolf Sodium Nitrite, to the extent Amazon claims it
18 could not control the algorithms promoting suicide aids or manage the database of customer
19 service complaints notifying them of the harms, or properly investigate claims, enforce its policy
20 for consumers to be age eighteen and older or is too big to pull the product off the shelves, then
21 Amazon.com itself is also defective.

22 **2. Amazon breached its duty by selling Sodium Nitrite to minors Kristine and**
23 **Ethan when Amazon knew it would likely be used for suicide.**

24 As detailed above, Amazon knew Sodium Nitrite has no legitimate non-institutional use
25 and that its consumers would use Sodium Nitrite to die by suicide. *FAC* ¶¶ 1, 2, 7, 27. Yet, it
26 took no steps to restrict sales. Instead, it sold the suicide powder to two children and arranged for
27

1 Loudwolf to deliver it, knowing it was not reasonably safe. Even when Nikki notified Amazon
 2 about the suspicious purchase, they concealed their knowledge about its likely use when they
 3 could have instead warned her. *FAC* ¶¶ 191. Thus, Amazon breached its duty to Plaintiffs.

4 **3. Amazon’s breach was a proximate cause in both Kristine’s and Ethan’s**
 5 **deaths.**

6 Proximate cause subdivides into (1) cause in fact and (2) legal cause. *Gall v. McDonald*
 7 *Indus.*, 84 Wn. App. 194, 207 (1996). Cause in fact relies on a but-for test: a duty breach is a
 8 cause in fact of an incident if the incident would not have occurred but for the breach. *Id.* “A
 9 legal cause is a cause in fact that warrants legal liability as a matter of social policy.” *Id.* The
 10 Washington Supreme Court has stated “[t]he question of legal causation is so intertwined with
 11 the question of duty that the former can be answered by addressing the latter.” *Id.* at 207-08
 12 (quoting *Taggart v. State*, 118 Wn.2d 195, 199 (1992)). In other words, “[i]t is quite possible,
 13 and often helpful, to state every question which arises in connection with [legal cause] in the
 14 form of a single question: was the defendant under a duty to protect the plaintiff against the event
 15 which did in fact occur?” *Id.* (quoting *Hartley v. State*, 103 Wn.2d 768, 777 (1985) (second
 16 alteration in original)).

17 There may be multiple proximate causes of a single injury. *Ricjas v. Grant Cnty. Pub.*
 18 *Util. Dist.*, 117 Wn. App. 694, 697 (2003) (quoting *Smith v. Acme*, 16 Wn. App. 389, 396 (1976)).
 19 To break a causal chain, intervening negligence must be superseding. Whether an act is
 20 superseding concerns foreseeability. “[E]ven if the intervening act of the third person constitutes
 21 negligence, that negligence does not constitute a superseding cause if the actor at the time of his
 22 negligent conduct should have realized that a third person might so act.” *Id.* “Whether an act may
 23 be considered a superseding cause sufficient to relieve a defendant of liability depends on
 24 whether the intervening act can reasonably be foreseen by the defendant; only intervening acts
 25 which are *not* reasonably foreseeable are deemed superseding causes.” *Albertson v. State*, 191
 26
 27

1 Wn. App. 284 (2015). Foreseeability of an intervening act is ordinarily a question of fact for the
2 jury. *Cramer v. Dep't of Highways*, 73 Wn. App. 516, 521 (1994) (quotation marks omitted).

3 The causal chain here is clear and distinct. Plaintiffs allege Amazon knew, before
4 Kristine's and Ethan's deaths, that high-purity Sodium Nitrite had no legitimate household use
5 and was being frequently used to die by suicide. *FAC* ¶¶ 1, 2, 7, 27. Indeed, Amazon actively
6 removed warnings from the product page that indicated Sodium Nitrite was being used for suicide
7 and punished consumers who left such reviews. *Id.* ¶¶ 145-7, 241. That Kristine and Ethan would
8 use the product Amazon negligently sold to them to die by suicide was foreseeable. Any effort
9 by Amazon to refute Plaintiffs' allegations that warnings would have prevented Kristine and
10 Ethan's excruciating pain and deaths is inappropriately considered in a 12(b)(6) motion devoid
11 of expert testimony from suicidologists who can report on the frequency of interrupted and failed
12 suicide attempts among adolescents. At this stage, it must be accepted as fact that Amazon's
13 negligence is a proximate cause of both deaths.²

14 As such, the Court should deny Amazon's motion to dismiss Plaintiffs' products
15 liability cause of action.

16 **D. Plaintiffs state a claim for negligence under Washington law.**

17 To state a common law negligence claim, a plaintiff must establish (1) the existence of a
18 duty, (2) breach of the duty, (3) an injury, and (4) proximate cause between the breach and the
19 injury. *Tincani*, 124 Wn.2d at 127. In Count II, Plaintiffs state a common law negligence claim
20 against Amazon for breaching duties to (1) exercise reasonable care; (2) not assist and/or aid in
21 a suicide; and (3) not supply a substance for the use of another it knew or had reason to know to
22 be likely to use it for suicide. *FAC* ¶¶ 245.a-c.

26 ² As a pure comparative negligence state Amazon may be a proximate cause even if a jury were to decide Kristine
27 and Ethan, or the manufacturer were also at fault.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1. Amazon owed a common-law duty to exercise reasonable care to not aid with a suicide and to not supply a substance to a person it knew or should have known would use the substance for self-harm.

Amazon’s duty derives from the same logic, common sense, justice, policy, and precedent as discussed in the product liability section *supra*. Washington has a strong public policy that forbids all non-medical encouragement or aiding in suicide. Indeed, the Legislature has determined a person is guilty of a Class C felony “when he or she knowingly causes or aids another person to attempt suicide.” RCW 9A.36.060. This explicit prohibition makes it clear that **public policy holds** that a suicidal person’s life is entitled to legal protection from those who may assist in the act; and that public policy recognizes a related tort duty exists.

Additional statutory provisions further make this clear. As an exception to the general prohibition on aiding in suicide, Washington has enacted the Death with Dignity Act (“DDA”), chapter 70.245 RCW. The DDA permits medically assisted suicides in highly regulated scenarios. However, it also makes clear that civil and criminal liability may lie in cases involving suicides. As it states: “This [C]hapter does not limit further liability for civil damages resulting from other negligent conduct or intentional misconduct by any person.” RCW 70.245.200(3). This pronouncement strongly further indicates the public policy against aiding in a suicide and that civil liability can arise in cases involving aiding in a suicide attempt.

Washington precedent also establishes that there exists a duty to not aid in suicide and to not provide instrumentalities to a person that a defendant knows or should know will use the instrumentality for suicide. As the *Bernethy* court recognized, statutory principles “at a minimum, reflect[ed] a strong public policy in our state.” 97 Wn.2d at 931-32. The court also reasoned that “duty may be predicated on violation of a statute or common law principles of negligence.” *Id.* Relying on public policy and common law, the Court applied Restatement (Second) of Torts § 390 (1965):

One who supplies directly or through a third person a chattel for the use of another whom the supplier knows or has reason to know to be likely because of his youth, inexperience, or otherwise, to use it in a manner involving unreasonable risk of physical harm to himself

1 and others who the supplier should expect to share in or be endangered by its use, is
2 subject to liability for physical harm resulting to them.

3 *Id.* at 933. Thus, the Court held the vendor owed a duty to not sell a firearm to an intoxicated
4 person if he knew or should have known it would endanger others.

5 The same policy and precedent considerations establish an entity, including a vendor,
6 owes a duty to not aid in suicide or supply an instrumentality to a person the vendor knows or
7 should know will use for suicide. *Id.* RCW 9A.36.060. Indeed, logic and common sense also
8 make such a duty clear. Amazon owed a common law duty to not aid in suicide or supply an
9 instrumentality to a person it knew or should have known the person would use for suicide.

10 **2. Amazon’s duty arguments to the contrary fail.**

11 Amazon makes several arguments as to why the duty demonstrated above does not exist,
12 all of which lack merit. First, Plaintiffs do not argue RCW 9A.36.060 establishes a cause of
13 action, that it sets any statutory standard of care, or that its violation is negligence. Instead, as the
14 discussion above details, Plaintiffs rely on it as a legislative public policy statement to
15 demonstrate “‘logic, common sense, justice, policy, and precedent, as applied to the facts of the
16 case’” establish Amazon owed a duty to Plaintiffs. *Merriman*, 198 Wn. App. at 617. RCW
17 9A.36.060, along with the DDA, Section 390, and *Bernethy together* show that clear public
18 policy, precedent, logic, and common sense impose a duty upon Amazon.

19 Second, Plaintiffs need not conduct an analysis under Restatement (Second) of Torts §
20 286 (1965). For example, comment (f) to Section 286 states a statute may “be found to be
21 intended for the protection of the interests of only a particular class of persons. If, so, a violation
22 of the provision will be held to be negligence toward persons included within the particular class,
23 but not toward those who do not fall within it.” Restatement § 286 cmt. f. However, “[t]he fact a
24 legislative enactment requires a particular act to be done for the protection of the interests of a
25 particular class of individuals does not preclude the possibility that failure to do such an act may
26 be negligence at common law toward other classes of persons.” *Id.* cmt. g. Nor does it “preclude
27

1 the possibility that, in a proper case, the requirements of the statute may be considered as
2 evidence bearing on the reasonableness of the actor’s conduct.” *Id.*

3 Even where a statute fails a Section 286 test—and the statute does not set a standard of
4 care and a statutory violation does not establish negligence—it can still be used by a court as
5 evidence that a common law duty or standard of care exists. Indeed, in *Bernethy*, the Court did
6 not engage in a Section 286 analysis of the criminal law it reviewed because the law did not
7 create the duty—in fact, the criminal statutes were not even directly on point. However, *Bernethy*
8 looked to those statutes to determine that the legislature had made a strong public policy
9 statement that provided support for a duty. 97 Wn.2d at 932-33. Here, Plaintiffs look to RCW
10 9A.36.060—along with the other policy statements and precedent noted—as evidence of a public
11 policy that support Amazon’s duty. Plaintiffs do not intend to show that Amazon is liable because
12 it breached RCW 9A.36.060.

13 Third, Amazon argues Section 390 of the Second Restatement of Torts does not support
14 a cause of action here. Amazon’s Motion at 14. Initially, Amazon claims the Section does not
15 apply to Kristine or Ethan because they were not “legally incompetent” at the time of the sale.
16 *Id.* However, both Plaintiffs were minors, and neither the Restatement nor Washington law
17 requires “legal competence.” In fact, the Section itself is broad and does not use the word
18 “incompetent”:

19 One who supplies directly or through a third person a chattel for the use of another
20 whom the supplier knows or has reason to know to be likely because of his youth,
21 inexperience, or otherwise, to use it in a manner involving unreasonable risk of
22 physical harm to himself and others whom the supplier should expect to share in or
23 be endangered by its use, is subject to liability for physical harm resulting to them.
24 Restatement (Second) of Torts § 390 (1965).

25 Moreover, while the Restatement title does use the word “incompetent”, the comments explain
26 this is not a legal incapacity, but an inability to use an instrumentality safely:

27 This Section deals with the supplying of a chattel to a person **incompetent to use
it safely** Thus, one who supplies a chattel for the use of another who knows its
exact character and condition is not entitled to assume that the other will use it
safely if the supplier knows or has reason to know that such other is likely to use it

1 dangerously, as where the other belongs to a class which is notoriously incompetent
2 to use the chattel safely ... or the supplier knows that the other ... has a propensity
3 or fixed purpose to misuse it. *Id.* cmt. b (emphasis added).

4 A propensity to speed is not a legal incompetence. In *Mele v. Turner*, 106 Wn.2d 73
5 (1986)—which Amazon incorrectly cites to suggest legal incompetency is “extremely
6 limited”—the Court notes the wide variety of types of “incompetency” the Restatement
7 was intended to address:

8 The kinds of “incompetency” which come within this rule are set forth in the
9 “Illustrations” prepared by the authors of the Restatement. These include: giving a
10 loaded gun to a feebleminded child of 10; permitting a 10-year-old child, who has
11 never driven an automobile before, to drive one; permitting one’s chauffeur, who
12 is in the habit of driving at excessive speeds, to drive the car on an errand of his
13 own; lending one’s car to a friend to drive to a dance, knowing that the friend
14 habitually becomes intoxicated at dances; and renting an automobile to a person
15 who says that he plans to drive it from Boston to New York in 3 hours to win a bet.

16 *Id.* at 77. Nothing in these examples, or *Mele*, indicates a legal incapacity is required. However,
17 one can imagine, putting a known suicide powder into the hands of adolescents quarantined at
18 home for over six months during a raging pandemic, is quintessentially the type of
19 “incompetency” the Restatement intended to cover.

20 **E. Plaintiff Nikki Maynor’s negligent infliction of emotional distress claim survives
21 because her other claims survive.**

22 Amazon’s sole argument as to why this Court should dismiss Nikki’s negligent infliction
23 of distress claim is that it is “collateral” to the claims that concern Amazon’s obligations to Ethan,
24 and if those claims fail, Nikki’s also fails. Even assuming – without conceding – negligent
25 infliction of distress claim is collateral, Amazon’s argument fails. As detailed above, Amazon is
26 liable for Ethan’s death. Therefore, Nikki’s negligent infliction of distress claim remains viable.

27 **F. WPLA preemption does not apply.**

Amazon’s argument that the WPLA preempts Plaintiffs’ common law claim is without
merit. WPLA preemption is not appropriate because Amazon says it is not a “seller” of
Loudwolf Sodium Nitrite, its actions were done with notice of the high likelihood of suicide,

1 and Amazon’s conduct breaching the duty to not aid in suicide went beyond ordinary
2 commercial activity.

3 **1. Amazon denies it’s a seller.**

4 Amazon asserts it is “not a ‘seller’ under the WPLA in cases involving third-party sellers’
5 products.” Amazon’s Motion at 11 n.2. Despite wanting to “not raise the issue at the Rule
6 12(b)(6) stage,” it has. *Id.* If not a seller, Amazon cannot in good faith claim entitlement to WPLA
7 preemption. Likely, Amazon is foreshadowing a tact used in *Oberdorf v. Amazon.com Inc.*,
8 where it waited until a motion for summary judgment to deny it was a seller and attempt
9 (unsuccessfully) to squirm out of product liability claims. 930 F.3d 136 (3d Cir. 2019). There, its
10 definition as a seller was not meaningful because preemption was not at issue. The plaintiff’s
11 common law negligence and product liability claims both were remanded for trial. Amazon’s
12 intentions are clear: it wants to use WPLA preemption to dump the common law negligence
13 claim and yet keep in its back-pocket for later that it’s not a seller and therefore can’t be liable
14 for not-reasonably-safe products. Such gamesmanship should not be rewarded.

15 **2. Amazon’s aid in suicides goes beyond product-based activity.**

16 While the WPLA “supplants” negligence claims that focus on a harm a product itself
17 specifically causes, *i.e.*, a claim is “product-based” it does not preempt claims that are not so
18 based. *Hue v. Farmboy Spray Co.*, 127 Wn.2d 67, 87 (1995). Plaintiffs’ claim in common law
19 negligence claim is **not** product-based. Instead, it is based on Amazon’s failure through its
20 business operations to exercise due care to not aid in suicides and to not supply a substance it
21 knew or had reason to know would be used for suicide. The claim focuses on **Amazon’s conduct.**

22 The WPLA’s text itself demonstrates the claim does not fall within the Act. It defines a
23 product liability claim to include claims “for harm caused by manufacture, production, making,
24 construction, fabrication, design, formula, preparation, assembly, installation, testing, warnings,
25 instructions, marketing, packaging, storage or labeling of” a product. RCW 7.72.010(4). The
26 common law negligence claims here do not concern or relate to any of these things. Nor does the
27

1 claim relate to instructions, labels, warnings, or marketing: it has nothing to do with failing to
 2 warn of specific Sodium Nitrite dangers or how Amazon marketed the product. The claim instead
 3 relates to Amazon's platform itself and the services uniquely offered by Amazon to Loudwolf,
 4 Ethan, and Kristine to get the suicide chemical into the hands of these teenagers.

5 Finally, Amazon's discussions as to the WPLA's legislative history and purpose support
 6 Plaintiffs' argument. The legislature passed the WPLA to limit sellers' exposure to strict liability
 7 and liability imposed only because a seller is in a product chain, seeking to foster innovation of
 8 new products by reducing fear of product liability exposure. *See, e.g., Washington Water Power*
 9 *Co. v. Graybar Elec. Co.*, 112 Wn.2d 847, 850-51 (1989); Laws of 1981, Ch. 27 § 1. Nothing in
 10 the history shows the legislature intended to address claims where an entity provides an
 11 instrumentality to a person who the entity knows or should know would use it for self-harm. The
 12 WPLA does not impose a shield from liability for all commercial conduct, and certainly not one
 13 so insurmountable, it eviscerates properly pleaded claims pre-discovery in a 12(b)(6) motion.

14 **3. Amazon misapplies *Louisiana-Pac. Corp. v. ASARCO Inc.***

15 The WPLA does not preempt a negligence claim based on active conduct that is not
 16 product-based. Plaintiffs' FAC plausibly alleges that Amazon knew it was aiding in suicides, yet
 17 chose to make no modifications to its conduct or to warn. FAC ¶¶ 110-121, 144, 244-47. Such a
 18 conscious decision constitutes widespread wrongdoing that cannot be attributed to just one
 19 product listing. This conduct was undertaken through the coordinated actions of employees and
 20 the automated innerworkings of Amazon's own platform to provide Sodium Nitrite with
 21 realization – and disregard – for the high probability of injury to others. *See Bradley v. Am.*
 22 *Smelting & Refining Co.*, 104 Wn.2d 677, 682-83 (1985).

23 Amazon's argument about *Louisiana-Pac. Corp. v. ASARCO, Inc.* cuts against it. 24 F.3d
 24 1565 (9th Cir. 1994). In *Louisiana-Pac. Corp.*, a copper smelting company, ASARCO, was
 25 dumping a by-product into Puget Sound. *Id.*, at 1584. The dumping was legal and subject to an
 26 agreement with the city. At some point, third parties learned the dumping was causing pollution.
 27

1 *Id.* Yet, ASARCO continued to dump even after receiving calls and letters saying the slag was
 2 causing major contamination to the waters. *Id.* The common law nuisance claims against
 3 ASARCO were not preempted by the WPLA where the wrongful conduct alleged was done
 4 deliberately and with notice. *Id.*

5 Here, Amazon's wrongful **conduct** reaches into the very core of Amazon's own practices.
 6 Amazon was on notice from parents, regulators, foreign laws, published poison control reports,
 7 suicide websites, and industry standards that all the Sodium Nitrite it was selling was being used
 8 for suicide. *FAC* ¶¶ 110-121, 144. Amazon concealed the suicides from its third-party retailers,
 9 failed to enforce its bans on providing Amazon accounts to children, and used its unique
 10 algorithms to encourage suicide. *Id.* ¶¶ 18, 25, 28, 29, 31, 32, 82, 100, 105-08, 110-29, 144-50.
 11 When Nikki alerted Amazon that she received a mysterious email from Amazon confirming a
 12 purchase of Sodium Nitrite, Amazon lied that the purchase was canceled. *Id.* ¶¶ 25, 190-95, 200.

13 Amazon's negligence claim is not product-based, nor duplicative of its product liability
 14 claim. Instead, it pertains to Amazon's own operational malevolence.

15 **G. Amazon is not entitled to Section 230 immunity.**

16 Section 230 of the Communications Decency Act ("CDA") "precludes liability for (1) a
 17 provider or user of an interactive computer service (2) whom plaintiff seeks to treat as a publisher
 18 or speaker (3) of information provided by another information content provider." *Gonzalez v.*
 19 *Google LLC*, 2 F.4th 871, 891 (9th Cir. 2021) (quoting *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096,
 20 1100-01 (9th Cir. 2009)).

21 The CDA precludes claims whenever "the duty that the plaintiff alleges the defendant
 22 violated derives from the defendant's status or conduct as a 'publisher or speaker.'" *Barnes*, 570
 23 F.3d at 1102 (9th Cir. 2009), as amended (Sept. 28, 2009). Courts do not extend the scope of the
 24 CDA safe harbor provision "to immunize a party's conduct outside the realm of the Internet just
 25 because it relates to the publishing of information on the Internet." *F.T.C. v. Accusearch Inc.*,
 26 570 F.3d 1187, 1206 (10th Cir. 2009) (Tymkovich, J., concurring). Even when published content
 27

1 is at the heart of the claims, it does not guarantee CDA immunity. In *Barnes*, for example, the
2 Ninth Circuit barred claims where Yahoo failed to remove nude posts submitted by the plaintiff's
3 ex-boyfriend, but preserved the claims relating to Yahoo's breached promise to remove the
4 content." Similarly, there's no Section 230 immunity simply because the defendant is a publisher
5 with courts acknowledging that a company can be both a product and an interactive computer
6 service that publishes. In *Lemmon v. Snap, Inc.*, the Ninth Circuit held that Section 230 does not
7 apply to product liability and negligence claims pertaining to a publishing platform's *own* design
8 features. 995 F.3d 1085 (9th Cir. 2021). In *A.M. v. Omegle*, the court denied CDA 230 immunity
9 for plaintiff's product liability claims when the platform's own operations and lack of age
10 verification led the plaintiff, a child, to harmful content and ultimately a child abuser. 614 F.
11 Supp. 3d 814 (D. Or. 2022).

12 In *Oberdorf*, a case conspicuously absent from Amazon's brief, the Third Circuit
13 specified that although Amazon "exercises online editorial functions," Amazon is not entitled to
14 Section 230 immunity for negligence and strict liability claims that "rely on Amazon's role as an
15 actor in the sales process." 930 F.3d at 153. To the extent a litigant's claims "rely on allegations
16 relating to selling, inspecting, marketing, distributing, failing to test, or designing, they pertain
17 to Amazon's direct role in the sales and distribution processes." *Id.* Even when the *Oberdorf*
18 court found that some of the **facts** contained in a complaint did relate to editorial content on a
19 product page, where the **claims** overall related to Amazon's role in the sales, the claims were not
20 barred by CDA.

21 None of Plaintiffs' causes of actions treat Amazon as a publisher. Nor do Plaintiffs
22 attempt to hold Amazon liable for content provided by a third party. Rather, the facts pertaining
23 to words and images on the product page are not themselves elements comprising the claims
24 against the defendant as would be the case in standard causes of action – defamation, obscenity,
25 revenge porn – where a defendant is treated as a publisher and a 230 immunity applies.

1 The facts pertaining to the product page illustrate Amazon’s notice, failure to act,
2 noncompliance with its own safety standards, and design features that normalize and push the
3 product for suicide. They show Amazon’s malfeasance in the context of industry standards where
4 other similarly situated – and even far less-resourced – companies took immediate action upon
5 learning of Sodium Nitrite suicides.

6 **CONCLUSION**

7 For the foregoing reasons, the Court should deny Amazon’s motion in its entirety.
8 Alternatively, the Court should permit Plaintiffs to amend the Complaint to address any
9 deficiencies identified by the Court because amendment would not be futile. *Eminence Capital,*
10 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003).

11
12 DATED this 17th day of April, 2023.

13 **CORRIE YACKULIC LAW FIRM, PLLC**

CA GOLDBERG, PLLC

14
15 /s/ Corrie J. Yackulic
16 CORRIE J. YACKULIC, WSBA 16063
17 110 Prefontaine Place South, Suite 304
18 Seattle, Washington 98104
19 Tel. 206-787-1915
20 corrie@cjylaw.com

/s/ Carrie Goldberg
CARRIE GOLDBERG, *pro hac vice*
NAOMI LEEDS, *pro hac vice*
HANNAH MEROPOL, *pro hac vice*
16 Court Street
Brooklyn, New York 11241
carrie@cagoldberglaw.com
naomi@cagoldberglaw.com
hannah@cagoldberglaw.com

21 *Attorneys for Plaintiffs*

22 I certify this memorandum contains 8,361 words, in compliance with Local Civil Rules.

23
24 /s/ Corrie J. Yackulic
CORRIE J. YACKULIC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on April 17, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court’s Electronic Mail Notice List.

