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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

ROBERT F. KENNEDY, JR., a citizen of New York, JOSEPH MERCOLA, M.D., a citizen of Florida, RONALD CUMMINS, a citizen of Minnesota, and CHELSEA GREEN PUBLISHING, INC., a Vermont Corporation,

Plaintiffs,

v.

U.S. Senator ELIZABETH WARREN,

Defendant.

CASE NO.
COMPLAINT
JURY DEMANDED

COMPLAINT

By and through their undersigned counsel, Plaintiffs Dr. Joseph Mercola, Ronald Cummins, Robert F. Kennedy, Jr., and Chelsea Green Publishing, Inc. file the following Complaint against Defendant Senator Elizabeth Warren. All statements concerning the Plaintiffs are made on the basis of knowledge, all others on information and belief.

NATURE OF THE ACTION

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1. The First Amendment guarantees that books challenging governmental orthodoxy can be sold without fear of governmental intimidation or reprisal.

2. Almost sixty years ago, in *Bantam Books v. Sullivan*, 372 U.S. 58 (1963), the Supreme Court held that state officials violated the First Amendment by sending letters to booksellers warning that the sale of certain named books was potentially unlawful.

3. The “vice” in such letters and in the “veiled threat” of legal repercussions they communicated, explained the Court, is that they allow government to achieve censorship while doing an end-run around the judiciary, “provid[ing] no safeguards whatever against the suppression of . . . constitutionally protected” speech, thus effecting an unconstitutional “prior restraint.” *Id.* at 69-70.

4. It made no difference in *Bantam Books* whether the officials who sent the letter possessed the “power to apply formal legal sanctions”—*i.e.*, whether the officials themselves had the power to sanction or prosecute the booksellers in any way. *Id.* at 68. Indeed, the lack of such power made the unconstitutionality more apparent. The officials “are not law enforcement officers,” said the Court; “they do not pretend that they are qualified to give or that they attempt to give distributors only fair legal advice. . . . [T]hey acted . . . not to advise but to suppress.” *Id.* at 72.

5. It also made no difference, the Court found, that the letters were framed as mere “exhort[ation]” or that the booksellers were in theory “free” to ignore the letters, because the officials had “deliberately set about to achieve the suppression of publications deemed ‘objectionable’” and “people do not lightly disregard public officers’ veiled threats.” *Id.* at 66-68.

6. Today, certain members of the United States Congress have apparently forgotten, or think they are above, the prohibition of “informal censorship” by public officials set forth in *Bantam*

1 *Books.*

2 7. On September 7, 2021, Senator Warren wrote a letter to Amazon, the largest bookseller in
3 the world, naming certain books and threatening, without basis or justification, that Amazon’s
4 “peddling” of those books is “potentially unlawful.”

5 8. Among the books named by Senator Warren is *The Truth About COVID-19: Exposing the*
6 *Great Reset, Lockdowns, Vaccine Passports, and the New Normal*. Plaintiffs here are this book’s
7 authors, the writer of its Foreword, and its publisher.

8 9. *The Truth About COVID-19* criticizes current governmental policy and orthodoxy on
9 COVID-19 and the COVID-19 vaccines.

10 10. *The Truth About COVID-19* expresses viewpoints, ideas, opinions, facts, and factual
11 hypotheses about the pandemic that Senator Warren and many others in her political party not only
12 disfavor but have systematically sought to suppress—and to a remarkable degree have successfully
13 suppressed—through the same tactics used here, in which Members of Congress warn behemoth
14 Internet-based companies, which carry so much of today’s public discourse, that if they do not
15 censor the disfavored speech, they will face serious adverse legal consequences.

16 11. There is no doubt that *The Truth About COVID-19* is constitutionally protected speech.

