

MAR 28 2023

CLERK OF THE COURT  
BY: *Christina E. Kelly*  
Deputy Clerk

1 ROB BONTA  
Attorney General of California  
2 PAULA BLIZZARD (SBN 207920)  
NATALIE S. MANZO (SBN 155655)  
3 Supervising Deputy Attorneys General  
ANIK BANERJEE (SBN 236960)  
4 Deputy Attorney General  
300 South Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
6 Telephone: (213) 269-6058

7 *Attorneys for Plaintiff,*  
*The People of the State of California*

8  
9 Heidi K. Hubbard (*pro hac vice*)  
WILLIAMS & CONNOLLY LLP  
680 Maine Ave. SW  
10 Washington, DC 20024  
11 Tel.: (202) 434-5000

12 Jeffrey M. Davidson (Bar No. 248620)  
COVINGTON & BURLING, LLP  
13 415 Mission Street, Suite 5400  
San Francisco, CA 94105  
14 Tel: (415) 591-6000

15 *Attorneys for Defendant Amazon.com, Inc.*  
16 *(additional counsel listed below)*

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

20 THE PEOPLE OF THE STATE OF  
21 CALIFORNIA,

22 Plaintiff,

23 v.

24 AMAZON.COM, INC.,

25 Defendant.

No. CGC-22-601826

**STIPULATED EXPERT PROTOCOL  
AND [PROPOSED] ORDER**

Dep't: 304

Judge: Hon. Ethan P. Schulman

Case Filed: September 15, 2022

1 The Parties have agreed and stipulated to certain issues regarding expert discovery in the above-  
2 referenced action (“Action”), and thus submit this Stipulated Expert Protocol and Proposed Order  
3 (“Expert Stipulation”), subject to approval by the Court.

4 **I. DEFINITIONS**

5 1. Counsel: Attorneys who are either employees of a Party or retained to represent or  
6 advise a Party in connection with the subject matter of this Action.

7 2. Expert: A person who has been retained by a Party or its Counsel to serve as an expert  
8 witness or as a consultant in the Matter, including unless otherwise indicated such person’s employees  
9 and support staff. This includes both Testifying Experts and Non-Testifying Experts.

10 3. Matter: This Action together with the investigation conducted by the Office of the  
11 California Attorney General that culminated in the commencement of this Action,

12 4. Non-Testifying Expert: An Expert who is not a Testifying Expert.

13 5. Party: Any entity named a plaintiff or defendant in this Action, including all of its  
14 officers, directors, and employees.

15 6. Producing Party: Any Party proffering a Testifying Expert.

16 7. Testifying Expert: An Expert who is properly designated and disclosed by a Party to give  
17 expert opinion testimony in the Action in accordance with applicable statutes, court rules and orders,  
18 and this Expert Stipulation. Unless and until an Expert is properly designated and disclosed, such  
19 Expert is a Non-Testifying Expert.

20 **II. GENERAL PROVISIONS**

21 8. This Expert Stipulation applies to the Parties in the Action, and provides the protocols  
22 applicable to conducting discovery related to Experts in this Action.

23 9. This Expert Stipulation shall be effective only upon agreement of the Parties, and  
24 approval of the Court.

25 10. This Expert Stipulation shall apply to all prior and future work by Experts in this Matter.

26 11. Either Party may seek to modify this Expert Stipulation later for good cause. Prior to  
27 doing so, Counsel for the Parties shall meet and confer in a good-faith effort to reach agreement as to the  
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1 appropriate scope of any modifications. This Expert Stipulation, however, may be amended only by  
2 subsequent written stipulation among the Parties or upon order of the Court.

3 12. Unless otherwise specified in this Expert Stipulation, expert discovery shall be governed  
4 by the applicable provisions of the California Evidence Code and the California Code of Civil  
5 Procedure. Nothing herein shall affect the California substantive law regarding the admissibility of  
6 expert opinion testimony.

7 13. Nothing herein shall limit or waive any Party's right to object to the admission into  
8 evidence of any opposing Party's Expert report or opinion(s) or other materials, or to the qualification of  
9 any person to serve as an expert witness.

10 14. The Parties agree that they are not required to produce or exchange any log of any  
11 material, otherwise discoverable, that is precluded from discovery or disclosure pursuant to this Expert  
12 Stipulation.

13 **III. NON-TESTIFYING EXPERTS**

14 15. The Parties agree that that there shall be no discovery or disclosure with respect to Non-  
15 Testifying Experts, provided, however, that if a Party retains as a consulting expert a person who is  
16 otherwise a fact witness, only that person's communications within the scope of a *bona fide* consulting  
17 agreement shall be exempt from discovery or disclosure under this Paragraph 15.