/s/ Corrie J. Yackulic

Corrie J. Yackulic

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NICHOLAS MCCARTHY and MARTINIQUE
MAYNOR, individually and NICHOLAS
MCCARTHY as successor-in-interest to ETHAN
MCCARTHY a deceased individual; LAURA
JÓNSSON and STEINN JÓNSSON,
individually, and LAURA JÓNSSON as
successor-in-interest to KRISTINE JÓNSSON, a
deceased individual,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

No. 2:23-cv-00263

DEFENDANT AMAZON.COM,
INC.'S MOTION TO DISMISS

NOTE ON MOTION CALENDAR:
APRIL 21, 2023

ORAL ARGUMENT REQUESTED

AMAZON.COM, INC.'S
MOTION TO DISMISS
(No. 2:23-cv-00263)

161458035

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS

	Page
INTRODUCTION	1
BACKGROUND	2
A. Kristine Jónsson Purchases Sodium Nitrite from Loudwolf and Intentionally Misuses it to Commit Suicide.....	2
B. Ethan McCarthy Purchases Sodium Nitrite from Loudwolf and Intentionally Misuses it to Commit Suicide.....	3
C. Plaintiffs Claim that Amazon Is Liable for Loudwolf’s Sales of Sodium Nitrite that Kristine and Ethan Intentionally Misused to Commit Suicide.....	3
ARGUMENT	4
A. Plaintiffs Allege No Viable Claim Based on Kristine’s Suicide.	4
1. Plaintiffs Cannot State a Claim Under Washington Law.	5
a. The WPLA Preempts Plaintiffs’ Common-Law Claims.	5
b. Plaintiffs Cannot Hold Amazon Liable Under the WPLA as a Manufacturer.	5
i. The WPLA Precludes Treating Amazon as a Manufacturer.....	5
ii. Plaintiffs Have No Cognizable Manufacturer-Liability Claim.	7
iii. Amazon Cannot Be Liable for Its Alleged Negligence.	10
iv. Amazon Cannot Be Liable for Removing Customer Reviews.....	16
c. Plaintiffs Fail to Plead Claims Under Ohio Law.	18
i. The Ohio Product Liability Act Preempts Plaintiffs’ Claims.	18
ii. Plaintiffs’ Claims Fail Under Ohio Tort Law.	20
d. Ohio’s Substantive Law Should Govern Liability if There Were a Conflict.	21
B. Plaintiffs Allege No Viable Claim Based on Ethan’s Suicide.....	22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF CONTENTS (continued)

	Page
1. West Virginia Does Not Recognize Plaintiffs’ Claims.....	22
2. Counts I and II Fail Under West Virginia Common Law.....	24
3. Count III Fails to State an NIED Claim.....	25
CONCLUSION.....	25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES

Page(s)

CASES

Am. Family Mut. Ins. Co. v. Wood Stoves Etc., Inc.,
518 P.3d 666 (Wash. Ct. App. 2022).....6

Anderson v. Weslo, Inc.,
906 P.2d 336 (Wash. Ct. App. 1995).....7, 8, 9

Axline v. 3M Co.,
8 F.4th 667 (8th Cir. 2021)22

Barnes v. Yahoo!, Inc.,
570 F.3d 1096 (9th Cir. 2009)16

Baughn v. Honda Motor Co., Ltd.,
727 P.2d 655 (Wash. 1986).....7, 8, 10, 14

Braxton v. Rotec Indus., Inc.,
633 P.2d 897 (Wash. Ct. App. 1981).....7

Burrows v. 3M Co.,
529 F. Supp. 3d 1194 (W.D. Wash. 2021).....10

Buttelo v. Woods-Yates Am. Mach. Co.,
864 P.2d 948 (Wash. Ct. App. 1993).....13

Carlsen v. Wackenhut Corp.,
868 P.2d 882 (1994).....15

Caswell v. Olympic Pipeline Co.,
484 F. App'x 151 (9th Cir. 2012)22

Colbert v. Moomba Sports, Inc.,
176 P.3d 497 (Wash. 2008).....25

Diaz v. Wash. State Migrant Council,
265 P.3d 956 (Wash. Ct. App. 2011).....15

Gen. Pipeline Constr., Inc. v. Hairston,
765 S.E.2d 163 (W. Va. 2014).....24

Greene v. A.P. Prods., Ltd.,
717 N.W.2d 855 (Mich. 2006).....7

AMAZON.COM, INC.'S
MOTION TO DISMISS - iii
(No. 2:23-cv-00263)

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

161458035

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES (continued)

Page(s)

Hue v. Farmboy Spray Co.,
896 P.2d 682 (Wash. 1995).....11

Huggins v. Tri-Cnty. Bonding Co.,
337 S.E.2d 12 (W. Va. 1985).....24

Jackson v. City of Seattle,
244 P.3d 425 (2010).....9

Johnson v. Recreational Equip., Inc.,
247 P.3d 18 (Wash. Ct. App. 2011).....6, 9

Joseph v. Amazon.com, Inc.,
46 F. Supp. 3d 1095 (W.D. Wash. 2014).....16

Knott v. Liberty Jewelry & Loan, Inc.,
748 P.2d 661 (1988).....12, 13

Landis v. Hearthmark, LLC,
750 S.E.2d 280 (W. Va. 2013).....24

Lee v. City of Spokane,
2 P.3d 979 (Wash. Ct. App. 2000).....25

Louisiana-Pac. Corp. v. ASARCO Inc.,
24 F.3d 1565 (9th Cir. 1994)11

M.M. v. M.F.,
2020 WL 6342653 (Ohio Oct. 29, 2020).....20

Macias v. Saberhagen Holdings, Inc.,
282 P.3d 1069 (Wash. 2012).....5

Martin v. Goodyear Tire & Rubber Co.,
61 P.3d 1196 (Wash. Ct. App. 2003).....21

McKenna v. Harrison Mem’l Hosp.,
960 P.2d 486 (Wash. Ct. App. 1998).....12, 17

McLaughlin v. Sullivan,
461 A.2d 123 (N.H. 1983).....23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES (continued)

Page(s)

Mele v. Turner,
720 P.2d 787 (1986).....14

Miles v. Raymond Corp.,
612 F. Supp. 2d 913 (N.D. Ohio 2009).....18, 19

Miles v. S.C. Johnson & Son, Inc.,
2002 WL 1303131 (N.D. Ill. June 12, 2002).....7

Moats v. Preston County Com’n.,
521 S.E. 2d 180 (W. Va., 1999).....22, 23

Morris v. Corder,
866 S.E.2d 66 (W. Va. 2021).....23

Nelson v. Int’l Paint Co.,
716 F.2d 640 (9th Cir. 1983)4

Parker v. ACE Hardware Corp.,
104 N.E.3d 298 (Ohio Ct. App. 2018).....18

Reece v. Good Samaritan Hosp.,
953 P.2d 117 (1998).....10

Rice v. Dow Chem. Co.,
875 P.2d 1213 (Wash. 1994).....22

Roney v. Gencorp,
654 F. Supp. 2d 501 (S.D.W. Va. 2009).....24

Schooley v. Pinch’s Deli Mkt., Inc.,
951 P.2d 749 (1998).....15

Schreiner Farms, Inc. v. Am. Tower, Inc.,
293 P.3d 407 (Wash. Ct. App. 2013).....17

Sherman v. Ffizer, Inc.,
440 P.3d 1016 (Wash. Ct. App. 2019).....9

Simonetta v. Viad Corp.,
197 P.3d 127 (Wash. 2008).....12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES (continued)

Page(s)

State v. Allen,
341 P.3d 268 (Wash. 2015).....15

State v. Shuck,
166 N.E.3d 122 (Ohio Ct. App. 2020).....21

Stiner v. Amazon.com, Inc.,
164 N.E.3d 394 (Ohio 2020)18, 20

Straford v. SmithKline Beecham Corp.,
2008 WL 2491965 (S.D. Ohio June 17, 2008)18, 19

Stump v. Ashland, Inc.,
499 S.E.2d 41 (W. Va. 1997).....25

Taylor v. Yale & Towne Mfg. Co.,
520 N.E.2d 1375 (Ohio Ct. App. 1987).....20

Thongchoom v. Graco Children’s Prods., Inc.,
71 P.3d 214 (Wash. Ct. App. 2003).....8, 9, 10

Volovetz v. Tremco Barrier Sols., Inc.,
74 N.E.3d 743 (Ohio Ct. App. 2016).....18

W. Coast, Inc. v. Snohomish County,
48 P.3d 997 (2002).....17

Wash. Water Power Co. v. Graybar Elec. Co.,
774 P.2d 1199 (Wash. 1989).....5, 13, 14, 15

Webstad v. Stortini,
924 P.2d 940 (Wash. Ct. App. 1996).....13, 15

WEL Cos. v. Haldex Brake Prods. Corp.,
467 F. Supp. 3d 545 (S.D. Ohio 2020)19

Wesfield Cos. v. O.K.L. Can Line,
804 N.E.2d 45 (Ohio Ct. App. 2003).....19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

TABLE OF AUTHORITIES (continued)

Page(s)

STATUTES

28 U.S.C. § 1406(a)4
 47 U.S.C. § 23016
 Ohio Rev. Code § 2307 passim
 Ohio Rev. Code § 379521
 RCW 7.72.0105, 11
 RCW 7.72.0306, 9, 10
 RCW 7.72.040 passim
 RCW 9A.36.06014, 15

RULES

Fed. R. Civ. P. 12(b)(6)3, 4, 11

OTHER AUTHORITIES

21 C.F.R. § 172.175(b)(3)9
 2d Rest. Torts § 286 (1965)9, 15, 21
 2d Rest. Torts § 390 (1965)14, 20, 21
 2d Rest. Torts § 402A cmt. j (1965)8
 3d Rest. Agency § 5.0315
 Black’s Law Dictionary 1161 (11th ed. 2019)11
 Laws of 1981, ch. 27, § 113
 Model Uniform Product Liability Act, 44 Fed. Reg. 62,726 (Oct. 31, 1979)13
 Restatement (Third) of Agency § 5.03 cmt. d(7) (2006)15
 Senate Journal, 47th Leg., Reg. Sess. (Wash. 1981)12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

INTRODUCTION

Kristine Jónsson and Ethan McCarthy used Amazon’s website to purchase sodium nitrite that was manufactured by an entity (Duda Diesel) not party to this suit and sold by former co-defendant Loudwolf, Inc. Kristine and Ethan used the sodium nitrite to commit suicide in Ohio and West Virginia, respectively. Their parents now seek to hold Amazon liable for their deaths. But Washington, Ohio, and West Virginia do not impose liability for the sale of a nondefective product to legally competent persons who intentionally misuse that product to commit suicide. While Kristine’s and Ethan’s deaths are heartbreaking, their parents’ attempt to hold Amazon liable is contrary to the well-established law of all three jurisdictions.

Count I brings products-liability claims alleging that the sodium nitrite’s warnings were inadequate and that the product itself was unreasonably dangerous. None of the states whose law could apply imposes a duty to warn of the obvious and known dangers of ingesting an industrial-grade chemical, nor imposes liability for a user’s intentional misuse of a product to commit suicide.

Count II brings negligence claims based on negligent-entrustment and statute-based-duty theories. These claims fail for a host of reasons, including that Washington’s and Ohio’s product-liability statutes preempt the claims, there is no applicable common-law or statutory duty, and neither Ethan nor Kristine were the kind of legal “incompetents” to whom a negligent-entrustment action can apply.

Count III brings a negligent infliction of emotional distress (“NIED”) claim on behalf of Ethan’s mother. This claim is derivative of the negligence claim and fails along with it. She also cannot recover because she did not contemporaneously witness the injury-causing events.

BACKGROUND

1
2 Plaintiffs seek to hold Amazon liable for Kristine’s and Ethan’s intentional misuse of a
3 non-defective product that Amazon did not manufacture, label, sell, or supply. The Complaint’s
4 allegations establish that Kristine and Ethan formulated plans to commit suicide wholly
5 independent of Amazon and used Amazon as a means to procure a substance that they believed,
6 from sources other than Amazon, would cause their deaths if ingested.

A. Kristine Jónsson Purchases Sodium Nitrite from Loudwolf and Intentionally Misuses it to Commit Suicide.

7
8 Kristine Jónsson took her life on September 30, 2020, at the age of sixteen. *See* Dkt. #15
9 (hereinafter “FAC”) ¶¶ 157, 179-86. Earlier that month she had become “resolute about dying”
10 after struggling with “the quarantine restrictions” during the COVID-19 pandemic. *Id.* ¶¶ 160, 162.
11 Kristine “learned about Sodium Nitrite” from a “pro-suicide website” called “Sanctioned-
12 Suicide.com.” *Id.* ¶¶ 116, 170. Plaintiffs do not allege that Sanctioned Suicide is affiliated with
13 Amazon in any way. The website provides instructions on various methods of suicide, including
14 hanging, jumping, and ingesting sodium nitrite. *Id.* ¶ 112 n.5. It also has “threads of instructions
15 specifying dosages” of sodium nitrite, as well as “methods for dissolving” it “in water prior to
16 consumption.” *Id.* ¶ 143. Although sodium nitrite is sold by numerous vendors on various
17 websites, “many users” on Sanctioned Suicide “suggest Amazon and Loudwolf.” *Id.* ¶ 142.
18 Kristine researched these threads, taking notes on “the four steps to death by Sodium Nitrite” and
19 calculating the dosage. *Id.* ¶¶ 171-72.

20
21 Kristine “went on Amazon.com” and bought sodium nitrite from Loudwolf on
22 September 24, 2020. *Id.* ¶ 173. Three days after receiving it in Ohio, “Kristine snuck out of the
23 house,” then “stole her mom’s car and drove it to the CVS pharmacy.” *Id.* ¶ 179. At CVS, she
24 bought “Tagamet, an acid reduction medicine” that Sanctioned Suicide members recommended to
25 prevent “vomiting after ingesting a deadly dose.” *Id.* ¶¶ 106, 179. She then drove to a local park
26

1 where she ingested a fatal dose of the Loudwolf Sodium Nitrite. *Id.* ¶¶ 184-86. The Coroner’s
2 Report determined her death was a “Suicide” due to “Sodium Nitrite Toxicity.” *Id.* ¶¶ 185-86.

3 **B. Ethan McCarthy Purchases Sodium Nitrite from Loudwolf and Intentionally**
4 **Misuses it to Commit Suicide.**

5 Ethan McCarthy took his life at age seventeen in January 2021. *See id.* ¶¶ 188, 195-98.
6 The Complaint does not allege that Ethan had any particular mental-health issues, offer a specific
7 explanation for his suicide, or link Ethan’s mental condition to Amazon. Ethan bought Loudwolf
8 Sodium Nitrite on January 1, 2021, using his mother Nikki’s Amazon account. *Id.* ¶¶ 190, 194.
9 Nikki saw an email confirming the purchase and asked her kids about it, but Ethan denied knowing
10 about it. *Id.* ¶ 190. Nikki called Amazon customer service to cancel the order and was told that
11 Amazon would inform Loudwolf. *Id.* ¶ 191. But Loudwolf had already shipped it. *Id.* ¶ 194. The
12 sodium nitrite arrived in West Virginia a few days later. *Id.* ¶ 195. One or two mornings later,
13 Nikki found Ethan’s body, as well as a bottle of Loudwolf Sodium Nitrite and “a glass with white
14 dried powder and a spoon” on his desk. *Id.* ¶¶ 198, 200. The police determined his death was “a
15 suicide, by ingestion of Sodium Nitrite.” *Id.* ¶ 201.

16 **C. Plaintiffs Claim that Amazon Is Liable for Loudwolf’s Sales of Sodium Nitrite that**
17 **Kristine and Ethan Intentionally Misused to Commit Suicide.**

18 Plaintiffs originally brought this lawsuit in California state court, and Amazon removed it
19 to the Northern District of California. *See* Dkt. #1-1. The First Amended Complaint (“Complaint”)
20 includes claims against Loudwolf and Amazon. *See* FAC ¶¶ 34-46. The Complaint acknowledges
21 that both sales were lawful under federal and state law yet insists that Amazon is liable for the
22 suicides. *See id.* ¶¶ 118-21. Count I is a claim for products liability. *Id.* ¶¶ 232-43. Count II is a
23 claim for negligence. *Id.* ¶¶ 244-47. And Count III—brought only by Ethan’s mother—is a claim
24 for negligent infliction of emotional distress. *Id.* ¶¶ 248-51.¹

25 ¹ Amazon disagrees with many of the allegations in the Complaint but acknowledges that
26 properly pleaded factual allegations must be accepted as true at the Rule 12(b)(6) stage. Still, it
bears noting that many of the most inflammatory allegations are irrelevant. For instance, the

1 Amazon moved to dismiss or to transfer, arguing that (1) it was not subject to personal
2 jurisdiction in California because Loudwolf—the California-based third-party seller—had stored,
3 sold, and shipped the sodium nitrite from California without any logistical support from Amazon
4 in California; and (2) Plaintiffs failed to state a claim under California, Ohio, or West Virginia
5 law. *See* Dkt. #25 at 12-28. The court directed Plaintiffs to brief just the “personal jurisdiction and
6 transfer issues.” Dkt. #26 at 1. Plaintiffs voluntarily dismissed Loudwolf to avoid potential
7 severance and transfer to Ohio and West Virginia. *See* Dkt. #34 at 2. The court concluded that it
8 lacked personal jurisdiction over Amazon because it had no case-relevant “conduct within
9 California” related to Loudwolf’s sale of the sodium nitrite, *id.* at 1, and transferred the case here
10 under 28 U.S.C. § 1406(a), *id.* at 2.

11 Amazon now refiles its pending Rule 12(b)(6) motion pursuant to the Clerk of Court’s
12 instructions, Dkt. #37, and in light of the § 1406(a) transfer’s effect on the relevant “substantive
13 law” and “choice of law rules,” *Nelson v. Int’l Paint Co.*, 716 F.2d 640, 643 (9th Cir. 1983).

14 ARGUMENT

15 This Court should dismiss the Complaint under Rule 12(b)(6) for failure to state a claim
16 against Amazon. The claims based on Kristine’s and Ethan’s suicides fail for the same reasons
17 under Washington law. The claims based on Kristine’s suicide also fail under Ohio law, and the
18 claims based on Ethan’s suicide also fail under West Virginia law. Amazon addresses the
19 Jónssons’ claims first, then Ethan’s Parents’ claims.

20 A. Plaintiffs Allege No Viable Claim Based on Kristine’s Suicide.

21 The Jónssons’ claims for Product Liability (Count I) and Negligence (Counts I and II) fail
22 under both Washington and Ohio law. *See* FAC ¶¶ 232-47.

23
24
25
26

Complaint asserts that Amazon “bundles ... suicide kits” (FAC ¶ 106)—an allegation that is
transparently false—yet does not allege that Ethan or Kristine bought such a “kit.”

1 **1. Plaintiffs Cannot State a Claim Under Washington Law.**

2 The Washington Product Liability Act (“WPLA”) controls this case and precludes
3 Plaintiffs from applying their novel theories of liability to Amazon. *See* RCW 7.72.010, *et seq.*
4 And even if the WPLA somehow did not preempt Plaintiffs’ claims, they also fail under
5 Washington common law.

6 **a. The WPLA Preempts Plaintiffs’ Common-Law Claims.**

7 Plaintiffs’ two common-law claims are preempted by the WPLA, which “supplants all
8 common law claims or actions based on harm caused by a product.” *Macias v. Saberhagen*
9 *Holdings, Inc.*, 282 P.3d 1069, 1073 (Wash. 2012). Both claims stem from Kristine being injured
10 by a product (sodium nitrite) that was sold to her on Amazon.com. *See* FAC ¶¶ 244-47. Such
11 claims fall squarely within the WPLA, which “could not have ... stated more broadly” that it
12 preempts all common-law claims “for product-related injuries.” *Wash. Water Power Co. v.*
13 *Graybar Elec. Co.*, 774 P.2d 1199, 1204 (Wash. 1989). The WPLA precludes Plaintiffs’ claims
14 against Amazon.

15 **b. Plaintiffs Cannot Hold Amazon Liable Under the WPLA as a**
16 **Manufacturer.**

17 Count I is styled as a “Products Liability” claim, but most of its allegations sound in
18 negligence, not strict products liability. *Compare* FAC ¶¶ 241.a-d, g, k (negligence), *with id.*
19 ¶¶ 241.e-f, h, *and* 242 (products liability). The allegations that do implicate product liability seek
20 to hold Amazon liable for: (1) failure to warn, *id.* ¶¶ 236, 241.e-f, h-j; and (2) the sodium nitrite
21 being “unsafe” beyond what “would be contemplated by the ordinary consumer,” *id.* ¶¶ 237, 240,
22 241.a-b, d, g, k, 242. Amazon cannot be liable under either theory. Only the product’s manufacturer
23 could be liable under those theories.

24 **i. The WPLA Precludes Treating Amazon as a Manufacturer.**

25 The WPLA provides that manufacturers should ordinarily bear the liability for inadequate
26 “warnings or instructions” or for the product being “unsafe to an extent beyond that which would

1 be contemplated by the ordinary consumer.” RCW 7.72.030(1)(b)-(c), (3). While there are limited
2 exceptions where a nonmanufacturing seller can be subject to manufacturer liability, the terms of
3 the WPLA preclude Plaintiffs from attempting to hold Amazon liable as a manufacturer.

4 First, the manufacturer’s liability for “the Loudwolf Sodium Nitrite” must fall exclusively
5 on Loudwolf. FAC ¶ 98. Although Plaintiffs have dismissed Loudwolf from this case, *supra* at 4,
6 they allege that “Loudwolf” was “the brand of Sodium Nitrite involved in this case,” FAC ¶ 4. The
7 WPLA provides that: “A product seller, other than a manufacturer, shall have the liability of a
8 manufacturer to the claimant if [t]he product was marketed under a ... brand name of the product
9 seller.” RCW 7.72.040(2)(e). Consistent with this mandate, the Washington Court of Appeals has
10 held that a product seller cannot “seek to allocate fault to the manufacturer of the defective product
11 that [the seller] branded as its own.” *Johnson v. Recreational Equip., Inc.*, 247 P.3d 18, 20 (Wash.
12 Ct. App. 2011). It follows that Plaintiffs cannot seek to allocate Loudwolf’s liability to Amazon,
13 as Amazon did not sell the sodium nitrite under its own “brand name.” *Id.* Allowing Plaintiffs to
14 do so “would contravene our legislature’s clear intent that a product seller that brands a product as
15 its own assumes the liability of the manufacturer.” *Id.* at 23.

16 Second, even if the apparent-manufacturer provision in RCW 7.72.040(2)(e) did not
17 allocate all manufacturer liability to Loudwolf, Plaintiffs could still not treat Amazon as a
18 manufacturer. Plaintiffs have not attempted to sue the actual manufacturer, despite alleging that
19 the product was supplied to Loudwolf by “Duda Diesel.” FAC ¶¶ 96, 103. The WPLA precludes
20 plaintiffs from holding nonmanufacturing sellers liable as manufacturers unless the plaintiff can
21 establish that the actual manufacturer is beyond “service of process” or that the plaintiff “would
22 be unable to enforce a judgment against” the actual manufacturer. RCW 7.72.040(2)(a)-(b). Those
23 “are statutory elements that the claimant must prove.” *Am. Family Mut. Ins. Co. v. Wood Stoves*
24 *Etc., Inc.*, 518 P.3d 666, 669 (Wash. Ct. App. 2022). Plaintiffs have not even attempted to name
25 Duda Diesel as a defendant in this suit, much less alleged facts plausibly establishing that Duda
26 Diesel is unavailable or insolvent. It follows that they cannot seek to impose manufacturer’s

1 liability on Amazon—a nonmanufacturing entity—without even attempting to hold the actual
2 manufacturer liable.

3 **ii. Plaintiffs Have No Cognizable Manufacturer-Liability Claim.**

4 Even if the WPLA did not preclude Plaintiffs from treating Amazon as a manufacturer, the
5 Complaint’s factual allegations cannot support a manufacturer-liability claim under the WPLA.

6 **No Duty to Warn.** In Washington, there is no duty to warn “at all in instances where a
7 danger is obvious or known” to the user. *Baughn v. Honda Motor Co., Ltd.*, 727 P.2d 655, 662
8 (Wash. 1986); *see also Anderson v. Weslo, Inc.*, 906 P.2d 336, 342 (Wash. Ct. App. 1995). Here,
9 the danger was obvious and known.

10 The danger of ingesting large doses of industrial-grade chemicals is obvious. *See Greene v.*
11 *A.P. Prods., Ltd.*, 717 N.W.2d 855, 861-62 (Mich. 2006) (holding that the risk of ingesting hair oil
12 was “obvious” where its label listed “ingredients ... which would be unfamiliar to the average
13 product user”); *Miles v. S.C. Johnson & Son, Inc.*, 2002 WL 1303131, at *4 (N.D. Ill. June 12,
14 2002) (“The dangers of ingesting Drano are obvious to the ordinary consumer, who presumably
15 purchases the product with knowledge of—and in fact because of—its caustic properties.”). The
16 danger was particularly obvious, given that the product “was not marketed as safe for human
17 consumption or ingestion,” *Greene*, 717 N.W.2d at 861, and was categorized as “Business,
18 Industrial, and Scientific Supplies,” FAC ¶ 73. The product itself prominently bears the words
19 “INDUSTRIAL & SCIENTIFIC” on the front of the bottle. *See id.* at ¶ 98. The label warns that
20 the product is toxic and also states: “HAZARD Oxidizer. Irritant.” *Id.* ¶ 99. What’s more, the risk
21 of death from sodium nitrite was “known to the user.” *Braxton v. Rotec Indus., Inc.*, 633 P.2d 897,
22 900 (Wash. Ct. App. 1981). Kristine learned about the product after researching it on a “pro-suicide
23 website” called “Sanctioned-Suicide.com.” FAC ¶¶ 116, 170. And she specifically sought out
24 sodium nitrite for its fatal properties and as a method to commit suicide. *See id.* ¶¶ 106, 171-72,
25 179.