17 12. Senator Warren’s letter calls on Amazon to stop selling *The Truth About COVID-19* (along
18 with other books) on the ground that it purportedly contains “vaccine misinformation.”
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20 13. The term “vaccine misinformation,” as Senator Warren uses it is propagandistic and false,
21 referring to any speech challenging the safety and efficacy of the COVID vaccines, even when that
22 speech consists of factually accurate information or reasonable and protected opinion.

23 14. On September 8, 2021, Senator Warren exacerbated the First Amendment violation by is-
24 suing a press release publicizing her September 7 letter to Amazon, by posting a link to a copy of
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1 that letter on her official website, by stating that she “is calling on Amazon to take aggressive action
2 to stamp out COVID-19 misinformation,” and by repeating the threat that Amazon’s “peddling” of
3 books containing (what she called) COVID-19 “misinformation” was “potentially unlawful.” Sen-
4 ator Warren, Press Release, Sept. 8, 2021, [https://www.warren.senate.gov/oversight/letters/warren-](https://www.warren.senate.gov/oversight/letters/warren-investigation-finds-amazon-provides-consumers-with-covid-19-vaccine-misinformation-in-search-results)
5 [investigation-finds-amazon-provides-consumers-with-covid-19-vaccine-misinformation-in-](https://www.warren.senate.gov/oversight/letters/warren-investigation-finds-amazon-provides-consumers-with-covid-19-vaccine-misinformation-in-search-results)
6 [search-results](https://www.warren.senate.gov/oversight/letters/warren-investigation-finds-amazon-provides-consumers-with-covid-19-vaccine-misinformation-in-search-results).

7 15. On September 10, 2021, as a direct result of Senator Warren’s letter, a major national
8 bookseller chain, Barnes & Noble, notified the publisher of *The Truth About COVID-19* by email
9 that it would no longer sell the work as an e-book.

10 16. Barnes & Noble subsequently—for now—reversed that decision.

11 17. As of the date of this Complaint, it is impossible for Plaintiffs to know with certainty
12 whether, as a result of Senator Warren’s letter, Amazon has, or is now, covertly demoting,
13 downgrading, or otherwise suppressing *The Truth About COVID-19* in numerous ways hidden from
14 view, but Plaintiffs allege on information and belief that Amazon is in fact covertly taking such
15 action.

16 18. In *Backpage.com, LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015) (Posner, J.), relying on *Bantam*
17 *Books*, the Court held that a governmental official “violates a plaintiff’s First Amendment rights”
18 if by “threat” or “intimidation” the official attempts to induce “a third party” to stop “publishing or
19 otherwise disseminating the plaintiff’s message,” and emphasized that “such a threat is actionable
20 and thus can be enjoined even if it turns out to be empty—the victim ignores it, and the threatener
21 folds his tent.” *Id.* at 230-31. Such threats go “by the name of ‘prior restraint,’ and a prior restraint
22 is the quintessential first-amendment violation.” *Id.* at 235 (citation omitted).

23 19. Thus, even if no bookseller in the country had yielded to Senator Warren’s threats, and
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1 regardless of whether any more succumb to the pressure in coming days, her letter would still be
2 actionable as a violation of the First Amendment.

3 20. Accordingly, Plaintiffs ask this Court to vindicate clearly established law, to vindicate
4 Plaintiffs’ constitutional rights, and to vindicate the First Amendment itself, by declaring Senator
5 Warren’s conduct unconstitutional, by enjoining her from repeating or continuing such conduct in
6 future, and by awarding Plaintiffs damages for violations of their rights.

7 **JURISDICTION AND VENUE**

8 21. This Court has personal jurisdiction over Defendant because the letter in question was
9 addressed and sent to Amazon’s headquarters in Washington State. *See* Fed. R. Civ. P. 4(k)(1)(a);
10 RCW § 4.28.185(1). Defendant is sued in both her official and personal capacities.

