

1 ROB BONTA
Attorney General of California
2 PAULA BLIZZARD (SBN 207920)
Senior Assistant Attorney General
3 NATALIE S. MANZO (SBN 155655)
JAMIE L. MILLER (SBN 271452)
4 Supervising Deputy Attorneys General

5 ROBERT B. McNARY
Deputy Attorney General
6 State Bar No. 253745
300 South Spring Street, Suite 1702
7 Los Angeles, CA 90013-1230
Telephone: (213) 897-2703
8 Fax: (916) 731-3637

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

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

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| 13 THE PEOPLE OF THE STATE OF CALIFORNIA, | |
| | Plaintiff, |
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| 15 v. | |
| 16 AMAZON.COM, INC., | |
| | Defendant. |
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| 20 AMAZON.COM, INC., | |
| | Cross-Complainant, |
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| 22 v. | |
| 23 THE PEOPLE OF THE STATE OF CALIFORNIA, | |
| | Cross-Defendant |
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ELECTRONICALLY FILED

*Superior Court of California,
County of San Francisco*

07/14/2023
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

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

Case No. CGC-22-601826
**PLAINTIFF AND CROSS-
DEFENDANT THE PEOPLE OF THE
STATE OF CALIFORNIA'S
DEMURRER TO AMAZON.COM,
INC.'S CROSS-COMPLAINT**
Cross-Complaint Filed: May 30, 2023
Department: 304
Judge: Hon. Ethan P. Schulman
Hearing: October 4, 2023
Hearing Time: 1:30pm

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NOTICE OF DEMURRER

PLEASE TAKE NOTICE that, on October 4, 2023 at 1:30pm, in Department 304 of the above captioned Court, located at 400 McAllister Street, San Francisco, California, Plaintiff and Cross-Defendant The People of the State of California (“the People”) will, and hereby do, demur to the Cross-Complaint filed by Defendant and Cross-Complainant Amazon.com, Inc., (“Amazon”), and the nine causes of action for declaratory relief Amazon asserts in the Cross-Complaint, pursuant to the Code of Civil Procedure section 430.10. The People demur on the grounds set forth in the Demurrer below and in the Memorandum of Points and Authorities filed concurrently herewith.

The People’s Demurrer is based upon this Notice of Demurrer, the accompanying Demurrer, the accompanying Memorandum of Points and Authorities and Request for Judicial Notice, all other matters of which this Court may take judicial notice, the arguments presented to the Court at the hearing, and such other matters as the Court may properly consider.

Dated: July 14, 2023

THE PEOPLE OF THE STATE OF CALIFORNIA

By: /s/ Robert B. McNary
Deputy Attorney General

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

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*

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DEMURRER

Pursuant to the Code of Civil Procedure section 430.10, the People of the State of California (“the People”) demur to all causes of action in the Cross-Complaint filed by Defendant and Cross-Complainant Amazon.com, Inc., (“Amazon”), on each of the following grounds:

Demurrer to the First Cause of Action
(Declaratory judgment that Plaintiff’s damages based on off-Amazon purchases are fatally indirect and speculative)

1. The First Cause of Action in the Cross-Complaint fails to state facts sufficient to constitute a cause of action. Civ. Proc. Code § 430.10(e).

Demurrer to the Second Cause of Action
(Declaratory judgment that Amazon’s selling policies and Seller Code of Conduct are lawful)

2. The Second Cause of Action in the Cross-Complaint fails to state facts sufficient to constitute a cause of action. Civ. Proc. Code § 430.10(e).

Demurrer to the Third Cause of Action
(Declaratory judgment that Amazon’s Marketplace Fair Pricing Policy is lawful)

3. The Third Cause of Action in the Cross-Complaint fails to state facts sufficient to constitute a cause of action. Civ. Proc. Code § 430.10(e).

Demurrer to the Fourth Cause of Action
(Declaratory judgment that Amazon’s Guaranteed Minimum Margin Agreements are lawful)

4. The Fourth Cause of Action in the Cross-Complaint fails to state facts sufficient to constitute a cause of action. Civ. Proc. Code § 430.10(e).