1 Washington courts have held, in cases involving far more benign activities with far younger
2 product users, that the product's danger was obvious or known. That includes: a 16-year-old
3 performing somersaults on a trampoline, *Anderson*, 906 P.2d at 338; two 8-year-olds riding a mini-
4 trail bike on public roads without helmets, *Baughn*, 727 P.2d at 657-58, 662-64; and an infant
5 using "a baby walker" that "allow[ed] the baby some mobility," *Thongchoom v. Graco Children's*
6 *Prods., Inc.*, 71 P.3d 214, 218 (Wash. Ct. App. 2003). Accordingly, there was no duty to warn of
7 the obvious *and* known dangers associated with intentionally ingesting sodium nitrite.

8 **No Inadequate Warnings.** Even if there were somehow a duty to warn of the obvious
9 dangers of imbibing sodium nitrite, Plaintiffs' failure-to-warn claims are precluded by the
10 product's warnings. *See supra* at 7. "Where a warning is given, the seller may reasonably assume
11 that it will be read and heeded; and a product bearing such a warning, which is safe for use if it is
12 followed, is not in defective condition, nor is it unreasonably dangerous." *Baughn*, 727 P.2d at 661
13 (quoting 2d Rest. Torts § 402A cmt. j (1965)). And here, the bottle adequately alerted users to "its
14 dangers" (toxicity) and "the measures to take to avoid those dangers" (confining uses to
15 experimental, analytical, technical, and household purposes). *See supra* at 7.

16 In an attempt to salvage their failure-to-warn claims, Plaintiffs allege that the warning label
17 should have specified "how deadly the product is," described "the painful death Sodium Nitrite
18 causes," provided more "information on how to counteract Sodium Nitrite's poisonous affects
19 [sic]," and "indicate[d] antidotes." FAC ¶¶ 99, 240.e-f, 227. But Washington courts have
20 consistently held that a warning label need not warn of "every possible injury." *Anderson*, 906
21 P.2d 340-42. In *Baughn*, for instance, the Washington Supreme Court rejected the claim that the
22 warnings on a mini-trail bike were inadequate because they could have "describe[d] in more vivid
23 detail that death or serious injury may result." 727 P.2d at 665. Similarly, in *Anderson*, the
24 Washington Court of Appeals refused to deem a trampoline manual's warnings defective based on
25 the allegation that they "failed to warn [the plaintiff] of the kinds of injuries that could result from
26 doing somersaults on the trampoline." 906 P.2d at 338. And in *Thongchoom*, the court dismissed

1 a claim that a baby walker “should have stated that babies can move quickly in the walker and that
2 they often move backward first,” deeming it enough that the walker “warned of risks associated
3 with mobility.” 71 P.3d at 219. The warnings on the Loudwolf Sodium Nitrite alerted users to a
4 “serious risk of injury” from ingesting it, *Anderson*, 906 P.2d at 342, which makes them adequate
5 under Washington law.

6 Plaintiffs raise additional, equally infirm failure-to-warn theories: They allege that Amazon
7 should have provided its own warnings “on the website.” FAC ¶ 227. But “[n]othing in RCW
8 7.72.030(1)(b) [of the WPLA] requires product manufacturers to provide additional warnings
9 beyond those that are provided with the product.” *Sherman v. Pfizer, Inc.*, 440 P.3d 1016 (Wash.
10 Ct. App. 2019). They also allege that Loudwolf’s label violated FDA regulations requiring that
11 sodium nitrite “in a retail package intended for household use ... bear the statement ‘Keep out of
12 the reach of children.’” 21 C.F.R. § 172.175(b)(3). It is not clear whether Plaintiffs seek to hold
13 Amazon liable for Loudwolf’s allegedly defective label. But Washington law is clear that they
14 cannot. Any liability for the label falls squarely on Loudwolf, which “assume[d] the liability of
15 the manufacturer,” including any warning defects, by selling “under its own brand name.”
16 *Johnson*, 247 P.3d at 21; *supra* at 6. Additionally, the FDA regulation cannot be used to impose a
17 duty of care here because Kristine is not within the “particular class of persons” that the
18 “administrative regulation” seeks “to protect.” *Jackson v. City of Seattle*, 244 P.3d 425, 428-29
19 (2010) (quoting 2d Rest. Torts § 286 (1965)). The regulation protects very small “children” from
20 whom sodium nitrite could be kept “out of the reach of.” FAC ¶ 138. But Kristine was sixteen
21 years old and purchased the sodium nitrite herself fully intending to cause herself harm. *See* FAC
22 ¶¶ 157-173. She is clearly not within the protected class.

23 **No Proximate Cause.** To prevail on their failure-to-warn claims, Plaintiffs must also
24 establish that Kristine’s death was “proximately caused” by Amazon’s allegedly inadequate
25 warnings. RCW 7.72.030(1), (3). Washington courts have been clear that alleged inadequacies in
26 the warnings or representations provided with a product cannot be a proximate cause when the

1 product user “chooses to act without regard to” the risks the product-user is warned about. *Baughn*,
2 727 P.2d at 665 (emphasis in original) (cleaned up). A product user’s “deliberate disregard” of a
3 product’s warnings breaks “the chain of legal causation required to establish proximate cause.”
4 *Burrows v. 3M Co.*, 529 F. Supp. 3d 1194, 1200-01 (W.D. Wash. 2021) (collecting cases).

5 That is what happened here. Kristine intentionally ingested the sodium nitrite “without
6 regard to” its obvious and known dangers. In fact, the danger of the product was the primary
7 motivation for Kristine’s purchase. When a consumer acts “without regard” to risks, any alleged
8 inadequacy in the warning is not the proximate cause of the injury. *Baughn*, 727 P.2d at 664.

9 **The Product Was Not Unreasonably Unsafe.** Plaintiffs also assert that Amazon violated
10 the WPLA because sodium nitrite is unreasonably unsafe. *See* FAC ¶¶ 237, 245.c. This allegation
11 implicates Washington’s “consumer expectation” test. *See* RCW 7.72.030(3). Plaintiffs “cannot
12 establish a design defect under the consumer expectations test” if the risk “was a danger obvious
13 to the ordinary consumer,” *Thongchoom*, 71 P.3d at 218, or if the “manufacturer has adequately
14 warned consumers of the risks associated with using a product,” *Reece v. Good Samaritan Hosp.*,
15 953 P.2d 117, 123 (1998).

16 Both rules apply here. The risk of ingesting a fatal dose of sodium nitrite was obvious to
17 the ordinary consumer and known by Kristine. *See supra* at 7-8. And the bottle adequately warned
18 users of “its dangers.” *See supra* at 7.

19 **iii. Amazon Cannot Be Liable for Its Alleged Negligence.**

20 Plaintiffs further allege—under common-law product liability (Count I) and common-law
21 negligence (Count II)—that Loudwolf and Amazon were negligent in selling the sodium nitrite to
22 Kristine. *See* FAC ¶¶ 241.a-d, g, k, 245.b-c. The gravamen of these allegations is that Amazon and
23 Loudwolf had a duty “to ensure vulnerable, household-based individuals are not purchasing
24 poisonous chemicals” to use for suicide. *Id.* ¶¶ 241.g, 245.c. These claims are controlled by the
25 WPLA, *see supra* at 5, and Plaintiffs have no cognizable negligence claim under the WPLA.
26

1 Plaintiffs will likely attempt to avoid WPLA preemption by characterizing their
2 “negligence” allegations in Counts I and II as focusing on Amazon’s conduct and not on the
3 product itself. But the Ninth Circuit has held that “allegations of negligent conduct” do not save a
4 common-law claim from WPLA preemption. *Louisiana-Pac. Corp. v. ASARCO Inc.*, 24 F.3d
5 1565, 1584 (9th Cir. 1994). What’s more, the plain language of the WPLA precludes such an
6 argument. The WPLA defines a “product liability claim” to include “any claim or action brought
7 for harm caused by the ... warnings, instructions, *marketing*, ... or labeling of the relevant
8 product.” RCW 7.72.010(4) (emphasis added). The conduct for which Plaintiffs seek to hold
9 Amazon liable—and the only connection to their claims—is Amazon’s alleged role in advertising
10 and selling the sodium nitrite on its website. *See, e.g.*, FAC ¶¶ 241. That constitutes “marketing”
11 under RCW 7.72.010(4), because the plain meaning of “marketing” is “[t]he act or process of
12 promoting and selling, leasing, or licensing products.” Black’s Law Dictionary 1161 (11th ed.
13 2019). As “marketing” claims against Amazon, the negligence allegations in Counts I and II are
14 “subsumed under” the WPLA. *Hue v. Farmboy Spray Co.*, 896 P.2d 682, 693 (Wash. 1995).

15 **WPLA Seller Negligence Under Count I.** The WPLA establishes a limited cause of
16 action based on “[t]he negligence of such product seller.” RCW 7.72.040(1)(a). Even assuming
17 that Amazon can be considered a “seller” of Loudwolf’s sodium nitrite, Amazon has not
18 committed “negligence” because a WPLA claim for seller-negligence requires an actual defect in
19 the product at issue, and the sodium nitrite here was not defective.²

20 The text, history, and purpose of the WPLA make clear that a “seller” cannot be liable in
21 “negligence” unless the product at issue was defective. RCW 7.72.040(1)(a). The WPLA creates—
22 as an “[e]xception” to manufacturer liability—a claim for “harm” that “was proximately caused
23 by [t]he negligence of such product seller.” *Id.* The term “negligence” in the phrase “negligence
24 of such product seller” should have the same meaning it had “at common law” when the WPLA

25 _____
26 ² While Amazon’s position is that it is not a “seller” under the WPLA in cases involving third-
party sellers’ products, it does not raise the issue at the Rule 12(b)(6) stage.

1 was enacted. *McKenna v. Harrison Mem'l Hosp.*, 960 P.2d 486, 487 (Wash. Ct. App. 1998).
2 Hence, Washington Supreme Court precedent instructs courts to “align the WPLA with the
3 common law limitations” on seller negligence. *Simonetta v. Viad Corp.*, 197 P.3d 127, 133 (Wash.
4 2008). And when the WPLA was passed in 1981, Washington law “require[d] a showing that the
5 injury-causing product was defective before liability [could] be imposed” on a seller. *Knott v.*
6 *Liberty Jewelry & Loan, Inc.*, 748 P.2d 661, 665 (1988).

7 The decision in *Knott* illustrates the principle. *See id.* There, the plaintiff brought various
8 “product liability and tort claims against the vendor, distributor, ... and manufacturer” of a
9 “Saturday night special” handgun used in a murder. *Id.* at 662. The plaintiff alleged “the distributor
10 and seller” of the “handgun were negligent in the marketing and sale of Saturday night specials.”
11 *Id.* at 664. The Court of Appeals rejected that claim, concluding that “no common law duty exists
12 ... to control the distribution of” an otherwise non-defective “product to the general public.” *Id.*
13 And it refused to recognize “a new common law cause of action for injuries sustained from the
14 criminal use of certain handguns.” *Id.* at 665. It reasoned that the Washington Supreme Court’s
15 pre-WPLA precedent, as well as decisions from other jurisdictions, “requires a showing that the
16 injury-causing product was defective before liability can be imposed” on a distributor or seller. *Id.*

17 The WPLA’s legislative history confirms that RCW 7.72.040(1)(a) limits seller liability to
18 claims grounded in a defective product. The Legislature intended RCW 7.72.040 to provide the
19 same “protection afforded to the non-manufacturing product seller in Section 105 of the” Uniform
20 Product Liability Act (“UPLA”). Senate Journal, 47th Leg., Reg. Sess., at 625 (Wash. 1981). And
21 the UPLA makes clear that sellers’ negligence-based liability is limited to: (1) “such product
22 seller’s own conduct with respect to the design, construction, inspection, or condition of the
23 product”; and (2) “any failure of such product seller to transmit adequate warnings or instructions
24
25
26

1 about the danger or proper use of the product.”³ Model Uniform Product Liability Act, 44 Fed.
2 Reg. 62,726 (Oct. 31, 1979). Neither ground applies here.

3 Finally, the WPLA’s express purpose bolsters the product-defect requirement. The stated
4 “intent of the legislature” was to ensure “that the right of the consumer to recover for injuries
5 sustained as a result of an *unsafe product* not be unduly impaired.” *Buttelo v. Woods-Yates Am.*
6 *Mach. Co.*, 864 P.2d 948, 952 (Wash. Ct. App. 1993) (quoting Laws of 1981, ch. 27, § 1). That
7 intent aligns with *Knott*’s holding that “there must be something wrong with the product” itself or
8 “there will be no liability” for the product’s seller. 748 P.2d at 665 (citation omitted) (cleaned up).

9 Plaintiffs do not have a cognizable WPLA seller-negligence claim because the sodium
10 nitrite at issue here was not defective. As explained above, the only potential “defect” Plaintiffs
11 identify relates to the warning Loudwolf placed on its bottle. Amazon cannot be liable for those
12 alleged defects. *Supra* at 5-6. The obviousness of the danger and adequacy of the warnings, *see*
13 *supra* at 7-9, precludes the product from being defective. And, in any event, the alleged defects
14 did not proximately cause the injury. *See supra* at 9-10.

15 The fact that the product was used to commit suicide cannot justify a different result. Under
16 Washington’s common law, “no duty exists to avoid acts or omissions that lead another person to
17 commit suicide unless those acts or omissions directly or indirectly deprive that person of the
18 command of his or her faculties or the control of his or her conduct.” *Webstad v. Stortini*, 924 P.2d
19 940, 945 (Wash. Ct. App. 1996). If “no duty exists” under Washington’s common law “to avoid
20 acts or omissions that lead another person to commit suicide,” then there cannot be a duty under
21 the WPLA, which was “inten[ded] to limit, rather than to expand, liability” for sellers. *Buttelo*,
22 864 P.2d at 952.

23 **Common-Law Negligence Under Count II.** Count II’s common-law negligence claim
24 boils down to two theories of liability. The first is negligent entrustment, *see* FAC ¶ 245.c; *see*

25 _____
26 ³ The Washington Supreme Court has previously invoked the UPLA when construing the
WPLA. *See, e.g., Graybar*, 112 Wn.2d at 857.

1 also 2d Rest. Torts § 390 (1965). The second is violation of a purported statute-based duty “[t]o
2 not assist or aid in a suicide attempt.” FAC ¶ 245.b; *see also id.* ¶ 209. Both theories are precluded
3 by the WPLA. And even if they were not, both fail under Washington common law.

4 Plaintiffs cannot use a negligent-entrustment theory to hold Amazon liable for Kristine’s
5 death. *See* FAC ¶ 245.b. Such a claim is clearly preempted by the WPLA. *Supra* at 5. Plaintiffs
6 cannot escape the WPLA’s preemptive scope by simply recharacterizing the act of “selling Sodium
7 Nitrite,” FAC ¶ 1, as “supply[ing] a substance,” *id.* ¶ 245.c. Permitting such pleading around the
8 WPLA would “frustrat[e] the entire scheme of the statute,” which is to “create[] a single cause of
9 action for product-related harms.” *Graybar*, 774 P.2d at 1204, 1207.

10 What’s more, Washington’s doctrine of negligent entrustment cannot support Plaintiffs’
11 claim here. Negligent entrustment claims are limited to cases where the product user is “*Known to*
12 *be Incompetent.*” *Mele v. Turner*, 720 P.2d 787 (1986) (quoting 2d Rest. Torts § 390). The kind of
13 “incompetency” that supports a negligent-entrustment claim based on injury to the product user is
14 extremely limited, such as “giving a loaded gun to a feeble minded child of 10” or “to an
15 intoxicated person.”⁴ *Mele*, 720 P.2d at 787. Plaintiffs allege no facts suggesting that Kristine was
16 such a legally recognized “incompetent.” Also, the Washington Supreme Court has held that
17 product-sellers cannot be liable under a negligent-entrustment or general “negligence” theory if
18 the product had a “sufficient” warning. *Baughn*, 727 P.2d at 663 (cleaned up). And the sodium
19 nitrite “sufficiently informed” users “of the dangers” of ingesting it. *Id.*; *supra* at 7.

20 Plaintiffs also cannot use a Washington criminal statute to impose a novel duty “[t]o not
21 assist or aid in a suicide attempt.” FAC ¶ 245.c. Plaintiffs rely on RCW 9A.36.060, *see* FAC ¶ 209,
22 which makes it a “class C felony” to “knowingly cause[] or aid[] another person to attempt
23 suicide.” While Washington courts can use statutes to define the duty of care in common-law

24 _____
25 ⁴ The Restatement establishes a higher standard of incompetency to recover for “harm
26 sustained by the incompetent,” as opposed to recovering for harm sustained by “third persons
injured by the improper use made of the chattel by the incompetent person.” 2d Rest. Torts § 390
cmts. c-d.

1 negligence actions, *see Schooley v. Pinch's Deli Mkt., Inc.*, 951 P.2d 749 (1998), the WPLA
2 preempts any such common-law claim here, *supra* at 5. And using other statutes to impose novel
3 duties on product-sellers would undermine the WPLA's primary goals of "delimiting the
4 substantive liabilities of manufacturers and product sellers" and reducing "uncertainty in tort
5 litigation." *Graybar*, 774 P.2d at 1202, 1209.

6 WPLA preemption aside, using RCW 9A.36.060 to impose a negligence-based duty of
7 care is contrary to Washington precedent. For starters, the Washington Court of Appeal expressly
8 considered RCW 9A.36.060 as a possible basis for "imposing a duty" in *Webstad*, yet concluded
9 that "no duty exists" under Washington law "to avoid acts or omissions that lead another person
10 to commit suicide." 924 P.2d at 946. Additionally, the Washington "legislature has indicated no
11 intention that" RCW 9A.36.060 should set the "standard of conduct for purposes of a tort action."
12 2d Rest. § 286 cmt. d. To the contrary, RCW 9A.36.060(1) has a heightened *mens rea* that requires
13 the defendant to "knowingly" cause or aid a specific person's suicide attempt. Amazon is not aware
14 of any Washington case imposing a negligence-based duty based on a criminal statute with a
15 heightened *mens rea* requirement. Doing so would be illogical, as an "actual knowledge" standard
16 is more demanding than the "duty of ordinary care" applied in negligence actions. *Carlsen v.*
17 *Wackenhut Corp.*, 868 P.2d 882, 888 (1994).

18 Finally, Washington courts require an actual "statutory violation" to conclude that a statute-
19 based "duty of care exists." *Schooley*, 951 P.2d at 752. There is no violation here because Plaintiffs
20 do not allege facts plausibly suggesting that Amazon "knowingly" aided in Kristine's suicide.
21 Washington has rejected "a theory of constructive knowledge" and instead requires "actual
22 knowledge" that the defendant "was promoting or facilitating" the act at issue. *State v. Allen*, 341
23 P.3d 268, 273 (Wash. 2015). For corporate defendants such as Amazon, that means actual
24 knowledge of the "individual who took the action that the statute criminalizes." Restatement
25 (Third) of Agency § 5.03 cmt. d(7) (2006); *see Diaz v. Wash. State Migrant Council*, 265 P.3d
26 956, 968 (Wash. Ct. App. 2011) (applying 3d Rest. Agency § 5.03). Plaintiffs do not—and

1 cannot—allege that any Amazon employee had actual knowledge of Kristine’s plans to misuse
2 sodium nitrite to end her life.

3 **iv. Amazon Cannot Be Liable for Removing Customer Reviews.**

4 Plaintiffs also claim that Amazon “intentionally removed and concealed negative product
5 reviews that warned consumers of the products use for death by suicide.” *See* FAC ¶ 241.j. To
6 prevail on this theory, Plaintiffs must establish that Kristine’s death was “proximately caused” by
7 Amazon’s “intentional concealment of information about the product.” RCW 7.72.040(c). This
8 theory fails for several reasons.

9 For starters, the Communications Decency Act (“CDA”) precludes liability based on
10 allegations that Amazon “removes certain reviews” from its website. *Joseph v. Amazon.com, Inc.*,
11 46 F. Supp. 3d 1095, 1106 (W.D. Wash. 2014). All three elements for CDA immunity under 47
12 U.S.C. § 230 are met here. *See Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100-01 (9th Cir. 2009).
13 First, “Amazon is an interactive service provider for CDA purposes.” *Joseph*, 46 F. Supp. 3d at
14 1105 (collecting cases). Second, the claim “seeks to treat” Amazon “as a publisher” by making it
15 liable for “deciding ... to withdraw” certain reviews “from publication” on its website. *Barnes*,
16 570 F.3d at 1100, 1102; *Joseph*, (noting that the second element is met when “the website operator
17 removes certain reviews”). Third, the “information” at issue in the customer reviews was
18 “provided by another content provider.” *Barnes*, 570 F.3d at 1101. Specifically, it was provided
19 by other users on Amazon.com. *See* FAC ¶¶ 122, 144-45; *see also Joseph*, 46 F. Supp. 3d at 1106
20 (collecting cases holding that “reviews ... posted by third parties” meet the third element). The
21 CDA therefore “precludes liability ... under [Plaintiffs’] state law cause of action.” *Barnes*, 570
22 F.3d at 1100.

23 Additionally, Plaintiffs do not—and cannot—identify any “information” or “facts about
24 the product” that Amazon intentionally concealed. To the contrary, Plaintiffs allege that the sodium
25 nitrite came in a bottle warning that the product was “toxic” and a “HAZARD.” *See* FAC ¶ 99.
26 The “information” and “facts” about sodium nitrite were plainly disclosed to Kristine. RCW

1 7.72.040(c). Moreover, Kristine actually knew the relevant “information” and “facts” regarding
2 the product’s toxicity and hazardousness; she purchased the product for those very properties. *See*
3 *supra* at 2-3. Plaintiffs allege—at most—that Amazon removed information about *purchasers*
4 misusing the product, which is not “information . . . about the product” itself. RCW 7.72.040(c).

5 Similarly, Plaintiffs do not allege any facts plausibly suggesting that Amazon’s alleged
6 “intentional concealment” of reviews “proximately caused” Kristine’s death. *Id.* Plaintiffs allege
7 that Amazon removed reviews that expressly mentioned “suicide.” *See* FAC ¶¶ 144-45. Kristine
8 was specifically seeking sodium nitrite to commit suicide. *See id.* ¶¶ 161-73. Such reviews would
9 have, if anything, simply confirmed what she already knew and intended to bring about—sodium
10 nitrite can be fatal if ingested. Removing them could not have caused her to purchase sodium
11 nitrite.

12 Finally, Plaintiffs do not allege any facts establishing Amazon’s “intent” that the
13 concealments “should be acted upon by the plaintiff.” *W. Coast, Inc. v. Snohomish County*, 48
14 P.3d 997 (2002).⁵ In other words, Plaintiffs do not allege any facts indicating that Amazon intended
15 to induce individuals to purchase sodium nitrite as a method for suicide.

16 * * *

17 There is no basis in Washington law to impose liability on Amazon for Kristine’s
18 independent decision to commit suicide by intentionally misusing a non-defective product.

19
20
21
22
23
24 ⁵ Intent to induce action by the plaintiff is an essential element of common-law “fraudulent
25 concealment.” *Schreiner Farms, Inc. v. Am. Tower, Inc.*, 293 P.3d 407 (Wash. Ct. App. 2013).
26 That common-law doctrine supplies the essential elements for a claim of “intentional
concealment” here because the WPLA does not define the terms. *See McKenna*, 960 P.2d at 487
(using the common law to define the WPLA’s undefined terms).

1 **c. Plaintiffs Fail to Plead Claims Under Ohio Law.**

2 Ohio law also bars Plaintiffs' claims against Amazon and should govern liability in the
3 event of a conflict.

4 **i. The Ohio Product Liability Act Preempts Plaintiffs' Claims.**

5 The Ohio Product Liability Act ("OPLA") has "abrogated all common law claims relating
6 to product liability causes of actions." *Parker v. ACE Hardware Corp.*, 104 N.E.3d 298, 304 (Ohio
7 Ct. App. 2018). The Act abrogates Plaintiffs' claims because they all "seek recovery of
8 compensatory damages based upon a death allegedly caused by ... marketing of a product [sodium
9 nitrite], and/or a warning or lack thereof relative to that product." *Miles v. Raymond Corp.*, 612 F.
10 Supp. 2d 913, 919 (N.D. Ohio 2009). And the Act bars recovery against Amazon because, under
11 Ohio Supreme Court precedent, "Amazon is not a supplier" under the OPLA. *Stiner v.*
12 *Amazon.com, Inc.*, 164 N.E.3d 394, 401 (Ohio 2020).

13 The OPLA's purpose—expressly codified by the Legislature—is "to abrogate all common
14 law product liability claims or causes of action." Ohio Rev. Code § 2307.71(B). It subsumes every
15 "claim or cause of action ... that seeks to recover compensatory damages from a manufacturer or
16 supplier for death, physical injury to person [or] emotional distress ... that allegedly arose from ...
17 the design ... or marketing of [a] product ... [or] ... [a]ny warning or instruction, or lack of warning
18 or instruction, associated with that product." *Id.* § 2307.71(A)(13).