11 22. Subject matter jurisdiction over this case lies under 28 U.S.C. § 1331 (federal question), 28
12 U.S.C. § 2201 (declaratory relief), 28 U.S.C. § 2202 (further relief), *Bivens v. Six Unknown Named*
13 *Agents of the Federal Bureau of Investigation*, 403 U.S. 388 (1971) (damages), and under the First
14 Amendment of the United States Constitution itself (equitable relief).

15 23. Venue is proper in this District under 28 U.S.C. § 1391(b)(3) because Defendant is subject
16 to this Court’s personal jurisdiction and this District encompasses the Amazon headquarters to
17 which the violative letter was sent.
18

19 **PARTIES**

20 24. Plaintiff Dr. Joseph Mercola is a citizen of Florida, a *New York Times* best-selling author,
21 and a board-certified and licensed physician.

22 25. Plaintiff Ronald Cummins is a citizen of Minnesota, an author and journalist, and CEO of
23 the Organic Consumers Association, a nationwide non-profit consumer organization.

24 26. Plaintiff Robert F. Kennedy, Jr. is a citizen of New York, a prominent lawyer and professor,
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1 and the founder and CEO of Children’s Health Defense, a non-profit organization.

2 27. Plaintiff Chelsea Green Publishing, Inc. [hereafter “Chelsea Green”] is an employee-owned
3 independent book publisher founded in 1984, and is headquartered in White River Junction,
4 Vermont.

5 28. Defendant Elizabeth Warren, who is sued in both her official and personal capacities, is a
6 United States Senator representing the state of Massachusetts.

7 **FACTS**

8 29. Plaintiffs incorporate and reallege all preceding paragraphs as if fully set forth here.

9 30. On May 16, 2021, Plaintiff Chelsea Green published *The Truth About COVID-19: Exposing*
10 *the Great Reset, Lockdowns, Vaccine Passports, and the New Normal*.

11 31. Plaintiffs Mercola and Cummins co-authored *The Truth About COVID-19*.

12 32. Plaintiff Kennedy wrote the book’s Foreword.

13 33. The book became a *Wall Street Journal* and *USA Today* bestseller.

14 34. The book condemns government COVID policies. It expresses views on a host of COVID-
15 related topics—for example, the origins of the disease, the safety and efficacy of the COVID
16 vaccines, and the suppression of alternative treatments that could have saved lives—with which
17 many may disagree.
18

19 35. There can be no doubt that *The Truth About COVID-19* is constitutionally protected speech.
20 There is no legally recognized set of criteria for identifying constitutionally unprotected speech that
21 *The Truth About COVID-19* remotely satisfies (such as violation of intellectual property law or
22 incitement to imminent lawless action), and Senator Warren’s letter to Amazon identifies no such
23 criteria.
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25 36. In other words, Senator Warren’s letter calls for the suppression of protected speech.

1 37. Senator Warren’s letter to Amazon makes numerous false claims that *The Truth About*
2 *COVID-19* contains “misinformation.”

3 38. While Senator Warren’s claims, even if they were correct, would not alter the book’s
4 constitutional protection, it is important to emphasize that, in aid of her veiled threats, Senator
5 Warren engages in falsehood and unsubstantiated accusation in what she says about *The Truth*
6 *About COVID-19*.

7 39. In other words, Senator Warren’s claims of “misinformation” in *The Truth About COVID-*
8 *19* are themselves misinformation. Examples include, without limitation, the following.

9 40. Senator Warren claims that *The Truth About COVID-19* disseminates “false information”
10 when it “asserts that . . . vitamin D . . . can prevent COVID-19 infection.” Senator Warren’s letter
11 suggests that “this claim” has no “scientific basis.”
12

13 41. The spuriousness of Senator Warren’s assertions regarding the book’s discussions of
14 vitamin D vis-à-vis COVID-19 is obvious.

15 42. The *Truth About COVID-19* does indeed say that vitamin D can “help protect you from
16 COVID-19 and reduce your chances of experiencing more severe outcomes”; it urges readers to
17 have their vitamin D level checked to ensure they do not have a deficiency, and it advises them that
18 if they do have such deficiency, they should bring their vitamin D level to within the medically
19 recommended range.

