

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

ROB BONTA  
Attorney General of California  
PAULA BLIZZARD (SBN 207920)  
Senior Assistant Attorney General  
NATALIE S. MANZO (SBN 155655)  
JAMIE L. MILLER (SBN 271452)  
Supervising Deputy Attorneys General  
MINA NOROOZKHANI (SBN 281552)  
ROBERT B. McNARY (SBN 253745)  
STEPHEN R. SMEREK (SBN 208343)  
CATHERINE S. SIMONSEN (SBN 307325)  
KOMAL K. PATEL (SBN 342765)  
ALAN D. ROMERO (SBN 316323)  
NELL G. MOLEY (SBN 295498)  
LAUREN J. POMEROY (SBN 291604)  
Deputy Attorneys General

300 South Spring Street, Suite 1702  
Los Angeles, CA 90013-1230  
Telephone: (213) 897-2703  
Fax: (916) 731-3637

*Attorneys for Plaintiff and Cross-Defendant  
The People of the State of California*

**ELECTRONICALLY  
FILED**

*Superior Court of California,  
County of San Francisco*

**11/15/2023**  
**Clerk of the Court**  
BY: ANNIE PASCUAL  
Deputy Clerk

**Exempt from Filing Fees Pursuant  
to Government Code § 6103**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO**

**THE PEOPLE OF THE STATE OF  
CALIFORNIA,**  
  
Plaintiff, Cross-Defendant  
  
v.  
  
**AMAZON.COM, INC.,**  
  
Defendant, Cross-Complainant.

**Case No. CGC-22-601826**  
  
**THE PEOPLE OF THE STATE OF  
CALIFORNIA’S ANSWER TO  
DEFENDANT AMAZON.COM, INC.’S  
CROSS-COMPLAINT**  
  
Cross-Complaint Filed: May 30, 2023  
Department: 304  
Judge: Hon. Ethan P. Schulman

1 ANSWER

2 The PEOPLE OF THE STATE OF CALIFORNIA (the “People”) hereby answer the  
3 Cross-Complaint filed by Defendant Amazon.com, Inc. (“Amazon”), as follows:

4 Pursuant to Section 431.30(d) of the Code of Civil Procedure, the People deny generally  
5 the allegations of the Cross-Complaint. Any allegation not expressly and explicitly admitted by  
6 the People is denied.

7 Pursuant to Section 431.20(a) of the Code of Civil Procedure, the People respond  
8 generally to the legal conclusions and characterizations in the Cross-Complaint that no responsive  
9 pleading is required. Insofar as any responsive pleading is required, the People dispute all legal  
10 conclusions and characterizations of Amazon’s relevant agreements and conduct as being lawful  
11 under the Cartwright Act or the California Unfair Competition Law.

12 Pursuant to the October 5, 2023 Order Sustaining in Part and Overruling in Part the  
13 People’s Demurrer to Amazon’s Cross-Complaint, the People respond only to Counts 2 to 9 of  
14 the Cross-Complaint, the Court having sustained the People’s Demurrer to Count 1. (Order at 6.).  
15 Also pursuant to that Order, the People respond to the Cross-Complaint only with respect to the  
16 present dispute involving violations of the Cartwright Act and the California Unfair Competition  
17 Law. (Order at 9.)

18 The People incorporate their Complaint, filed September 14, 2022 in the underlying  
19 action, by reference and reassert all allegations therein.

20 **I. THE PARTIES**

21 1. The People are without the knowledge necessary to admit or deny that Amazon is  
22 a Delaware corporation with its principal place of business at 400 Terry Avenue North, Seattle,  
23 Washington, 98109.

24 2. The People admit that the California Attorney General is the chief law  
25 enforcement officer of the State of California pursuant to Cal. Const., art. V, § 13. The People  
26 also admit that the California Attorney General filed the Complaint in this action on behalf of the  
27 People of the State of California. Except as expressly admitted, The People deny the allegations  
28 in Paragraph 2.

1 **II. JURISDICTION AND VENUE**

2 3. The People do not contest jurisdiction or venue in the City and County of San  
3 Francisco.

4 **III. BACKGROUND**

5 4. The People deny the allegations in Paragraph 4.

6 5. The People deny the allegations in Paragraph 5.

7 6. The People deny the allegations in Paragraph 6.

8 7. The People deny the allegations in Paragraph 7

9 8. The People deny the allegations in Paragraph 8.

10 9. The People admit that one focus of third-party sellers may be to increase their  
11 respective individual sales. Except as expressly admitted, the People deny the allegations in  
12 Paragraph 9.

13 10. The People deny the allegations in Paragraph 10.

