SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DEPARTMENT 304

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. AMAZON.COM, INC., Defendant.	Case No. CGC-22-601826 ORDER DENYING AMAZON.COM INC.'S MOTION FOR SUMMARY ADJUDICATION OF ITS SEVENTH CROSS-CLAIM

Amazon.com, Inc.'s motion for summary adjudication of its seventh cross-claim came on for hearing on March 2, 2026. Having considered the pleadings and papers on file in the action, and the arguments of counsel presented at the hearing, the motion is denied.

BACKGROUND

On September 15, 2022, Plaintiff, the People of the State of California ("the People"), filed an antitrust and unfair competition action against Defendant Amazon.com, Inc. ("Amazon"). The People allege Amazon, through certain agreements with its third-party sellers and wholesale suppliers, has "prevented effective competition across a wide swath of online marketplaces and stores," which insulates Amazon from price competition, entrenches its dominance, prevents effective competition, and harms consumers and the California economy. (Compl. ¶¶ 1-2, 4-7, 9.) On March 30, 2023, the Court overruled Amazon's demurrer to the complaint. (See Mar. 20, 2023 Order, 1, 16.)

On May 30, 2023, Amazon filed a Cross-Complaint (or "XC") against the People. Amazon alleges that to compete in retail, it "invests heavily in improving the consumer experience and seeks to offer customers low prices, fast and free delivery, easy-to-use functionality, and timely customer service." (XC ¶ 5; see *id.* ¶¶ 35, 56.) Amazon alleges that it has also "been a procompetitive force in the retail industry." (*Id.* ¶ 6; see *id.* ¶ 12.) Amazon alleges that it is committed to helping third parties succeed in the retail market by "investing billions of dollars, building hundreds of tools, and providing sellers with rich data to accelerate their sales." (*Id.* ¶ 7.) Amazon alleges that its agreements with third-party sellers and wholesale suppliers "are common in retail, beneficial to consumers, and clearly procompetitive." (*Id.* ¶¶ 11-15, 56; see, e.g., *id.* ¶¶ 20-22, 44-55.) Amazon alleges that it does not set prices for third-party sellers and no policy prohibits third-party sellers from discounting their product offers outside of Amazon's platform. (*Id.* ¶¶ 18-19.) Amazon alleges nine causes of action, seeking declaratory relief that: (1) Plaintiff's damages claims based on off-Amazon purchases are fatally indirect and speculative; (2) Amazon's selling policies and Seller Code of Conduct are lawful; (3) Amazon's Marketplace Fair Pricing Policy is lawful; (4) Amazon's Guaranteed Minimum Margin Agreements are lawful; (5) Amazon's Matching Compensation Program is lawful; (6) the Amazon Standard for Brands Policy is lawful; (7) Amazon's practices to determine Featured Offer eligibility are lawful; (8) Amazon's Business Solutions Agreement is lawful; and (9) Amazon's third-party seller pricing policies since March 2019 are lawful. (*Id.* ¶¶ 57-118.) By order dated October 5, 2023, the Court sustained in part and overruled in part the People's demurrer to Amazon's Cross-Complaint. In particular, the Court sustained the People's demurrer as to Count 1 of Amazon's Cross-Complaint without leave to amend and overruled the People's demurrer as to Counts 2 through 9 of Amazon's Cross-Complaint. (Oct. 5, 2023 Order, 4-11.)

In its seventh cross-claim, Amazon seeks a declaratory judgment that its practices to determine whether a third-party seller's or vendor's offer on its platform is eligible to be selected as a "Featured Offer" are lawful. (XC ¶¶ 99-105.) Amazon alleges as follows: Amazon "highlights offers based on the combination of features most likely to provide the best experiences to customers." (*Id.* ¶ 36.) Its selection of the Featured Offer is "based on the prediction of a customer's preferences if the customer were to compare all offers; the qualification process thereby aims to earn and preserve trust in Amazon's

store." (*Id.*) "Amazon considers various factors to determine an offer's eligibility to be the Featured Offer," including the identity and demonstrated performance of the third-party seller and the offer's price. (*Id.* ¶¶ 37-38.) Among eligible offers, Amazon "seeks to highlight the offer that is the 'best fit' for the customer based on factors such as customer actions (such as how frequently an item was purchased by other customers), the product's price, delivery speed, and measures of post-purchase satisfaction like return rates." (*Id.* ¶ 42.)[1]

Amazon utilizes its Select Competitor Featured Offer Disqualification ("SC-FOD") to determine if offers are price competitive. (*Id.* ¶ 38.) "SC-FOD is applied only to a small percentage of offers in Amazon's store for which recent pricing data for select retailers are available." (*Id.* ¶ 40.) "Offers that are not price competitive with other offers shoppers may find on Amazon or at other retailers are not . . . removed from Amazon's store. Though Amazon does not highlight those offers as the Featured Offer, they remain fully discoverable and available for purchase, including being directly visible to customers and available to buy on the Product Detail Page through a pop-out link (the 'All Offer Display')." (*Id.* ¶ 39.) "A seller whose offer has been disqualified from being the Featured Offer . . . can maintain the uncompetitive price, [although] the preferred option for customers is for the seller to lower the price so that it is competitive." (*Id.* ¶ 40.)

Amazon alleges that its use of the Featured Offer is "patently procompetitive—it simplifies and improves the shopping experience for consumers, to the benefit of the consumers and third-party sellers and vendors. It also encourages third-party sellers to offer competitive prices and a high-quality consumer experience, because these factors are considered by Amazon in deciding which offers to feature." (*Id.* ¶ 100.) Amazon's practices are "necessary to achieve the procompetitive effects of the Featured Offer," and the Featured Offer "has achieved and continues to achieve the intended procompetitive justifications, the effect of which includes lower prices, increased output and selection, and a better consumer experience." (*Id.*)

"Amazon does not enter into any agreements with third-party sellers as to how they may secure

[1] The Featured Offer was previously referred to as the "Buy Box." (See Compl. ¶ 30 & fn. 2 ["Amazon changed the official name from 'Buy Box' to 'Featured Offer' a few years ago, but many employees and executives in the company, and sellers virtually unanimously, still refer to it as the 'Buy Box,' not the 'Featured Offer.'"].)

the Featured Offer." (*Id.* ¶ 101.) Its "practices to determine whether an offer is eligible to be displayed as the Featured Offer, including SC-FOD, do not prohibit third-party sellers from discounting their product offers through channels other than Amazon's store." (*Id.* ¶ 102.) Nor do those practices have the ability to cause anticompetitive effects; "SC-FOD is applied to only a small number of offers." (*Id.* ¶ 103.) "Amazon seeks a declaratory judgment that its practices to determine whether an offer is eligible to be displayed as the Featured Offer are lawful." (*Id.* ¶ 105.)