20 43. The notion that this position is misinformation and should be expunged from public
21 discourse is contradicted by the National Institute of Health’s website PubMed.gov, which recently
22 published an article from the *Journal of Medical Virology* titled, “Vitamin D deficiency is
23 associated with COVID-19 positivity and severity of the disease.” *See* M. Demir et al., *Vitamin D*
24 *deficiency is associated with COVID-19 positivity and severity of the disease,*
25

1 <https://pubmed.ncbi.nlm.nih.gov/33512007>.

2 44. Numerous other scientific articles have also found that vitamin D deficiencies are associated
3 with COVID infections and with more severe COVID outcomes.

4 45. Indeed, a “systematic review” of the literature, also published on a National Institutes of
5 Health website, concluded that “blood vitamin D status can determine the risk of being infected
6 with COVID-19, seriousness of COVID-19, and mortality from COVID-19. Therefore,
7 maintaining appropriate levels of Vitamin D through supplementation or natural methods . . . is
8 recommended for the public to be able to cope with the pandemic.” H. Yisak et al., *Effects of*
9 *Vitamin D on COVID-19 Infection and Prognosis: A Systematic Review*,
10 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7800698>.

11 46. Thus, while Senator Warren professes to champion true COVID information to save lives,
12 and simultaneously purveys misleading statements that could lead to COVID deaths, she suggests
13 that vitamin D levels do not affect COVID infection, when in fact—as readers would learn from
14 *The Truth About COVID-19*—correcting vitamin D deficiencies could save lives.

15 47. Senator Warren’s letter further accuses *The Truth About COVID-19* of disseminating “false
16 and misleading information about vaccines,” including by (in Senator Warren’s words)
17 “contend[ing] that vaccines cannot be trusted.”
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19 48. The book’s stated thesis about the COVID vaccines is that their effectiveness “has been
20 wildly exaggerated and major safety questions have gone unanswered.”
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22 49. This statement is accurate and well within the bounds of constitutionally protected opinion.

23 50. Senator Warren’s letter further asserts that “[o]ne of the [book’s] authors, Dr. Mercola, is
24 one of the ‘Disinformation Dozen,’ a group responsible for 65% of anti-vaccine content on
25 Facebook and Twitter.”

1 51. As authority for this supposed fact, Senator Warren cites a putative study published by a
2 United Kingdom-based entity calling itself “The Center for Countering Digital Hate.”

3 52. The same supposed “fact” and “study” have been credulously cited repeatedly by other
4 public officials and by major media outlets.

5 53. But according to Facebook itself, “[t]here isn’t any evidence to support this claim.”
6 Facebook, Aug. 18, 2021, [https://about.fb.com/news/2021/08/taking-action-against-vaccine-](https://about.fb.com/news/2021/08/taking-action-against-vaccine-misinformation-superspreaders)
7 [misinformation-superspreaders](https://about.fb.com/news/2021/08/taking-action-against-vaccine-misinformation-superspreaders).

8 54. And as Facebook also points out, “there is no explanation for how the organization behind
9 the report identified the content they describe as ‘anti-vax.’” *Id.*