Demurrer to the Fifth Cause of Action
(Declaratory judgment that Amazon’s Matching Compensation Program is lawful)

5. The Fifth Cause of Action in the Cross-Complaint fails to state facts sufficient to constitute a cause of action. Civ. Proc. Code § 430.10(e).

Demurrer to the Sixth Cause of Action
(Declaratory judgment that the Amazon Standard for Brands policy is lawful)

6. The Sixth Cause of Action in the Cross-Complaint fails to state facts sufficient to constitute a cause of action. Civ. Proc. Code § 430.10(e).

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10

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15 (1992) 3 Cal.App.4th 30111

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27 (2006) 141 Cal.App.4th 3609

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In re Cipro Cases I & II

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1 **II. BACKGROUND**

2 The People filed their Complaint against Amazon on September 14, 2022, alleging
3 violations of the Cartwright Act (Bus. & Prof. Code § 16720, *et seq.*) and the Unfair Competition
4 Law (Bus. & Prof. Code § 17200, *et seq.*). The People’s Complaint alleges that Amazon’s retail
5 and wholesale price parity agreements and practices have anticompetitive effects in violation of
6 California antitrust and unfair competition law. Amazon demurred and, after full briefing and oral
7 argument, the Court overruled the demurrer on March 30, 2023.

8 In response to the Court’s demurrer order in favor of the People, on May 30, 2023, Amazon
9 filed its answer, denying the illegal conduct alleged in the complaint and alleging sixteen
10 affirmative defenses. Amazon’s affirmative defenses include, for example, that the People’s
11 “claims are barred, in whole or in part, because the conduct, policies, contracts, and other matters
12 over which Plaintiff is suing are lawful, justified, procompetitive, and carried out for legitimate
13 business reasons,” (Affirmative Defense No. 8), that the People lack harm to competition, antitrust
14 injury, and proximate cause, (Affirmative Defense Nos. 9-15), and that the People cannot seek
15 damages on purchases from non-Amazon entities (Affirmative Defense No. 16).

16 On the same day, Amazon also filed the Cross-Complaint, requesting a wide range of its
17 agreements and other practices be deemed “lawful”:

- 18 1. The first count seeks a judgment that “Plaintiff’s claims for damages based on
19 purchases of products from third parties in which Amazon was not the seller and not
20 part of the supply chain are fatally indirect and speculative, that Plaintiff lacks
21 antitrust standing to seek such damages, and that Plaintiff fails to establish Amazon
22 proximately caused any such alleged injury to support such damages.” (Cross-Cmpl.
23 at ¶¶ 57-61.)
- 24 2. The second count seeks a judgment that “its selling policies and Seller Code of
25 Conduct are lawful. (Cross-Cmpl. at ¶¶ 62-69.)
- 26 3. The third count seeks a judgment that “the [Marketplace Fair Pricing Policy] is
27 lawful.” (Cross-Cmpl. at ¶¶ 70-77.)
- 28

- 1 4. The fourth count seeks a judgment that “Amazon’s [Guaranteed Minimum Margin
- 2 Agreements] are lawful.” (Cross-Cmpl. at ¶¶ 78-84.)
- 3 5. The fifth count seeks a judgment that “the [Matching Compensation Program] is
- 4 lawful.” (Cross-Cmpl. at ¶¶ 85-91.)
- 5 6. The sixth count seeks a judgment that “the [Amazon Standard for Brands] policy is
- 6 lawful.” (Cross-Cmpl. at ¶¶ 92-98.)
- 7 7. The seventh count seeks a judgment that Amazon’s “practices to determine whether
- 8 an offer is eligible to be displayed as the Featured Offer are lawful.” (Cross-Cmpl.
- 9 at ¶¶ 99-105.)
- 10 8. The eighth count seeks a judgment that “the [Business Solutions Agreement] is
- 11 lawful.” (Cross-Cmpl. at ¶¶ 106-112.)
- 12 9. The ninth count seeks a judgment that “third-party seller pricing policies since
- 13 March 2019 are lawful.” The policies “includ[e] those set forth in the [Business
- 14 Solutions Agreement], [Amazon Standard for Brands], [Marketplace Fair Pricing
- 15 Policy], and Seller Code of Conduct.” (Cross-Cmpl. at ¶¶ 113-118.)