Amazon now moves for summary adjudication of its seventh cross-claim. The People oppose the motion.[2]

LEGAL STANDARD

"A party may move for summary adjudication as to one or more causes of action within an action, . . . if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, that there is no merit to an affirmative defense as to any cause of action, that there is no merit to a claim for damages, . . . or that one or more defendants either owed or did not owe a duty to the plaintiff or plaintiffs." (Code Civ. Proc. § 437c(f)(1).) "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (*Id.*) A "cross-complainant has met that party's burden of showing that there is no defense to a cause of action if that party has proved each element of the cause of action entitling the party to judgment on the cause of action. Once the [] cross-complainant had met that burden, the burden shifts to the [] cross-defendant to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Id.* § 437(p)(1); see *In re Automobile Antitrust Cases I & II* (2016) 1

[2] Amazon's request for judicial notice of its Seller Central Program Policies (Pruski Decl. Ex. 10) is granted as unopposed. Amazon's requests for judicial notice of the California Law Revision Commission's *Antitrust Law – Study B750* (Pruski Decl. Ex. 1), the redacted complaint filed against it in *FTC, et al. v. Amazon.com, Inc.*, No. 2:23-cv-01495-JHC (W.D. Wa.) (Pruski Decl. E), and a press release issued by Attorney General Rob Bonta (Pruski Decl. Ex. 3), are denied as irrelevant to the issues before the Court. (*Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 ["Although a court may judicially notice a variety of matters, only *relevant* material may be noticed" (cleaned up)], overruled on other grounds by *In re Tobacco Cases II* (2007) 41 Cal.4th 1257; see also *Unlimited Adjusting Group, Inc. v. Wells Fargo Bank, N.A.* (2009) 174 Cal.App.4th 883, 888 fn. 4 [statements of fact contained in press release not subject to judicial notice].) Amazon's contention on reply that "the existence of the FTC's complaint and the allegations therein are relevant and necessary to understand the merits of Plaintiff's allegations" in the instant action (Reply ISO RJN, 2-3) is nonsensical.

Cal.App.5th 127, 150.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

In antitrust conspiracy cases, "in order to carry a burden of production to make a prima facie showing that there is a triable issue of the material fact of the existence of an unlawful conspiracy, a plaintiff, who would bear the burden of proof by a preponderance of evidence at trial, must present evidence that would allow a reasonable trier of fact to find in his favor on the unlawful-conspiracy issue by a preponderance of the evidence, that is, *to find an unlawful conspiracy more likely than not.*" (*In re Automobile Antitrust Cases I & II*, 1 Cal.App.5th at 151-152, quoting *Aguilar*, 25 Cal.4th at 852.) "When attempting to prove unlawful conspiracy, antitrust plaintiffs may rely on both direct and circumstantial evidence." (*Id.* at 152.) "Whether direct evidence or inference, however, if the court determines that any evidence or inference presented or drawn by the plaintiff indeed shows or implies unlawful conspiracy *more likely than* permissible competition, it must then deny the defendants' motion for summary judgment, even in the face of contradictory evidence or inference presented or drawn by the defendants, because a reasonable trier of fact could find for the plaintiff." (*Id.*, quoting *Aguilar*, 25 Cal.4th at 856-857.)[3]

"With respect to the substantive law of conspiracy, while some sort of concerted activity is necessary for an antitrust claim, it is well settled that an explicit or formal agreement is not required." (*Automobile Antitrust Cases I & II*, 1 Cal.App.5th at 152-153.) In ruling on a motion for summary adjudication, "the court may not weigh the plaintiff's evidence or inferences against the defendants as though it were sitting as the trier of fact." (*Id.* at 167-168, quoting *Aguilar*, 25 Cal.4th at 856 (cleaned

[3] Amazon contends on reply that the People apply "the wrong legal standard." (Reply, 2-3.) Amazon denies that, as the People contend, "Amazon bears both the burden of production and the burden of persuasion." (*Id.* at 2 (cleaned up).) Rather, it contends that the People's burden is "the same as it would bear at trial," and that the People are required to "do more than raise a material dispute of fact." (*Id.* at 2-3 (cleaned up).) It is Amazon, not the People, that misstates the applicable standard. "From commencement to conclusion, the moving party bears the burden of persuasion that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar*, 25 Cal.4th at 857.) As discussed in Sections I.B, I.C, and I.D, *infra*, it is questionable whether Amazon has even met its initial burden of production so as to shift the burden to the People.

up).) Finally, "both California and federal decisions urge caution in granting a defendant's motion for summary judgment in an antitrust case." (*Id.* at 154 (cleaned up); see *id.* at 159-172 [reversing summary judgment where a reasonable juror presented with the evidence could find an unlawful conspiracy more likely than not.])

DISCUSSION

I. Summary Adjudication Is Barred By Disputed Issues Of Material Fact.

This motion focuses on Amazon's use of "Select Competitor – Featured Offer Disqualification" or SC-FOD. The parties agree that SC-FOD is Amazon's practice of "disqualify[ing] third-party sellers' offers from being eligible to be a 'Featured Offer' in Amazon's store when they are priced higher than what a customer would pay at certain competitors." (Opening Brief, 4, quoting Compl. ¶¶ 88, 30 fn. 2; see also *id.* at 9 [SC-FOD "measures whether an offer for certain products on Amazon is the same or lower than certain other offers for that product at certain retailers outside of Amazon"]; Opposition, 1 fn. 1 [defining "SC-FOD/Buy Box Suppression" as "Amazon's announced policy of suppressing the Buy Box on a third-party seller offer by application of SC-FOD where Amazon identifies a lower price offered through any competing online retailer monitored by Amazon"]; UMF 33.)[4] Amazon denies that this practice was incorporated into its standard of terms of service agreement with third-party sellers, the Business Solutions Agreement ("BSA"), contending that it "has nothing to do with the BSA, or any policies incorporated into the BSA." (Opening Brief, 4; see also *id.* at 8-10; Reply, 1 ["SC-FOD is not implemented as part of any agreement with third-party sellers."].) Rather, Amazon contends, it "*unilaterally* implements SC-FOD according to its own business judgment on how best to operate its store," and as a result, the practice does not arise from "concerted action" and is outside the scope of the Cartwright Act. (Opening Brief, 4, 11-16; see Reply, 1.) Amazon argues further that because the People

[4] Amazon referred to an earlier version of SC-FOD as "Buy Box Removal," while the People refer to SC-FOD as "Buy Box Suppression." (See People's Separate Statement filed January 27, 2026 ("UMF") 30 ["Buy Box Removal evolved into what is now called SC-FOD."]; Opening Brief, 7 & fn. 1.) "UMF" refers to the undisputed material facts in the People's Separate Statement in Opposition to Amazon's Motion filed January 27, 2026.
This Order summarizes certain record evidence so as to avoid disclosing information the Court previously authorized to be filed under seal, including internal details about the SC-FOD and limited statistics related to its application. (See Jan. 30, 2026 Order on Amazon's Motion to Seal, 5-8.)

cannot show that SC-FOD is unlawful under the Cartwright Act, it follows that the People cannot show that the same practice is unlawful or unfair under the UCL. (Opening Brief, 19-21; see Reply, 16.)