19 Plaintiffs cannot thwart the OPLA's preemptive effect by artful pleading or creative
20 characterization of their claims. It is "[t]he essential nature of the substantive allegations of the
21 plaintiff's claim" that "determines the claim's true nature." *Volovetz v. Tremco Barrier Sols., Inc.*,
22 74 N.E.3d 743, 753 (Ohio Ct. App. 2016). So a claim is preempted if "[t]he actionable conduct
23 that forms the basis of the negligence claim—negligent research, manufacturing, testing,
24 marketing, and failure to warn—is the same conduct that the OPLA defines as giving rise to a
25 'products liability claim.'" *Straford v. SmithKline Beecham Corp.*, 2008 WL 2491965, at *5 (S.D.
26 Ohio June 17, 2008).

1 Plaintiffs allege that Amazon, “as [a] product seller[], [is] liable” for Kristine’s suicide
2 using the sodium nitrite sold by Loudwolf. *See* FAC ¶¶ 241, 244. These claims fall squarely within
3 the OPLA. Count I seeks to hold Amazon liable based on its alleged conduct in “selling” the
4 sodium nitrite to Kristine, as well as “fail[ing] to provide adequate warnings” and other
5 “information” regarding the sodium nitrite. FAC ¶ 241.a-k. That is a claim based on the
6 “marketing” of the sodium nitrite,⁶ as well as the “warning or instruction, or lack of warning or
7 instruction, associated with” the sodium nitrite. Ohio. Rev. Code § 2307.71(A)(13)(a)-(b).
8 Likewise, Count II claims Amazon breached various duties of care through its “tortious conduct.”
9 FAC ¶¶ 245-47. Count II does not identify any “tortious conduct” separate from the acts alleged
10 in Count I, all of which fall under either the “marketing” or “failure to warn” provisions of the
11 OPLA. *Stratford*, 2008 WL 2491965, at *5. Indeed, all of “the factual allegations in the complaint
12 relate exclusively to [Amazon’s] involvement with [sodium nitrite], which is a product.” *Miles*,
13 612 F. Supp. 2d at 922. So “any common law claims arising out of those factual allegations are
14 product liability claims—not, as Plaintiffs would have it, general negligence claims.” *Id.*

15 The OPLA’s preemption of their common-law claims is decisive because Plaintiffs cannot
16 state a claim against Amazon under the OPLA. Plaintiffs allege claims under the common law,
17 FAC ¶¶ 232-47, but “claims brought pursuant to the common law, instead of the OPLA, are now
18 routinely dismissed,” *WEL Cos. v. Haldex Brake Prods. Corp.*, 467 F. Supp. 3d 545, 558 (S.D.
19 Ohio 2020) (collecting cases). Additionally, Amazon cannot be liable under the OPLA in third-
20 party-seller cases like this one. The OPLA limits liability to “manufacturers” and “suppliers” only.
21 Ohio Rev. Code § 2307.74-77 (outlining manufacturer liability); *id.* § 2307.78 (outlining supplier
22 liability). Plaintiffs do not allege that Amazon is the actual manufacturer. *See* FAC ¶¶ 96, 103.

23
24
25 ⁶ Ohio courts have held that the plain meaning of “marketing” is “an aggregate of functions
26 involved in transferring title and in moving goods from producer to consumer.” *Wesfield Cos. v.*
O.K.L. Can Line, 804 N.E.2d 45, 50 (Ohio Ct. App. 2003) (citation omitted).

1 And Amazon is not a “supplier” in this case because Kristine purchased the sodium nitrite from
2 Loudwolf, which is a “third-party seller.” FAC ¶¶ 20, 30, 65.

3 The Ohio Supreme Court has held that, in cases involving third-party sellers’ products,
4 “Amazon is not a supplier ... for the purposes of the Ohio Products Liability Act.” *Stiner*, 164
5 N.E.3d at 401. In *Stiner*, the plaintiff-father brought various “product-liability and negligence
6 claims” against Amazon arising from his son’s death after using a caffeine powder purchased from
7 “a third-party vendor” through Amazon.com. *Id.* at 396, 398. The Ohio Supreme Court concluded
8 that the claims “all depend[ed] on whether Amazon is a ‘supplier’ under the Act.” *Id.* at 398. And
9 it held that Amazon was not “a ‘supplier’ under the Act” because it does not “exercise control over
10 the product itself sufficient to make it a ‘supplier’ under the Act.” *Id.* at 399-400.

11 The OPLA therefore preempts Plaintiffs’ common-law claims and precludes them from
12 holding Amazon liable in this case.

13 **ii. Plaintiffs’ Claims Fail Under Ohio Tort Law.**

14 Plaintiffs also cannot state a claim under the common law that the OPLA preempted.

15 **Products Liability.** Count I cannot state a claim for products liability under Ohio common
16 law. Pre-OPLA common law is clear that there is no duty to warn where the product’s danger is
17 “fairly obvious.” *Taylor v. Yale & Towne Mfg. Co.*, 520 N.E.2d 1375, 1377 (Ohio Ct. App. 1987).
18 The hazard of sodium nitrite was known to Kristine; she allegedly purchased it specifically because
19 she intended this hazard to cause her death. *See* FAC ¶¶ 116, 160, 162, 170.

20 **Negligence.** Plaintiffs’ claims for negligence, under negligent-entrustment and statutory-
21 based theories, are not viable under Ohio common law.

22 First, Plaintiffs allege that Amazon breached a purported duty “[t]o not supply a substance
23 for the use of another whom it knew or had reason to know to be likely to use it in manner involving
24 unreasonable risk of physical harm to himself.” *See* FAC ¶ 245.c. This is a negligent-entrustment
25 claim under § 390 of the Second Restatement. *See supra* at 14. But “Ohio courts have not adopted
26 Section 390 of the Restatement.” *M.M. v. M.F.*, 2020 WL 6342653, at *4 (Ohio Oct. 29, 2020).

1 Even if they had, the cause of action cannot apply here. Kristine is not the kind of “incompetent”
2 who can bring a claim for her own injuries. *See supra* at 14-15. Also, § 390 applies to the
3 “supplier” of “a chattel.” 2d Rest. § 390. But the OPLA preempts any such common-law action by
4 defining when a “supplier” is liable for “negligence” in supplying a “product”—and the Ohio
5 Supreme Court has held that Amazon is not a supplier in cases like this one. *See supra* at 20.

6 Second, Plaintiffs claim that Amazon breached a duty “[t]o not assist or aid in a suicide
7 attempt,” which they base on “Ohio Revised Code Section 3795,” a criminal statute. *See* FAC
8 ¶¶ 209, 245.b. Courts are “under no compulsion to accept” criminal statutes “as defining any
9 standard of conduct for purposes of a tort action.” 2d Rest. Torts § 286, *cmt. d.* In any event, the
10 allegations do not establish a violation of Section 3795, which criminalizes “knowingly
11 [p]roviding the physical means by which the other person commits ... suicide.” Ohio Rev. Code
12 § 3795.04(A)(1). It was Loudwolf—not Amazon—who was “providing” the sodium nitrite to
13 Kristine. *See* FAC ¶¶ 57, 65. Also, the defendant must act “knowingly ... with the *purpose* of
14 helping another person to commit or attempt suicide.” Ohio Rev. Code § 3795.01(A) (emphasis
15 added). The Complaint does not and cannot allege facts establishing that Amazon acted with the
16 “purpose of helping” Kristine commit suicide. *Id.* At most, it alleges that Amazon did not
17 proactively restrict the sale of sodium nitrite or adopt procedures to identify purchases of sodium
18 nitrite in “unusual circumstances” that could indicate an increased risk of suicide. FAC ¶ 227. Such
19 conduct is not the kind of “specific intention to cause a certain result” that is necessary to act with
20 “purpose” under Ohio law. *State v. Shuck*, 166 N.E.3d 122, 127 (Ohio Ct. App. 2020) (cleaned
21 up).

22 **d. Ohio’s Substantive Law Should Govern Liability**
23 **if There Were a Conflict.**

24 Under Washington’s choice-of-law regime, courts generally apply the substantive tort “law
25 of the state where the injury occurred unless another state has a greater interest in determination
26 of that particular issue.” *Martin v. Goodyear Tire & Rubber Co.*, 61 P.3d 1196, 1199 (Wash. Ct.

1 App. 2003). That general rule applies here. While Amazon “has its principal place of business in
2 Washington,” Ohio “ha[s] the most significant relationship to this action” given that the product
3 was sold in and delivered to Ohio, Kristine and her parents “were [Ohio] residents,” and Kristine
4 “was injured in” Ohio. *Caswell v. Olympic Pipeline Co.*, 484 F. App’x 151, 152 (9th Cir. 2012).
5 Accordingly, Ohio “substantive law” applies here. *Id.* (applying substantive law of state of injury
6 in a product liability case). “Declining to apply Ohio substantive law here would allow [Plaintiffs]
7 to make an end run around Ohio’s relevant policies” on product liability. *Axline v. 3M Co.*, 8 F.4th
8 667, 674–75 (8th Cir. 2021) (applying the OPLA to claims against a Minnesota manufacturer for
9 an Ohio-based injury). “Applying [Ohio] law achieves a uniform result for injuries caused by
10 products used in the state of [Ohio] and predictability for manufacturers [and sellers] whose
11 products are used or consumed in” Ohio. *Rice v. Dow Chem. Co.*, 875 P.2d 1213, 1219 (Wash.
12 1994).

13 **B. Plaintiffs Allege No Viable Claim Based on Ethan’s Suicide.**

14 Ethan’s parents bring the same two claims—Products Liability and Negligence—as the
15 Jónssons. *See* FAC ¶¶ 232-47. Their claims fail under Washington law for the same reasons as
16 discussed above. *Supra* at 5-18. Their claims also fail under West Virginia law. And, as with the
17 Jónssons’ claims, if this Court were to conclude that Plaintiffs have a viable claim under
18 Washington law based on Ethan’s suicide, then West Virginia law should govern liability as it was
19 the site of the sale, injury, and death, *see* FAC ¶¶ 187-204, and therefore has “the most significant
20 relationship to this action,” *Caswell*, 484 F. App’x at 152.

21 **1. West Virginia Does Not Recognize Plaintiffs’ Claims.**

22 The West Virginia Supreme Court has held that “recovery for wrongful death by suicide
23 may be possible” only in limited situations. *Moats v. Preston County Com’n.*, 521 S.E. 2d 180,
24 189 (W. Va., 1999). It has stressed that such actions “have generally been barred because the act
25 of suicide is considered deliberate and intentional, and therefore, an intervening act that precludes
26 a finding that the defendant is responsible.” *Id.* at 188. There are just two potential exceptions:

1 (1) “where the defendant is found to have actually caused the suicide,” and (2) “where the
2 defendant is found to have had a duty to prevent the suicide from occurring.” *Id.* at 188 (citing
3 *McLaughlin v. Sullivan*, 461 A.2d 123, 124 (N.H. 1983)). Neither applies here.

4 The West Virginia Supreme Court has yet to apply the first exception but the authorities
5 that the court cited in *Moats* make clear it cannot apply here.⁷ *See id.* This is not a case where
6 Amazon’s allegedly “tortious act ... caused a mental condition in the decedent that proximately
7 resulted in an uncontrollable impulse to commit suicide, or prevented the decedent from realizing
8 the nature of his act.” *McLaughlin*, 461 A.2d at 124. Plaintiffs do not allege that Ethan had “a
9 mental condition” caused by Amazon. *Id.*; FAC ¶¶ 187-91. The first “exception also encompasses
10 cases in which a statute prohibiting the sale of certain drugs or liquor was *violated* by the
11 defendant.” *McLaughlin*, 461 A.2d at 124 (emphasis added). That is also not the case here.
12 Plaintiffs do not identify any federal or West Virginia statute that Amazon violated. *See* FAC
13 ¶¶ 118-21.

14 The second exception also does not apply. It involves cases where the decedent and the
15 defendant have “some relationship which would give rise to a duty to prevent suicide.” *Morris*,
16 866 S.E.2d at 69 (cleaned up). The exception requires both a “caretaking relationship and the
17 caretaker’s knowledge that the individual is ‘suicidal’ for purposes of imposition of duty.” *Id.* at
18 70 (cleaned up). Neither requirement is met here. Amazon does not have a “caretaking
19 relationship” with purchasers. Such caretaking relationships are limited to “custodial” institutions
20 that have “actual physical custody and control over ... persons” and to “mental health
21 professionals” caring for patients. *Id.* at 69-70. Nor did Amazon have “knowledge” that Ethan was
22 suicidal. *Id.* at 70. Plaintiffs allege that he used his mother’s account to make the purchase and
23 exhibited no signs of suicide risk. *See* FAC ¶¶ 26, 188.

24
25 ⁷ The West Virginia Supreme Court’s most recent decision on wrongful-death claims arising
26 from suicide also looked to the New Hampshire Supreme Court’s *McLaughlin* opinion to elaborate
on the exceptions. *See Morris v. Corder*, 866 S.E.2d 66, 70 (W. Va. 2021).

1 **2. Counts I and II Fail Under West Virginia Common Law.**

2 Beyond the suicide-specific limitation on tort claims, Plaintiffs' claims fail under West
3 Virginia's established product-liability and negligence doctrines.

4 **Product Liability.** Count I fails to state a product-liability claim under West Virginia law.
5 *See* FAC ¶¶ 232-43. First, under West Virginia's product-liability doctrine, defendants are "not
6 liable when the product is materially altered before use, or is combined with another product which
7 makes it dangerous." *Landis v. Hearthmark, LLC*, 750 S.E.2d 280, 291-92 (W. Va. 2013) (cleaned
8 up). That is precisely what occurred here. Ethan "mixed" the sodium nitrite "with water" then
9 drank it. FAC ¶¶ 6, 200; *see also id.* ¶¶ 130-33. Second, "there is no duty to warn of obvious
10 dangers present in products." *Roney v. Gencorp*, 654 F. Supp. 2d 501, 503 (S.D.W. Va. 2009).
11 The danger of ingesting industrial chemicals—to commit suicide without medical supervision—is
12 obvious. *See supra* at 7-8.

13 **Negligence.** Count II fails to state a negligence claim under West Virginia law. Count II's
14 negligent-entrustment theory fails because "the critical element of a negligent entrustment action"
15 under West Virginia common law is the "improper" entrustment of the chattel "to a person who is
16 known to be likely to cause an unreasonable risk of harm *to others*." *Huggins v. Tri-Cnty. Bonding*
17 *Co.*, 337 S.E.2d 12, 17 (W. Va. 1985) (emphasis added). The Complaint does not allege that Ethan
18 was a danger "to others," only to himself. *Id.*; FAC ¶¶ 187-201. The Complaint's statutory-
19 violation theory, *see supra* at 21, also fails because, as the Complaint acknowledges, West Virginia
20 has no statute outlawing "aiding in another person's death," FAC ¶ 209. Thus, there is no
21 "violation of a statute" that is "intended for the protection of persons of a certain class," which is
22 necessary for a "*prima facie* negligence" case. *Gen. Pipeline Constr., Inc. v. Hairston*, 765 S.E.2d
23 163, 171 (W. Va. 2014) (cleaned up). Plaintiffs cannot invoke the "common law tradition allowing
24 prosecution for aiding a suicide," FAC ¶ 209, because that obviously does not involve a statute.

3. Count III Fails to State an NIED Claim.⁸

Count III fails to state an NIED claim—under both Washington and West Virginia law—for two reasons. First, an NIED claim “is a collateral claim for damages suffered indirectly as the result of the defendant’s breach of duty *owed to the decedent.*” *Lee v. City of Spokane*, 2 P.3d 979, 990 (Wash. Ct. App. 2000); *see also Stump v. Ashland, Inc.*, 499 S.E.2d 41, 47 (W. Va. 1997) (requiring that the alleged distress be “a result of defendant’s negligent conduct” (cleaned up)). Because Count II fails to state a negligence claim against Amazon, Count III necessarily fails to state an NIED claim. Second, “a plaintiff in a negligent infliction of emotional distress action must be present at the scene of the injury-producing event at the time it occurs and must be aware that it is causing injury to the victim.” *Stump*, 499 S.E.2d at 47; *Colbert v. Moomba Sports, Inc.*, 176 P.3d 497, 500, 503 (Wash. 2008) (requiring “viewing a physically injured loved one shortly after a traumatic accident” such that it is “a continuation of the event”). Ethan’s mother found him the morning after he committed suicide. *See* FAC ¶¶ 198, 231. So, there cannot be an NIED claim.

CONCLUSION

This Court should grant Amazon’s motion and dismiss the claims against Amazon outright.

Dated: March 30, 2023

By: s/ Gregory F. Miller

I certify that this motion contains 8,373 words, in compliance with the Local Civil Rules.

Gregory F. Miller, Bar No. 56466
Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Telephone: +1.206.359.8000
GMiller@perkinscoie.com

Steven Williamson, Bar No. 343842
Perkins Coie LLP
1888 Century Park East, Suite 1700
Los Angeles, California 90067-1721
Telephone: +1.310.788.9900
SWilliamson@perkinscoie.com
Pro hac vice application pending

Attorneys for Defendant Amazon.com, Inc.

⁸ Count III is brought only by Ethan’s mother, Nikki Maynor. *See* FAC ¶¶ 248-51.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on March 30, 2023, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court’s Electronic Mail Notice List.

s/ June Starr

June Starr

CERTIFICATE OF SERVICE
(No. 2:23-cv-00263)

Perkins Coie LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101-3099
Phone: +1.206.359.8000
Fax: +1.206.359.9000

161458035

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NICOLAS MCCARTHY, et al.,
Plaintiffs,
v.
AMAZON.COM, INC.,
Defendant.

Case No. [3:22-cv-05718-JD](#)

TRANSFER ORDER

Pursuant to the Court’s minute order, Dkt. No. 34, the case is transferred to the Western District of Washington.

IT IS SO ORDERED.

Dated: February 17, 2023



JAMES DONATO
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Civil Minutes

Date: February 16, 2023

Judge: Hon. James Donato

Time: 10 Minutes

Case No. **3:22-cv-05718-JD**

Case Name **McCarthy et al v. Amazon.com, Inc. et al**

Attorneys for Plaintiffs: Hannah Meropol, Naomi Leeds, and Carrie Goldberg
Attorney for Defendant: Gregory F. Miller

Court Reporter: Belle Ball

Deputy Clerk: Lisa Clark

PROCEEDINGS

Motion Hearing -- Held

NOTES AND ORDERS

Defendant Amazon's motion to dismiss or transfer for lack of personal jurisdiction, Dkt. No. 25, is granted.

The Court lacks general jurisdiction over Amazon because it is incorporated in Delaware, has its principal place of business in Washington, and there are no exceptional facts to warrant looking beyond these "paradigm bases for general jurisdiction." *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (cleaned up).

Specific jurisdiction is also lacking. Plaintiffs have not adequately demonstrated that their "claims relate to [Amazon's] conduct within California." *CZ Servs., Inc. v. Anthem Ins. Cos., Inc.*, No. 19-cv-04453-JD, 2022 WL 4126281, at *2 (N.D. Cal. Sept. 9, 2022); *see also Sharpe v. Puritan's Pride, Inc.*, No. 16-cv-06717-JD, 2019 WL 188658, at *4 (N.D. Cal. Jan. 14, 2019). It is not enough that Amazon conducted some business with defendant Loudwolf, a California corporation. *See McDonald v. Kiloo ApS*, 385 F. Supp. 3d 1022, 1041 (N.D. Cal. 2019); *CZ Servs.*, 2022 WL 4126281, at *1.

Transfer, not dismissal, is appropriate. *See Amity Rubberized Pen Co. v. Mkt. Quest Grp. Inc.*, 793 F.3d 991, 996 (9th Cir. 2015) ("[T]ransfer will generally be in the interest of justice, unless it is apparent that the matter to be transferred is frivolous or was filed in bad faith."). The Court

may transfer this case to “any district or division in which it could have been brought.” 28 U.S.C. § 1406(a); *see also Goldlawr, Inc. v. Heiman*, 369 U.S. 463, 466 (1962).

At plaintiffs’ request, Loudwolf is dismissed without prejudice. Amazon, the sole remaining defendant, has its principal place of business in Seattle, Washington, and so personal jurisdiction and venue are proper in that district. *See* Dkt. No. 25-1 ¶ 3 (Sachs declaration). Consequently, the case may be transferred to the Western District of Washington.

To the extent that the factors relevant to transfer under 28 U.S.C. § 1404(a) apply here, the record indicates that Washington will be a much more convenient forum for parties and witnesses. *See Coleman v. Mallinckrodt Enters. LLC*, No. 17-cv-06565-JD, 2019 WL 1779574, at *1 (N.D. Cal. Apr. 23, 2019) (discussing Section 1404(a) factors). Plaintiffs’ claims against Amazon are about its business practices and operations in Washington. Most, and possibly all, of the relevant witnesses and documents will be located there. Severing plaintiffs’ claims and transferring their cases to Ohio and West Virginia, as Amazon suggests, would result in needless duplication of effort and judicial resources.

Transfer is ordered to the Western District of Washington.

1 Hannah Meropol (CA Bar No. 340095)
 2 Carrie Goldberg (*pro hac vice* application forthcoming)
 3 Naomi Leeds (*pro hac vice* application forthcoming)
 4 **C.A. Goldberg, PLLC**
 5 16 Court St., 33rd Floor
 6 Brooklyn, NY 11241
 7 Telephone: 646-666-8908
 8 Fax: 347-599-9998
 9 Email: hannah@cagoldberglaw.com
 10 *Attorneys for Plaintiffs*

11 UNITED STATES DISTRICT COURT
 12
 13 NORTHERN DISTRICT OF CALIFORNIA

14 NICHOLAS MCCARTHY and
 15 MARTINIQUE MAYNOR, individually and
 16 NICHOLAS MCCARTHY as successor-in-
 17 interest to ETHAN MCCARTHY a deceased
 18 individual;
 19 LAURA JÓNSSON and
 20 STEINN JÓNSSON, individually, and
 21 LAURA JÓNSSON as successor-in-interest
 22 to KRISTINE JÓNSSON, a deceased
 23 individual;

24 Plaintiffs,

25 vs.

26 AMAZON.COM, INC., a Delaware
 27 corporation, and
 LOUDWOLF, INC., a California
 corporation,

Defendants.

NO. 3:22-cv-05718-JD

**FIRST AMENDED COMPLAINT FOR
 CIVIL PENALTIES AND DEMAND
 FOR A JURY TRIAL**

1. Products liability
2. Negligence
3. Negligent infliction of emotional distress

28 **COME NOW** plaintiffs Martinique Maynor and Nicholas McCarthy, individually, and
 29 Nicholas McCarthy as successor-in-interest to Ethan McCarthy, deceased, and Laura Jónsson
 30 and Steinn Jónsson, individually, and Laura Jónsson as successor-in-interest of Kristine Jónsson,
 31

1 by and through their attorneys, C.A. Goldberg, PLLC, and for causes of action against defendants
2 Amazon.com, Inc. and Loudwolf, Inc. state:

3 **PRELIMINARY STATEMENT**

4 1. This is an action against Amazon.com, Inc. (“Amazon”), which profits by selling
5 Sodium Nitrite, a suicide chemical, it knows is used by children to die by suicide.

6 2. Amazon is guided by the principle that it can sell anything to anybody anywhere
7 anytime and for any reason, even when it knows it’s selling something that likely will be used to
8 kill a child within a week from their purchase.

9 3. In our country, it is illegal to aid or assist in somebody else’s suicide.

10 4. The rare exception exists in eleven states where physicians are allowed, under
11 exceedingly narrow and legislated medical circumstances, to carefully facilitate the death of a
12 proven terminally ill patient. Contrary to what Amazon and Loudwolf, Inc. (“Loudwolf”) – the
13 brand of Sodium Nitrite involved in this case – may think, there is no exception that allows for
14 corporate-assisted suicide.

15 5. This is a case about the most powerful, wealthy, and trusted corporation in
16 America knowingly assisting in the deaths of healthy children by selling them suicide kits.

17 6. These kits are comprised of Sodium Nitrite—a soluble solution that when mixed
18 with water and drunk can render a person unconscious within twenty minutes. Along with
19 Sodium Nitrite, Amazon recommends that customers also purchase a small scale to measure the
20 right dose, Tagamet to prevent vomiting up the liquid, and the “Amazon edition” of the *Peaceful*
21 *Pill Handbook* which contains a chapter with instructions on how to administer these ingredients
22 together to die.

23 7. Even after parents and regulators warned Amazon that Sodium Nitrite had no
24 household use, Amazon continued to sell it to households, for under twenty dollars, and with
25 two-day delivery.

1 8. Through October of 2022, Amazon continued to stock at least three brands of 98-
2 99% pure Sodium Nitrite. As of December of 2022, Amazon disabled its sales of Sodium Nitrite
3 directly to individuals but refuses to indicate whether it will eventually resume sales to
4 individuals.

5 9. Defendant Loudwolf is one brand of Sodium Nitrite Amazon stocked.

6 10. Amazon sold Loudwolf Sodium Nitrite and other brands to children.

7 11. Amazon received notifications from parents of children who died from various
8 brands of Sodium Nitrite dating back to at least 2018.