14 11. The People deny the allegations in Paragraph 11.

15 12. The People admit the Complaint alleges that Amazon imposes agreements at the  
16 retail and wholesale level in which Amazon’s third-party sellers and wholesale suppliers agree  
17 not to offer, and to prevent Amazon’s competitors from offering, lower prices off-Amazon.  
18 Except as expressly admitted, The People deny the allegations in Paragraph 12.

19 13. The People admit that the Complaint alleges that “A key tactic Amazon employs  
20 to insulate its online store from competition and perpetuate its ability to charge supra-competitive  
21 prices is coercing third-party sellers to enter into anticompetitive price parity agreements.  
22 Amazon requires each of these Marketplace sellers to sign a Business Solutions Agreement  
23 (“BSA”), through which they expressly agree to certain ‘Program Policies’ and other selling  
24 terms.” (Complaint at ¶113.) Except as expressly admitted, The People deny the allegations in  
25 Paragraph 13.

26 14. The People admit the Complaint alleges that through the BSA, third-party sellers  
27 “expressly agree to certain ‘Program Policies’”, including the Amazon Standards for Brands  
28 (“ASB”), the Marketplace Fair Pricing Policy (“MFPP”), and the Seller Code of Conduct, which

1 require sellers to “offer the same or higher prices elsewhere versus on Amazon” (Compl. ¶ 116),  
2 “not to do anything to cause their prices elsewhere to be lower than their prices on Amazon”  
3 (Compl. ¶ 119), and “agree to advertise the same prices off Amazon as they offer on Amazon”  
4 (Compl. ¶ 122), respectively. Except as expressly admitted, The People deny the allegations in  
5 Paragraph 14.

6 15. The People admit the Complaint alleges that Amazon “enforces price parity at the  
7 wholesale level” through Guaranteed Minimum Margin (“GMM”) agreements and through  
8 “de facto minimum margin agreements” via Amazon’s Matching Compensation Program  
9 (“MCP”). Except as expressly admitted, The People deny the allegations in Paragraph 15.

10 16. The People deny the allegations in Paragraph 16.

11 **IV. AMAZON’S THIRD-PARTY SELLER PRICING POLICIES**

12 17. The People deny the allegations in Paragraph 17.

13 18. The People deny the allegations in Paragraph 18.

14 19. The People deny the allegations in Paragraph 19.

15 20. The People admit that sellers wishing to sell in Amazon’s store must enter into the  
16 Business Solutions Agreement (“BSA”).

17 21. The People admit that third-party sellers wishing to sell in Amazon’s store must  
18 enter into the Business Solutions Agreement (“BSA”). The People further admit that the BSA  
19 incorporates certain “Program Policies” (including but not limited to Amazon Standards for  
20 Brands (“ASB”), the Marketplace Fair Pricing Policy (“MFPP”), and the Seller Code of  
21 Conduct). Except as expressly admitted, the People deny the allegations in Paragraph 21.

22 22. The People admit that Amazon purports to selectively quote the text of the  
23 Amazon Standards for Brands (“ASB”), the Marketplace Fair Pricing Policy (“MFPP”), and the  
24 Seller Code of Conduct at undefined points in time. Except as expressly admitted, the People  
25 deny the allegations in Paragraph 22.

26 23. The People deny the allegations in Paragraph 23.

27 24. The People deny the allegations in Paragraph 24.

28

1           25.     The People admit that Amazon purports to selectively quote the text of the  
2 Marketplace Fair Pricing Policy (“MFPP”) at an undefined point in time. Except as expressly  
3 admitted, The People deny the allegations in Paragraph 25.

4           26.     The People admit that Amazon purports to selectively quote the text of the  
5 Marketplace Fair Pricing Policy (“MFPP”) at an undefined point in time. Except as expressly  
6 admitted, The People deny the allegations in Paragraph 26.

7           27.     The People deny the allegations in Paragraph 27.

8           28.     The People deny the allegations in Paragraph 28.

9           29.     The People admit that Amazon purports to selectively summarize the requirements  
10 imposed by its Selling Policies and Seller Code of Conduct at an undefined point in time. Except  
11 as expressed admitted, The People deny the allegations in Paragraph 29.

12          30.     The People deny the allegations in Paragraph 30.

13          31.     The People admit that the ASB applies to brands and manufacturers, as well as  
14 their agents, licensees, and other representatives selling on their behalf in the Amazon store.  
15 Except as expressly admitted, The People deny the allegations in Paragraph 31.

16          32.     The People admit that Amazon purports to selectively quote the text of the ASB at  
17 an undefined point in time. Except as expressly admitted, The People deny the allegations in  
18 Paragraph 32.