The People contend that Amazon's motion fails for two independent reasons. First, they contend that Amazon's key contention—that SC-FOD has "nothing to do with the BSA" or any policies incorporated into it—is contradicted by substantial evidence that SC-FOD is, in fact, a part of the BSA and the policies it incorporates. (Opposition, 1-2, 15-18.) Second, they contend that SC-FOD is not a mere "unilateral" policy, but is utilized by Amazon, together with other related policies, to coerce third-party sellers to adhere to price parity. (*Id.* at 2-4, 18-23.)

The record—including Amazon's own evidence—contains substantial evidence giving rise to disputed issues of material fact regarding Amazon's contentions that SC-FOD is not part of its agreements with third-party sellers and that it does not utilize SC-FOD to coerce sellers to agree to price parity. Further, Amazon has not met its burden on summary adjudication to show undisputed facts establishing that SC-FOD has procompetitive rather than anti-competitive effects. Amazon's motion therefore must be denied.

A. Background Law

The Cartwright Act, Bus. & Prof. Code § 16720 *et seq.*, is California's principal antitrust law. (*In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 136.)[5] Like antitrust law generally, the Cartwright Act "rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions." (*Id.* (cleaned up).) "At its heart is a prohibition against agreements that prevent the growth of healthy, competitive markets for goods and services and the establishment of prices through market forces." (*Id.*) The purpose of the Cartwright Act is to prevent an action which "has as its *purpose or effect* an unreasonable restraint of trade." (*Corwin v. L.A. Newspaper Service Bureau, Inc.* (1978) 22 Cal.3d 302, 314 (cleaned up); see also *Theme Promotions, Inc. v. News Am. Mktg. FSI* (9th Cir. 2008) 546 F.3d 991, 1000 [same].)

[5] Except as noted, all further statutory citations in this Order are to the Business & Professions Code.

The Cartwright Act "generally outlaws any combinations or agreements which restrain trade or competition, or which fix or control prices, and declares that, with certain exceptions, every trust is unlawful, against public policy and void." (*In re Cipro Cases I & II*, 61 Cal.4th at 136 (cleaned up); § 16726 ["Except as provided in this chapter, every trust is unlawful, against public policy and void."].) The "trust[s]" the Act prohibits include any "combination . . . by two or more persons" to "create or carry out restrictions in trade or commerce"; "to limit or reduce the production, or increase the price of merchandise or of any commodity"; "to prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity"; or to "fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State." (§ 16720(a)-(d).) In broad language, the Act also prohibits any "combination" of two or more persons:

> To make or enter into or execute or carry out any *contracts, obligations or agreements of any kind or description*, by which they do all or any or any combination of any of the following:
>
> (1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value.
>
> (2) Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure.
>
> (3) Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.
>
> (4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected.

(*Id.* § 16720(e) (emphasis added).)

It is "well settled" that anticompetitive agreements need not always be express, but "may be inferred from the circumstances surrounding a course of dealing." (*Fisherman's Wharf Bay Cruise Ship Corp. v. Superior Court* (2003) 114 Cal.App.4th 309, 338 (cleaned up).) An unlawful agreement may run

afoul of the antitrust laws even if it is imposed on a reluctant contracting party by a second party with superior market power. (*Epic Games, Inc. v. Apple, Inc.* (9th Cir. 2023) 67 F.4th 946, 982-983 [district court erred in holding that a "non-negotiated contract of adhesion" falls outside the scope of Section 1 of the Sherman Act].)

"In order to state a claim under the Cartwright Act, a plaintiff must allege the formation and operation of the conspiracy and the illegal acts done in furtherance of the conspiracy. Conversely, a claim describing only a unilateral refusal to deal without alleging a corresponding illegal conspiracy or combination does not state an actionable antitrust claim." (*Beverage v. Apple, Inc.* (2024) 101 Cal.App.5th 736, 749-750 (cleaned up).) "This premise, that absent a legal provision to the contrary, a private party generally may choose to do or not to do business with whomever it pleases without violating antitrust laws, is known as the *Colgate* doctrine." (*Id.* at 750 (cleaned up).) "California courts have adopted the *Colgate* doctrine for purposes of applying the Cartwright Act." (*Id.*, quoting *Chavez v. Whirlpool Corp.* (2001) 93 Cal.App.4th 363, 370; see also *Beverage*, 101 Cal.App.5th at 753-754.)[6] Thus, "[i]f a seller does no more than announce a policy designed to restrain trade, and declines to sell to those who fail to adhere to the policy, no illegal combination is established." (*Kolling v. Dow Jones & Co.* (1982) 137 Cal.App.3d 709, 921.) For example, a manufacturer may announce a resale price policy and refuse to deal with dealers who do not comply. (*Chavez,* 93 Cal.App.4th at 370.) However, "the 'combination' necessary to support an antitrust action can be found where a supplier or producer, by coercive conduct, imposes restraints to which distributors involuntarily adhere." (*Kolling*, 137 Cal.App.3d at 721; see *G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 268 ["a necessary 'conspiracy' or 'combination' cognizable as an antitrust action is formed where a trader uses coercive tactics to impose restraints upon otherwise uncooperative businesses"].) Thus, "an illegal combination may be found where a supplier secures compliance with announced policies in restraint of trade by means which go beyond mere announcement of policy and the refusal to deal. If, for example, the supplier takes

[6] Amazon asserts that *Beverage* held that the alleged conduct was not cognizable under the Cartwright Act because no coordinated action had been alleged. (Opening Brief, 13.) It did not. Because the plaintiffs limited their challenge on appeal only to the dismissal of their UCL claim and "abandoned any claim of error" in the other aspects of the trial court's demurrer ruling, the Court of Appeal "presume[d]" the trial court had correctly dismissed plaintiffs' Cartwright Act cause of action under the *Colgate* doctrine. (101 Cal.App.5th at 752.)

'affirmative action' to bring about the involuntary acquiescence of its dealers, an unlawful combination exists." (*Kolling*, 137 Cal.App.3d at 721; see also *G.H.I.I. v. MTS, Inc.* (1983) 147 Cal.App.3d 256, 268; *R.E. Spriggs Co. v. Adolph Coors Co.* (1979) 94 Cal.App.3d 419, 425; see also CACI NO. 3408 [defining "coercion"].)

Here, in order to prevail on its motion, Amazon must show it is undisputed that it neither entered into prohibited agreements with third-party sellers nor engaged in coercive conduct in violation of the Cartwright Act. The Court addresses each in turn.