9 12. Amazon has no method of age verification to set up an account and even if it did,
10 does not hesitate to sell Sodium Nitrite to households or to children.

11 13. Amazon knows it sells Sodium Nitrite to households that have no history of
12 purchasing potent industrial chemicals.

13 14. Amazon and Loudwolf know there are zero household uses for Sodium Nitrite.

14 15. Amazon knows that during the coronavirus pandemic there was a huge spike in
15 teenage suicide and mental health crises, and that Sodium Nitrite became a popular, cheap, and
16 convenient method for teens to kill themselves.

17 16. During the pandemic, Amazon's profits soared 220% in the first year alone,
18 capitalizing on Americans quarantining at home and positioning itself as the trusted stalwart that
19 could be counted on deliver necessities—at times being the only reliable provider of masks, toilet
20 paper, and hand sanitizer when everybody was scared to leave home.

21 17. Shoppers on Amazon can just as easily click to purchase Sodium Nitrite as they
22 can batteries, pistachio nuts, or toilet paper.

23 18. After being informed of the high incidence of Sodium Nitrite being sold to
24 children and delivered to their homes, Amazon consciously, and with the advice of legal counsel,
25 recommitted to continue to sell Sodium Nitrite and deliver it to the homes of children.

26

27

1 19. Plaintiffs are the families of two teenagers, unknown to one another, who during
2 the Coronavirus pandemic separately purchased Loudwolf Sodium Nitrite from Amazon and then
3 died excruciating deaths just over three months apart.

4 20. On September 24, 2020, 16-year-old Kristine Jónsson from Hilliard, Ohio
5 purchased Loudwolf Sodium Nitrite from Amazon.com. It arrived two days later.

6 21. The police found her dead in her mother's car at 8:12 am on September 30, 2020.

7 22. On January 1, 2021, 17-year-old Ethan McCarthy from Milton, West Virginia
8 purchased Loudwolf Sodium Nitrite from Amazon.com.

9 23. On January 7, 2021, Ethan's mother discovered him dead in his bed and he was
10 pronounced dead at 10:56am.

11 24. Both Kristine and Ethan had purchased the Sodium Nitrite for \$19.99. Amazon
12 made a total of \$2.39 from each sale.

13 25. The circumstances surrounding Amazon's sales to both Kristine and Ethan were
14 highly irregular. Amazon has a policy that people under the age of 18 can only use the service
15 with the involvement of a parent or guardian. However, Kristine, at just sixteen, had created her
16 own account to purchase the poisonous chemical and was never asked her age when she set up
17 the account. The package delivered to Kristine's home was addressed without a last name. It read
18 only "Kristine."

19 26. Seventeen-year-old Ethan used the account that belonged to his mother, Nikki, to
20 purchase Sodium Nitrite. When Nikki received the email receipt for the purchase, she
21 immediately called Amazon's customer service to tell them there must have been some mistake
22 and that nobody at her home had ordered the item. Amazon told Nikki the order was cancelled.
23 Instead, the Sodium Nitrite was delivered to her home four days later.

24 27. Amazon consciously sold Kristine and Ethan Sodium Nitrite with the knowledge
25 and understanding it would be used to end their lives.

26 28. At the time of Kristine and Ethan's deaths, Amazon had received dozens of
27

1 notifications from parents and regulators about deaths caused by Sodium Nitrite, dating back to
2 at least 2018.

3 29. On March 17, 2021 the US Food and Drug Administration (FDA) notified
4 Loudwolf that Loudwolf Sodium Nitrite purchased through Amazon was mislabeled and had
5 been used in a self-inflicted death.

6 30. Upon information and belief, on March 17, 2021, Loudwolf permanently removed
7 Sodium Nitrite from its Amazon store and from its own website.

8 31. Amazon had withheld from Loudwolf and other vendors of Sodium Nitrite its
9 knowledge of the numerous suicides and regulatory complaints it had received about the various
10 brands of Sodium Nitrite.

11 32. While Loudwolf discontinued all global sales effective the day it acquired
12 knowledge of one death, Amazon continued to sell various brands of Sodium Nitrite through
13 October 2022 killing scores more children and young adults. To date, Amazon refuses to confirm
14 it no longer sells Sodium Nitrite.

15 33. In loving memory of Kristine and Ethan, their families now seek to hold Amazon
16 responsible under theories of product liability and negligence for the untimely, painful, and
17 preventable deaths it caused. It further seeks an injunction against Loudwolf and Amazon to ban
18 sales of Sodium Nitrite

19 **PARTIES**

20 At all relevant and material times:

21 34. Plaintiff Nicholas McCarthy (“Nick”) is the father of Ethan McCarthy (“Ethan”),
22 who died on January 7, 2021 at age 17, and is the successor-in-interest to Ethan’s estate.

23 35. Nick resides in Austintown, Ohio.

24 36. Nick has not entered into a User Agreement or other contractual relationship with
25 Amazon in connection with Ethan’s use of Amazon.

26 37. Upon information and belief, Ethan never entered into a User Agreement or other
27

1 contractual relationship with Amazon, but as successor-in-interest to the Estate of Ethan
2 McCarthy, Nick expressly disaffirms any and all User Agreements with Amazon into which
3 Ethan may have entered.

4 38. Plaintiff Martinique McCarthy (“Nikki”) is the mother of Ethan.

5 39. Nikki resides in Wilmington, North Carolina.

6 40. Nikki has not entered into a User Agreement or other contractual relationship with
7 Amazon in connection with Ethan’s use of Amazon.

8 41. Plaintiff Laura Jónsson (“Kristin”) is the mother of Kristine Jónsson, who died on
9 September 30, 2020 at age 16, and is the successor-in-interest to Kristine’s estate.

10 42. Kristin resides in Hilliard, Ohio.

11 43. Kristin has not entered into a User Agreement or other contractual relationship
12 with Amazon in connection with Kristine’s use of Amazon.

13 44. As successor-in-interest to the Estate of Kristine Jónsson, Kristin expressly
14 disaffirms any and all User Agreements with Amazon into which Kristin may have entered.

15 45. Plaintiff Steinn Jónsson (“Steinn”) is the father of Kristine.

16 46. Steinn resides in Hilliard Ohio.

17 47. Steinn has not entered into a User Agreement or other contractual relationship
18 with Amazon in connection with Kristine’s use of Amazon.

19 48. Defendant Loudwolf is a corporation organized under the laws of the State of
20 California with a principal place of business in Dublin, California in Alameda County.

21 49. Defendant Amazon is a corporation organized under the laws of the State of
22 Delaware with its headquarters in the State of Washington.

23 50. Defendant Amazon does business throughout the State of California.

24 **JURISDICTION**

1 51. Under 28 U.S.C. § 1332(a)(1), this Court has jurisdiction based on diversity
2 because it is a civil action in which the amount in controversy exceeds the sum of \$75,000
3 between citizens of different States.

4 52. This Court has personal jurisdiction over the parties.

5 53. This Court has personal jurisdiction over Loudwolf because Loudwolf is
6 incorporated in California and has its principal place of business in California.

7 54. This Court has personal jurisdiction over Amazon. Amazon conducts substantial
8 business in California that is so continuous and systematic as to render Amazon “at home” in the
9 State. Amazon also purposefully avails itself of the privileges of conducting business within
10 California. Moreover, these causes of action arise out of Amazon’s business activities within
11 California, namely, the sale of Sodium Nitrite through Loudwolf.

12 55. On information and belief, Amazon operates more fulfillment centers in California
13 than any other state and maintains an extensive sales distribution network within the State. It
14 conducts substantial marketing and sales activities within the State. Amazon also employs a
15 significant number of individuals within California to carry out its business activities, including
16 at eleven offices listed on Amazon’s recruiting website, Amazon.jobs.

17 56. Amazon contracted to do business with Loudwolf in California, including
18 requirements that Loudwolf indemnify Amazon from all claims from customers and to hire
19 counsel of its choosing.

20 57. Loudwolf’s inventory of Sodium Nitrite was stored and shipped from California
21 to the Plaintiffs.

22 58. The events surrounding whether Amazon withheld notification to Loudwolf of
23 Amazon’s prior notice that Sodium Nitrite was being purchased and used for suicide occurred in
24 California.

25 59. The events surrounding whether Amazon properly delivered to Loudwolf
26 notification of the cancellation of the Sodium Nitrite order from Nikki McCarthy occurred in
27

1 California, as did the ultimate shipment of the Sodium Nitrite.

2 60. Venue is proper in this under 28 U.S.C. § 1441(a).

3 **FACTS**

4 **Amazon Company Design**

5 61. Jeff Bezos founded Amazon in 1994 and remained CEO until he stepped down in
6 July 2021 to pursue a space-exploration career.

7 62. Amazon is a global online marketplace, selling its own products and those of over
8 one million other manufacturers and vendors. It is the world's most valuable retail company.

9 63. Amazon's revenues in 2020 were \$386 billion, and as of September 2022, its
10 market capitalization was \$1.16 trillion.

11 64. Over 350 million products and services are available on Amazon.

12 65. Amazon's primary business model is to sell products for other manufacturers and
13 to take a commission on those sales. Amazon calls these manufacturers "third-party sellers" or
14 "third-party vendors."

15 66. In order to use Amazon's services to list its product, a manufacturer must assent
16 to Amazon's standardized Services Business Solutions Agreement ("the Agreement"). This
17 Agreement governs Amazon's total control over the sales on its platform and the products it sells.

18 67. Amazon contractually requires that manufacturers publish certain information on
19 the product page for each product sold—a description of the product, including its brand, model,
20 dimensions, and weight; digital images of the product, as well as other information such as
21 shipping and handling options, product availability, in-stock status, and any other information
22 reasonably requested by Amazon.

23 68. The Agreement grants Amazon a royalty-free, non-exclusive, worldwide,
24 perpetual, irrevocable right and license to commercially or non-commercially exploit, in any
25 manner, the information provided by the manufacturers whose products it sells.

26 69. Amazon offers manufacturers a host of other services they can use in conjunction
27

1 with listing their product on Amazon’s website. For example, Amazon offers “Amazon Clicks,”
2 an advertising service in which Amazon highlights and promotes the vendor’s product to
3 customers.

4 70. Amazon exercises control of whether to prohibit the sale of products it deems
5 unsuitable for sale on its marketplace. At any time, Amazon has the power and control to de-list
6 a product.

7 71. Amazon reserves the right, to at any time, cease providing any or all of the
8 services it offers manufacturers at its sole discretion and without notice, including suspending,
9 prohibiting, or removing any listing. Amazon also retains other important privileges. For
10 example, Amazon can require manufacturers to stop or cancel orders of any product. If Amazon
11 determines that a manufacturer’s actions or performance may result in risks or hazards, it may in
12 its sole discretion withhold any payments to the manufacturer.

13 72. Amazon has an intricate payment arrangement with manufacturers whose
14 products it sells. First, Amazon charges a monthly subscription fee. Then Amazon charges what
15 it calls a “referral fee,” which is actually just a seller’s commission on each item sold. The
16 percentage and minimum commission Amazon collects vary based on the category of the
17 product.

18 73. Amazon takes a 12% commission for products categorized as “Business,
19 Industrial, and Scientific Supplies” with a minimum per-unit commission of \$0.30.

20 74. Amazon charges manufacturers refund administration fees, which are the lesser
21 of \$5.00 or 20% of the applicable commission.

22 75. When a product sells, Amazon collects the amount paid by the customer,
23 including both the price of the item and shipping costs, and takes its commission off the top.

24 76. Amazon has strict visual requirements for products sold on its site. Amazon’s
25
26

27

1 Seller Central website recommends six images and one video of all products.¹ They instruct that
2 “[i]mages should be clear, **informative**, and attractive” [emphasis added]. Amazon says it takes
3 a hardline when images do not comply with the policy. (“[I]f the images on your Amazon product
4 listings are found to be non-compliant with Amazon’s image content requirements, the product
5 listings will be removed from search until a compliant image is provided.”). The standards for
6 the main product images are particularly strict and forbid cropping of the images except for
7 jewelry (“MAIN images must show the entire product that is for sale. Images must not touch or
8 be cut off by the edge of the image frame, with exception of Jewelry (e.g., necklaces.”). Amazon
9 also has industry-specific visual requirements for products.

10 77. Amazon also has particularly strict requirements for industrial and scientific
11 products sold.² Amazon claims these requirements are for consumer safety. (“The selling
12 guidelines listed here for selling in the Industrial & Scientific category reflect buyer concern for
13 product quality, product branding, and consumer safety.”) All products classified as “Industrial
14 and Scientific” require that sellers “conduct proper research to ensure the product listing complies
15 with applicable local, state, federal, and international laws and regulations.” All industrial and
16 scientific products sold on Amazon “must meet North America product safety standards.”
17 Amazon requires there be adequate information, so purchasers fully understand the product.
18 “Sellers must submit product titles, bullets, and product descriptions that are clearly written and
19 **assist the customer in understanding the product**” [emphasis added].

20 78. Amazon does not enforce the visual requirements or the consumer safety
21 requirements for the industrial and scientific product it sells. This non-enforcement is true both
22 for the industrial and scientific products it sells for manufacturers like Loudwolf, as well as the
23 brands where Amazon possesses the products wholesale and is itself in charge of describing and

24 ¹https://sellercentral.amazon.com/gp/help/external/G1881?language=en_US&ref=efph_G1881_cont_16881 (last
25 visited September 27, 2022).

26 ²https://sellercentral.amazon.com/gp/help/external/G201847780?language=en_US&ref=efph_G201847780_cont_200332540 (last visited September 27, 2022).

1 photographing the product.

2 79. Amazon recognizes there is liability for selling unsafe products online and in the
3 Agreement threatens to take civil action against manufacturers who do so.

4 80. Amazon tells its manufacturers that the “[t]he sale of illegal, unsafe, or other
5 restricted products” is “strictly prohibited” and that “the sale of illegal or unsafe products can
6 lead to legal action, including civil and criminal penalties.”

7 81. Amazon claims to not allow minors to have their own consumer accounts, but
8 instead child users can be on their parents’ “household” account.

9 82. However, Amazon does not ask new account holders to state their age when
10 they’re setting up an account.³

11 83. Amazon instills the false belief in families that they sell safe products.

12 84. Amazon makes much ado about its prohibition on products it deems unsafe or
13 immoral. It specifically prohibits drug products, controlled substances, and any product
14 containing CBD.

15 85. Amazon promotes its gift cards as a safe gift to give children on their birthdays,
16 Christmas, and other special occasions.

17 86. Amazon makes billions of dollars in gift cards given to children.

18 87. By its own admission, Amazon influences the mental states that that compel
19 people to purchase specific goods. Its 2021 Amazon Consumer Behavior Report begins with:
20 “To win in this era, especially on Amazon and other e-marketplaces, brands and retailers will
21 need to take a hard look at factors that *drive* consumers to make a purchase, paying close attention
22 to personalization, convenience, value, and product assortment.”⁴

23
24 ³<https://www.amazon.com/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM#:~:text=If%20you%20are%20under%2018,teenagers%20in%20their%20Amazon%20Household.> (Last updated September 14, 2022).

25 ⁴ *The 2021 Amazon Consumer Behavior Report: Based on a Survey of 2,000+ U.S. Shoppers*, Feedvisor (2021)
26 [emphasis added].

1 88. Upon information and belief, between the data analytics collected about users and
2 its state-of-the-art ways to market at them, Amazon’s own design influences and predicts how
3 people will shop and what they will buy.

4 89. During the coronavirus pandemic, the trust in Amazon—and its influence in
5 causing purchases—grew as more people stuck in their homes quarantining relied on Amazon
6 for safe home deliveries of the essentials of life. (“As consumer’s comfortability and reliance on
7 e-marketplaces accelerates amid the pandemic, Amazon has emerged as the biggest beneficiary
8 from the growing trend of online shopping.” *Id.*)

9
10 **Loudwolf Sodium Nitrite Sold on Amazon.com**

11 90. Loudwolf, Inc. is a manufacturer that sells industrial chemicals on Amazon.

12 91. Paul Fullwood (aka “Professor Fullwood”) is the founder of Loudwolf, Inc. He is
13 president and chief operating officer of Digital Animation, Inc., a founding partner of Edison
14 Research Labs, and chairman of The First Fruit Charities, Inc. He is a board member of various
15 other companies including Digital Imagination, Inc.

16 92. Upon information and belief, Loudwolf is a mom-and-pop store for hobbyists run
17 mainly by Fullwood, his wife, and two sons from their modest home. At most, it had four
18 employees.

19 93. During the height of the pandemic when hand sanitizer was scarce, Loudwolf
20 distributed glycerine to households across the company so people could make their own hand
21 sanitizer.

22 94. Since starting the business, in step with consumer trends, Loudwolf’s sales have
23 become increasingly dependent on Amazon. Upon information and belief, about 95% of
24 Loudwolf’s sales come from Amazon.

25 95. Loudwolf brand Sodium Nitrite was sold both by Amazon.com and on its own
26 website, Loudwolf.com.

1 96. Upon information and belief, Duda Diesel supplied Loudwolf with the Sodium
2 Nitrite.

3 97. Loudwolf Sodium Nitrite was sold on Amazon at 99.6% purity— a purity level for
4 which there is no non-institutional or household use.



14 98. At all relevant times, the Loudwolf Sodium Nitrite available for purchase on
15 Amazon was, like other brands of Sodium Nitrite available on Amazon, sold in violation of
16 federal regulations issued by the FDA for Sodium Nitrite. CFR 172.175(b)(3) provides Sodium
17 Nitrite must, at minimum, bear a clear label stating: “KEEP OUT OF REACH OF
18 CHILDREN.” The actual label fails to include this language, yet falsely boasts “hundreds of
19 known uses” and that it is “suitable for most experimental and analytical applications, as well
20 as many technical and household purposes.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



(Label depicted reads: “This is a high purity, reagent grade chemical. It is suitable for most experimental and analytical applications, as well as many technical and household purposes. This substance has hundreds of known uses. Please do your own research regarding its application to your specific purpose.”)

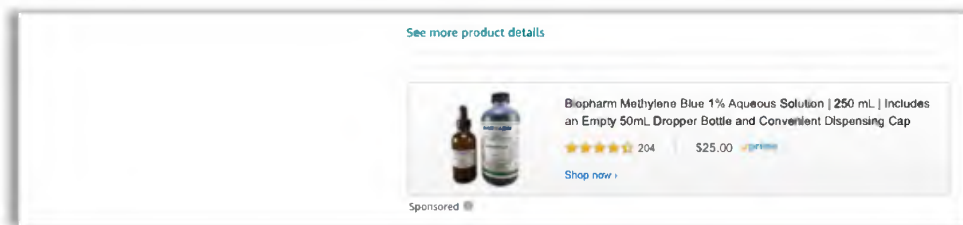
99. Further, the actual bottle contains nothing that even remotely warns consumers of how deadly the product is or how to reverse the effects. The only warning language contained on the label states: “HAZARD Oxidizer. Irritant.”

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27



100. Upon information and belief, Amazon continued selling Loudwolf Sodium Nitrite despite repeated notifications that it was being used to complete suicides.

101. Neither the product label nor the Amazon product page for Loudwolf Sodium Nitrite mentioned a proven antidote to suicide attempts via Sodium Nitrite: an injection of methylene blue. Though, notably, Amazon has sold advertising space to Biopharm Methylene Blue 1% on various Sodium Nitrite product pages.



102. Even though Amazon had received dozens of notices that its various brands of Sodium Nitrite were being used for suicide, dating back to at least 2018, if not earlier, Amazon

1 did not notify Loudwolf or other Sodium Nitrite vendors its product was regularly being
2 purchased by people –including children -- to kill themselves.

3 103. Upon information and belief, Duda Diesel, the supplier for Loudwolf and itself a
4 former Sodium Nitrite seller on Amazon, also withheld from Loudwolf its knowledge that
5 Sodium Nitrite was regularly used for suicide.

6 104. On March 17, 2021 Paul Fullwood received a call from a Compliance Officer at
7 the Food and Drug Administration (“FDA”) informing him his product was improperly labeled
8 and that they had received a complaint that somebody had purchased Loudwolf Sodium Nitrite
9 from Amazon and died by suicide. Fullwood confirmed in writing to the FDA that as of noon
10 that day he had cancelled all Amazons listings for Loudwolf Sodium Nitrite. He removed the
11 product both from Amazon and his own website.

12 105. Upon information and belief, Amazon also received notification from the FDA
13 about Sodium Nitrite, but continued to sell other brands.

14 106. Amazon bundles Sodium Nitrite with other offerings to create suicide kits. Along
15 with Sodium Nitrite, Amazon’s recommendation feature (*i.e.*, “Customers who viewed this item
16 also viewed” and “Frequently bought together”) offers Tagamet, an acid reduction medicine that
17 online suicide forums recommend to prevent lifesaving vomiting after ingesting a deadly dose of
18 Sodium Nitrite. Also, among Amazon’s recommendations for viewers of Sodium Nitrite are
19 small scales and the “Amazon Edition” of Dr. Philip Nitschke’s suicide instruction book, *The*
20 *Peaceful Pill Handbook*. Amazon offers a new edition of the *Peaceful Pill Handbook* each year
21 for \$95. Upon information and belief, Loudwolf Sodium Nitrite was one of the brands for which
22 Amazon recommended these other suicide aids in the “Customers who viewed this item also
23 viewed” and “Frequently bought together” suggestions to shoppers on product pages.

Customers who viewed this item also viewed

Wishful Pink Curing Salt Prague Powder #1, Premium Curing Salt for Meat, Gluten Free 1.25 Pound Jar
 ★★★★★ 153
 \$12.97 (\$0.65/Ounce)
 ✓prime FREE Delivery

Tagamet Acid Reducer, 200mg, 30-count Tablets, 30 Count
 ★★★★★ 5,743
 \$7.98 (\$0.27/Count)
 ✓prime FREE One-Day

LabChem C997T40EA LC152202 Hydrochloric Acid Solution, 0.1N (0.1M), 1 L Volume
 ★★★★★ 212
 \$20.41
 ✓prime FREE Delivery

Frequently bought together

Total price: **\$35.88**
 Add both to Cart

These items are shipped from and sold by different sellers. [Hide details](#)

Customers who viewed this item also viewed

Hydrochloric Acid Solution, 2M, 500mL - The Curated Chemical Collection
 ★★★★★ 76
 \$17.29
 Prime FREE Delivery Only 4 left in stock - order...

HiMedia GRM715-500G Aluminum Nitrate Nonahydrate, Extra Pure, 500 g
 ★★★★★ 9
 \$21.50
 ✓prime FREE One-Day

Peaceful Pill Handbook 2020: Amazon Edition DRUGS & PSYCHE
 ★★★★★ 14
 Paperback
 \$95.00
 ✓prime FREE Delivery

KEEPER 05508-V Camo 4PK, P Batches, 400 lbs Working Load Limit
 ★★★★★ 25
 \$32.11
 ✓prime FREE Delivery

Hydrochloric Acid 37% Reagent Grade for High Purity Assay Resin (Galva/34g)
 ★★★★★ 81
 1 offer from \$77.49

Sulfuric Acid Solution, 1.0M, 500mL - The Curated Chemical Collection
 ★★★★★ 95
 \$17.99
 Prime FREE Delivery

LabChem C997T40EA LC152202 Hydrochloric Acid Solution, 0.1N (0.1M), 1 L Volume
 ★★★★★ 212
 \$20.41
 ✓prime FREE Delivery

Page 3 of 7 Start over

107. The “Amazon Edition” of *The Peaceful Pill Handbook* devotes a chapter to “Lethal Inorganic Salts” wherein it details instructions for how to use Sodium Nitrite to die. It provides: “Sodium nitrite salt is very soluble in water. To prepare a lethal dose of the salt, 15gm is dissolved into 50- 100 ml of water. The taste is salty and unremarkable.”

108. Shockingly, the online edition of the *The Peaceful Pill eHandbook* touts how cheap and speedy Sodium Nitrite purchase and delivery is for suicidal readers who purchase it on Amazon, even providing an Amazon link. “[Sodium Nitrite] is readily available on the internet and has no safety issues for transport. Cost is minimal with chemical suppliers offering the product for as little as US\$15/kgm. <https://www.amazon.com/Sodium-Nitrite-Powder>.”

1 109. Upon information and belief, Amazon sold Loudwolf Sodium Nitrite starting in
2 June 2017.

3 110. Amazon knew or should have known people used Loudwolf Sodium Nitrite to
4 die by suicide.

5 111. Starting in or before 2019, news articles and studies by medical researchers and
6 the National Poison Data System began reporting a spike in suicides caused by Sodium Nitrite.

7 112. Upon information and belief, Amazon's own data demonstrates an increased
8 demand by individuals for Sodium Nitrite starting in or about 2019.⁵

9 113. In 2019 the California Poison Control System (CPCS) was consulted on five
10 patients who intentionally ingested sodium nitrite between May and November 2019. In all cases,
11 the patients acquired the product from online vendors.⁶

12 114. Upon information and belief, Amazon's own data demonstrates an increase in
13 private individual purchases, especially by those who also viewed and/or purchased products like
14 Tagamet acid reducer, scales, and suicide instruction books.

