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19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF SAN FRANCISCO

21 **THE PEOPLE OF THE STATE OF**
22 **CALIFORNIA,**
23 Plaintiff,
24 **v.**
25 **AMAZON.COM, INC.,**
26 Defendant.

CASE NO. CGC-22-601826
JOINT CASE MANAGEMENT STATEMENT
Date: August 3, 2023
Time: 9:00 AM
Dept.: 304
Judge: Hon. Ethan P. Schulman
Case Filed: September 15, 2022
Trial Date: August 10, 2026

JOINT CASE MANAGEMENT STATEMENT

Pursuant to the Order After Initial Case Management Conference entered by the Court on May 5, 2023, counsel for Plaintiff, The People of the State of California (“The People”), and Defendant, Amazon.com, Inc. (“Amazon”) submit this Joint Case Management Statement in the above-captioned action (the “Action”). The Parties agree that there are no disputes ripe for the Court’s consideration or intervention, but submit this Statement for the purpose of apprising the Court as to the status of the litigation (Part I), the status of discovery (Part II), the potential for early resolution of issues (Part III) and opportunities for coordination (Part IV).

I. STATUS OF LITIGATION

The Complaint was filed on September 15, 2022. On December 6, 2022, Amazon filed a demurrer challenging the Complaint. The Court heard oral argument on March 15, 2023 and entered an order overruling Amazon’s demurrer on March 30, 2023.

On May 30, 2023, Amazon filed a Verified Answer to the Complaint, including sixteen affirmative defenses, together with a Cross-Complaint for Declaratory Relief. On July 14, 2023, The People filed a demurrer to Amazon’s Cross-Complaint. Pursuant to the stipulated briefing schedule entered by the Court, Amazon’s opposition to the demurrer is due August 28, 2023, and The People’s reply is due September 27, 2023. The Court has scheduled oral argument on the demurrer to the Cross-Complaint for October 6, 2023.

The Court held an initial Case Management Conference on January 4, 2023 and a second Case Management Conference on May 5, 2023. Following the Case Management Conference on May 5, 2023, the Court adopted the pretrial schedule as proposed by the parties, including the following milestone dates:

- | | |
|------------------|--------------------------------------|
| October 11, 2024 | Close of fact discovery |
| October 25, 2025 | Close of expert discovery |
| April 24, 2026 | Deadline to file dispositive motions |
| July 17, 2026 | Final pretrial conference |
| August 10, 2026 | Trial |

1 Both parties have commenced fact discovery, including third-party discovery. The present
2 status of fact discovery is addressed in Section II.

3 **II. STATUS OF DISCOVERY**

4 **A. Document Requests Served by The People**

5 The People have served four sets of requests for production of documents on Amazon: Set 1
6 (served in October 2022), Sets 2 and 3 (served in March 2023), and Set 4 (served in May 2023).
7 To date, The People have served 125 individual requests for documents on Amazon since the filing
8 of the Complaint.

9 Amazon Transactional Data (Set 1)

10 On May 3, 2023, after meeting and conferring with Amazon for several months regarding
11 the scope of additional transaction-level data requested by The People, The People identified
12 additional responsive transactional data fields to be produced. On July 10, 2023, following another
13 round of meet and confers, The People confirmed the specific transactional data fields to be
14 produced by Amazon. Amazon is currently preparing the agreed-to transaction-level data for
15 production.