B. There Are Disputed Issues Of Material Fact Regarding Whether SC-FOD Comprises Part Of Amazon's Agreements With Third-Party Sellers.

Amazon contends first, relying on its own business records and the testimony of certain of its executives and other employees, that SC-FOD "has nothing to do with the [Business Solutions Agreement], or any policies incorporated into the BSA." (Opening Brief, 4; see also *id.* at 8; Reply, 3-9.) Rather, Amazon asserts that "the evidence conclusively demonstrates that SC-FOD has no connection to ASB [Amazon Standards for Brands], the MFPP [Marketplace Fair Pricing Policy], the Seller Code of Conduct [SCC], or any other policy that is incorporated into Amazon's Business Solutions Agreement with third-party sellers." (Opening Brief, 16.) The People disagree, arguing that the BSA and incorporated Program Policies constitute a "combination" within the meaning of the Cartwright Act, and that "the evidence is more than sufficient for the trier of fact to find that SC-FOD/Buy Box Suppression is part of the BSA." (Opposition, 15-18.) Resolution of the parties' disagreement requires an examination of the language of each of the agreements and policies at issue and of the record evidence.

To offer physical products for sale as the seller-of-record in Amazon's store in the United States, a third party generally enters into the BSA. (UMF 13.) The BSA states that it "contains the terms and conditions that govern [the third-party seller's] access to and use of [Amazon's] services." (UMF 14.) The BSA requires third-party sellers in Amazon's store in the United States to follow certain "Program Policies." (UMF 18; Ex. 9, 1.)[7] Among those Program Policies are the Standards for Brands Selling in

[7] Amazon's assertion that the BSA merely expresses Amazon's "expectation" that third-party sellers will follow the Program Policies (SUF 18) is at odds with the plain language of the BSA, which provides that third-party sellers "AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE SERVICE TERMS AND PROGRAM POLICIES THAT APPLY" in the applicable country. (Ex. 9, 1.) "SUF" refers to Amazon's material facts set forth in its Separate Statement filed October 16, 2025.

Amazon's Store ("ASB"), the Marketplace Fair Pricing Policy ("MFPP"), and the Seller Code of Conduct ("SCC"). (UMF 19; see Ex. 10 [listing Program Policies].)

The MFPP, which is a brief one-page document, states that "[s]ellers are responsible for setting their own prices on Amazon stores." (Ex. 8.) It goes on to warn, however,

> Amazon regularly monitors the prices of items on our stores, including shipping costs, and compares them with other prices available to our customers. If we see pricing practices on a store offer that harms customer trust, *Amazon can remove the Featured Offer*, remove the offer, suspend the ship option, or in serious or repeated cases suspend or terminate selling privileges.

(*Id.* (emphasis added).) It defines pricing practices that "harm customer trust" to include "[s]etting a price on a product or service that is significantly higher than recent prices offered on or off Amazon." (*Id.*) Nothing in the MFPP defines the term "significantly higher" or provides any guidance to sellers as to the meaning of that phrase.

ASB is a policy that "applies to Brands and manufacturers, as well as their agents, licensees, and other representatives selling on their behalf in the Amazon store." (Ex. 11, CAAGLit-AMZ_18936662.) It states that Amazon may source products directly from brands and sell them to customers in its store itself, while other brands "can operate as sellers in the Amazon store if they can consistently maintain our standards for customer experience." (*Id.*) It goes on to state that Amazon "measure[s] customer experience in a number of ways, including . . . price competitiveness." (*Id.*) And it cautions,

> If you are unable to maintain our standards for customer experience, you might lose certain privileges associated with operating as a seller in the Amazon store (*including having your offers featured on product detail pages*), or you might lose the opportunity to operate as a seller in the Amazon store altogether.

(*Id.* (emphasis added).) Amazon promises to "notify Brands if they are impacted by this policy, whether they need to take any actions to maintain a great customer experience, what options they have to take those actions, and the deadlines for taking them." (*Id.* at CAAGLit-AMZ_18936663.)[8]

Thus, the MFPP explicitly states that Amazon may "remove the Featured Offer" for a third-party seller that "harm[s] customer trust" by "[s]etting a price on a product or service that is significantly higher than recent prices offered on or off Amazon," while the ASB similarly states that a Brand that fails to meet Amazon's standards for "price competitiveness" may lose the ability to have its offers featured on

[8] Neither party devotes any significant attention to the Seller Code of Conduct. (Ex. 12.)

product detail pages. On their face, both policies, which are incorporated into the BSA, appear to embody an agreement by third-party sellers to comply with Amazon's price parity requirements—exactly what the People allege.[9]

In its opening brief, Amazon attempts to minimize the importance of these policies. Thus, it asserts that the MFPP is only designed "to prevent sellers from setting prices that are atypically or egregiously high, such that they might be viewed as price gouging." (Opening Brief, 9.) However, the plain language of the MFPP does not mention price gouging, and it makes no attempt to define prices that are "significantly higher" than those offered "on or off Amazon."[10] Likewise, Amazon's assertion that "[t]he BSA does not contain provisions about whether a third-party seller must price competitively (i.e., the same or lower) as compared to other retailers" (SUF 21) is irreconcilable with the ASB, which contains just such a provision. (See Ex. 11, CAAGLit-AMZ_18936662 [defining standards for customer experience to include "price competitiveness"].)[11] Amazon argues further that it "adopted SC-FOD for one reason: Amazon believed that it would harm consumers' perception of the Amazon store as a place to find competitive prices if Amazon were to prominently display . . . third-party sellers' prices when it knows that a customer would pay less at reputable competitors for that same product." (Opening Brief, 13-14.) But whatever Amazon's motivation may have been for adopting SC-FOD—which itself presents disputed facts—fails to address the issue here: whether it was incorporated into its agreements with third-party sellers. As to that issue, Amazon offers only conclusory testimony by two Amazon executives to

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[9] Amazon contends that "price parity" and "price competitiveness" are distinct. (Reply, 1.) However, the distinction is one without a difference here, where Amazon's pricing policies require sellers to set a price on a product that is the same across all channels, including Amazon, or offer the lowest price on Amazon.

[10] The People offer evidence that Amazon exercises SC-FOD "when offer prices are even one penny higher on Amazon than prices on competing retail websites," which understandably causes sellers to interpret the MFPP as requiring price parity. (Opposition, 5; see also *id.* at 17; see, e.g., Ex. 46, 76:3-78:6; Ex. 50, 60:14-61:19; Ex. 52, 145:16-23.) Setting a price one penny higher on Amazon than on another platform is hardly "price gouging." (Compare Pen. Code § 396 [prohibiting "excessive and unjustified increases in the prices of essential consumer goods and services" during a declared state of emergency or local emergency as offering to sell certain goods or service for "a price of more than 10 percent greater than the price" charged by the seller immediately prior to the proclamation of or declaration of emergency].)