18 16. The Parties agree that notes, drafts, written communications, or other records of  
19 preliminary or intermediate work prepared or created by, for, or at the direction of Non-Testifying  
20 Experts shall not be the subject of any form of discovery (including by deposition).

21 17. The Parties agree that budgets, invoices, bills, receipts, or time records concerning Non-  
22 Testifying Experts or their staff, assistants, colleagues, or associates, or their companies or organizations  
23 shall not be the subject of any form of discovery (including by deposition).

24 18. To the extent a Non-Testifying Expert is later designated and disclosed as a Testifying  
25 Expert, that person shall be subject to discovery or disclosure pursuant to Section IV of this this Expert  
26 Stipulation governing Testifying Experts, including with respect to any documents that would otherwise  
27 be subject to protection under this Section III arising from that person's work as a Non-Testifying  
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1 Expert.

2 **IV. TESTIFYING EXPERTS**

3 **A. Process for Disclosing Opinions of Testifying Experts.**

4 19. The Parties agree to structure expert discovery such that it will include the written  
5 disclosure of any expert opinion(s) to be offered by a Testifying Expert in this Action, and to make any  
6 Testifying Expert available for a deposition, pursuant to the processes set forth in this Section. The  
7 Parties agree to meet and confer in good faith regarding reasonable modifications for the deadlines  
8 contemplated in this Section IV, including to account for weekends, holidays and commitments in other  
9 matters.

10 **i. Exchange of Testifying Expert Witness Information**

11 20. On or before a date agreed upon by the Parties and approved by the Court, but in any  
12 event no later than seven (7) days following the close of fact discovery in this Action, each Party shall  
13 issue its demand for testifying expert witness information pursuant to *CRCP 2034.18* <sup>210</sup> <sub>5</sub>.

14 21. No later than thirty (30) days following the close of fact discovery in this Action, each  
15 Party shall provide in writing to the other Party a list containing the name and address of any natural  
16 person, including one who is a Party, whose oral or deposition testimony in the form of an expert  
17 opinion that the Party expects to offer in evidence at the trial of this Action and, for each such Testifying  
18 Expert witness, the disclosures outlined in Civ. Proc. Code § 2034.260(c).

19 22. No later than thirty (30) days following receipt of the other Party's Testifying Expert  
20 witness information pursuant to Paragraph 21, each Party shall provide in writing to the other Party a  
21 supplemental list containing the name and address of any other natural person, including one who is a  
22 Party, whose oral or deposition testimony in the form of an expert opinion that Party expects to offer in  
23 evidence at the trial of this Action and, for each such Testifying Expert witness, the disclosures outlined  
24 in Civ. Proc. Code § 2034.260(c).

25 **ii. Opening Expert Reports.**

26 23. No later than ninety (90) days after the close of fact discovery in this Action, the Parties  
27 shall produce a written expert report signed by the Testifying Expert for each proffered Testifying  
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1 Expert on any issues where that Party bears the burden of proof (“Opening Expert Report”).

2 24. Each Opening Expert Report shall contain, at a minimum:

- 3 a. a complete statement of all opinions the Testifying Expert will express and the  
4 basis and reasons for them;
- 5 b. the facts and data relied on by the Testifying Expert in forming such opinions;
- 6 c. the Testifying Expert’s qualifications, including a current *curriculum vitae*;
- 7 d. a list of all publications authored in the previous 10 years<sup>1</sup>;
- 8 e. a list of all materials relied on by the Testifying Expert in forming such opinions,  
9 including the Bates ranges of documents, data, or other information produced in this Action;
- 10 f. a list of all other cases in which, during the previous ten (10) years, the Testifying  
11 Expert testified in an expert capacity either at trial or by deposition;
- 12 g. a statement of the compensation to be paid for the Testifying Expert’s work and  
13 testimony in this Matter; and
- 14 h. to the extent not otherwise captured by this Paragraph, all items required by  
15 California Code of Civil Procedure § 2034.260(c).

16 **iii. Rebuttal Expert Reports.**

17 25. No later than ninety (90) days after the deadline for Opening Expert Reports, the  
18 opposing Party may produce a written expert report for each proffered Testifying Expert that is signed  
19 by the Testifying Expert (“Rebuttal Expert Reports”).

20 26. Rebuttal Expert Reports shall be subject to the requirements of Paragraph 24.