16 Amazon alleges the Attorney General “challenges these practices,” and identifies the People’s
17 Complaint as the only such challenge by the Attorney General. (Cross-Cmpl. at ¶¶ 11-15.) Amazon
18 claims that the requested “[d]eclaratory judgment will give much-needed certainty to Amazon, its
19 third-party sellers and vendors, and retail competitors more broadly that the standard agreements,
20 policies, and practices that Amazon has in place are lawful.” (Cross-Cmpl. at ¶ 11.)

21 **III. LEGAL STANDARD**

22 A cross-complaint, like any complaint, is a “separate,” “severable” pleading that must stand
23 of its own accord. (*Sec. Pac. Nat’l Bank v. Adamo* (1983) 142 Cal.App.3d 492, 496.) While a
24 demurrer admits all “material facts properly pleaded,” a demurrer does not admit “contentions,
25 deductions, or conclusions of fact or law.” (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) Demurrer
26 is appropriate where a pleading “does not state facts sufficient to constitute a cause of action.”
27 (Code of Civ. Proc. § 430.10(e).)

1 The Court may refuse a request for declaratory relief where the requested “declaration or
2 determination is not necessary or proper at the time under all the circumstances.” (Code of Civ.
3 Proc. § 1061.) A court may abuse its discretion when it allows a case where another proceeding
4 involving the same issues is pending between the same parties. (*See Pacific Electric Ry. Co. v.*
5 *Dewey* (1949) 95 Cal.App.2d 69, 71-72.) Claims for declaratory relief are authorized by section
6 1060 of the Code of Civil Procedure, if there is an actual and present controversy, where the
7 existence of the dispute “sufficiently concrete,” and declining judicial consideration would impose
8 hardship on the parties. (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th
9 531, 532-542.)

10 **IV. ARGUMENT**

11 Amazon’s redundant and unnecessary Cross-Complaint will complicate the resolution of
12 this litigation, while constraining unrelated law enforcement involving the company. To the extent
13 Amazon’s Cross-Complaint is premised on the same conduct at issue in the People’s Complaint, it
14 is duplicative and unnecessary for resolving any actual controversies between the parties. And to
15 the extent Amazon seeks broader relief, the Cross-Complaint requests highly improper advisory
16 opinions that its agreements and other conduct do not violate *any* laws. Most troublingly, these
17 outside-the-scope cross-claims would threaten to prevent the Office of the Attorney General, and
18 other law enforcers, from conducting their law enforcement duties. Because Amazon’s cross-claims
19 are either duplicative or improper, the Cross-Complaint should be dismissed in its entirety for
20 failure to state facts sufficient to constitute a cause of action. Civ. Proc. Code § 430.10(e). The
21 proper procedure is to resolve the People’s Complaint, and Amazon’s affirmative defenses to that
22 complaint.

23 **A. For all duplicative causes of action and issues, the Cross-Complaint is neither** 24 **necessary nor appropriate.**

25 As California courts have long recognized, a cross-complaint for declaratory relief is not
26 the proper procedure for the determination of “issues” that are “alleged as affirmative defenses” to
27 the underlying complaint. (*C.J.L. Constr., Inc. v. Universal Plumbing* (1993) 18 Cal.App.4th 376,
28 390-391, citing *Welfare Inv. Co. v. Stowell* (1933) 132 Cal.App. 275, 276-278.) “The declaratory

1 relief statute should not be used for the purpose of anticipating and determining an issue which can
2 be determined in the main action. The object of the statute is to afford a new form of relief where
3 needed and not to furnish a litigant with a second cause of action for the determination of identical
4 issues.” (*Hood v. Superior Court* (1995) 33 Cal.App.4th 319, 324.) “The relief statute should not
5 be used for the purpose of anticipating and determining an issue which can be determined in the
6 main action.” (*Cal. Ins. Guar. Ass’n v. Superior Court* (1991) 231 Cal.App.3d 1617, 1624 quoting
7 *General of America Ins. Co. v. Lilly* (1968) 258 Cal.App.2d 465, 470.)