[11] Amazon asserted at the hearing that the ASB applies only brand-wide, while SC-FOD applies individual product by product. However, it did not file any testimony to that effect, nor is there anything in the ASB to indicate that Amazon would not enforce it against a brand for selling even a single popular product at a higher price than one it views as competitive. Sellers could reasonably understand the ASB's emphasis on price competitiveness as reinforcing or reiterating the policy embodied in the SC-FOD.

the effect that SC-FOD was not "part of the Business Solutions Agreement" and was not used to enforce the MFPP or the express price parity provision that indisputably existed in the BSA before 2019. (*Id.* at 14-16.) Because that testimony cannot overcome the plain language of the MFPP and the ASB,[12] Amazon fails to carry its initial burden on summary adjudication, and its motion must be denied on that ground alone.

The evidentiary record reinforces the same conclusion. The People's evidence establishes that from at least 2004 through March 2019, the BSA contained an express price parity provision, which prohibited sellers from setting prices on other online stores lower than the prices they set on Amazon. (UMF 23; Ex. 4 (Amazon's Answer) ¶ 4 ["Amazon admits that the BSA formerly contained a price parity provision, which was removed in March 2019"]; AMF 5.)[13] Thus, the People argue, "SC-FOD/Buy Box Suppression has been integrally intertwined with and part of the BSA since SC-FOD/Buy Box Suppression was first implemented" in 2015. (Opposition, 16; UMF 26-31.) While the express price parity provision was removed from the BSA in March 2019 (AMF 6),[14] the People offer evidence to the effect that as late as 2022, Amazon continued to advise sellers that they "may list items at any price you feel is fair . . . so long as your price adheres to the parity requirements of your selling agreement." (Exs. 116-122.) Amazon concedes that "in a few instances, [it] mistakenly told a handful of sellers that a parity requirement existed, after the date when Plaintiff agrees that the [express parity] provision was removed," but insists that those communications are "immaterial." (Reply, 4.) While the record does appear to support Amazon's contention that these were form communications that it failed to update following the removal of the express price parity provision, they also show that the language in question was replaced

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[12] See, e.g., *Winet v. Price* (1992) 4 Cal.App.4th 1159, 1167 [a party's uncommunicated subjective intent as to the meaning of the words of a contract cannot overcome the contract's plain language].)

[13] "AMF" refers to the undisputed additional material facts in Amazon's Reply in Support of its Separate Statement filed February 18, 2026. Amazon's response to this additional material fact clarifies that in addition to prices from online competitors or retailers, it also considers prices from brick and mortar stores.

[14] Amazon objects to many of the People's additional material facts on the ground that they are not material "because Plaintiff does not cite this fact in the argument portion of its opposition." (E.g., AMF 1-4, 6-8, 11-14, 19-20, 22, 27, 29-31, 33, 36-40, 43-49, 62-63, 77, 79, 92, 97, 99-104.) The boilerplate objection is meritless: "material facts" are "facts that relate to the cause of action . . . that is the subject of the motion and that could make a difference in the disposition of the motion," not facts that are cited in a party's brief. (Cal. Rules of Court, rule 3.1350(a)(2).) In any event, many of the facts in question are, in fact, cited in the People's opposition brief.

with a reference to the MFPP. (See, e.g., Ex. 116 ["We should change 'price parity requirement of your selling agreement' to 'Marketplace Fair Pricing Policy.'"].) As discussed above, the MFPP expressly warns third-party sellers that Amazon may "remove the Featured Offer" for a third-party seller that "harm[s] customer trust" by "[s]etting a price on a product or service that is significantly higher than recent prices offered on or off Amazon." That appears to be just another way of saying the same thing. (See UMF 33 ["As of August 2025, SC-FOD compares certain third-party sellers' offers on certain products to prices offered by certain [competitors]. If such an offer on Amazon is higher than what a customer would pay at those competitors, the third-party seller's offer on Amazon is typically ineligible to be selected as a Featured Offer."].)

On reply, Amazon asserts, without evidentiary support, that the express price parity provision and SC-FOD were "very different" because "the former price parity provision compared one seller's Amazon price to *that same seller's* price off-Amazon, whereas SC-FOD measures the seller's Amazon price to *other retailers'* off-Amazon prices." (Reply, 6.) The distinction appears to be immaterial. As discussed at the hearing, moreover, third-party sellers' reasonable understanding of Amazon's policies incorporated into the BSA may have been informed by policies or practices (such as the express price parity provision) to which they had been subject in the past. (See, e.g., *Kern County Hospital Authority v. Public Employment Relations Bd.* (2024) 100 Cal.App.5th 860, 882 [parties' past conduct is properly considered in determining the meaning of an ambiguous contract provision].)

Amazon attacks the People's evidence as comprised of "factually inaccurate testimony from third-party sellers," and criticizes the People for "mak[ing] no effort to show that the faulty evidence upon which Plaintiff relies overcomes the substantial direct testimony and documentary evidence Amazon cited." (Reply, 3; see also *id.* at 4.)[15] Amazon misconceives its burden on summary judgment. Again, "if

[15] The Court declines to consider the new evidence submitted by Amazon on reply. (Pruski Reply Decl. Exs. 293-294.) "The reply shall not include any new evidentiary matter, additional material facts, or separate statement submitted with the reply and not presented in the moving papers or opposing papers." (Code Civ. Proc. § 437c(b)(4).) In other words, "[w]hile the code provides for reply papers, it makes no allowance for submitting additional evidence or filing a supplemental separate statement. This is consistent with the requirement [that] supporting papers and the separate statement be served with the original motion." (*San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.* (2002) 102 Cal.App.4th 308, 313 (cleaned up); accord, *Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538 ["The general rule of motion practice, which applies here, is that new evidence is not permitted with reply papers. This principle is most prominent in the context of summary judgment motions, which is not surprising, given

the court determines that any evidence or inference presented or drawn by the plaintiff indeed shows or implies unlawful conspiracy *more likely than* permissible competition, it must then deny the defendants' motion for summary judgment, *even in the face of contradictory evidence or inference presented or drawn by the defendants*, because a reasonable trier of fact could find for the plaintiff." (*In re Automobile Antitrust Cases I & II,* 1 Cal.App.5th at 152 (cleaned up; second emphasis added).) At a minimum, this evidence gives rise to disputed issues of fact.

C. There Are Disputed Issues Of Material Fact Regarding Whether Amazon's Use Of SC-FOD Coerces Sellers To Agree To Price Parity.