10 55. By referring to all purportedly “anti-vaccine content,” absent nuance or specificity, as some-
11 thing to be denounced and de-platformed, Senator Warren indicates that in her view, any speech
12 challenging the safety and efficacy of COVID vaccines is somehow “misinformation,” despite the
13 fact that many renowned scientists have questioned the safety and efficacy of the COVID vaccines
14 and thousands of physicians have asked for more openness to alternative COVID treatments. *See,*
15 *e.g.,* Robert Malone & Peter Navarro, *Biden Team’s Misguided and Deadly COVID-19 Vaccine*
16 *Strategy*, Washington Times, Aug. 5, 2021, [https://web.ar-](https://web.archive.org/web/20210805220335/https://www.washingtontimes.com/news/2021/aug/5/biden-teams-misguided-and-deadly-covid-19-vaccine-/)
17 [chive.org/web/20210805220335/https://www.washingtontimes.com/news/2021/aug/5/biden-](https://web.archive.org/web/20210805220335/https://www.washingtontimes.com/news/2021/aug/5/biden-teams-misguided-and-deadly-covid-19-vaccine-/)
18 [teams-misguided-and-deadly-covid-19-vaccine-;](https://web.archive.org/web/20210805220335/https://www.washingtontimes.com/news/2021/aug/5/biden-teams-misguided-and-deadly-covid-19-vaccine-/) Physicians Declaration, [https://doctorsandscien-](https://doctorsandscientistsdeclaration.org)
19 [tistsdeclaration.org](https://doctorsandscientistsdeclaration.org).
20

21 56. *The Truth About COVID-19*’s First Amendment protection does not depend on the veracity
22 of the statements asserted therein and hence does not require the Court to decide which of the
23 contrary assertions is correct. Nevertheless, the fact that statements described as “misinformation”
24 by Senator Warren are demonstrably true exposes the logical consequence of, and thus her motive
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1 in, threatening Amazon—*i.e.*, the suppression of legitimate discourse on a topic of enormous public
2 importance.

3 57. Senator Warren’s letter further cites a June 2021 review of *The Truth About COVID-19* that
4 purports to list examples of the book’s “misinformation,” the first of which is that “the authors
5 argue that the SARS-CoV-2 coronavirus was engineered in a laboratory in Wuhan, China.”

6 58. It is true that *The Truth About COVID-19* argues that that “the preponderance of evidence”
7 supports the lab-leak theory of the origins of the COVID virus.

8 59. But the claim that this position is “misinformation” is, once again, itself misinformation.
9 The lab-leak theory—which has been denounced as a “conspiracy theory” by federal actors and
10 suppressed on social media—is in fact supported by substantial and growing evidence. *See, e.g.*,
11 Wall Street Journal, *Science Closes In on Covid’s Origins: Four studies—including two from*
12 *WHO—provide powerful evidence favoring the lab-leak theory*, Oct. 5, 2021,
13 [https://www.wsj.com/articles/covid-19-coronavirus-lab-leak-virology-origins-pandemic-](https://www.wsj.com/articles/covid-19-coronavirus-lab-leak-virology-origins-pandemic-11633462827)
14 [11633462827](https://www.wsj.com/articles/covid-19-coronavirus-lab-leak-virology-origins-pandemic-11633462827).

16 60. The review’s next example of the supposed “misinformation” in the *The Truth About*
17 *COVID-19* is that the book: “insists multiple times that the public health measures and restrictions
18 will be permanent. Not true. The CDC announced that fully vaccinated Americans could resume
19 activities without wearing masks or physically distancing, resume domestic travel, and refrain from
20 quarantine even when following a known exposure to the virus if they remain symptom-free.”

22 61. This CDC announcement proved to be false and was soon retracted. The prediction made
23 in *The Truth About COVID-19* that health restrictions would continue after vaccination has proved
24 true, and the book’s prediction that some restrictions would continue indefinitely has not been
25 refuted.

1 62. Nor is it accurate that the *Truth About COVID-19* “insists” that these restrictions will be
2 permanent; the book argues that certain restrictions on our liberty, beginning in the pandemic, will
3 “probably” be permanent.

4 63. Senator Warren’s September 7, 2021 letter to Amazon, published on her official website, in
5 both purpose and effect communicates a threat not only to Amazon but to all booksellers that if
6 they continue to sell *The Truth About COVID-19*, they risk legal repercussions.

7 64. The letter begins, “I write regarding concerns that Amazon is peddling misinformation
8 about COVID-19 vaccines and treatments” and asserts that such “misinformation” is causing
9 rampant death and disease.