19          33.     The People admit that the ASB applies to all brands, as well as to agents and  
20 representatives of brands. Except as expressly admitted, The People deny the allegations in  
21 Paragraph 33.

22          34.     The People deny the allegations in Paragraph 34.

23          35.     The People deny the allegations in Paragraph 35.

24          36.     The People admit that Amazon suppresses offers from third-party sellers whose  
25 products are available for a lower price through other online retailers monitored by Amazon.  
26 Except as expressly admitted, The People deny the allegations in Paragraph 36.

27  
28

1           37.     The People admit that Amazon considers various factors to determine an offer's  
2 eligibility to be the Featured Offer. Except as expressly admitted, The People deny the  
3 allegations in Paragraph 37.

4           38.     The People deny the allegations in Paragraph 38.

5           39.     The People deny the allegations in Paragraph 39.

6           40.     The People deny the allegations in Paragraph 40.

7           41.     The People deny the allegations in Paragraph 41.

8           42.     The People deny the allegations in Paragraph 42.

9           43.     The People admit that presently the third-party sellers can see whether their offer  
10 is ineligible to be the Featured Offer based on their pricing through Seller Central. Except as  
11 expressly admitted, The People deny the allegations in Paragraph 43.

12          44.     The People deny the allegations in Paragraph 44.

13          45.     The People deny the allegations in Paragraph 45.

14          46.     The People deny the allegations in Paragraph 46.

15          47.     The People deny the allegations in Paragraph 47.

16          48.     The People deny the allegations in Paragraph 48.

17          49.     The People deny the allegations in Paragraph 49.

18          50.     The People deny the allegations in Paragraph 50.

19          51.     The People deny the allegations in Paragraph 51.

20          52.     The People admit that Amazon may ask vendors for funding through the Matching  
21 Compensation Program. Except as expressly admitted, The People deny the allegations in  
22 Paragraph 52.

23          53.     The People deny the allegations in Paragraph 53.

24          54.     The People deny the allegations in Paragraph 54.

25          55.     The People deny the allegations in Paragraph 55.

26          56.     The People deny the allegations in Paragraph 56.

27  
28

1 **COUNT 1: PLAINTIFF'S DAMAGES CLAIMS**

2 57. Pursuant to the Court's ruling on the People's Demurrer, no responsive pleading is  
3 required for Paragraph 57.

4 58. Pursuant to the Court's ruling on the People's Demurrer, no responsive pleading is  
5 required for Paragraph 58.

6 59. Pursuant to the Court's ruling on the People's Demurrer, no responsive pleading is  
7 required for Paragraph 59.

8 60. Pursuant to the Court's ruling on the People's Demurrer, no responsive pleading is  
9 required for Paragraph 60.

10 61. Pursuant to the Court's ruling on the People's Demurrer, no responsive pleading is  
11 required for Paragraph 61.

12 **COUNT 2: AMAZON'S SELLING POLICIES AND SELLER CODE OF CONDUCT**

13 62. The allegations in Paragraph 62 are legal conclusions and characterizations, to  
14 which no responsive pleading is required. Insofar as any responsive pleading is required for  
15 Paragraph 62, the People deny the allegations in Paragraph 62.

16 63. The People deny the allegations in Paragraph 63.

17 64. The People admit that third-party sellers may face penalties if they violate  
18 Amazon's selling policies and Seller Code of Conduct. Except as expressly admitted, The People  
19 deny the allegations in Paragraph 64.

20 65. The People deny the allegations in Paragraph 65.

21 66. The People deny the allegations in Paragraph 66.

22 67. The People deny the allegations in Paragraph 67.

23 68. The People deny the allegations in Paragraph 68.

24 69. The People admit that Amazon seeks a declaratory judgment that its selling  
25 policies and Seller Code of Conduct are lawful. Except as expressly admitted, The People deny  
26 the allegations in Paragraph 69.

27  
28

1 **COUNT 3: AMAZON’S MARKETPLACE FAIR PRICING POLICY**

2 70. The allegations in Paragraph 70 are legal conclusions and characterizations, to  
3 which no responsive pleading is required. Insofar as any responsive pleading is required for  
4 Paragraph 70, the People deny the allegations in Paragraph 70.

5 71. The People deny the allegations in Paragraph 71.

6 72. The People admit that third-party sellers may face penalties if they violate the  
7 MFPP. Except as expressly admitted, The People deny the allegations in Paragraph 72.

8 73. The People deny the allegations in Paragraph 73.

9 74. The People deny the allegations in Paragraph 74.