Amazon argues that it "has not engaged in affirmatively coercive conduct designed to force a third party to agree to price competitively on Amazon's store under threat of Amazon refusing to do business with the third party." (Opening Brief, 17; see Reply, 12.) Rather, Amazon asserts that "SC-FOD does not remove an offer from Amazon" (Opening Brief, 17) and "[e]ither way [] offers will remain available to customers for purchase in the Amazon store." (*Id.* at 18; see Reply, 12.) Amazon also argues that "SC-FOD does not obligate third-party sellers to engage in any particular pricing behavior or otherwise agree to any suggested retail price set by Amazon in order to have their goods sold in Amazon's store." (Opening Brief, 18.) Amazon contends that "[t]he fact that some third-party sellers see benefits to having their offers selected as a Featured Offer is a voluntary commercial decision and not 'coercion' within the meaning of controlling case law." (*Id.*) In sum, Amazon asserts that it "has done nothing more than announce an eligibility rule for determining which offers it will select to be a Featured Offer and enforce that unilateral rule through internal tools." (*Id.*; see Reply, 11.)[16]

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that it is a common evidentiary motion.)"].) Amazon's argument that this evidence is "admissible for rehabilitation" (Reply, 4 fn. 2) is unpersuasive.

[16] In support of its motion, Amazon offers testimony by Amazon witnesses and business documents to establish that its motivation in using SC-FOD was to avoid harming consumers' perception of the Amazon store as a place to find competitive prices. (See Opening Brief, 13-14, citing SUF 41-42.) However, nowhere does it proffer any affirmative evidence that SC-FOD has had procompetitive *effects*. Purpose and effect are entirely distinct issues. As this Court previously observed, "given the industry- and market-specific contexts in which such issues arise, such issues almost certainly will be the subject of competing expert testimony." (Mar. 30, 2023 Order, 13, quoting J. Baker & F. Morton, "Antitrust Enforcement Against Platform MFNs," 127 Yale L.J. 2176, 2185 (2018) ["when a [Most Favored Nation clause] may create both anticompetitive effects and efficiencies, it is an empirical question whether it would be justified as procompetitive in any particular industry"].).) Amazon, which does not attempt to show that SC-FOD has had pro-competitive effects, does not disagree.

The People disagree, arguing that "Amazon's use of SC-FOD/Buy Box Suppression, and other related, escalating disincentives, coerces seller compliance with price parity sufficient to establish the necessary 'combination' for violation of the Cartwright Act." (Opposition, 19; see *id.* at 23-24.) In particular, the People assert that "Amazon applies SC-FOD/Buy Box Suppression to punish non-compliant sellers, impeding the ability of customers to purchase their products. Amazon takes further affirmative steps, emailing non-compliant sellers to alert them their offers are subject to SC-FOD/Buy Box Suppression and identify the specific price Amazon requires to fix the issue." (*Id.* at 24.)

The undisputed facts are as follows. "SC-FOD does not result in third-party sellers' offers being removed from the Amazon store." (UMF 37.) "Offers ineligible to be selected as a Featured Offer due to SC-FOD remain available to purchase in Amazon's store through the All-Offers Display, formerly known as the Offer Listing Page." (UMF 38.) "The standard notice Amazon sends to sellers telling them that their offers are ineligible to be selected as a Featured Offer because they are not competitively priced states that the sellers could regain eligibility to become the Featured Offer by lowering their prices on Amazon and provides sellers with that competitive reference price." (UMF 36.) These undisputed facts are sufficient to establish that Amazon does not outright refuse to deal with third-party sellers who do not maintain price parity. Indeed, the People do not assert that this is a typical refusal to deal case. Rather, the People contend that Amazon takes affirmative actions to coerce price parity. (Opposition, 3, 8-9.)

Amazon submits deposition testimony from employees who oversaw SC-FOD, ASB, and pricing. That testimony establishes that SC-FOD was not used as a direct enforcement mechanism for price parity. In particular, Christina Glenn, Amazon's Vice President of Pricing and Promotions, "has overseen the SC-FOD program, and the Amazon team members responsible for SC-FOD, from 2017 to present." (UMF 46-47.) Ms. Glenn testified that SC-FOD was never used to enforce the BSA, ASB, MFPP, or SCC. (Ex. 24, 563:13-564:22.)

Regarding ASB, Jessica Reynolds, Senior Manager for the Brand Excellence team, "has worked on the Brand Excellence team, and the ASB program, since joining Amazon in 2019." (UMF 65-66.) Ms. Reynolds testified that "[w]ithin the context of the ASB policy, and ASB policy applications, there's not a featured offer removal application. The actual ASB policy applications . . . it's new offer redirection

is one. And, [] that's one of the policy applications. But it's not the same as featured offer removal. That's [] different, and our team doesn't do that." (Ex. 29, 117:15-22; see UMF 60 ["The team that runs ASB is separate from the team that runs SC-FOD."].)

As to the MFPP, Sara Borowski, Amazon Product Manager from 2015 to 2017, led the original experiments that resulted in the creation of SC-FOD. (UMF 44.) Ms. Borowski then oversaw SC-FOD from 2015 to 2017. (UMF 45.) Ms. Borowski testified that SC-FOD was never used to enforce the MFPP. (Ex. 16, 401:20-24.) Similarly, Chris Brown, Director of Price Perception at Amazon, is the current owner of the SC-FOD team and was responsible for the SC-FOD program before late 2019 and after 2022. (UMF 51-52; see UMF 49.) Mr. Brown testified that "SC-FOD is not related to the MFPP, but since 2019 when [he] joined pricing, [he] took over atypical pricing featured offer disqualification reference prices, as well as PEP [price error prevention], which is listing the activation, all three of which are related to and referred to in the MFPP." (Ex. 17, 372:8-13; see *id.* at 372:15-17 ["the systems that I run are not related, but I see the systems that I run as closer to the text of the MFPP"].) Mr. Brown also testified that "Amazon does not enforce the MFPP through SC-FOD." (Ex. 18, 534:20-21; see *id.* at 614:15-19.) Furthermore, Rajiv Chopra, Amazon's Vice President of Worldwide Pricing and Competitor Monitoring from April 2018 to December 2024 (UMF 54), testified that SC-FOD was never used to enforce MFPP. (Ex. 22, 628:2-7). In particular, Mr. Chopra testified that SC-FOD and MFPP "are entirely different topics." (Ex. 22, 628:7-8.) Mr. Chopra testified that MFPP "is about [] egregious pricing or [] attempted price gouging and atypically high pricing. And [he] believe[s] the seller pricing systems included tools for price error prevention as well as atypically high pricing featured offer disqualification." (*Id.* at 628:14-19.)

Although Amazon submits evidence to support its position that it did not use SC-FOD to directly enforce the BSA, ASB, MFFP, or SCC, Amazon does not submit any material facts or affirmative evidence that its communications to sellers or other conduct was not coercive.[17] Rather, Amazon relies on

[17] The "golden rule" of summary judgment is that "if it is not set forth in the separate statement, *it does not exist*. Both the court and the opposing party are entitled to have all the facts upon which the moving party bases its motion plainly set forth *in the separate statement*. And if the separate statement does not contain all material facts on which the motion is based, the moving party has failed to meet its initial burden of production and is not entitled to summary adjudication as a matter of law." (*California-American Water Co. v. Marina Coast Water Dist.* (2022) 86 Cal.App.5th 1272, 1297-1298 (cleaned up).)

the fact that it does not outright refuse to deal with sellers when an offer is ineligible to be a Featured Offer because the product remains available for purchase. (UMF 37-38.) However, the People raise triable issues of material fact regarding coercion such that Amazon is not entitled to summary adjudication.