10 65. The letter singles out *The Truth About COVID-19* as the most prominent example of the so-
11 called “misinformation about COVID-19 vaccines and treatments” that Amazon is “peddling.” A
12 screenshot of the book as depicted on Amazon’s website appears in the body of the letter.

13 66. The letter denounces Amazon for showing users *The Truth About COVID-19* when they
14 search for books on the topic of COVID or vaccines, and for informing users that *The Truth About*
15 *COVID-19* is a bestseller.

16 67. The letter accuses Amazon of “a pattern and practice of misbehavior” and of being “either
17 unwilling or unable to modify its business practices to prevent the spread of falsehoods or the sale
18 of inappropriate products—an unethical, unacceptable, and potentially unlawful course of action.”

19 68. The letter does not (and to Plaintiffs’ awareness, could not) say what laws the sale of *The*
20 *Truth About COVID-19* is “potentially” transgressing.

21 69. But the letter accuses that book and other books containing so-called COVID
22 “misinformation” of having “led to untold . . . deaths” and accuses Amazon of, “[a]larmingly,”
23 causing such deaths by selling these books.
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1 70. Knowingly and/or recklessly causing “untold death” without justification is both a tort and
2 a crime. Homicide.

3 71. A reasonable reader could understand Senator Warren’s letter to be warning Amazon that
4 the continued sale of *The Truth About COVID-19* may result in Amazon being legally responsible
5 for wrongful death and homicide.

6 72. Senator Warren’s letter makes plain that it is calling on Amazon to de-platform the books
7 she deems objectionable by lauding other Big Tech behemoths that, in response to similar
8 governmental pressure, now block, remove, and demote all so-called “COVID misinformation”:
9 She says, among other things: “In response to concerns about COVID-19 misinformation on its
10 platform, Facebook has removed pages, groups, and accounts spreading such misinformation and
11 adjusted its algorithms to either remove misleading posts or display them less prominently.
12 Similarly, Twitter has published a COVID19 misinformation policy that prohibits users from using
13 its services ‘to share false or misleading information about COVID-19 which may lead to harm.’”
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15 73. Senator Warren’s letter denounces Amazon for not including COVID-19 or vaccine
16 “misinformation” as a category of speech disqualifying a book from being sold.

17 74. It was a foreseeable consequence of, and Senator Warren’s intention in, publishing her
18 public letter to Amazon to cause Amazon and other booksellers to censor *The Truth About COVID-*
19 *19*.

20 75. It was a foreseeable consequence of Senator Warren’s letter, and intention, to bring about
21 this result by informing Amazon (and other booksellers) that promoting and profiting from the sale
22 of *The Truth About COVID-19* is a “potentially unlawful” course of conduct.

23 76. The censorship Senator Warren intended to bring about included Amazon and other sellers
24 demoting *The Truth About COVID-19*, concealing it from users, and/or ceasing to sell it altogether.
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1 77. A reasonable interpretation of Senator Warren’s letter is that booksellers that promote or
2 sell *The Truth About COVID-19* are engaged in “potentially unlawful” conduct, subjecting them to
3 liability, prosecution, and/or other adverse legal repercussions, and a reasonable response on the
4 part of persons informed by a high-ranking government official that they are engaged in “potentially
5 unlawful” conduct is to cease that conduct.

6 78. The thinly veiled threat to Amazon of legal repercussions communicated by Senator
7 Warren’s letter was and is magnified by extrinsic facts and circumstances.

8 79. Senator Warren has, for example, in recent months singled out Amazon by name (“Amazon,
9 I’m looking at you”) when demanding that the federal government take action to cause certain
10 corporations to pay billions of dollars in additional taxes. *See, e.g.*, The Late Show with Stephen
11 Colbert, May 13, 2021, at 1:11, <https://www.youtube.com/watch?v=zb7O9GkMy54>.