8 When a complaint for declaratory relief seeks to litigate issues that are “fully engaged by
9 other causes of action,” declaratory relief is “unnecessary and superfluous” because “a declaration
10 of rights adds nothing to those matters that were asserted and presumably will be resolved in the
11 underlying action.” (*Hood, supra*, 33 Cal.App.4th at p. 324.) “Where another action is pending in
12 which a party may secure all the relief sought in a declaratory relief action the court may properly
13 refuse to entertain the action for declaratory relief.” (*Leach v. Leach* (1959) 172 Cal.App.2d 330,
14 333.; see also *Shane v. Superior Court* (1984) 160 Cal.App.3d 1237, 1250 [“It has long been held
15 that the validity of one lawsuit is not a proper subject for declaratory relief in a second lawsuit,
16 inasmuch as the first case will determine the questions posed by the second”].)

17 Amazon has failed to identify any actual controversy with the People where a “new form
18 of relief [is] needed.” (*Hood, supra*, 33 Cal.App.4th at p. 324.) Amazon’s Cross-Complaint includes
19 several counts requesting the determination of identical issues as the affirmative case:

- 20 • The People’s standing and establishment of damages are directly at issue in the
21 People’s affirmative case stated by the Complaint (Cmpl. at ¶¶ 15, 217);
- 22 • Certain anticompetitive and unfair aspects of Amazon’s “selling policies” and “third
23 party seller pricing policies” that violate the Cartwright Act and UCL are directly at
24 issue in the People’s affirmative case (Cmpl. at ¶¶ 2-4, 113-174, 205-213);
- 25 • Certain anticompetitive and unfair terms of Amazon’s Guaranteed Minimum Margin
26 and Matching Compensation agreements that violate the Cartwright Act and UCL are
27 directly at issue in the People’s affirmative case (Cmpl. at ¶¶ 2-4, 175-204, 205-213).

28 For each of these identical issues, adjudicating the affirmative Complaint and Amazon’s affirmative

1 defenses will resolve the issues, making the cross-claims “unnecessary and superfluous.” (*Hood*,
2 *supra*, 33 Cal.App.4th at p. 324.) Because Amazon has already pleaded affirmative defenses on
3 these precise issues, including that Amazon’s conduct alleged in the Complaint is “lawful,”
4 Amazon would face no hardship were its duplicative cross-claims to be dismissed.

5 Allowing mirror-image counter-claims would delay resolution of the underlying issues,
6 with unnecessary complications. For example, if Amazon’s Cross-Complaint proceeds, it
7 introduces the likelihood of dueling summary judgment motions on the same substantive issue.
8 Instead of this unnecessary duplication, the more efficient resolution of the parties’ issues is in the
9 initial case by the People.

10 **B. For the remainder of its cross-claims, Amazon fails to allege any “actual,**
11 **present controversy” as required by the Code of Civil Procedure.**

12 By requesting relief *beyond* the Complaint without identifying any dispute with the People
13 *besides* the Complaint, Amazon is requesting a judicial declaration of rights without alleging any
14 actual dispute on those issues. For Amazon to litigate issues outside the scope of the People’s
15 Complaint, its Cross-Complaint must describe an “actual controversy” between the parties ripe for
16 adjudication. (Code Civ. Proc., § 1060; see *Selby Realty Co. v. City of San Buenaventura* (1973)
17 20 Cal.3d 110, 117.) Declaratory relief is unavailable when there is no actual controversy ripe for
18 judicial resolution. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 605-
19 607.) Amazon has failed to satisfy the controlling “two-pronged test” for an actual controversy ripe
20 for judicial resolution: “(1) whether the dispute is sufficiently concrete that declaratory relief is
21 appropriate; and (2) whether withholding judicial consideration will result in the parties suffering
22 hardship.” (*Stonehouse Homes LLC, supra*, 167 Cal.App.4th at p. 540.)