21 **iv. Reply Expert Reports.**

22 27. In the event of any Rebuttal Expert Report(s), the opposing Party shall have the  
23 opportunity, on or before a date no later than ninety (90) days after the deadline for Rebuttal Expert  
24 Reports, to produce a written and signed expert report for the limited purpose of responding to any  
25 opinions in any Rebuttal Expert Reports (“Reply Expert Report”).

26 28. Any Reply Expert Report shall be subject to the requirements of Paragraph 24.

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28 <sup>1</sup> To the extent such publications are not reasonably available from a public source, the Producing Party shall, upon request, provide such publications to the opposing Party.

1                    **v. Expert Depositions.**

2            29. No subpoena for deposition need be served on any Testifying Expert. Instead, the  
3 Producing Party shall make the Testifying Expert available for a deposition at a time and place in the  
4 continental U.S. mutually agreeable to the Parties.

5            30. Any fee charged by the Testifying Expert for preparing for a deposition, for traveling to  
6 the place of the deposition, for attending the deposition, as well as any associated travel expenses, shall  
7 be the responsibility of the Producing Party.

8                    **vi. Duty to Correct.**

9            31. A Producing Party must correct any disclosure by or testimony from a Testifying Expert:

10            a. in a timely manner if the Producing Party learns that in some material respect the  
11 disclosure or testimony is incorrect, and if corrective information has not otherwise been made  
12 known to the other Party during the discovery process or in writing; or

13            b. as ordered by the Court.

14            32. This duty to correct applies to all expert reports and all expert depositions, but may not be  
15 used to introduce new opinions not previously disclosed.

16                    **B. Expert Materials To Be Disclosed**

17            33. For each Testifying Expert, the Producing Party shall provide, within three business days  
18 of the service of any expert report contemplated by this Expert Stipulation:

19            a. all documents relied on by the Testifying Expert in forming their opinions;

20            b. a copy of all data and other information relied on by the Testifying Expert in  
21 forming their opinions, including but not limited to, underlying data, spreadsheets (including  
22 formulas therein), computerized regression analysis and/or other underlying reports, programs,  
23 computer coders and schedule sufficient to reconstruct the work, calculations, and/or analyses  
24 upon which the Testifying Expert is relying for their opinions;

25            c. exhibits, information, charts, tables, or data processed or modeled by a computer  
26 at the direction of a Testifying Expert and relied upon by the Testifying Expert in the course of  
27 forming the Testifying Expert's opinions; and

1 d. all data sets exactly as relied upon by the Testifying Expert, and all spreadsheets  
2 in the expert report or exhibits thereto in native format.

3 34. Information required by Paragraph 33 shall be produced by the Producing Party  
4 electronically (via email or secure file transfer protocol) where appropriate and feasible. Data, statistical  
5 analyses, or other information (including any calculation or exhibit) upon which a Testifying Expert  
6 relies for any of their opinions shall be provided in a machine readable format, including any data that  
7 has been cleaned, reformatted, or modified in any way from the form in which it may have been  
8 provided to the Testifying Expert. To the extent the disclosures required by this Expert Stipulation  
9 describe or include exhibits, information, or data results generated, processed, or modeled by a computer  
10 at the direction of a Testifying Expert and relied upon by a Testifying Expert in forming their opinions,  
11 machine readable copies of the input data along with the appropriate computer program(s) and  
12 instructions sufficient to replicate such exhibits, information, and data results shall be produced.

13 35. The Producing Party need not provide programs, software, or instructions that are  
14 commercially available at a reasonable cost, as long as the Producing Party provides timely and  
15 reasonable access for purposes of replication or analysis of disclosed results.

16 36. Documents that are publicly available at a reasonable cost need not be produced absent  
17 specific request if they are identified with sufficient specificity to allow a Party to locate and obtain the  
18 documents.

19 37. Documents that have been previously produced in this Matter need not be produced if  
20 they are identified by Bates number.

21 38. Transcripts of depositions taken and previously produced in this Matter need not be  
22 produced if the Producing Party identifies in writing the deponent names and dates for transcripts, the  
23 page ranges relied upon, and the exhibit numbers of all exhibits relied upon from such deposition.

24 **C. Expert Materials Not Requiring Disclosure and Limits on Discovery.**

25 39. Except as otherwise agreed herein, the Parties agree that, in light of the discovery and  
26 disclosure obligations agreed to above, the following categories of information shall not be the subject  
27 of any form of discovery (including by deposition) in this Action:  
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1 a. the content or fact of any communications, written or otherwise exchanged,  
2 recounted, or memorialized in connection with this Matter among and between a Testifying  
3 Expert and any other person, including: (i) the Testifying Expert's employees and/or support  
4 staff; (ii) the Testifying Expert's Party; (iii) Counsel for the Testifying Expert's Party; and/or (iv)  
5 any other Expert for the Testifying Expert's Party, except to the extent any such communications  
6 were relied on in formulating the Testifying Expert's Opinions.