15 115. Upon information and belief, Amazon received complaints about Loudwolf
16 Sodium Nitrite killing their loved ones.

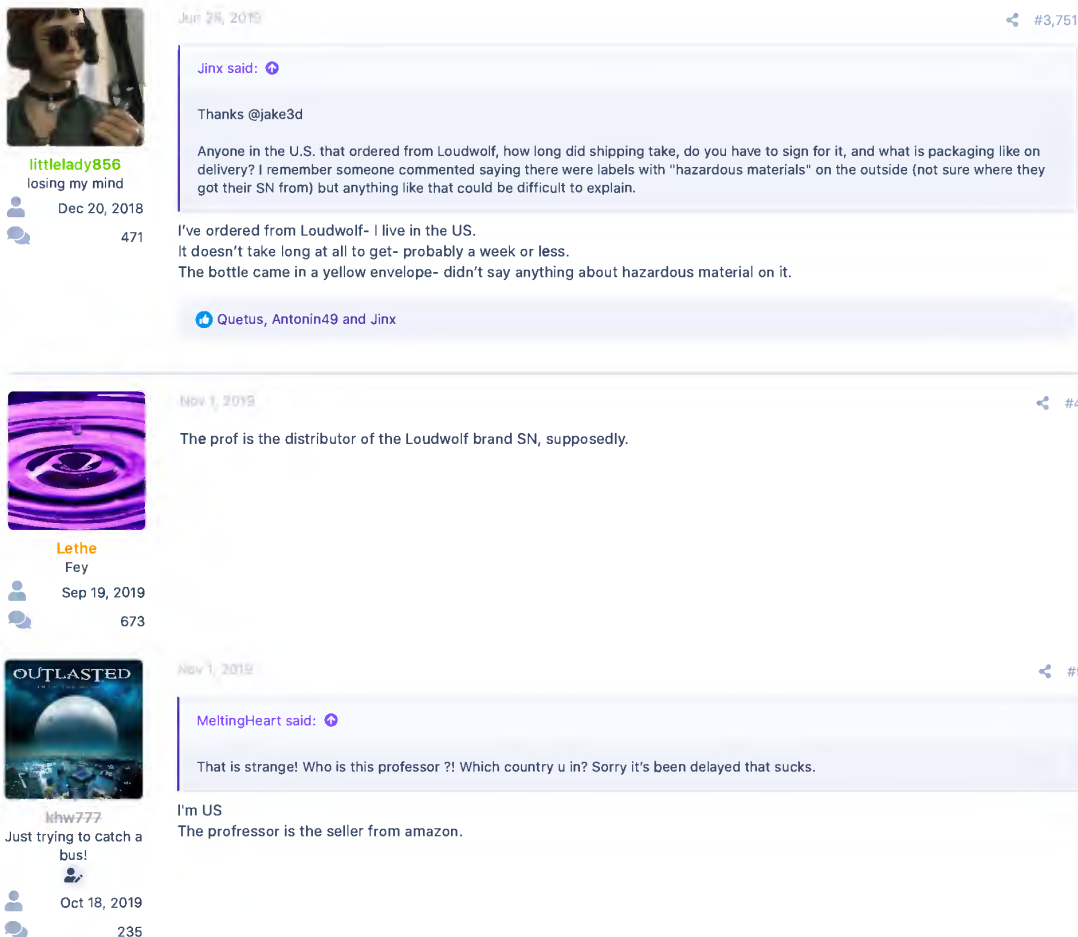
17 116. The pro-suicide website, Sanctioned-Suicide.com ("Sanctioned Suicide"),
18 explicitly refers suicidal individuals to Amazon to purchase Loudwolf Sodium Nitrite because it
19 is "sold without regulation" on Amazon.

20 117. Professor Fullwood, Loudwolf and Amazon are commonly referred to on suicide

21 _____
22 ⁵ The increase in sales is the result of the popularity of sanctioned-suicide.org, a website that had incarnations
23 on the deep web and Reddit before Reddit banned it in 2018. Two individuals created Sanctioned Suicide to
24 form a membership community for both those people who want to die and those who encourage others to
25 die. Among Sanctioned Suicide's many features is a "Suicide.Wiki" link which has such topics as "Methods",
26 "Hanging", "Jumping", "SA", and "SN." The SN link provides "step-by-step instructions" for death by
27 Sodium Nitrite, a suicide method that "effectively kills whether old people or healthy Olympic champions":
"1. Take 30 mg metoclopramide (another editor suggested 800 mg of Tagamet, as well). 2. Wait 1 hour. 3.
Dissolve 15-25 g Sodium Nitrite in 50 ml municipal tap water. 4) Drink the solution and relax on a bed, a
couch or a reclining chair."

⁶ Matin, Adiba M. "Survival after self-poisoning with sodium nitrite: a case report" J Am Coll Emerg Physicians
Open. 2022 Apr; 3(2): e12702. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8931305/#emp212702-bib-0005>

1 forums as easy, quick, and accessible options to purchase Sodium Nitrite.



118. Amazon is legally required to control sales of Sodium Nitrite in other countries because of its use for suicide. However, it does not provide the same care to its customers outside those countries. For instance, Sodium Nitrite is a “reportable substance” in the UK. As such, Amazon must report “any suspicious transaction (business to consumer and business to business) of Sodium Nitrite.”⁷

119. Similarly, other countries, such as The Netherlands, have organized actions to try

⁷ *Guidance: Supplying Explosives Precursors and Poisons*, Gov.uk Guidance (June 25, 2021), <https://www.gov.uk/government/publications/supplying-explosives-precursors/supplying-explosives-precursors-and-poison>.

1 to stop sales of Sodium Nitrite to private individuals.⁸

2 120. Indeed, Amazon Netherlands is a member of Thuiswinkel.org—a signatory of
3 Dutch national legislation that was enacted in 2019 in the wake of Sodium Nitrite suicides to
4 prohibit the sales of suicide chemicals to individuals.

5 121. Despite Amazon’s knowledge that Sodium Nitrite is considered too dangerous to
6 sell in other nations, Amazon continued to sell it to individuals in the United States—its home
7 country.

8 122. Upon information and belief, Amazon engages in deception to increase its sales
9 of Sodium Nitrite. For instance, upon learning that families were leaving one-star reviews for
10 Sodium Nitrite relating to the deadliness of the product and its use for suicide, instead of
11 removing the product, Amazon removed comments containing the word “suicide.”

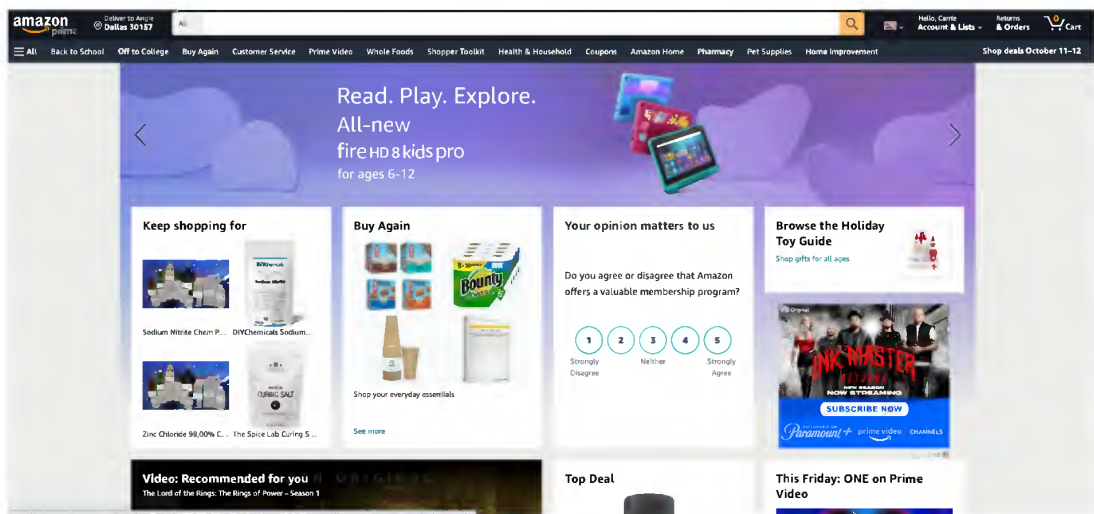
12 123. Amazon’s deletion of one-star reviews caused Loudwolf Sodium Nitrite to have
13 artificially high customer ratings.

14 124. Amazon has also taken punitive measures against grieving family members by
15 banning these individuals from leaving comments on any Amazon products at all after they left
16 one-star reviews about Sodium Nitrite.

17 125. Upon information and belief, Amazon used advertising tactics to convince people
18 to purchase Loudwolf Sodium Nitrite, such as tracking users who viewed Sodium Nitrite with
19 cookies and then advertising Loudwolf Sodium Nitrite to them on other sites they visited with
20 direct links to the product on Amazon.

21 126. For customers who have looked repeatedly at Sodium Nitrite, Amazon places
22 Sodium Nitrite on their Amazon landing page and suggests customers “[k]eep shopping for”
23 Sodium Nitrite.”

24
25 _____
26 ⁸ *Suppliers of Suicidal Drug: No Sale to Private Individuals*, Algemeen Dagblad,
27 https://www.ad.nl/politiek/leveranciers-zelfmoordmiddel-geen-verkoop-aan-particulier~a70b9e15/?referrer=https%3A%2F%2Fsuicide.wiki%2Fw%2FSodium_Nitrite.

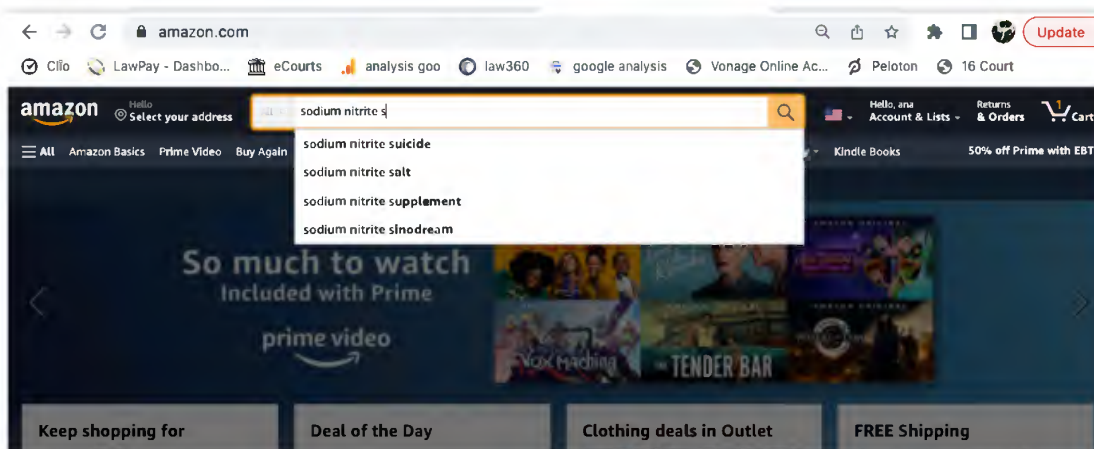


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

217. Upon information and belief, Amazon routinely sent top-of-mind emails advertising Sodium Nitrite to consumers who looked at Loudwolf Sodium Nitrite but did not purchase it, and to consumers who placed it in their online shopping cart but had not completed the transaction.

218. Upon information and belief, after people bought Loudwolf Sodium Nitrite, Amazon would routinely nudge them about their purchase, asking them to rate the product and even inquiring if they would like to order more.

219. Upon information and belief, Amazon engaged in various other methods to normalize the use of Loudwolf Sodium Nitrite for suicide to condition its consumers to think that shopping for suicide products on Amazon was safe, normal and a frequent well-plodded road. In addition to recommending users buy the exact bundle of items recommended by Sanctioned Suicide's website to be used in conjunction with Sodium Nitrite and using the aforementioned methods to nudge and pressure individuals to purchase, at all relevant times, Amazon auto-filled its search results. Users who typed in "sodium nitrite" saw "sodium nitrite suicide" as the fifth suggested prompt to complete their search. A user who began to type in "sodium nitrite salt" would instead see "sodium nitrite suicide" before they could type the second letter of "salt."



Suicide by Sodium Nitrite

130. Sodium Nitrite is a water soluble, white to slightly yellowish crystalline powder.

131. Sodium Nitrite has no household application. Its uses are mainly as a corrosion inhibitor in antifreeze, an antidote to cyanide poisoning, and as a microbial. In Australia it was also introduced as a method to control the growth of feral pig populations.

132. When Sodium Nitrite is used for suicide, it is mixed in a glass with water and consumed orally. One gulp is enough. Methemoglobinemia impairs oxygen transport in blood, which causes hypoxia.

133. Death from Sodium Nitrite induced Methemoglobinemia causes excruciating discomfort prior to death. It operates as a chemical asphyxiant depriving oxygen to the brain and heart. Individuals often experience volatile vomiting, seizures, diarrhea, and intense stomach pain.

134. The appearance of individuals who died or are dying of Sodium Nitrite toxicity is itself traumatizing. The lips and nails are blackened, and the skin is mottled and splotchy, and turns bluish gray. The limbs become rigid. The blood, which turns thick and brown and with the viscosity of chocolate syrup, oozes from the mouth and nose.

1 135. At a very diluted level, Sodium Nitrite can be found in food preservatives. For
2 instance, curing salts used for making jerky contain about 6% Sodium Nitrite. Even at this much
3 lower concentration, curing salts are always dyed pink as a caution to avoid mistaking it for
4 regular salt because over-consumption even of curing salts is so dangerous. In contrast, the
5 Loudwolf Sodium Nitrite, sold by Amazon, contained 99.6% pure Sodium Nitrite.

6 136. Sodium Nitrite at a purity level greater than 95% is a reagent chemical, meaning
7 its uses are strictly monitored in food factories and medical manufacturing, as well as in high-
8 purity laboratory and analytical applications. A trace amount could make a person extremely ill.

9 137. Sodium Nitrite at a purity level of 99.6% purity, as stated on Loudwolf’s label,
10 actually exceeds the American Chemistry Society (“ACS”) standard of 97% purity. This is the
11 highest purity chemical grade that exists in American science and research.

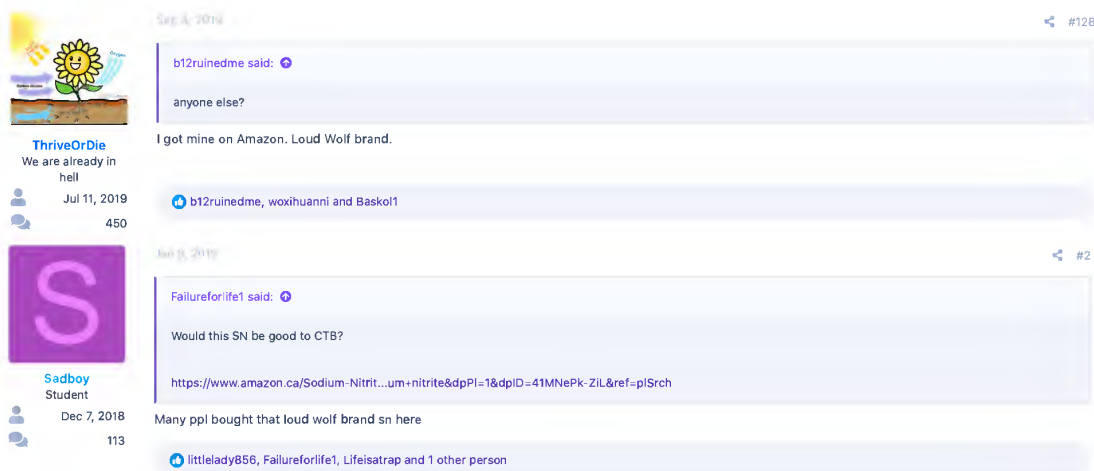
12 138. The FDA Administration has a special category of regulation for Sodium Nitrite
13 (21 CFR 172.175). All retail packing requires labeling with “adequate instructions for use to
14 provide a final food product” and which complies with strict federal limits on the amount of the
15 dangerous compound used. Federal law requires labels provide safety warnings for kids. “[T]he
16 label of the additive, or of a mixture containing the additive, shall bear the statement ‘Keep out
17 of the reach of children.’”

18 139. Sodium Nitrite has recently become a highly recommended suicide method on the
19 pro-suicide website Sanctioned Suicide.

20 140. Sanctioned Suicide specifically recommends Sodium Nitrite as an effective
21 method of completing a suicide that is cheap and easy and most importantly, difficult for family
22 members and professionals to stop.

23 141. Sanctioned Suicide and its “suicide.wiki” have long recommended that members
24 purchase Sodium Nitrite specifically from Amazon.com.

25 142. Sanctioned Suicide users abbreviate Sodium Nitrite, to “SN.” In posts about
26 where to find the chemical, many users suggest Amazon and Loudwolf.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

143. The site further provides threads of instructions specifying dosages and methods of dissolving the substance in water prior to consumption. It recommends supplementing the Sodium Nitrite with antacid medication like Tagamet to ensure the poison can be digested without vomiting.

Amazon knew since at least 2018 about it was selling Sodium Nitrite to kids for suicide

144. On March 19, 2018 Dominick DiFede left a one-star review on Amazon’s HiMedia Sodium Nitrite (a company with which Amazon had a first party relationship) product page with headline “My 16 year old son bought this product to comit suicide and succeeded. Thanks amazon.” The review read “I am writing you on my dead childs amazon account. He found a reddit threat teaching him how to use sodium nitrits to kill himself. So he dumped about 100g into his gatoraide bottle. Texted me from his moms house to tell me he was going to sleep and he loved me and i told him i loved him. He then drankthe poison and died. Nice amazon delivering death to children.”

145. Shortly after sending DiFede an email receipt confirming the publication of the review, Amazon stated that the review violated its community guidelines, had been removed, and the account “will no longer be able to contribute reviews and other content on Amazon.”

1 146. DiFede's son had purchased Sodium Nitrite from his own account using a gift
2 card.

3 147. Upon information and belief, this anecdote above is just one of dozens of incidents
4 of parents reporting to Amazon the suicide of a child from Sodium Nitrite.

5 148. Starting no later than 2017 Amazon began selling the Peaceful Pill Handbook with
6 its chapter on using Sodium Nitrite

7 149. Starting in 2019, Netherlands, a country where Amazon does business, regulated
8 that direct-to-consumer sales of Sodium Nitrite are regulated.

9 150. The National Association of Chemical Distributors, reports that none of its 400
10 members and affiliates distribute Sodium Nitrite direct to consumer.

11
12 **The Availability of Sodium Nitrite on Amazon increase suicides**

13 151. The Centers for Disease Control and Prevention say that since 2009, suicide has
14 increased by 45% among 15–24-year-olds and over 30% among 25-34-year-olds.

15 152. Experts say that for most people, suicidal thoughts will eventually pass.
16 Treatment, support from loved ones, and detailed plans to keep safe can help.

17 153. Clinicians and researchers have found that people are much more likely to attempt
18 suicide if they learn about methods, become convinced it is the right thing to do, and have the
19 means.

20 154. Amazon and Loudwolf provide the method and means for suicide. With
21 Amazon's fast delivery, individuals can obtain Sodium Nitrite (and the products it recommends
22 – Tagamet, the handbook, and a scale) within a few days of learning about it and within a period
23 of time short enough for the bout of suicidal ideation originating at the point of purchase to
24 persist.
25
26

1 155. Upon information and belief, Amazon is the number one vendor of Sodium Nitrite
2 used for suicides.

3 156. Upon information and belief, at the times of Kristine's and Ethan's deaths,
4 Loudwolf was the number one brand of Sodium Nitrite sold by Amazon.

5
6 **Amazon Sells Loudwolf Sodium Nitrite to 16-year-old Kristine Jónsson which Kills**

7 **Her**

8 157. In September 2020, Kristine, age 16, lived with her parents, her little brother,
9 Daniel, and her litter sister, Katherine in Hilliard, Ohio.

10 158. Kristine was an extremely intelligent and focused girl. She was committed to her
11 academics, taking online courses at the Community College while still a junior in high school.
12 She also took great interest in developing her art skills. She was a pretty normal kid – she enjoyed
13 scrolling through Tumblr, weighing in on the group chat with her friends, clocking her 10,000
14 steps a day, and suffered through board games with her family. She was very close with her best
15 friend, Emma, and her cousin, Becca. Before the Coronavirus pandemic forced everybody into
16 quarantine in March 2020, Kristine and Emma had attended the Renaissance Faire and they
17 hoped to someday go to the Pride Parade with Becca.

18 159. Kristine was very close with her brother, Daniel, then 13, and her sister, Katherine,
19 then 10.

20 160. The pandemic was extremely difficult for Kristine. It began at a time in her life
21 when she was just beginning to come into her own. By September 2020, she felt the quarantine
22 restrictions would never lift. In her diary, she expressed feeling listless and meaningless. She
23 expressed feeling no joy; even the things that had once given her pleasure like group-chatting
24 with her friends no longer were enough.

25 161. On September 9, 2020, Kristine began imagining how people in her life would
26 react if they found out she was hospitalized after a suicide attempt. "It's such a morbid thought
27

1 but I keep coming back to it,” she wrote. That night she registered for an account on Sanctioned-
2 Suicide.org.

3 162. Between September 15 and September 29, 2020, Kristine became resolute about
4 dying. Meanwhile, she put on a brave face to her family; they had no idea.

5 163. She created lists of pros and cons wrote letters to all her friends, and in her diary,
6 she carefully considered and ruled out other methods.

7 164. She considered getting a gun but noted that she would have to be over 18 and that
8 the wait was too long.

9 165. She considered getting an illegal gun but feared her mom would notice the
10 delivery.

11 166. She considered cutting herself but decided she didn’t have the desire to experience
12 that type of pain and mess.

13 167. She considered an overdose on illegal drugs but didn’t know enough about what
14 drugs to use or where to get them. Her own medicine cabinet only had Tylenol and melatonin.

15 168. She considered ordering Nembutal from another country, but it cost \$600 and she
16 was worried she would need a PO Box so her parents wouldn’t be suspicious of a strange
17 delivery.

18 169. She considered hanging herself but felt that would be too painful and hard, plus
19 she didn’t want to do it where her family would be the first to find her.

20 170. Then she learned about Sodium Nitrite, which she could get in less than 48 hours
21 from Amazon.com.

22 171. In her journal, Kristine jotted down the four steps to death by Sodium Nitrite: 1)
23 Tagamet, 2) wait 1 hour, 3) dissolve 15-25g in 50ml water, 4) drink.

24 172. She calculated that for her body size, she would need 20 grams of Sodium Nitrite
25 and 200 mg of Tagamet so she would not throw up.

26
27

1 173. On September 24, 2020, Kristine went on Amazon.com, created an Amazon
2 account, and purchased Loudwolf Sodium Nitrite. With shipping, the total cost was \$28.67.

3 174. The package arrived to the Jónsson's home two days later, on September 26, 2020,
4 her mother's birthday. The package was addressed to "Kristine" and contained no last name.

5 175. Besides Kristine, nobody else in the house knew the package had arrived. No
6 signature was required. Upon information and belief, Kristine was able to retrieve it undetected
7 because Amazon notified her of the delivery.

8 176. On the night of September 29, 2020, Kristine had spent time watching the
9 presidential debate with her family. Once it got late, she and her siblings went up to bed.

10 177. Before going to her room, Kristine spent some time in her sister Katherine's room
11 reading from a Harry Potter book.

12 178. When Kristine and the family went to bed everything seemed in usual order.

13 179. At roughly 1:30am, Kristine snuck out of the house with a backpack that
14 contained the Loudwolf Sodium Nitrite and a sleeping bag. She stole her mom's car and drove it
15 to the CVS pharmacy where she bought the Tagamet.

16 180. The next morning, Kristine's mom, Kristin, went about her usual morning routine.
17 Kristin noticed the front door was unlocked so she went to lock it and noticed her car was missing.
18 She immediately assumed her car had been stolen.

19 181. When she went upstairs to check on her family, she noticed Kristine was not in
20 her bedroom. Kristin called her niece and texted some friends, but nobody knew where Kristine
21 was.

22 182. At this point, Kristin fell into a state of sheer panic and called 911. The police
23 came and checked the footage from the family's Ring security camera and saw Kristine leaving
24 in the car in the middle of the night.

25
26
27

1 183. Kristin went into Kristine’s room to look for clues about where her daughter might
2 have gone. She noticed a pile of letters that caused her to scream in fear – they looked like suicide
3 notes.

4 184. Steinn, Kristine’s father, realized he could access Kristine’s location on the
5 mobile application “Find my,” and tracked her location to a park about 6 miles away from the
6 house in Dublin, Ohio.

7 185. The police then tracked Kristine’s vehicle to that park and found the car with
8 Kristine deceased inside. The bottle and packaging from the Sodium Nitrite were with her.

9 186. Per the Coroner’s Report, the cause of death was “Sodium Nitrite Toxicity.” The
10 manner of death was “Suicide.” Kristine’s suffered excruciating pain in her final moments.