23 **1. For all issues beyond the Complaint, Amazon has no supporting factual**
24 **allegations of any present controversy with the People.**

25 Amazon cannot establish a required actual controversy without even describing the
26 corresponding opposing position by the People. And the Cross-Complaint alleges no concrete
27 positions of the Attorney General’s Office on the lawfulness of Amazon’s policies and practices
28 besides the People’s Complaint. Without *any* opposing position, Amazon’s stated controversy is

1 certainly not “sufficiently concrete,” because the requested determination would require the court
2 to “speculate on the resolution of hypothetical situations” in an “abstract posture.” (*Stonehouse*
3 *Homes LLC, supra*, 167 Cal.App.4th at p. 540; *Dominguez v. Bonta* (2022) 87 Cal.App.5th 389,
4 418-19 [affirming dismissal of declaratory relief because plaintiffs’ allegations “are, at present,
5 conjectural and hypothetical”].)

6 Just as the People’s Complaint was required to withstand scrutiny at demurrer—by
7 examination of the factual allegations and disregarding any conclusory statements—Amazon
8 cannot support its Cross-Complaint with conclusory assertions of disputes or controversies between
9 Amazon and the People. Factual allegations are required. (*Wilson v. Transit Auth. of City of*
10 *Sacramento* (1962) 199 Cal.App.2d 716, 724 [“No allegation was made in the complaint that there
11 was at the time of the filing of said action any unsettled grievance or other controversy”].) And the
12 only present controversy with the People described in Amazon’s Cross-Complaint is the People’s
13 Complaint.

14 Amazon fails to describe any live controversy with the People beyond the four corners of
15 the Complaint: no communication, no statement of position, and certainly no act of law
16 enforcement. Besides the Complaint, Amazon provides no description of an actual, present
17 controversy with the People supporting its request to determine the wholesale lawfulness under all
18 laws of all aspects of the following policies and practices:

- 19 • Amazon’s “selling policies and Seller Code of Conduct”
- 20 • Amazon’s Marketplace Fair Pricing Policy
- 21 • The Amazon Standard for Brands policy
- 22 • Amazon’s “practices to determine whether an offer is eligible to be displayed as the
23 Featured Offer”
- 24 • Amazon’s Business Solutions Agreement
- 25 • Amazon’s “third-party seller pricing policies since March 2019,” “including those
26 set forth in the [Business Solutions Agreement], [Amazon Standard for Brands],
27 [Marketplace Fair Pricing Policy], and Seller Code of Conduct.”

28 Other than the antitrust and unfair competition violations stated by the Complaint, the Cross-

1 Complaint does not describe a present dispute with People.

2 Critically, Amazon cannot save its Cross-Complaint by referencing the titles of the various
3 agreements and policies in the People’s Complaint. Amazon cannot argue that just because the
4 People’s Complaint references certain agreements and policies that Amazon is entitled to seek a
5 sweeping declaration that *every* term in each agreement and policy is lawful under all laws. This is
6 true for two reasons.

7 *First*, Amazon’s policies, agreements, and other conduct include hundreds or thousands of
8 terms and provisions not at issue in the People’s Complaint. The Complaint focuses only on the
9 anticompetitive and unfair effects of Amazon’s retail and wholesale price parity agreements at issue
10 and Amazon’s enforcement of the agreements. Certainly, many of Amazon’s contract terms and
11 “selling policies” have no relation to these alleged effects in the Complaint. For all of those terms
12 and policies, Amazon’s Cross-Complaint contains no allegation of an actual antitrust or unfair
13 competition controversy between the People and Amazon, besides the People’s Complaint.

14 *Second*, Amazon cannot invent a controversy with the People by pretending that the People
15 have alleged the independent unlawfulness of each Amazon policy or practice; the People have not
16 done so. Amazon may prefer to respond to the People’s liability case by slicing and dicing the
17 People’s case into its separate terms and practices in isolation. But the Complaint does not support
18 a controversy on Amazon’s requests for separate “lawfulness” determinations for its various
19 policies and agreements, because the People do not allege the separate unlawfulness of Amazon’s
20 policies and agreements standing alone.