7 b. notes, drafts, comments, or other records of preliminary or intermediate work of  
8 any nature prepared or created by, for, or at the direction of a Testifying Expert or Counsel,  
9 including drafts of expert reports, affidavits, or other expert materials, but excluding any final  
10 expert report, declaration, affidavit, or other work of a Testifying Expert filed with the Court or  
11 served on a Party in connection with this Action; and

12 c. any budgets, invoices, bills, receipts, or time records concerning a Testifying  
13 Expert's work in connection with this Action.

14 40. Notwithstanding Paragraph 39, all information, communications, or documents upon  
15 which a Testifying Expert relies as a basis for their opinions are discoverable.

16 41. This Expert Stipulation does not impose any independent obligation on a Party to retain  
17 any information contemplated by Paragraph 39.

18 42. This Expert Stipulation does not preclude reasonable questions at a deposition, hearing,  
19 or trial related to a Testifying Expert's compensation, or the number of hours the Testifying Expert  
20 expended in preparing their opinion(s).

21 43. Nothing herein shall be construed to prevent questions relating to the substance of the  
22 Testifying Expert's opinion(s) (including alternative theories, methodologies, variables, or assumptions  
23 that the Testifying Expert may not have relied upon in formulating his or her opinions). Thus,  
24 notwithstanding anything to the contrary herein, a Testifying Expert may be presented at a deposition,  
25 hearing, or trial with documents, testimony, or other materials not disclosed in this Section IV and  
26 questioned about whether the Testifying Expert relied or did not rely on such documents, testimony, or  
27 other materials in formulating their opinion(s), and whether such documents, testimony, or other  
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1 materials would cause the Testifying Expert to alter their opinion(s) in any respect. A Testifying  
2 Expert's communications with their employees and staff, as well as any communications with Counsel  
3 for the Producing Party as to the relevance or significance of facts or data and as to the consideration of  
4 alternatives, however, are completely exempt from disclosure.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD

2 DATED: March 28, 2023

Respectfully Submitted,

3 By: /s/ *Anik Banerjee*

By: /s/ *Jeffrey M. Davidson*

4 Rob Bonta  
5 Attorney General of California

Heidi K. Hubbard (*pro hac vice*)  
Kevin M. Hodges (*pro hac vice*)  
Jonathan B. Pitt (*pro hac vice*)  
Carl R. Metz (*pro hac vice*)  
Carol J. Pruski (Bar No. 275953)  
WILLIAMS & CONNOLLY LLP

6 Anik Banerjee (SBN 236960)  
7 Deputy Attorney General

680 Maine Ave. SW  
Washington, DC 20024  
Tel.: (202) 434-5000  
Fax: (202) 434-5029

8 Paula Blizzard (SBN 207920)  
9 Natalie S. Manzo (SBN 155655)  
10 Supervising Deputy Attorneys General  
11 Mina Noroozkhani (SBN 281552)  
12 Robert B. McNary (SBN 253745)  
13 Stephen R. Smerek (SBN 208343)  
14 Shira Hoffman (SBN 337659)  
15 Catherine Simonsen (SBN 307325)  
16 Komal Patel (SBN 342765)  
17 Alan Romero (SBN 316323)  
18 300 South Spring Street, Suite 1702  
19 Los Angeles, CA 90013  
20 Tel: (213) 269-6058

Jeffrey M. Davidson (Bar No. 248620)  
Cortlin H. Lannin (Bar No. 266488)  
Neema T. Sahni (Bar No. 274240)  
COVINGTON & BURLING, LLP  
415 Mission Street, Suite 5400  
San Francisco, CA 94105  
Tel: (415) 591-6000  
Fax: (415) 591-6091

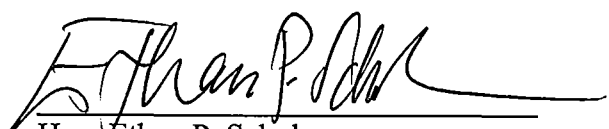
21 *Attorneys for Plaintiff, The People of the State of*  
22 *California*