12 80. Senator Warren has, moreover, publicly demanded the break-up of Amazon under federal
13 antitrust laws. *See, e.g.*, CNBC, *Sen. Elizabeth Warren pushes to break up big tech companies like*
14 *Amazon and Facebook*, August 3, 2019, [https://www.cnbc.com/2019/03/08/elizabeth-warren-](https://www.cnbc.com/2019/03/08/elizabeth-warren-pushes-to-break-up-companies-like-amazon-and-facebook.html)
15 [pushes-to-break-up-companies-like-amazon-and-facebook.html](https://www.cnbc.com/2019/03/08/elizabeth-warren-pushes-to-break-up-companies-like-amazon-and-facebook.html).

16 81. Indeed, the very same week that Senator Warren sent her letter to Amazon, the Biden
17 Administration was considering and signaling its approval of a bill introduced in the United States
18 Congress—referred to in the media as “Amazon-busting legislation”—that would require the
19 break-up of Big Tech retail platforms such as Amazon under federal antitrust law. *See, e.g.*,
20 Geekwire, Sept. 10, 2021, [https://www.geekwire.com/2021/rep-jayapal-biden-administration-](https://www.geekwire.com/2021/rep-jayapal-biden-administration-supports-amazon-busting-ending-platform-monopolies-act)
21 [supports-amazon-busting-ending-platform-monopolies-act](https://www.geekwire.com/2021/rep-jayapal-biden-administration-supports-amazon-busting-ending-platform-monopolies-act).

22 82. As a result, Senator Warren’s letter to Amazon could foreseeably and reasonably have
23 caused the company to believe that by complying with her demands, Amazon might lessen the
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1 probability of the federal government imposing immense new taxes on the company or using
2 federal antitrust law against it.

3 83. On information and belief, Senator Warren’s letter has caused booksellers to stop selling
4 and/or to take other adverse action against Plaintiff’s book.

5 84. On September 10, 2021, Barnes & Noble sent an email to Chelsea Green stating: “Please
6 note that we have made the editorial decision to remove *The Truth About COVID-19: Exposing The*
7 *Great Reset, Lockdowns, Vaccine Passports, and the New Normal* - 9781645020899 eBook from
8 sale on our platform.”

9 85. Amazon is not listing *The Truth About COVID-19* in its proper category as a medical work,
10 thereby decreasing sales.

11 86. Amazon is demoting *The Truth About COVID-19* by not advertising it to users whose past
12 book purchases would (under Amazon’s standard algorithms) indicate their interest in the book,
13 thereby decreasing sales.

14 87. While Chelsea Green has in the past regularly run ads on Amazon promoting its books, on
15 or about October 1, 2021, Amazon notified Chelsea Green by email that it was refusing ads that
16 Chelsea Green sought to run promoting *The Truth About COVID-19*.

17 88. Independent booksellers are refusing to sell Plaintiffs’ book.

18 89. Booksellers such as Barnes & Noble that have both online and brick-and-mortar outlets are
19 refusing to carry or sell *The Truth About COVID-19* in their brick-and-mortar stores.
20

21 **CAUSE OF ACTION**

22 **First Amendment Violation**

23 90. Plaintiffs incorporate all preceding allegations as if fully set forth here.

24 91. Senator Warren’s above-described conduct violates the First Amendment by seeking
25

1 through intimidation and threat to stop Amazon and other booksellers from selling/promoting
2 Plaintiffs' book.

3 92. Defendant's conduct has caused and threatens in future to cause booksellers to stop selling
4 Plaintiffs' book, to stop promoting it, to demote it, or to take other adverse action against it.

5 93. Defendant has thereby sought to effect, is threatening to effect, and has in fact effected an
6 unconstitutional prior restraint.

7 94. Defendant has in addition discriminated against protected speech on the basis of its
8 viewpoint.

9 95. The imminent threat to Plaintiffs' First Amendment rights posed by Defendant is ongoing
10 and will persist in future in the absence of declaratory and injunctive relief from this court.