16 Documents Amazon Produced to the FTC (Set 1)

17 During the June 8, 2023 Informal Discovery Conference, The People presented a dispute
18 regarding Amazon's response to Document Request No. 2 (for documents Amazon produced to the
19 FTC in response to the FTC-CID after the Complaint was filed). With the Court's guidance,
20 following the IDC, the parties conferred further and agreed that Amazon would produce documents
21 from the files of 12 of the disputed custodians, and either produce or provide an accounting for the
22 documents from the files of the remaining 10 disputed custodians, subject to an agreement that
23 Amazon was not waiving its right to challenge the relevance of these documents at an appropriate
24 point in the future or admitting that the custodians associated with documents produced to the FTC
25 are relevant to any of The People's pending document requests. Amazon produced the documents
26 and the accounting on July 14, 2023. The People asked questions about Amazon's document
27 review and accounting on July 21, 2023, to which Amazon is in the process of responding.
28

1 Amazon Documents re Certain Third Parties (Sets 2 and 3)

2 The People’s second and third sets of document requests seek all of Amazon’s
3 communications and agreements with, and documents relating to, the five third-party witnesses
4 whose depositions The People have noticed. Amazon has produced responsive agreements and
5 data, as well as some communications with the some of the third-party witnesses. Amazon has
6 informed The People that certain communications are maintained by Amazon in centralized
7 repositories, and that Amazon is working in good faith to attempt to extract and produce that
8 information. Amazon anticipates producing the majority of the communications from centralized
9 repositories during the week of July 24, and has agreed to keep The People apprised of the status
10 of additional, ongoing collections. The parties are continuing to meet and confer regarding The
11 People’s request for all documents relating to the five third-party witnesses as part of the continuing
12 negotiations over custodians and search terms as discussed below.

13 Search Terms and Custodians

14 The parties have engaged in several productive meet and confers regarding the set of
15 custodians, including centralized repositories, and search terms to identify responsive documents
16 to be reviewed and produced by Amazon in response to certain of The People’s 125 document
17 requests. While the parties have not yet reached agreement on custodians and search terms, there
18 are not presently any issues requiring the Court’s intervention.

19 Other Data and Document Requests (Set 4)

20 Separate and apart from requests involving negotiated custodians and search terms, or
21 centralized repositories, Amazon has agreed to produce responsive documents for certain identified
22 requests, including data responsive to requests for data other than the transaction-level data
23 discussed above. Amazon is in the process of collecting and reviewing these materials, which it
24 intends to commence producing on a rolling basis as soon as the responsive documents and data
25 are available, and will apprise The People of an anticipated timeline for the production of these
26 responsive documents and data when such information becomes known and/or available to
27 Amazon.
28

1 Amazon has also separately indicated that it is continuing to investigate the extent of
2 documents that may be responsive to certain document requests to determine whether responsive
3 documents exist, and, if so, what documents Amazon agrees to produce. The parties continue to
4 meet and confer on these requests. Accordingly, the parties have not presently identified any
5 disputes that require the Court's intervention.

6 **B. Document Requests Served by Amazon**

7 Amazon served its first set of requests for production of documents on The People on
8 October 4, 2022. To date, Amazon has served 31 individual requests for documents on The People
9 since the filing of the Complaint.

10 Third-Party Discovery from the Pre-Suit Investigation

11 Amazon requested, and The People agreed to produce, documents productions, sworn
12 statements, investigational hearing testimony, and certain related materials received from third-
13 party witnesses during The People's pre-suit investigation. The People began producing these
14 third-party documents from its investigative file in March 2023.¹ As of April 27, 2023, The People
15 had produced all such documents other than those for four third parties who had objected pursuant
16 to the Stipulated Protective Order. Those objections have now been resolved, and The People
17 completed production of documents in July 2023.

18 Third-Party Correspondence from the Pre-Suit Investigation

19 The People objected to Amazon's request that the People produce their communications
20 with third parties during the pre-filing investigation on various grounds. The parties presented a
21 dispute regarding this issue at the May 5, 2023 Case Management Conference, and the Court
22 provided guidance. With the Court's guidance, The People dropped their blanket objection to
23 producing such communications, generally agreed to produce or log email communications with
24 third parties contacted in connection with the pre-suit investigation, and commenced rolling
25 productions on May 15, 2023. To date, The People have produced communications involving 13

26 _____
27 ¹ The People's production of third-party documents and communications as described in
28 this joint statement excludes other government enforcers, potential and retained experts, other
potential and retained investigation/litigation/trial consultants, and their respective employees and
support staff, including court reporting service providers.