11 **Amazon sells Loudwolf Sodium Nitrite to 17-year-old Ethan McCarthy which Kills**

12 **Him**

13 187. In January 2021, Nikki Maynard lived in Milton, West Virginia with her three
14 kids, Caleb, Ethan, and Emily. She was a Registered Nurse Care Coordinator at the Children
15 with Special Needs Program for the state of West Virginia. Life had been hectic because of
16 Covid, but the family had a good Christmas and enjoyed the holidays together as a family with
17 the kids’ father, Nick McCarthy.

18 188. Ethan, 17, was Nikki and Nick’s middle child. He was the problem solver in the
19 family, mediating arguments between his siblings. Very sociable, he’d always been emotionally
20 stable. Even through his parent’s divorce, he was never diagnosed with behavioral or
21 psychological conditions and never showed signs of depression or suicidality.

22 189. When it came to school, Ethan was the type of kid who barely studied and always
23 managed to get A’s and B’s. Living in the country, he and his brother played outdoors a lot, loved
24 target practice, and were always on adventures. He was also a very talented gamer and was
25 always adding new modifications to his gaming console. Ethan loved animals, especially his dog,
26

1 Jasper. He was a very active boy who loved rock-climbing and weightlifting. He was a natural
2 caretaker, constantly helping Nikki around the house and babysitting his little cousin, River, who
3 was 4 years old when Ethan died.

4 190. On January 2, 2021, Nikki noticed an email receipt from Amazon for \$28.54 from
5 the day before for an unfamiliar product she had not purchased, which was scheduled to be
6 delivered between January 13 and January 15. She asked her kids if they had ordered the product,
7 Sodium Nitrite, from her account. They said they had no idea what it was and that no, they had
8 not ordered it. Caleb joked that maybe it was for a bomb.

9 From: "Amazon.com" <auto-confirm@amazon.com>
10 Date: January 2, 2021 at 2:45:34 AM EST
11 To: [REDACTED]
12 Subject: Your Amazon.com order #112-8916824-8929802
13 Reply-To: to-reply@amazon.com



Order Confirmation

Hello Martinique,

Thank you for shopping with us. We'll send a confirmation when your item ships.

Details

Order # [112-8916824-8929802](#)

Arriving:
January 13 -
Friday, January 15

Ship to:
Martinique
MILTON, WV

Order Total: \$28.54



We hope to see you again soon.

[Amazon.com](#)

Buy it again



Brewery Tear-A-Square Paper
Towels...



Body Fortress Super Advanced
Whey...

\$33.88

The payment for your invoice is processed by Amazon Payments, Inc. P.O. Box 81226 Seattle, Washington 98108-1226. If you need more information, please contact (866) 216-1075

By placing your order, you agree to Amazon.com's [Privacy Notice](#) and [Conditions of Use](#). Unless otherwise noted, items sold by [Amazon.com](#) are subject to sales tax in select states in accordance with the applicable laws of that state. If your order contains one or more items from a seller other than [Amazon.com](#), it may be subject to state and local sales tax, depending upon the seller's business policies and the location of their operations. Learn more about [tax and seller information](#).

This email was sent from a notification-only address that cannot accept incoming email. Please do not reply to this message.

1 191. Diligently, Nikki contacted Amazon right away on January 2 to cancel the order.
2 She called the number on the Amazon electronic receipt, 1(888)280-4331, and then got a call
3 back from Amazon. They told her they were cancelling the order and were informing the
4 manufacturer.

5 192. Believing her account had been hacked, Nikki followed the instructions in the
6 email from Amazon and enabled 2-factor authentication.

7 193. It was Nikki's understanding the shipment was cancelled and she gave it no
8 further thought.

9 194. Unbeknownst to Nikki, the product had shipped on January 1, 2021, just hours
10 after the purchase.

11 195. On January 5 or 6, 2021 Nikki saw some packages from Amazon had arrived and
12 brought them inside. She'd recently made several purchases from Amazon that she was
13 expecting – a computer microphone for Ethan, cat litter, a jewelry sizing tool, a dress, a floral
14 headband, and some hair dye. She placed the packages on the counter unopened and went about
15 her business.

16 196. In the morning of January 7, 2021, Nikki woke up and went down to the kitchen
17 to make breakfast for her family as usual. Ethan didn't get up as he usually would, so Nikki went
18 to wake Ethan up.

19 197. Nikki knocked on Ethan's bedroom door and received no response.

20 198. When she opened the door, she saw Ethan's still body lying in bed, his legs
21 crossed at the ankles and one arm was raised straight in the air. She ran over to him and put her
22 head on his chest. She touched his face. Nikki saw that Ethan's skin was mottled and felt cold.
23 She saw thick reddish-brown liquid coming out of his mouth.

24 199. Nikki screamed for her son Caleb to come. Caleb ran into the room and the two
25 handled Ethan's body. Nikki called 911 and EMS and the police arrived about fifteen minutes
26 later.

27

1 200. When emergency responders arrived, Nikki noticed that on Ethan’s desk was a
2 bottle labeled Sodium Nitrite and next to it was a glass with white dried powder and a spoon.
3 Nikki realized it was the same item for which she had received the Amazon receipt, the purchase
4 that Amazon assured her was canceled.

5 201. The police pronounced Ethan dead at 10:56am on January 7, 2021. Ethan’s cause
6 of death was ruled a suicide, by ingestion of Sodium Nitrite. Per the Death Certificate, Ethan’s
7 cause of death was “Sodium Nitrite Intoxication.” Ethan suffered excruciating pain in his final
8 moments.

9 202. On Ethan’s computer was a deleted folder named “my hopes and dreams.”

10 203. Nikki blacked out, and the next thing she remembers was being at her mom’s
11 home getting helped into the shower. Nikki and her kids were too traumatized to ever stay
12 another night in the home where Ethan had died. They stayed with Nikki’s mom until she sold
13 the house, and they moved out of state.

14 204. Over the next several weeks after Ethan died, Nikki experienced such
15 overwhelming grief that a doctor prescribed Xanax to her on which she became dependent for a
16 month. When she weaned herself from the Xanax, the pain hit her all over again. She was unable
17 to work regularly for five months.

18 **Amazon and Loudwolf caused Plaintiffs’ harms**

19 205. Amazon and Loudwolf are liable for promoting and aiding the suicides of Kristine
20 and Ethan.

21 206. Amazon’s bundling of Sodium Nitrite with acid-reducers, personal use scales, and
22 an “Amazon edition” suicide manual that instructed people how to use Sodium Nitrite and
23 referred them (with a link) to purchase it for cheap and with easy and fast delivery from Amazon
24 are evidence of Amazon’s knowledge and are just two of the many ways Amazon caused these
25 deaths.
26

1 207. California public policy is clear and demonstrates that there is liability—even
2 felony criminal liability via California Penal Code 401 PC—for causing or aiding another person
3 to attempt suicide.

4 208. The only exception to California’s prohibition on assisting in another person’s
5 suicide is the California “End of Life Option Act” which allows terminally ill adults to receive a
6 drug to hasten their death under very controlled medical circumstances.

7 209. Likewise, aiding in another person’s death is illegal in Washington State, where
8 Amazon was founded, and in Ohio where Kristine died. (See Washington State RCW 9A.36.060,
9 Ohio Revised Code Section 3795.04). In West Virginia, where Ethan died, there is no specific
10 criminal statute, but instead a common law tradition allowing prosecution for aiding a suicide.

11 210. There is no exception in criminal law that allows for the corporate-assisted suicide
12 Loudwolf and Amazon have caused. Nor do the tightly construed exceptions for physician-
13 assisted suicides in California and Washington contain provisions for corporate-assisted suicide.

14 211. Amazon and Loudwolf knew or should have known that they were facilitating and
15 profiting from vulnerable people dying by suicide.

16 212. Had Amazon applied the standard of care it must use for its sales of Sodium Nitrite
17 in the UK, it would have determined that Kristine and Ethan, neither of which had user histories
18 of purchasing meat preservatives, made suspicious, reportable purchases of Sodium Nitrite.

19 213. Instead, Amazon sold the Loudwolf Sodium Nitrite for \$19.99, which was
20 delivered within 3-4 days of both Kristine’s and Ethan’s purchases.

21 214. Amazon and Loudwolf were on notice that it was selling a dangerous product
22 when it sold Loudwolf Sodium Nitrite to Kristine and Ethan.

23 215. Amazon defends its right to sell Sodium Nitrite (and other products known to be
24 used for suicide) because it says some states immunize defendants that cause a personal injury
25 where that injury occurred during an attempted or completed suicide.

26
27

1 216. Amazon falsely states that “[w]e are constantly innovating on behalf of our
2 customers and working with regulators, third party experts, vendors, and sellers to improve the
3 ways we detect and prevent illegal and unsafe products from reaching our marketplace. Amazon
4 encourages you to report listings that violate Amazon’s policies or applicable law by contacting
5 us. We will investigate each report thoroughly and take appropriate action.”⁹

6 217. Amazon has refused to work with United States regulatory or legislative
7 authorities on the issue of Sodium Nitrite—it even ignored a letter from the top rulemaking
8 authority in our country—Congress.

9 218. On January 25, 2022, the United States Congress sent a letter to President and
10 Chief Executive Officer of Amazon, Andy Jassy, expressing its deep concern that Amazon is
11 providing “minors and adults with easy access to sodium nitrite, a deadly chemical.” Congress
12 expressed the belief that Amazon’s frictionless sale of Sodium Nitrite, combined with its speedy
13 delivery of the product, caused deaths. (“When a person is having suicidal thoughts, limiting fast
14 access to methods by which to die can make the difference between life and death, making the
15 fact that sodium nitrite can be sold and delivered overnight with Amazon Prime, a grave
16 concern.”).

17 219. Congress requested specific information on 15 different points, including the
18 number of units of Sodium Nitrite it sold, Amazon’s manipulation of user reviews, Amazon’s
19 labeling of Sodium Nitrite, and Amazon’s tracking methods to encourage sales of Sodium Nitrite.

20 220. Congress sought a response from Jassy by February 1, 2022. To date, neither
21 Jasse nor Amazon have provided a substantive response to the Congressional inquiry.

22 221. Amazon had options available to mitigate the risk of selling dangerous and deadly
23 Sodium Nitrite on its Marketplace, but it chose not to exercise those options.
24
25

26 ⁹ <https://sellercentral.amazon.com/gp/help/external/200164330> (last visited September 27, 2022).
27

1 222. Amazon was particularly well-positioned to assess health risks to consumers,
2 manage labeling, and take care to be responsible with warnings because, among its other online
3 retail functions, Amazon is a pharmacy that sells actual prescription drugs.

4 223. Amazon operates beneath the standard of care for online retailers when it comes
5 to selling Sodium Nitrite products. While Amazon has made an affirmative decision to continue
6 selling Sodium Nitrite, other online retailers banned the chemical years ago. Both Etsy and eBay
7 stopped selling Sodium Nitrite when they learned it was frequently being used for suicide.

8 224. In 2019, eBay made the voluntary decision to globally prohibit the sale of Sodium
9 Nitrite after learning it could be used for suicide. In a letter to a coroner in the UK who notified
10 eBay of a tragic case of death by Sodium Nitrite, eBay said that in addition to adding Sodium
11 Nitrite to its prohibited items policy in 2019, it had “update[d] its filters, which are used to detect
12 and prevent the listing for sale of this chemical.” Upon learning that there had been an undetected
13 sale of one unit of Sodium Nitrite in 2020 by an individual who listed it, eBay said it again
14 updated its filters and dispatched its security team to do a sweep for any similar listings.

15 225. EBay took so seriously a single third party listing of one unit of Sodium Nitrite
16 that it issued this public letter showing just how conscientious it is about prohibiting Sodium
17 Nitrite sales on its platform. The letter also explained that EBay relies on a notice and takedown
18 regime where members of the public can flag Sodium Nitrite listings or users offering it for sale,
19 and it has a system for receiving notifications from regulators if one of their 1.6 billion active
20 listings is selling it.

21 226. In contrast, upon receiving notice that the Sodium Nitrite it was selling and
22 delivering was killing kids, Amazon made the informed decision, on the counsel and advice of
23 their lawyers, to continue to sell a substance they know is sold over and over again for suicide.

24 227. Amazon also failed to take one of any number of simple ameliorative actions,
25 such as: cease selling Sodium Nitrite; include adequate warnings; display accurate warning labels
26 on the website and the bottle; describe Sodium Nitrite’s intended use (which can only be
27

1 institutional at this purity level); retain bad reviews and one-star reviews for the product; ensure
2 compliance with its own terms for product photography; indicate antidotes on the bottle and on
3 the website; limit qualified purchasers; refuse to provide quick, no-questions-asked delivery of
4 deadly chemicals; require age verification for all Amazon users; enforce their ban on not selling
5 unsafe products; comply with the standards set forth for unsafe products sold by third party
6 sellers; establish a complete ban on selling Sodium Nitrite to minors; use clear language on the
7 outside of packaging material to identify contents; apply the same standard of care as other
8 platforms that have removed the product; apply the same standard of care to US customers as
9 that required in the UK and the Netherlands; include suicide prevention brochures with the
10 packaging; stop guiding consumers to other suicide products when browsing for Sodium Nitrate
11 (*e.g.*, scales, instruction books, and antacids such as Tagamet); limit the ability to purchase any
12 laboratory or medical grade chemicals; integrate an effective business verification mechanism to
13 ensure vulnerable individuals are not purchasing poisonous chemicals; require dangerous
14 products be clearly marked on the outside of the packaging to potentially alert household
15 members; implement and staff a community standards and safety department that must launch
16 investigations into reports of dangerous and deadly products; escalate reports of death and suicide
17 caused by products purchased from Amazon; and flag situations where Sodium Nitrite is
18 purchased under unusual circumstances – such as when the item is immediately archived in a
19 person’s order history after purchase, when a person reports a purchase as a fraud, when a person
20 purchases Sodium Nitrite in their first name only, when a person creates a new account to
21 purchase Sodium Nitrite, when a person purchases Sodium Nitrite with no prior history of
22 purchasing chemical products before, when a person purchases Sodium Nitrite obviously not
23 during business hours and on holidays known for their increases in suicide, and when there is a
24 global pandemic.

25 228. Plaintiff Kristin Jónsson suffers deep anguish in the form of physical,
26 psychological, and emotional trauma caused by experiencing Kristine’s death. After Kristine’s
27

1 death, she experienced overwhelming anxiety and depression, PTSD and/or prolonged grief. She
2 experienced extreme weight loss, sleep disorders. She was put on medication for sleep and
3 depression/anxiety. She has suicidal thoughts intruding into her daily life, was in daily therapy
4 for three months. She wakes up in the middle of the night feeling terror about the safety of her
5 other kids, who also have experienced depression after the loss of their sister, and she is
6 constantly scared for their safety.

7 229. Plaintiff Steinn Jónsson has been crippled from the suffering and pain caused by
8 experiencing Kristine' death. He lost all enjoyment of life, had to stop working for seven weeks
9 and was put on antidepressants for the first time in his life.

10 230. Plaintiff Nikki Maynor suffers deep anguish in the form of physical,
11 psychological, and emotional trauma caused by experiencing Ethan's death. She was forced to
12 relocate homes because of the trauma of seeing Ethan dead. For five months she could barely
13 work, she was put on medication, and then experienced the pain of weening herself off of it and
14 reexperiencing the trauma.

15 231. Plaintiff Nick McCarthy has been crippled from the suffering and pain caused by
16 experiencing Ethan's death. He had a breakdown when he learned of his son's death, drove to
17 the funeral home and insisted on hugging Ethan's body on the gurney. He tried to numb the pain,
18 but had a nervous breakdown the next day, was hospitalized, and medicated. He suffers ongoing
19 trauma from the shock and from seeing his son, and still requires ongoing medication to stay
20 functional at his job.

21 CAUSES OF ACTION

22 Count I: Products Liability

23 **By all Plaintiffs Against Amazon and Loudwolf**

24 232. Paragraphs 1-202 are realleged as if fully set forth herein.

25 233. Amazon is a product seller of Loudwolf Sodium Nitrite.

26 234. Loudwolf is a product seller and a manufacturer of Loudwolf Sodium Nitrite.

- 1 235. Loudwolf Sodium Nitrite is a product.
- 2 236. Loudwolf Sodium Nitrite is defective due to the lack sufficient instructions and
3 warnings of potential safety hazards.
- 4 237. Loudwolf Sodium Nitrite is unreasonably dangerous.
- 5 238. Defendants jointly carry the liability of selling this defective product.
- 6 239. Plaintiffs used the product in a way that was reasonably foreseeable.
- 7 240. The product was in defective condition when it left Defendants' possession.
- 8 241. Amazon and Loudwolf, as product sellers, are liable the following non-exclusive
9 respects:
- 10 a. Amazon and Loudwolf negligently failed to cease selling Sodium Nitrite.
- 11 b. Amazon and Loudwolf negligently failed to limit sales to qualified purchasers.
- 12 c. Amazon negligently promoted other suicide-related products along with Sodium
13 Nitrite.
- 14 d. Amazon and Loudwolf negligently failed to limit consumers' ability to purchase
15 laboratory or medical grade chemicals.
- 16 e. Amazon and Loudwolf negligently failed to provide adequate warnings, either on
17 its website or along with the product when it shipped to consumers, concerning the painful death
18 Sodium Nitrite causes.
- 19 f. Amazon and Loudwolf negligently failed to provide information on how to
20 counteract Sodium Nitrite's poisonous affects.
- 21 g. Amazon and Loudwolf negligently failed to integrate an effective business
22 verification mechanism to ensure vulnerable, household-based individuals are not purchasing
23 poisonous chemicals.
- 24 h. Amazon and negligently failed to comply with its own terms and conditions for
25 product labeling.
- 26 i. Loudwolf negligently failed to describe Sodium Nitrite's intended uses.

1 j. Amazon intentionally removed and concealed negative product reviews that
2 warned consumers of the products use for death by suicide.

3 k. Amazon and Loudwolf negligently sold Loudwolf Sodium Nitrite to two children.

4 242. Amazon and Loudwolf are liable in one or more of the following non-exclusive
5 respects: Loudwolf Sodium Nitrite was and is unsafe to an extent beyond that which would be
6 contemplated by the ordinary consumer.

7 243. Amazon's and Loudwolf's tortious conduct directly and proximately caused both
8 Ethan's and Kristine's deaths, excruciating pain prior to death, and all resulting damages set forth
9 herein and below in Paragraphs 223-232.

10 **Count II: Negligence**

11 **By all Plaintiffs against Amazon and Loudwolf.**

12 244. Paragraphs 1-214 are realleged as if fully set forth herein.

13 245. Amazon and Loudwolf owed plaintiffs the following non-exclusive duties:

14 a. To exercise reasonable care;

15 b. To not assist or aid in a suicide attempt; and

16 c. To not supply a substance for the use of another whom it knew or had reason to
17 know to be likely to use it in a manner involving unreasonable risk of physical harm to himself.

18 246. Amazon and Loudwolf breached the above duties.

19 247. Defendants' tortious conduct directly and proximately caused both Kristine and
20 Ethan's deaths, excruciating pain prior to death, and all resulting damages set forth herein and
21 below in Paragraphs 223-232.

22 **Count III: Negligent Infliction of Emotional Distress**

23 **By Plaintiff Martinique Maynor against Amazon and Loudwolf.**

24 248. Paragraphs 1-218 are realleged as if fully set forth herein.

1 Kristine, Kristin, and Steinn, including the grief, mental anguish, and suffering resulting from
2 Kristine's death, as well as the loss of companionship, including mutual society and protection,
3 of Kristine's, in an amount to be proven at trial.

4 258. As a direct and proximate result of Defendants' tortious conduct, Nikki suffered
5 severe emotional distress in the form of physical, psychological, and emotional trauma. Nikki
6 suffers extreme symptoms of depression, social isolation, shame, and fear for the stability of her
7 other children. She also experiences painful and ruminating thoughts, sleeplessness, loss of
8 appetite, inability to concentrate, and suicidal ideation.

9 259. As a direct and proximate result of Defendants' tortious conduct, Nick suffered
10 severe emotional distress in the form of physical, psychological, and emotional trauma. Nick
11 continues to suffer from depression, anxiety, ruminating thoughts, sleeplessness, loss of appetite,
12 anhedonia, inability to concentrate, social isolation, shame, fear for the stability of the other
13 children, suicidal ideation.

14 260. As a direct and proximate result of Defendants' tortious conduct, Kristin suffered
15 severe emotional distress in the form of physical, psychological, and emotional trauma. Kristin
16 experiences heightened levels of anxiety, depression, and sleep disorder, as well as post-
17 traumatic stress, prolonged grief, extreme and sudden weight loss, anhedonia, panic disorder,
18 social isolation, and passive suicidality.

19 261. As a direct and proximate result of Amazon's tortious conduct, Steinn suffered
20 severe emotional distress in the form of psychological, and emotional trauma. Steinn suffers from
21 loss of enjoyment of life without his daughter. He was diagnosed with depression after Kristine's
22 death and continues to seek treatment in attempts to cope with the deep anguish this has caused
23 him.

24 **REQUEST FOR RELIEF**

25 **WHEREFORE**, Martinique Maynor, Nicholas McCarthy, Laura Jónsson, and Steinn
26 Jónsson request the Court to enter judgment as follows:

- 1 A. For a judgment of liability against Amazon;
- 2 B. For a judgment of liability against Loudwolf;
- 3 C. For an award of economic damages and non-economic damages in an amount to
- 4 be proven at trial;
- 5 D. For punitive damages against Amazon;
- 6 E. For punitive damages against Loudwolf;
- 7 F. For an award of pre-judgement and post-judgment interest;
- 8 G. For reasonable attorney fees and costs; and
- 9 H. For such other relief as the Court deems just and proper.

10 **DATED** this 12th day of December, 2022.

11 C.A. GOLDBERG, PLLC

12 

13 _____
14 HANNAH MEROPOL (Bar No. 340095)
15 CARRIE GOLDBERG, *pro hac vice* admission forthcoming
16 NAOMI LEEDS, *pro hac vice* admission forthcoming
17 16 Court Street
18 Brooklyn, New York 11241
19 hannah@cagoldberglaw.com
20 carrie@cagoldberglaw.com
21 naomi@cagoldberglaw.com
22 Attorneys for Plaintiff

19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF Western District of Washington

**Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court**

U.S. District Court case number: 2:23-cv-00263-JLR

Notice is hereby given that the appellant(s) listed below hereby appeal(s) to the United States Court of Appeals for the Ninth Circuit.

Date case was first filed in U.S. District Court: September 29, 2022

Date of judgment or order you are appealing: 06/27/23 and 08/28/23

Docket entry number of judgment or order you are appealing: 60; 61; and 68

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

Yes No IFP was granted by U.S. District Court

List all Appellants (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

NICHOLAS MCCARTHY, MARTINIQUE MAYNOR, ESTATE OF ETHAN MCCARTHY, LAURA JÓNSSON, STEINN JÓNSSON, ESTATE OF KRISTINE JÓNSSON

Is this a cross-appeal? Yes No

If yes, what is the first appeal case number?

Was there a previous appeal in this case? Yes No

If yes, what is the prior appeal case number?

Your mailing address (if pro se):

City: State: Zip Code:

Prisoner Inmate or A Number (if applicable):

Signature s/ Corrie J. Yackulic

Date September 5, 2023

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Form 6. Representation Statement

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

Nicholas McCarthy, Martinique Maynor, Estate of Ethan McCarthy, Laura Jónsson, Steinn Jónsson, Estate of Kristine Jónsson

Name(s) of counsel (if any):

Corrie J. Yackulic

Address: 110 Prefontaine Place S. Ste. 304, Seattle, WA 98104

Telephone number(s): 206-787-1915

Email(s): corrie@cjylaw.com

Is counsel registered for Electronic Filing in the 9th Circuit? Yes No

Appellee(s) (List only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.)

Name(s) of party/parties:

Amazon.com, Inc.