10 75. The People deny the allegations in Paragraph 75.

11 76. The People deny the allegations in Paragraph 76.

12 77. The People admit that Amazon seeks a declaratory judgment that the MFPP is  
13 lawful. Except as expressly admitted, The People deny the allegations in Paragraph 77.

14 **COUNT 4: AMAZON’S GUARANTEED MINIMUM MARGIN AGREEMENTS**

15 78. The allegations in Paragraph 78 are legal conclusions and characterizations, to  
16 which no responsive pleading is required. Insofar as any responsive pleading is required for  
17 Paragraph 78, the People deny the allegations in Paragraph 78.

18 79. The People deny the allegations in Paragraph 79.

19 80. The People deny the allegations in Paragraph 80.

20 81. The People deny the allegations in Paragraph 81.

21 82. The People deny the allegations in Paragraph 82.

22 83. The People deny the allegations in Paragraph 83.

23 84. The People admit that Amazon seeks a declaratory judgment that its GMM  
24 agreements are lawful. Except as expressly admitted, The People deny the allegations in  
25 Paragraph 84.

26  
27  
28



1 **COUNT 5: AMAZON’S MATCHING COMPENSATION PROGRAM**

2 85. The allegations in Paragraph 85 are legal conclusions and characterizations, to  
3 which no responsive pleading is required. Insofar as any responsive pleading is required for  
4 Paragraph 85, the People deny the allegations in Paragraph 85.

5 86. The People deny the allegations in Paragraph 86.

6 87. The People deny the allegations in Paragraph 87.

7 88. The People deny the allegations in Paragraph 88.

8 89. The People deny the allegations in Paragraph 89.

9 90. The People deny the allegations in Paragraph 90.

10 91. The People admit that Amazon seeks a declaratory judgment that the MCP is  
11 lawful. Except as expressly admitted, The People deny the allegations in Paragraph 91.

12 **COUNT 6: AMAZON STANDARD FOR BRANDS POLICY**

13 92. The allegations in Paragraph 92 are legal conclusions and characterizations, to  
14 which no responsive pleading is required. Insofar as any responsive pleading is required for  
15 Paragraph 92, the People deny the allegations in Paragraph 92.

16 93. The People deny the allegations in Paragraph 93.

17 94. The People admit that third-party sellers may face penalties if they violate the  
18 ASB. Except as expressly admitted, The People deny the allegations in Paragraph 94.

19 95. The People deny the allegations in Paragraph 95.

20 96. The People deny the allegations in Paragraph 96.

21 97. The People deny the allegations in Paragraph 97.

22 98. The People admit that Amazon seeks a declaratory judgment that the ASB policy  
23 is lawful. Except as expressly admitted, The People deny the allegations in Paragraph 98.

24 **COUNT 7: AMAZON’S PRACTICES TO DETERMINE FEATURED OFFER**  
25 **ELIGIBILITY**

26 99. The allegations in Paragraph 99 are legal conclusions and characterizations, to  
27 which no responsive pleading is required. Insofar as any responsive pleading is required for  
28 Paragraph 99, the People deny the allegations in Paragraph 99.





1 where “evidence in the trial of the main action would be substantially the same as that presented  
2 in connection with a cross-complaint,” where a party “has other means of seeking a determination  
3 of [its] rights,” or “when a matter can be raised as an affirmative defense.” (*CJL Constr., Inc. v.*  
4 *Universal Plumbing* (1993) 18 Cal.App.4th 376, 390-91 [collecting cases].)

5 Moreover, a declaratory action cannot be “used as a device to circumvent the right to a  
6 jury trial in cases where such right would be guaranteed[.]” (*State Farm Mut. Auto. Ins. Co. v.*  
7 *Superior Court, In and For City and County of San Francisco* (1956) 47 Cal.2d 428, 432.) The  
8 Cross-Complaint may not be used to bypass the jury as finders of fact.

### 9 **THIRD DEFENSE – CROSS-COMPLAINT VIOLATES PUBLIC POLICY**

10 Amazon seeks to broadly limit future enforcement actions brought by the Attorney  
11 General and Department of Justice by seeking relief to prevent future enforcement actions. This  
12 type of declaration violates public policy and California law, including but not limited to Section  
13 3423 of the Civil Code and Section 526 of the Code of Civil Procedure.

14 The People filed their Complaint challenging Amazon’s violations of the Cartwright Act  
15 and Unfair Competition Law. Because Amazon’s Cross-Complaint interferes with a valid action  
16 to enforce the law, it is barred as against public policy, as defined by controlling law and statute.