It is undisputed that "[i]n 2024, Amazon generated over $630 billion in revenue globally, and has a market cap well in excess of $2 trillion." (AMF 109.) It is undisputed that "Amazon also boasts over 100 million Prime members in the United States." (AMF 110.) It is further undisputed that "[e]ven the largest sellers in the Amazon store contribute a miniscule fraction of Amazon's revenues." (AMF 111.) In other words, Amazon has superior market power. The People present evidence from which a jury could reasonably conclude that Amazon employed its market power as leverage, in an escalating manner, to coerce third party sellers to comply with price parity requirements.

Amazon uses multiple means to notify sellers that an offer is ineligible to be a Featured Offer. It is undisputed that Amazon began sending "nudges" via email to sellers in 2015 notifying them that their offer was ineligible for selection as a Featured Offer. (AMF 50.) Indeed, in 2015, Amazon began removing the Buy Box on certain unique ASINs when the lowest priced Buy Box eligible offer was priced above a specific competitor for the same item. (Ex. 156, CAAGLit-AMZ_00218566.)[18] Amazon did "not proactively communicate this change to Sellers." (*Id.*) Rather, Amazon provided "fee discounts on the impacted ASINs to help Sellers lower their prices" and "nudge[d] Sellers with offers on the impacted ASINs and suggeste[d] a lower price at or below the Buy Box threshold." (*Id.*; see *id.* at CAAGLit-AMZ_00218564.) It is undisputed that in 2019, the communications started stating that an offer's ineligibility was due to the product's price being higher than certain competitors. (AMF 50; see, e.g., Ex. 192, CAAGLit-AMZ_13662045.) It is also undisputed that "Amazon revised its Seller Central dashboard (its primary way of communicating with sellers) to display all products that were subject to SC-FOD/Buy Box Suppression in a Pricing Health portal." (AMF 53.) It is further undisputed that "Amazon updated the data shared with third-party applications (APIs), providing those APIs with the ability to alert Amazon sellers when offers were subject to SC-FOD/Buy Box Suppression." (AMF 54.)

[18] "ASIN" refers to Amazon Serial Identification Number. (AMF 33.)

Thus, when a seller priced an item lower with a competitor than with Amazon, that seller may receive three different types of notifications that the offer for the item is no longer eligible to be a Featured Offer.

In addition to multiple notifications regarding an offer's ineligibility as a Featured Offer, Amazon undisputedly communicates directly with its sellers. (See AMF 55.) Amazon does not dispute that its "Seller Support representatives sometimes communicate with sellers who initiate communications to ask why they were not selected as the Featured Offer." (AMF 56; see AMF 57-58.) The People's evidence shows that Amazon's communications with sellers would escalate from standard form communications to explicit demands of sellers. In particular, a standard form exemplar response from Amazon's Selling Partner Support "regarding Featured Offer (Buy Box)" for a specific item states:

> Our internal investigation determined that you are not eligible to be featured in the Buy Box for ASIN [] because your offer is not priced competitively compared to other retailers outside of Amazon.
> Below are some options for you to price your offers competitively:
>
> On the Pricing Health page, lower your offer's total price (Price + shipping) to match or beat the Competitive Price . . . .
> Enroll in Automated Pricing which allows you to automatically adjust prices on SKUs in your catalog, in response to events such as the Buy Box winning price, without having to revisit the SKU every time you want to change your price. Learn more about Automatic Pricing . . .
> You can read more about Pricing Health on our Pricing Help page: . . .

(Ex. 187, CAAGLit-AMZ_13481940; see also Ex. 190, CAAGLit-AMZ_08200832.) Another standard form exemplar communication from Amazon's Seller Partner Support to a seller states:

> Thank you for contacting us with your question about seller pricing policies. You may list items at any price you feel is fair, regardless of the Amazon price or list price, *within the limits set by Amazon, and so long as your price adheres to the parity requirements of your selling agreement . . . In all cases, you must adhere to the parity requirements of your selling agreement. Please review the following section of the Amazon Services Business Solutions Agreement . . .*

(Ex. 119 (emphasis added); see Exs. 120-121; see also Ex. 200, CAAGLit-AMZ_09189079-80.) These standard form communications make clear that sellers must comply with price parity requirements.

Indeed, direct communications with Amazon reflect explicit demands to comply with price parity requirements. For example, a direct email from an Amazon Senior Account Manager to a seller states: "You are going to have to match that price, or increase the price on [], to get the buy box back. If you raise the price on other sites, we may have to put in a case with Seller Support to get the buy box request

expedited." (Ex. 189, CAAGLit-AMZ_08563548.) In another instance, a seller received a notification that one of its offers was ineligible to be a Featured Offer because the product was priced higher on Amazon than at other retailers. (Ex. 190, CAAGLit-AMZ_08200832.) The seller contacted Amazon, stating:

> Not sure what's causing this…saw someone offering the product for $10 less on [], so I bought it and now they're sold out…hopefully that settles the matter
>
> I mentioned this the other week, perhaps I'm misunderstanding it, but isn't Amazon dropping the price parity with other websites thing?

(*Id.* at CAAGLit-AMZ_08200831-32.) Amazon responded by stating that "[t]he policy adjustment [the seller was] referring pertains to products that are supplied by a vendor to be sold exclusively by Amazon. Price mapping in general is not part of that policy as we currently understand it." (*Id.* at CAAGLit-AMZ_08200831.) The seller then asked, "How do we fix the issue?" (*Id.*) Amazon responded: "Having the listing removed or updated on the [external retailer] side should fix the problem." (*Id.*) Furthermore, one seller "was told that 'until there is an increase in price on [external retailer] or our seller drops their price it will stay suppressed.'" (Ex. 191, CAAGLit-AMZ_07025209; see also, e.g., Ex. 91, 251:8-252:13 [after third-party seller received a notification from Amazon about a lower price off Amazon, it contacted its two distributors who sold products on other websites and, after those distributors did not adhere to its request to raise their prices, the seller stopped doing business with them].)[19]

The escalation continued. In addition to multiple notifications and direct communications with sellers, Amazon would offer "a free coaching engagement with a Customer Experience Ambassador." (Ex. 79, 82:7-12.) That engagement was specifically designed to address the seller's pricing. (*Id.* at 82:25-83:6; see Ex. 81, 81:1-7 ["And then we got somebody in October/November. His name is Jay. And in those first meetings, Jay and Jessica were in those meetings explaining this pricing metrics that