21 Consistent with longstanding, black-letter law, the People’s antitrust and unfair competition
22 claims are properly considered by viewing all of the facts and circumstances as a whole—not
23 separately analyzing each aspect of its conduct out of context. In antitrust cases, courts refrain from
24 “compartmentalizing” plaintiffs’ evidence into isolated pieces instead of assessing the overall
25 character and effect of the alleged anticompetitive conduct. (*In re Automobile Antitrust Cases I &*
26 *II* (2016) 1 Cal.App.5th 127, 151.) Antitrust plaintiffs are “given the full benefit of their proof
27 without tightly compartmentalizing the various factual components and wiping the slate clean after
28 scrutiny of each,” because an antitrust case is “not to be judged by dismembering it and viewing its

1 separate parts, but only by looking at it as a whole.” (*Id.* at pp. 152 quoting *Continental Ore Co. v.*
2 *Union Carbide & Carbon Corp.* (1962) 370 U.S. 690, 699.) The California Supreme Court has
3 made clear that the Cartwright Act requires a nuanced approach incorporating the “circumstances,
4 details, and logic” of the alleged violation. (*In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 147.)
5 Proper antitrust analysis is incompatible with the piecemeal approach Amazon advances in the
6 Cross-Complaint.

7 Amazon’s omission of an actual controversy with the People outside the Complaint is fatal
8 to its declaratory relief claims on those issues. Because “judicial decision-making is best conducted
9 in the context of an actual set of facts,” courts regularly defer to claims arising “in a factual, as
10 opposed to conceptual, context.” (*California Dept. of Consumer Affairs v. Superior Court* (2016)
11 245 Cal.App.4th 256, 264.) Only with “an actual set of facts” will the issues be “framed with
12 sufficient definiteness to enable the court to make a decree finally disposing of the controversy.”
13 (*Sanctity of Human Life Network v. California Highway Patrol* (2003) 105 Cal.App.4th 858, 872-
14 873.) Amazon’s “vague” and “nonspecific” claims are improper for declaratory relief. (*California*
15 *Ass’n of PSES v. California Dept. of Educ.* (2006) 141 Cal.App.4th 360, 377-378.) “Declaratory
16 relief requires a court to have narrow, precise questions to guide its examination....” (*Monterey*
17 *Coastkeeper v. Central Coast Regional Water Quality Control Board* (2022) 76 Cal.App.5th 1, 14,
18 as modified (Mar. 28, 2022), review denied (June 1, 2022).) Amazon’s Cross-Complaint provides
19 no such “narrow, precise questions.” (*Ibid.*)

20 Indeed, it is hard to imagine a more abstract, hypothetical controversy than one seeking a
21 judicial declaration that innumerable Amazon policies and practices are permissible under
22 (apparently) all potential federal and state laws that might conceivably apply in the future.
23 Amazon’s request for a judicial determination that the company’s policies do not violate *any laws*
24 *at all* is unprecedented in California law. Amazon’s proposed hypothetical controversies do not
25 support a request for declaratory relief. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739,
26 747-748.) “Even under the most liberal interpretation of ‘justiciability’ there must be presented
27 something more than a hypothetical question.” (*Wilson, supra*, 199 Cal.App.2d at p. 726.)

28 Here, Amazon’s Cross-Complaint seeks relief far beyond the antitrust and unfair

1 competition causes of action that will be resolved in the main case, and attempts to bar unspecified
2 future challenges to the lawfulness of Amazon’s general selling policies. (See Cross-Cmpl. ¶¶ 69,
3 118.) Such declarations apparently would enjoin the Attorney General—and other law enforcement
4 agencies—from investigating and prosecuting a range of civil and criminal conduct, including
5 fraud; unfair or deceptive practices; or violations of privacy, public security, or environmental laws.