1 of the more than 100 third parties with whom the People have represented that it communicated
2 with during its pre-suit investigation. The People anticipate substantially completing their
3 production in August 2023.

4 **C. Discovery on Third Parties**

5 The parties continue to coordinate regarding third-party discovery.

6 In March, The People noticed five third-party depositions to proceed in May and June.
7 Amazon subsequently served document subpoenas on each of these third parties and cross-noticed
8 (or stated its intent to cross-notice) their depositions. Four of the third-party witnesses requested
9 to continue the deposition dates noticed by The People to allow for additional time to respond to
10 the document subpoenas served by Amazon, and those depositions have been continued to
11 agreed-to dates between the end of August and November. The deposition for a fifth witness was
12 continued to September by agreement of the parties after Amazon successfully moved to compel
13 production from the witness in the jurisdiction where the witness resides and the subpoena was
14 issued.

15 On June 21, 2023, The People notified Amazon of their intent to notice the depositions of
16 twenty (20) additional third parties to proceed during the period from October 2023 through
17 February 2024. The People have identified proposed weeks for the deposition of each of third
18 party, and expect to confirm specific dates, together with the individual witnesses for corporate
19 third parties, in the coming weeks. The People are in the process of securing out-of-state subpoenas
20 as necessary for these third parties and preparing and serving deposition notices. Amazon intends
21 to notice (or cross-notice) depositions of these third parties, and will coordinate the timing of
22 depositions to the extent practicable. Amazon is evaluating the need to serve document subpoenas
23 on each of these third parties, and will work diligently to secure any necessary documents in
24 advance of the AG's proposed deposition dates.

25 Moving forward, the parties have agreed that each party will propose dates for any
26 additional third-party depositions in advance of the deposition, and prior to issuing any subpoena
27 to the third party, so that the other party can confirm availability (and generally, if practicable, the
28

1 parties shall propose dates at least 60 days out). The parties have further agreed to confer on
2 mutually agreeable date(s) for any third-party depositions.

3 **III. EARLY ADJUDICATION OF ISSUES IN THE CASE**

4 At the June 8, 2023 informal discovery conference, the Court asked the parties to consider
5 whether there are issues that should be prioritized such that the Court and the parties should try and
6 decide them first to the extent they are either important or more likely to lead to resolution of the
7 entire case than others. The Court requested that the parties address this issue in this statement or
8 at the August 3, 2023 Case Management Conference.

9 Because The People contend that Amazon's Cross-Claims should be dismissed, as set forth
10 in the People's demurrer, the parties have yet to meet and confer on potential early motions for
11 summary adjudication based on Amazon's Cross-Complaint. Should the demurrer be overruled,
12 Amazon anticipates at an appropriate juncture it will seek summary adjudication of one or more
13 issues in the case in advance of the stipulated deadline for filing motions for summary judgment
14 pursuant to Section 437c of the Code of Civil Procedure. Even if Amazon's Cross-Complaint is
15 allowed to proceed, The People do not believe that the Cross-Complaint serves as a viable
16 framework to efficiently resolve The People's claims.

17 Despite their current positions, both parties recognize that there may be issues that could be
18 prioritized to lead to more efficient resolution of the case, and are committed to engaging further
19 with one another on this issue as fact discovery continues and the case develops.

20 **IV. COORDINATION**

21 On July 19, 2023, Amazon proposed to The People a stipulated deposition protocol in an
22 effort to coordinate party and third-party discovery in this case with other pending actions that also
23 include antitrust claims asserted against Amazon arising from alleged anticompetitive agreements
24 between Amazon and its third-party sellers and/or wholesale suppliers. The People do not believe
25 that any formal stipulation or order regarding deposition coordination is necessary. Nonetheless,
26 The People are considering Amazon's proposal, and the parties anticipate meeting and conferring
27 on the issue in the coming weeks.

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