11 96. As a result of Defendant's conduct, Plaintiffs are suffering irreparable harm and an
12 imminent threat of irreparable harm.

13 97. By contrast, Defendant has no legitimate interest in being permitted to achieve censorship
14 of constitutionally protected speech by threatening third parties who carry or sell Plaintiffs'
15 protected speech.

16 98. Accordingly, Plaintiffs are entitled to immediate declaratory and injunctive relief, as well
17 as such other relief, including damages (against Defendant in her personal capacity) and attorneys'
18 fees, as the Court judges to be proper.

19
20 **Deprivation of Rights and Privileges Secured in the United States Constitution**

21 99. Plaintiffs incorporate all preceding allegations as if fully set forth here.

22 100. Senator Warren's above-described conduct has deprived Plaintiffs of rights and privileges
23 secured in the United States Constitution.

24 101. Senator Warren's above-described conduct has violated a clearly established right
25

1 guaranteed by the First Amendment, as set forth in *Bantam Books v. Sullivan*, 372 U.S. 58 (1963).

2 102. Senator Warren's above-described conduct in violation of the First Amendment has caused
3 damage to Plaintiffs' interests by decreasing the prominence and sales of *The Truth About COVID-*
4 *19*, including by causing retailers to categorize the book improperly, to remove the book from some
5 channels of sale, to refuse to accept advertising or promotion for the book, and/or to remove the
6 book from consumer recommendations generated through use of algorithms.

7 103. Senator Warren's above-described conduct in violation of the First Amendment has caused
8 damage to Plaintiffs' interests in the form of reputational injury, including by a sitting United States
9 Senator's implication that Plaintiffs' research and viewpoints are unworthy of protection under the
10 United States Constitution.

11 104. Senator Warren's above-described conduct in violation of the First Amendment has caused
12 damage to Plaintiffs' interests by curtailing their participation in debate on matters of utmost public
13 importance, namely, response to the COVID-19 pandemic.

14 105. Senator Warren's above-described conduct in violation of the First Amendment has caused
15 damage to Plaintiffs' interests by suppressing their right to present and advocate for their point of
16 view.

17 106. Pursuant to the authority set forth by the United States Supreme Court in *Bivens v. Six*
18 *Unknown Federal Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 396 (1971), Defendant's
19 conduct in violation of Plaintiffs' constitutional rights may give rise to an action for monetary
20 damages in this Court pursuant to 28 U.S.C. § 1331.

21 107. The Ninth Circuit Court of Appeals, in *Boule v. Egbert*, 998 F.3d 370 (9th Cir. 2021), has
22 confirmed that the rule of *Bivens* extends to damages resulting from a federal agent's violation of
23 First Amendment rights.
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1 108. There exist no special factors counseling the Court’s hesitation in the absence of affirmative
2 action by Congress, and no explicit congressional declaration that another remedy, such as an
3 administrative proceeding, is exclusive or would bar Plaintiffs’ action for recovery of damages.

4 109. Plaintiffs possess no adequate alternative remedies under state or federal law.

5 110. Accordingly, Plaintiffs are entitled to damages and such other relief as the Court deems
6 proper, including attorneys’ fees, against Defendant Elizabeth Warren in her personal capacity.

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs respectfully request that the Court enter judgment in their favor as
9 follows:

- 10
- 11 A. An order declaring Defendant’s conduct to be unlawful and unconstitutional;
- 12 B. An order enjoining Defendant from continuing to engage in conduct found to be
13 unconstitutional and requiring Defendant to issue a public retraction of her letter;
- 14 C. An order awarding Plaintiffs damages suffered by consequence of Defendant’s
15 violation of Plaintiffs’ constitutional rights;
- 16 D. An order awarding Plaintiffs nominal damages for the violation of Plaintiffs’
17 constitutional rights; and
- 18 E. Any other relief, including attorneys’ fees, the Court judges to be proper, and/or is
19 permitted under FRCP 54(c).

20 DATED this 7th day of November 2021

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