6 To provide just a few examples of the potentially sweeping effects of Amazon’s request for
7 a declaration its ecommerce business is “lawful,” the requested relief could be interpreted to
8 prohibit the Attorney General from investigating whether Amazon’s policies with respect to certain
9 products violated state environmental laws; the San Francisco City Attorney from asserting that
10 Amazon’s policies are fraudulent or deceptive under California’s Unfair Competition Law; or the
11 United States Federal Trade Commission from alleging that Amazon’s policies violated the FTC
12 Act.¹ Even the narrowest declaration of “lawfulness” could provide Amazon with a shield against
13 any future unfair competition allegation from state or federal agencies, since such claims are likely
14 to implicate at least some of Amazon’s “selling policies.” Moreover, the People would not be
15 “proper parties” to litigate these potential issues between Amazon and other law enforcers. (See
16 *Connerly, supra*, 146 Cal.App.4th at 747-748.)

17 California courts have held that far more concrete and well-defined disputes nonetheless
18 fail to meet the standard necessary for declaratory relief. (See, e.g., *Stonehouse Homes LLC, supra*,
19 167 Cal.App.4th at p. 541 [challenge to city council resolution directing city planning commission
20 to prepare a land-use ordinance with particular specifications was not ripe]; *Pac. Legal Found. v.*
21 *Cal. Coastal Com.* (1982) 33 Cal.3d 158, 172 [claim that Coastal Commission guidelines failed to
22 adhere to relevant statutory provisions was not ripe].) The *Stonehouse* plaintiffs sought a
23 determination of the application of proposed zoning changes to their development plans.
24 (*Stonehouse Homes LLC, supra*, 167 Cal.App.4th at pp. 535-536.) The trial court sustained
25 respondents’ demurrer, declining to issue “an advisory decision in a controversy not yet ripe.”

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27 ¹ These are not all hypothetical scenarios. For instance, the FTC recently sued Amazon for
28 violations of the FTC Act and the Restore Online Shoppers’ Confidence Act. The People’s
Request for Judicial Notice at 1.

1 (*Ibid.*) The Court of Appeals affirmed dismissal, agreeing with the trial court that when “the
2 parameters are as yet unknown, the controversy is not yet ripe for declaratory relief.” (*Id.* at pp.
3 541-542.) As the Court reasoned, “The mere fact that Stonehouse and respondents disagree over
4 the resolution’s meaning and application does not create a justiciable controversy. Courts may not
5 render advisory opinions on disputes which the parties anticipate might arise but which do not
6 presently exist.” (*Ibid.*) Similarly here, because Amazon’s Cross-Complaint relies solely on the
7 People’s Complaint, it fails to state a claim for declaratory relief on issues *outside* the Complaint’s
8 scope as no such justiciable controversy exists.

9 **2. Amazon cannot attempt to avoid future law enforcement actions by**
10 **counter-suing the People in a single antitrust and unfair competition**
11 **action.**

12 Amazon would not suffer “an imminent and significant hardship” in the absence of
13 declaratory relief. (*Stonehouse Homes LLC, supra*, 167 Cal.App.4th at p. 542.) Apart from the
14 People’s Complaint, Amazon points to no active or threatened enforcement proceeding, only
15 “purely conjectural” applications of the law to its conduct. (*Ibid.*) Thus Amazon would have the
16 Court “imagine a myriad of hypotheticals, speculate on the application of [California law] to those
17 hypotheticals, and conclude that under no circumstance would equitable principles warrant a
18 finding of [liability].” (*BKHN, Inc. v. Department of Health Services* (1992) 3 Cal.App.4th 301,
19 310.) Amazon’s request for judicial speculation is improper.

20 The request is especially improper as an apparent attempt to essentially immunize the
21 company from law enforcement over the entirety of its ecommerce operations. Such a request
22 violates bedrock public policy of California, which prohibits injunctions that would “prevent the
23 execution of a public statute by officers of the law for the public benefit.” (Code Civ. Proc., §
24 526(b); Civ. Code, § 3423(d).) Courts have applied this principle, rooted in the separation of
25 powers, to bar declaratory and injunctive relief which would interfere with the executive branch’s
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1 ability to enforce the law.²