Name(s) of counsel (if any):

Gregory F. Miller; Steven G. Williamson

Address: 1201 Third Ave. Ste. 4900, Seattle, WA 98101

Telephone number(s): 206-359-8000

Email(s): gmiller@perkinscoie.com; swilliamson@perkinscoie.com

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Name(s) of counsel (if any):

Carrie Goldberg; Naomi Leeds; and Hannah Meropol

Address: 16 Court Street, 33rd Floor; Brooklyn, NY 11241

Telephone number(s): 646-666-8908

Email(s): carrie@cagoldberglaw.com; naomi@cagoldberglaw.com; hannah@cagoldberglaw.com

Is counsel registered for Electronic Filing in the 9th Circuit? Yes No

Appellees

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Name(s) of party/parties:

Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

[Query](#) [Reports](#) [Utilities](#) [Help](#) [Log Out](#)

CLOSED,APPEAL,,JURYDEMAND,TRANSIN

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CIVIL DOCKET FOR CASE #: 2:23-cv-00263-JLR

McCarthy et al v. Amazon.com Inc et al
Assigned to: Judge James L. Robart
Case in other court: 9th Circuit Court of Appeals, 23-35584
Northern District of California, San Francisco, 3:22-cv-05718-JD
Cause: 28:1441 Petition for Removal- Product Liability

Date Filed: 02/21/2023
Date Terminated: 06/27/2023
Jury Demand: Plaintiff
Nature of Suit: 365 Personal Inj. Prod. Liability
Jurisdiction: Diversity

Plaintiff

Nicolas McCarthy
C,fcier

represented by **Carrie Goldberg**
CA GOLDBERG PLLC
16 COURT ST
33RD FL
BROOKLYN, NY 11241
646-666-8908
Email: carrie@cagoldberglaw.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Hannah Claire Meropol
CA GOLDBERG PLLC
16 COURT ST
33RD FL
BROOKLYN, NY 11241
646-666-8908
Email: hannah@cagoldberglaw.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Naomi Leeds
CA GOLDBERG PLLC
16 COURT ST
33RD FL
BROOKLYN, NY 11241
646-666-8908
Email: naomi@cagoldberglaw.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Corrie Johnson Yackulic
CORRIE YACKULIC LAW FIRM, PLLC

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

110 PREFONTAINE PLACE SOUTH
STE 304
SEATTLE, WA 98104
206-787-1915
Fax: 206-299-9725
Email: corrie@cjylaw.com
ATTORNEY TO BE NOTICED

Philip A Talmadge
TALMADGE FITZPATRICK
2775 HARBOR AVENUE SW
THIRD FLOOR SUITE C
SEATTLE, WA 98126
206-574-6661
Fax: 206-574-6661
Email: phil@tal-fitzlaw.com
ATTORNEY TO BE NOTICED

Plaintiff

Martinique Maynor

represented by **Carrie Goldberg**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Hannah Claire Meropol
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Naomi Leeds
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Corrie Johnson Yackulic
(See above for address)
ATTORNEY TO BE NOTICED

Philip A Talmadge
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Ethan McCarthy

represented by **Carrie Goldberg**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Hannah Claire Meropol
(See above for address)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Naomi Leeds
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Corrie Johnson Yackulic
(See above for address)
ATTORNEY TO BE NOTICED

Philip A Talmadge
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Laura Jonsson

represented by **Carrie Goldberg**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Hannah Claire Meropol
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Naomi Leeds
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Corrie Johnson Yackulic
(See above for address)
ATTORNEY TO BE NOTICED

Philip A Talmadge
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Steinn Jonsson

represented by **Carrie Goldberg**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Hannah Claire Meropol
(See above for address)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Naomi Leeds
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Corrie Johnson Yackulic
(See above for address)
ATTORNEY TO BE NOTICED

Philip A Talmadge
(See above for address)
ATTORNEY TO BE NOTICED

Plaintiff

Kristine Jonsson

represented by **Carrie Goldberg**
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Hannah Claire Meropol
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Naomi Leeds
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Corrie Johnson Yackulic
(See above for address)
ATTORNEY TO BE NOTICED

Philip A Talmadge
(See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant

Amazon.com Inc

represented by **Gregory F Miller**
PERKINS COIE (SEA)
1201 3RD AVE STE 4900
SEATTLE, WA 98101-3099
206-359-3588

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

Fax: 206-359-4588
 Email: gmiller@perkinscoie.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Steven G Williamson
 PERKINS COIE (LA-CENTURY CITY)
 1888 CENTURY PARK EAST
 STE 1700
 LOS ANGELES, CA 90067-1721
 310-788-3368
 Email: swilliamson@perkinscoie.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant**Loudwolf Inc**

TERMINATED: 02/17/2023

Date Filed	#	Docket Text
10/04/2022	1	NOTICE OF REMOVAL from Alameda. Their case number is 22CV018942. (Filing fee \$402 receipt number ACANDC-17594612). Filed by Amazon.com, Inc.. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet)(Williamson, Steven) (Filed on 10/4/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/04/2022)
10/05/2022	2	Case assigned to Magistrate Judge Donna M. Ryu. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 10/19/2022. (mbc, COURT STAFF) (Filed on 10/5/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/05/2022)
10/05/2022	3	Certificate of Interested Entities by Amazon.com, Inc. (Williamson, Steven) (Filed on 10/5/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/05/2022)
10/05/2022	4	Corporate Disclosure Statement by Amazon.com, Inc. (Williamson, Steven) (Filed on 10/5/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/05/2022)
10/05/2022	5	Initial Case Management Scheduling Order with ADR Deadlines: Case Management Statement due by 12/28/2022. Initial Case Management Conference set for 1/4/2023 01:30 PM in Oakland, Courtroom 4, 3rd Floor. (hdj, COURT STAFF) (Filed on 10/5/2022) Any non-CM/ECF Participants have been served by First Class Mail to the addresses of record listed on the Notice of Electronic Filing (NEF) [Transferred from cand on 2/27/2023.] (Entered: 10/05/2022)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

10/18/2022	6	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Amazon.com, Inc... (Williamson, Steven) (Filed on 10/18/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/18/2022)
10/18/2022	7	CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED. <i>This is a text only docket entry; there is no document associated with this notice.</i> (ig, COURT STAFF) (Filed on 10/18/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/18/2022)
10/19/2022	8	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge James Donato for all further proceedings. Magistrate Judge Donna M. Ryu no longer assigned to case. Notice: The assigned judge participates in the Cameras in the Courtroom Pilot Project. See General Order No. 65 and http://cand.uscourts.gov/cameras. Signed by The Clerk on 10/19/2022. (Attachments: # 1 Notice of Eligibility for Video Recording)(jrs, COURT STAFF) (Filed on 10/19/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/19/2022)
10/19/2022	9	WAIVER OF SERVICE Returned Executed filed by Kristine Jonsson, ETHAN MCCARTHY, MARTINIQUE MAYNOR, Laura Jonsson, Nicolas McCarthy, Steinn Jonsson. Service waived by Amazon.com, Inc. waiver sent on 10/11/2022, answer due 12/12/2022. (Meropol, Hannah) (Filed on 10/19/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/19/2022)
10/25/2022	10	CASE MANAGEMENT SCHEDULING ORDER: Initial Case Management Conference set for 1/5/2023 10:00 AM in San Francisco, Courtroom 11, 19th Floor. Case Management Statement due by 12/28/2022. Signed by Judge James Donato on 10/25/2022. (lrc, COURT STAFF) (Filed on 10/25/2022) [Transferred from cand on 2/27/2023.] (Entered: 10/25/2022)
11/29/2022	12	MOTION for Permission for Electronic Case Filing by Paul Fullwood on behalf of Loudwolf, Inc. (Attachments: # 1 Attachment 1, # 2 Attachment 2 - Sealed, # 3 Proposed Order)(wsn, COURT STAFF) (Filed on 11/29/2022) Modified on 12/6/2022 (wsn, COURT STAFF). [Transferred from cand on 2/27/2023.] (Entered: 12/06/2022)
12/05/2022	11	CERTIFICATE OF SERVICE by Kristine Jonsson, Laura Jonsson, Steinn Jonsson, MARTINIQUE MAYNOR, ETHAN MCCARTHY, Nicolas McCarthy (Meropol, Hannah) (Filed on 12/5/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/05/2022)
12/07/2022	13	ORDER RE 12 ECF REQUEST. Signed by Judge James Donato on 12/7/2022. (jdlc3, COURT STAFF) (Filed on 12/7/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/07/2022)
12/08/2022	14	STIPULATION WITH PROPOSED ORDER <i>Regarding Briefing Schedule and Page Limits</i> filed by Amazon.com, Inc.. (Attachments: # 1 Declaration)(Williamson, Steven) (Filed on 12/8/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/08/2022)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

12/12/2022	15	AMENDED COMPLAINT against All Defendants. Filed by Kristine Jonsson, ETHAN MCCARTHY, MARTINIQUE MAYNOR, Laura Jonsson, Nicolas McCarthy, Steinn Jonsson. (Meropol, Hannah) (Filed on 12/12/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/12/2022)
12/12/2022	16	ORDER. For Dkt. No. 14, the parties' briefing schedule is approved. Amazon's Rule 12 motion and plaintiffs' opposition are granted increases to 20 pages each, and Amazon may file a reply brief of 10 pages. Signed by Judge James Donato on 12/12/2022. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jdlc3, COURT STAFF) (Filed on 12/12/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/12/2022)
12/13/2022	17	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17818503.) filed by Kristine Jonsson, Laura Jonsson, Steinn Jonsson, MARTINIQUE MAYNOR, ETHAN MCCARTHY, Nicolas McCarthy. (Attachments: # 1 Supplement Certificate of Good Standing)(Goldberg, Carrie) (Filed on 12/13/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/13/2022)
12/14/2022	18	ORDER by Judge James Donato granting 17 Motion for Pro Hac Vice as to Carrie Goldberg. (Irc, COURT STAFF) (Filed on 12/14/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/14/2022)
12/14/2022	19	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17821123.) filed by Kristine Jonsson, Laura Jonsson, Steinn Jonsson, MARTINIQUE MAYNOR, ETHAN MCCARTHY, Nicolas McCarthy. (Attachments: # 1 Supplement)(Leeds, Naomi) (Filed on 12/14/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/14/2022)
12/15/2022	20	ORDER by Judge James Donato granting 19 Motion for Pro Hac Vice as to Naomi Leeds. (Irc, COURT STAFF) (Filed on 12/15/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/15/2022)
12/24/2022	21	Certificate of Interested Entities by Kristine Jonsson, Laura Jonsson, Steinn Jonsson, MARTINIQUE MAYNOR, ETHAN MCCARTHY, Nicolas McCarthy (Meropol, Hannah) (Filed on 12/24/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/24/2022)
12/27/2022	22	MOTION for leave to appear in Pro Hac Vice (Filing fee \$ 317, receipt number ACANDC-17854498.) filed by Amazon.com, Inc.. (Attachments: # 1 Attachment - Certificate of Good Standing)(Miller, Gregory) (Filed on 12/27/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/27/2022)
12/28/2022	23	ORDER by Judge James Donato granting 22 Motion for Pro Hac Vice as to Gregory F Miller. (Irc, COURT STAFF) (Filed on 12/28/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/28/2022)
12/28/2022	24	JOINT CASE MANAGEMENT STATEMENT filed by Amazon.com, Inc.. (Williamson, Steven) (Filed on 12/28/2022) [Transferred from cand on 2/27/2023.] (Entered: 12/28/2022)
01/03/2023	25	MOTION to Dismiss for Lack of Jurisdiction filed by Amazon.com, Inc.. Motion Hearing set for 2/9/2023 10:00 AM in San Francisco, Courtroom 11, 19th Floor before Judge James Donato. Responses due by 1/24/2023. Replies due by 2/7/2023. (Attachments: # 1 Declaration, # 2 Proposed Order)(Williamson, Steven) (Filed on 1/3/2023) [Transferred from cand on 2/27/2023.] (Entered: 01/03/2023)
01/05/2023	26	Minute Entry for proceedings held before Judge James Donato: Initial Case Management Conference held on 1/5/2023. (jdlc3, COURT STAFF) (Date Filed: 1/5/2023) [Transferred from cand on 2/27/2023.] (Entered: 01/05/2023)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

01/24/2023	27	OPPOSITION/RESPONSE (re 25 MOTION to Dismiss for Lack of Jurisdiction) filed by Kristine Jonsson, Laura Jonsson, Steinn Jonsson, MARTINIQUE MAYNOR, ETHAN MCCARTHY, Nicolas McCarthy. (Attachments: # 1 Declaration Declaration of Carrie Goldberg)(Goldberg, Carrie) (Filed on 1/24/2023) [Transferred from cand on 2/27/2023.] (Entered: 01/24/2023)
02/02/2023	28	ORDER. The motion to dismiss or transfer, Dkt. No. 25, is suitable for decision without oral argument pursuant to Civil Local Rule 7-1(b). The hearing that was set for February 9, 2023, is vacated. Signed by Judge James Donato on 2/2/2023. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jdlc3, COURT STAFF) (Filed on 2/2/2023) [Transferred from cand on 2/27/2023.] (Entered: 02/02/2023)
02/04/2023	29	Letter from Carrie Goldberg regarding Dkt. No. 28 . (Goldberg, Carrie) (Filed on 2/4/2023) [Transferred from cand on 2/27/2023.] (Entered: 02/04/2023)
02/05/2023	30	Letter from Gregory F. Miller Regarding Dkt. No. 29 (<i>Letter from Carrie Goldberg</i>). (Attachments: # 1 Exhibit Exhibit 1)(Miller, Gregory) (Filed on 2/5/2023) [Transferred from cand on 2/27/2023.] (Entered: 02/05/2023)
02/06/2023	31	Letter from Carrie Goldberg <i>in response to Dkt. No. 30</i> . (Goldberg, Carrie) (Filed on 2/6/2023) [Transferred from cand on 2/27/2023.] (Entered: 02/06/2023)
02/07/2023	32	REPLY (re 25 MOTION to Dismiss for Lack of Jurisdiction) filed by Amazon.com, Inc.. (Williamson, Steven) (Filed on 2/7/2023) [Transferred from cand on 2/27/2023.] (Entered: 02/07/2023)
02/08/2023	33	ORDER. For Dkt. No. 29, the Court is advised that an associate with one year of experience will handle the oral argument. Consequently, pursuant to paragraph 13 of the Court's standing order for civil cases, a hearing on the motion to dismiss or transfer is set for February 16, 2023, at 10:00 a.m. Signed by Judge James Donato on 2/8/2023. (This is a text-only entry generated by the court. There is no document associated with this entry.) (jdlc3, COURT STAFF) (Filed on 2/8/2023)[Transferred from cand on 2/27/2023.] (Entered: 02/08/2023)
02/17/2023	34	Minute Entry for proceedings held before Judge James Donato: Motion Hearing held on 2/16/2023. (jdlc3, COURT STAFF) (Date Filed: 2/17/2023) [Transferred from cand on 2/27/2023.] (Entered: 02/17/2023)
02/17/2023	35	TRANSFER ORDER. Signed by Judge James Donato on 2/17/2023. (jdlc3, COURT STAFF) (Filed on 2/17/2023) [Transferred from cand on 2/27/2023.] (Entered: 02/17/2023)
02/27/2023	36	Case transferred in from Northern District of California (San Francisco), Case Number 3:22-cv-05718-JD. (RE) (Entered: 02/27/2023)
02/27/2023		Judge James L. Robart added. (RE) (Entered: 02/27/2023)
02/27/2023	37	LETTER from Clerk to counsel re receipt of case from Northern District of California, San Francisco and advising of WAWD case number and judge assignment. (RE) (Entered: 02/27/2023)
03/13/2023	38	ORDER REGARDING INITIAL DISCLOSURES AND JOINT STATUS REPORT by Judge James L. Robart. Joint Status Report due by 4/17/2023, FRCP 26(f) Conference Deadline is 3/27/2023, Initial Disclosure Deadline is 4/10/2023. (AD) Modified on 3/13/2023 cc: Plaintiffs' counsel via email (AD). (Entered: 03/13/2023)
03/16/2023	39	NOTICE of Appearance by attorney Corrie Johnson Yackulic on behalf of Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy,

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

		Nicolas McCarthy. (Yackulic, Corrie) (Entered: 03/16/2023)
03/16/2023	40	APPLICATION OF ATTORNEY Carrie Goldberg FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy (Fee Paid) Receipt No. AWAADC-7930333 (Yackulic, Corrie) (Entered: 03/16/2023)
03/16/2023	41	APPLICATION OF ATTORNEY Hannah Meropol FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy (Fee Paid) Receipt No. AWAADC-7930343 (Yackulic, Corrie) (Entered: 03/16/2023)
03/16/2023	42	APPLICATION OF ATTORNEY Naomi Leeds FOR LEAVE TO APPEAR PRO HAC VICE for Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy (Fee Paid) Receipt No. AWAADC-7930345 (Yackulic, Corrie) (Entered: 03/16/2023)
03/17/2023	43	ORDER re 40 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Carrie Goldberg for Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy, by Clerk Ravi Subramanian. No document associated with this docket entry, text only. <i>NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(a).</i> (CDA) (Entered: 03/17/2023)
03/17/2023	44	ORDER re 41 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Hannah Claire Meropol for Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy, by Clerk Ravi Subramanian. No document associated with this docket entry, text only. <i>NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(a).</i> (CDA) (Entered: 03/17/2023)
03/28/2023		Application for Leave to Appear Pro Hac Vice 42 by attorney Naomi Leeds will not be processed at this time. Attorney must first complete all requirements for PHV admission via PACER. Please contact Admissions Clerk Jesse Curry at 206-370-8439 or jesse_curry@wawd.uscourts.gov with additional questions. (Ad hoc Attorney Naomi Leeds) (JWC) (Entered: 03/28/2023)
03/29/2023	45	ORDER re 42 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Naomi Leeds for Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, and Nicolas McCarthy by Clerk Ravi Subramanian. No document associated with this docket entry, text only. <i>NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(a).</i> (JWC) (Entered: 03/29/2023)
03/30/2023	46	APPLICATION OF ATTORNEY Steven G. Williamson FOR LEAVE TO APPEAR PRO HAC VICE by Defendant Amazon.com Inc. Receipt No. AWAADC-7950356 (Miller, Gregory) (Entered: 03/30/2023)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

03/30/2023	47	MOTION to Dismiss for Failure to State a Claim , filed by Defendant Amazon.com Inc. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 4/21/2023, (Miller, Gregory) (Entered: 03/30/2023)
03/31/2023	48	ORDER re 46 APPLICATION OF ATTORNEY Steven G. Williamson FOR LEAVE TO APPEAR PRO HAC VICE. The Court ADMITS Attorney Steven G Williamson for Defendant Amazon.com Inc by Clerk Ravi Subramanian. No document associated with this docket entry, text only. <i>NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(a).</i> (JWC) (Entered: 03/31/2023)
04/17/2023	49	JOINT STATUS REPORT signed by all parties. Estimated Trial Days: 8-10. (Miller, Gregory) (Entered: 04/17/2023)
04/17/2023	50	RESPONSE, by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy, to 47 MOTION to Dismiss for Failure to State a Claim . Oral Argument Requested. (Attachments: # 1 Proposed Order)(Yackulic, Corrie) (Entered: 04/17/2023)
04/19/2023	51	MINUTE ORDER re Plaintiffs' 50 Response to Motion. The Court ORDERS Plaintiffs to file a copy of the <i>Scott v. Amazon.com, Inc.</i> order by no later than April 21, 2023. Authorized by Judge James L. Robart. (LH) (Entered: 04/19/2023)
04/19/2023	52	DECLARATION of Corrie J. Yackulic filed by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy re 47 MOTION to Dismiss for Failure to State a Claim (Yackulic, Corrie) (Entered: 04/19/2023)
04/21/2023	53	MINUTE ORDER SETTING TRIAL DATE AND RELATED DATES by Judge James L. Robart; Length of Trial: *7 days*. Jury Trial is set for 8/5/2024 at 01:30 PM in Courtroom 14106 before Judge James L. Robart. Joinder of Parties due by 7/5/2023, Amended Pleadings due by 2/7/2024, Expert Witness Disclosure/Reports under FRCP 26(a)(2) due by 2/7/2024, Motions due by 3/8/2024, Discovery completed by 4/8/2024, Dispositive motions due by 5/7/2024, Attorney settlement conference to be held by 6/6/2024, Motions in Limine due by 6/24/2024, Pretrial Order due by 7/15/2024, Deposition Designations due by 7/15/2024, Pretrial Conference set for 7/22/2024 at 02:00 PM in Courtroom 14106 before Judge James L. Robart. Trial briefs to be submitted by 7/29/2024, Proposed voir dire/jury instructions due by 7/29/2024. (AD) (Entered: 04/21/2023)
04/21/2023	54	REPLY, filed by Defendant Amazon.com Inc, TO RESPONSE to 47 MOTION to Dismiss for Failure to State a Claim (Miller, Gregory) (Entered: 04/21/2023)
04/21/2023	55	DECLARATION of Gregory F. Miller filed by Defendant Amazon.com Inc re 47 MOTION to Dismiss for Failure to State a Claim (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Miller, Gregory) (Entered: 04/21/2023)
05/04/2023	56	MINUTE ORDER: The court ORDERS the parties to file, by no later than May 9, 2023, supplemental briefing to Defendant Amazon.com, Inc.'s motion to dismiss Plaintiffs' first amended complaint. (Mot. (Dkt. # 47). Authorized by Judge James L. Robart. (LH) (Entered: 05/04/2023)
05/09/2023	57	MEMORANDUM filed by All Plaintiffs re 47 MOTION to Dismiss for Failure to State a Claim <i>Plaintiffs' Supplemental Briefing</i> (Meropol, Hannah) (Entered: 05/09/2023)
05/09/2023	58	RESPONSE, by Defendant Amazon.com Inc, to 47 MOTION to Dismiss for Failure to State a Claim . Oral Argument Requested. (Miller, Gregory) (Entered: 05/09/2023)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

06/16/2023	59	NOTICE of Supplemental Authority re 54 Reply to Response to Motion, 47 MOTION to Dismiss for Failure to State a Claim , 57 Memorandum, 58 Response to Motion, 56 Minute Order,, Util - Set/Reset Motion Noting Date, 50 Response to Motion, by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy (Yackulic, Corrie) (Entered: 06/16/2023)
06/27/2023	60	ORDER granting Defendant's 47 Motion to Dismiss. The Court DISMISSES Plaintiffs' amended complaint with prejudice and without leave to amend. Signed by Judge James L. Robart. (LH) (Entered: 06/27/2023)
06/27/2023	61	JUDGMENT BY COURT: Defendant's motion to dismiss (Dkt. # 47) is GRANTED and Plaintiffs' amended complaint (Dkt. # 15) is DISMISSED with prejudice and without leave to amend. (See Order (Dkt. # 60).) (LH) (Entered: 06/27/2023)
07/25/2023	62	MOTION to Amend Judgment <i>Amend the Complaint; or Cert.fy Questions</i> , filed by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy. Oral Argument Requested. (Attachments: # 1 Proposed Order) Noting Date 8/11/2023 8/4/2023 , (Yackulic, Corrie) Modified noting date on 7/26/2023 (SS). (Entered: 07/25/2023)
07/25/2023	63	DECLARATION of Meredith Mitchel filed by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy re 62 MOTION to Amend Judgment <i>Amend the Complaint; or Cert.fy Questions</i> (Yackulic, Corrie) (Entered: 07/25/2023)
07/25/2023	64	DECLARATION of Carrie Goldberg filed by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy re 62 MOTION to Amend Judgment <i>Amend the Complaint; or Cert.fy Questions</i> (Yackulic, Corrie) (Entered: 07/25/2023)
07/26/2023		Noting Date Reset for 62 MOTION to Amend Judgment to 8/11/2023, per LCR7. (SS) (Entered: 07/26/2023)
08/07/2023	65	RESPONSE, by Defendant Amazon.com Inc, to 62 MOTION to Amend Judgment <i>Amend the Complaint; or Cert.fy Questions</i> . (Attachments: # 1 Proposed Order Proposed Order) (Miller, Gregory) (Entered: 08/07/2023)
08/11/2023	66	REPLY, filed by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy, TO RESPONSE to 62 MOTION to Amend Judgment <i>Amend the Complaint; or Cert.fy Questions</i> (Yackulic, Corrie) (Entered: 08/11/2023)
08/17/2023	67	NOTICE of Supplemental Authority re 62 MOTION to Amend Judgment <i>Amend the Complaint; or Cert.fy Questions</i> by Defendant Amazon.com Inc (Attachments: # 1 Exhibit)(Miller, Gregory) (Entered: 08/17/2023)
08/25/2023	68	ORDER denying Plaintiffs' 62 Motion to Amend Judgment, to Grant Plaintiffs Leave to File a Second Amended Complaint, or, in the Alternative, to Certify Questions to the Washington State Supreme Court. Signed by Judge James L. Robart. (SB) (Entered: 08/25/2023)
09/05/2023	69	NOTICE OF APPEAL to Ninth Circuit (23-35584) re 60 Order on Motion to Dismiss for Failure to State a Claim, 68 Order on Motion to Amend Judgment, 61 Judgment by Court by Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy. \$505, receipt number AWAADC-8150092 (cc: USCA) (Yackulic, Corrie) Modified on 9/7/2023 to add CCA#. (RE) (Entered: 09/05/2023)

11/15/23, 9:37 AM

WAWD CM/ECF Version 1.7.0.2

09/06/2023	70	TIME SCHEDULE ORDER/USCA CASE NUMBER (23-35584) as to 69 Notice of Appeal, filed by Laura Jonsson, Nicolas McCarthy, Martinique Maynor, Kristine Jonsson, Ethan McCarthy, Steinn Jonsson. (RE) (Entered: 09/07/2023)
11/06/2023	71	NOTICE of Association of Attorney by Philip A Talmadge on behalf of Plaintiffs Kristine Jonsson, Laura Jonsson, Steinn Jonsson, Martinique Maynor, Ethan McCarthy, Nicolas McCarthy. (Talmadge, Philip) (Entered: 11/06/2023)

PACER Service Center			
Transaction Receipt			
11/15/2023 09:37:28			
PACER Login:	cplosangeles16	Client Code:	
Description:	Docket Report	Search Criteria:	2:23-cv-00263-JLR
Billable Pages:	11	Cost:	1.10