*Attorneys for Defendant Amazon.com, Inc.*

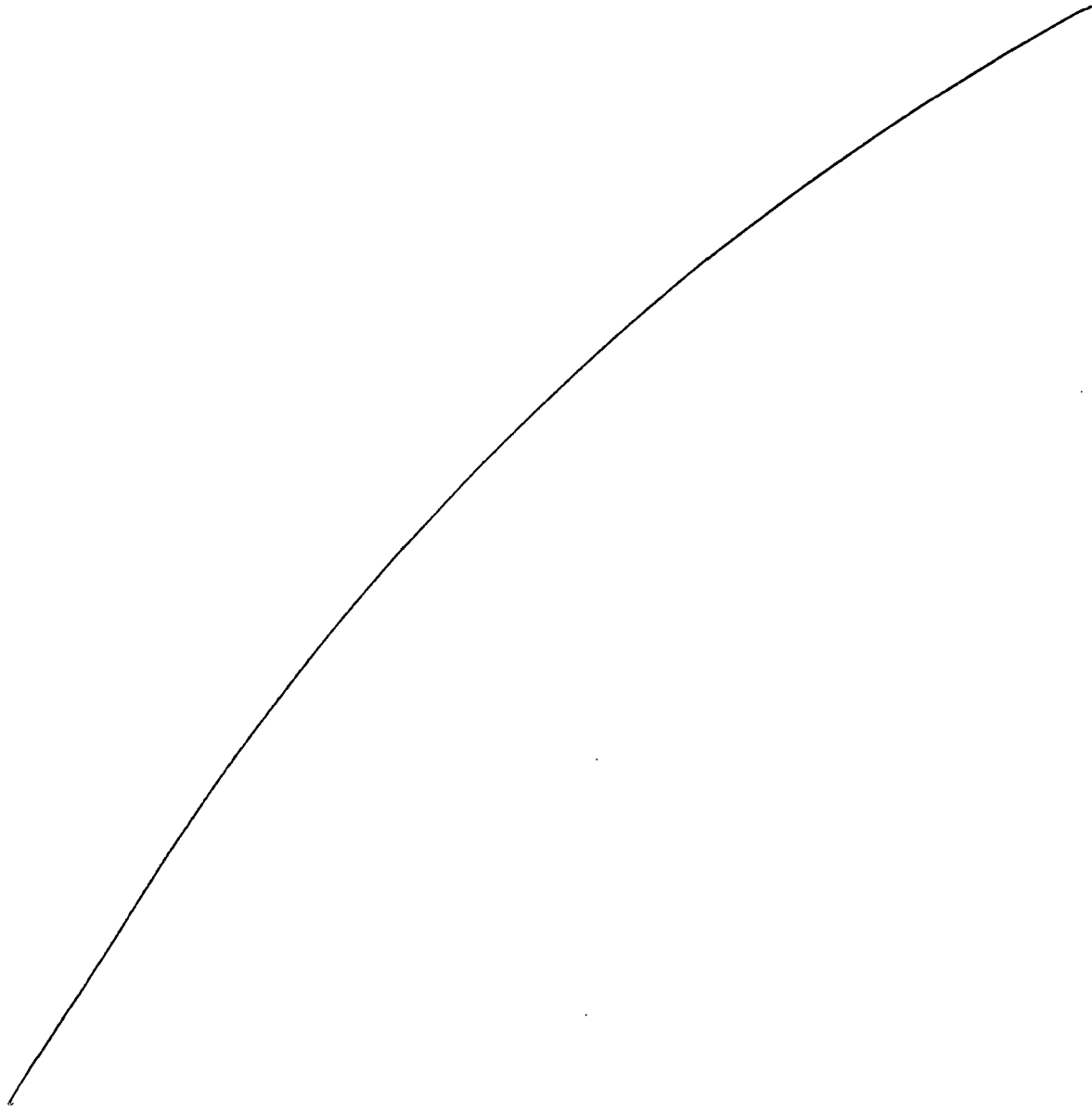
*J*  
**[PROPOSED] ORDER**

Pursuant to the above stipulation, IT IS SO ORDERED

DATED: Mar. 28, 2023

  
\_\_\_\_\_  
Hon. Ethan P. Schulman  
Judge of the Superior Court

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**CERTIFICATE OF ELECTRONIC SERVICE**  
(CCP 1010.6(6) & CRC 2.260(g))

I, Felicia Green, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On March 28, 2023, I electronically served STIPULATED EXPERT PROTOCOL AND ORDER via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: **MAR 28 2023**

Mark Culkins, Interim Chief Executive Officer of the Court

By:



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Felicia Green, Deputy Clerk