2 Courts will not grant such immunity from future law enforcement actions, including unfair
3 competition actions. For example, in *People v. Hy-Lond Enterprises, Inc.* (1979) 93 Cal.App.3d
4 734, 749, the court vacated a judgment that provided “immunity for future actions for unfair
5 competition with respect to future alleged violations of the law and regulations.” In that case, the
6 court found that a stipulated judgment entered between a district attorney and a nursing facility
7 improperly restrained future actions by the Attorney General for violations of the unfair
8 competition laws and thus prevented the Attorney General from carrying out his statutory duties.
9 (*Ibid.*; see also *Abbott Laboratories v. Superior Court* (2020) 9 Cal.5th 642, 663 [quoting *Hy-Lond*
10 for the general rule that “an injunction cannot be granted to prevent the execution of a public statute
11 by officers of the law for a public benefit”].)

12 By requesting a declaration of lawfulness, the Cross-Complaint’s declaratory relief claims
13 would accomplish the “same interference with and disruption of” prosecution as a formal
14 injunction. (See *Samuels v. Mackell* (1971) 401 U.S. 66, 71-72.) California’s public policy against
15 injunctions of official acts extends to claims for declaratory relief like Amazon’s Cross-Complaint.
16 (See *Agricultural Labor Relations Board, supra*, 16 Cal. 3d at pp. 401-02 (declaratory relief, like
17 a writ of mandate and restraining order, is “primarily injunctive in effect”); *Honeywell, Inc. v. State*
18 *Bd. of Equalization* (1975) 48 Cal.App.3d 907, 912 [“[w]here a statute prohibits the granting of an
19 injunction or writ of mandamus to prevent collection of a tax[,] an action for a declaration that the
20 tax is not legally collectible would circumvent the law and, accordingly, declaratory relief will be
21 refused”]; *Manchel v. County of Los Angeles* (1966) 245 Cal.App.2d 501, 507 [“Since, ordinarily,
22 equity cannot be invoked to enjoin the prosecution of a crime, such relief should not, in effect, be
23 accorded pursuant to a declaratory judgment law.”]; *Donaldson, supra*, 2 Cal.App.4th at 1623

24 ² See, e.g., *City of Los Angeles v. Superior Court of Los Angeles County* (1959) 51 Cal.2d 423, 430
25 [“A court acts in excess of its jurisdiction if it attempts to enjoin the enactment or enforcement of
26 a valid public statute or ordinance.”] [collecting cases]; *ibid.* [“The basis for these statutory
27 provisions [Cal. Code. Civ. Pro., § 526(b) and Cal. Civ. Code, § 3423(d)] is to be found in the
28 doctrine of separation of powers of government into three independent departments.”]; *Triple A*
Machine Shop, Inc. v. State of California (1989) 213 Cal.App.3d 131, 144-145 [“The separation
of powers doctrine requires judicial restraint in enjoining criminal investigations or
prosecutions”].

1 [request for declaratory and injunctive relief improper because “the court may not enjoin public
2 officers from performing official acts that they are required by law to perform”].)

3 California courts regularly refuse requests for relief that would prevent public officers from
4 executing their statutory duties.³ Even if Amazon were to disclaim such a broad interpretation and
5 effect of its Cross-Complaint, its claim for declaratory relief outside of the issues raised in the
6 People’s Complaint is plainly designed to preempt other future litigation, including law
7 enforcement efforts. That is exactly what California law and public policy prohibit.

8 **V. CONCLUSION**

9 For these reasons, the Court should sustain the People’s demurrer to the Cross-Complaint.

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11 Dated: July 14, 2023

Respectfully Submitted,

**THE PEOPLE OF THE STATE OF
CALIFORNIA**

By: /s/ Robert B. McNary
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

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*

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25 ³ See, e.g., *Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 363 [court may
26 not enjoin Caltrans from managing encroachments]; *Donaldson v. Lungren* (1992) 2 Cal.App.4th
27 1614, 1623 [court may not prevent coroner from performing official acts]; *Agricultural Labor
28 Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401 [court may not enjoin enforcement of
an administrative regulation]; *People v. Superior Court* (1967) 248 Cal.App.2d 276, 282-84
[court may not issue discovery order that interferes with Attorney General’s civil enforcement
action].