17 Amazon’s claims are barred, in whole or in part, to the extent that the remedies sought are  
18 contrary to public policy or are otherwise unauthorized. Relief “cannot be granted to prevent the  
19 execution of a public statute, by officers of the law, for the public benefit.” (*Manchel v. Los*  
20 *Angeles County* (1966) 245 Cal.App.2d 501, 506.)

21 Statutes prohibiting injunctive relief against the government also protect against the  
22 requested declaratory relief that is injunctive in nature. Amazon may not circumvent the  
23 prohibition on injunctions by seeking a declaration that would have the same effect.

### 24 **FOURTH DEFENSE – INTERFERENCE WITH PROSECUTORIAL FUNCTION**

25 The Attorney General and his deputies are charged with seeing that the laws of this state  
26 are followed. (Cal. Const., Article V, Section 13.) He is further charged with the enforcement of  
27 the Cartwright Act and Unfair Competition Law. (Bus. & Prof. Code §§ 16720 et seq., 17200 et  
28 seq.) He also is authorized to investigate possible violations of law. (Govt. Code § 1180 et seq.)

1 These powers extend to both criminal and civil investigations and prosecutions. The declaratory  
2 relief sought seeks to enjoin the Attorney General’s constitutional authority and duty to enforce  
3 California’s competition laws.

4 **FIFTH DEFENSE – UNCLEAN HANDS**

5 “No one may take advantage of his own wrong.” (Civil Code § 3517.) Amazon has  
6 violated the Cartwright Act and Unfair Competition Law, and it is not entitled to the declaratory  
7 judgment it seeks by virtue of its own liability.

8 **SIXTH DEFENSE – THE PEOPLE ARE NOT CORRECTLY NAMED**

9 The People, as opposed to an administrative or government agency, are not susceptible to  
10 suit by Amazon and have been improperly joined in this Cross-Complaint.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

**DEMAND FOR JURY TRIAL**

The People demand a trial before a jury on all issues presented by the Cross-Complaint that are triable to a jury.

Dated: November 15, 2023

**THE PEOPLE OF THE STATE OF CALIFORNIA**

*By: /s/ Stephen R. Smerek*  
Deputy Attorney General

ROB BONTA  
Attorney General of California  
PAULA BLIZZARD  
Senior Assistant Attorney General  
NATALIE S. MANZO  
JAMIE L. MILLER  
Supervising Deputy Attorney General

MINA NOROOZKHANI (SBN 281552)  
ROBERT B. McNARY (SBN 253745)  
STEPHEN R. SMERЕК (SBN 208343)  
CATHERINE S. SIMONSEN (SBN 307325)  
KOMAL K. PATEL (SBN 342765)  
ALAN D. ROMERO (SBN 316323)  
NELL G. MOLEY (SBN 295498)  
LAUREN J. POMEROY (SBN 291604)

300 South Spring Street, Suite 1702  
Los Angeles, CA 90013  
Tel: (213) 269-6058

*Attorneys for Plaintiff and Cross-Defendant  
The People of the State of California*

1 **DECLARATION OF ELECTRONIC SERVICE**

2 Case Name: *The People of the State of California v. Amazon.com, Inc.*

3 Case No. **CGC-22-601826**

4 I declare:

5 I am employed by the law firm of Shartsis Friese LLP. My business address is One Maritime  
6 Plaza, Eighteenth Floor, San Francisco, CA 94111. I am over the age of 18 years and am not a  
7 party to the within-entitled action.

8 On November 15, 2023, I served the following document:

9 **THE PEOPLE OF THE STATE OF CALIFORNIA’S ANSWER TO**  
10 **DEFENDANT AMAZON.COM, INC.’S CROSS-COMPLAINT**

11 on Defendant in this action by transmitting a true copy of the above by electronic mail, from the  
12 email address vkiley@sflaw.com, to Defendant’s counsel addressed as follows:

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

14 COVINGTON & BURLING, LLP  
15 Jeffrey M. Davidson, etc.  
16 Salesforce Tower  
17 415 Mission Street, Suite 5400  
18 San Francisco, CA 94105  
19 Tel.: (415) 591-6000  
20 Email: jdavidson@cov.com  
21 Email: AmazonCA@cov.com

22 WILLIAMS & CONNOLLY LLP  
23 Carl R. Metz, etc.  
24 680 Maine Ave. SW  
25 Washington, DC 20024  
26 Tel.: (202) 434-5000  
27 Email: cmetz@wc.com  
28 Email: Amazon-CAAG@wc.com

I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct. Executed on November 15, 2023 in San Francisco, California.

Virginia A. Kiley  
Declarant



Signature