[19] Amazon argued that in "most" of these communications, it was merely responding to sellers' inquiries regarding the accuracy of its price notifications or how to get their Buy Box restored, and that none are comparable to the threatening demands at issue in the cases. Of course, most is not all. Moreover, as Amazon conceded at the hearing, the case law does not supply a bright-line test to distinguish between innocent communications and threatening ones. At least on this record, the nature and characterization of those communications raise disputed issues of material fact that must be decided by the trier of fact. (See, e.g., *Kolling*, 137 Cal.App.3d at 714 [potential distributor testified that he was told, in a "threatening" tone, that defendant "strongly urged" its distributors to adhere to the cover price for rack sales]; CACI No. 3408 ["Coercion may be proven directly or indirectly," and the trier of fact may consider a number of factors in deciding whether there was coercion].)

had to be met. And that's when we started working with Jay every week, it started, then every other week."]; *id.* at 82:19-25 ["Q. What is the reference to 'price competitiveness' here? A. Again, it's the 95 percent 90-day price competitiveness score that they wanted us to meet. And he was going to work with us on meeting that, helping us meet that."].)

Amazon's superior market power in combination with multiple notifications, direct communications with sellers, and even coaching sellers regarding price parity, whether standing alone or in totality, are at least indicia of coercive conduct. This conclusion is reinforced by the economic effects of a seller's failure to comply with price parity as negative economic effects can present ripe circumstances for effective coercion. In particular, it is undisputed that SC-FOD/Buy Box Suppression results in a loss of key benefits and features on Amazon's store. (Compare, e.g., *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation* (10th Cir. 2022) 44 F.4th 959, 998 [concluding the plaintiff failed "to demonstrate coercion because the loss of an additional discount was the only consequence PBMs faced for rejecting Mylan's exclusive rebate agreements"].) In 2019, Amazon began "demoting the search rank of uncompetitive [] items . . . At a minimum, the price uncompetitive items will be moved out of the top 5 search results, which account for ~70% of purchases. This feature will reduce, but not eliminate how much traffic [Amazon] drive[s] to uncompetitively priced items." (Ex. 220, CAAGLit-AMZ_06414803.001; see, e.g., Ex. 50, 84:9-11 ["The Buy Box is not displayed, and the search ability of it is reduced or diminished completely."]; Ex. 52, 95:22-24 ["when we don't have the Buy Box, then we can't advertise on it, and it doesn't show up as high in search"].) Then, "Amazon removed the More Buying Choices box (which identified additional offers on the detail page) from SC-FOD/Buy Box Suppressed ASINs in approximately 2020, and removed additional links to the All Offers Display in 2021." (AMF 65.) "When Amazon added Add-to-Cart buttons to its search results page in 2022, it ensured that ASINs without a Buy Box did not receive them." (AMF 75.) "Starting in 2023, Amazon added a 'No featured offers available' message above the Buy Box." (AMF 66.) Additionally, "to be eligible for a sponsored product advertisement, an offer has to be eligible to be the Featured Offer." (AMF 70.) "Buy Box Suppressed ASINs were [also] eliminated from eligibility for recommendation widgets." (AMF 71.) Furthermore, a "Buy Box Suppressed ASIN was removed from

the standard Twister view and replaced with a link with no picture and greyed out text reading 'See [number] options with no featured offers.' Only if a customer clicked on this link would they be able to view pictures and details of the SC-FOD/Buy Box suppressed ASIN." (AMF 72.)

SC-FOD/Buy Box Suppression has serious financial consequences for sellers. For example, if a seller loses a Buy Box, that seller could see their sales drop to almost zero. (Ex. 90, 33:16-18; see Ex. 46, 64:23-24 ["your sales would plummet"]; Ex. 96, 136:7-11 ["you probably, most of the time, would not sell your product . . . if you didn't adjust the price to make it eligible, you, in all likelihood, would not sell that product"], 91:5-18, 304:4-15; Ex. 50, 84:16-17 ["Our sales plummet. They go down very sharply, very quickly."]; Ex. 53, 38:10-11 ["sales would go down roughly 90 percent"]; Ex. 54, 72:7-11; Ex. 56, 65:4-9 ["If our Buy Box is lost, then we will lose -- it's inconsistent depending on the product, but usually over 90 percent of the monthly sales for that product. And I have a cookie example that used to sell 2,000 units a month and now sells like maybe 40 on a good month when the Buy Box is suppressed."]; Ex. 87, 90:15-22; see also, e.g., Ex. 46, 65:12-15 ["no one just goes out of the Buy Box into the other selling options and then goes and finds and buys from you. We have not experienced that in all of our years."]; Ex. 90, 33:4-12 ["speaking as a person who shops on Amazon quite frequently, if you go to that product page and you don't see a button that says 'buy now' or 'add to cart' -- instead you see something that says something like 'click here to see sellers' -- in our experience, our conversion rate dropped almost to zero. Almost nobody clicks that button. Generally people will hit 'back' and they'll look at a different product."].) The dramatic decrease in sales following removal of the Buy Box gives rise to the inference that SC-FOD/Buy Box Suppression has the effect of refusal to deal if a seller has little to no sales.

Notably, one seller testified as follows: "we work around Amazon instead of through Amazon because there is no point of -- there's no way to negotiate that change. So yes, without Amazon, our company would cease to exist as it represents almost all of our sales on and off the marketplace." (Ex. 46, 90:5-10; see also, e.g., *R.E. Spriggs Co.*, 94 Cal.App.3d at 425 ["Coors' ideas about proper prices at the wholesale and retail level may only have been couched in terms of suggestions, but having in mind Coors' relative economic clout, particularly its power to cancel valuable distributor franchises almost at will, it seems clear that there is evidence that Coors engaged in price maintenance through suggestions

which the distributors could not refuse."]; compare also, e.g., *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litigation*, 44 F.4th at 997 ["no PBM testified that they felt compelled to enter into exclusive agreements with Mylan despite unfavorable terms. Instead, the clear evidence presented by the record discloses PBMs entered exclusive deals with *both* Mylan and Sanofi whenever they offered the most advantageous terms." (emphasis in original)]; *In re Qualcomm Antitrust Litigation* (N.D. Cal. 2017) 292 F.Supp.3d 948, 976-977 [holding the plaintiffs sufficiently alleged an unlawful combination under the Cartwright Act where the "Plaintiffs allege that Qualcomm employed its superior market power and threatened to withhold chips if OEMs did not agree to Qualcomm's licensing terms. Plaintiffs' allegations specify the threats and explain why coercion was effective."].)

Thus, the People's evidence raises triable issues of material fact as to whether Amazon's conduct to secure compliance with price parity requirements goes beyond the announcement of a pricing policy and refusal to deal, as well as whether Amazon's conduct constitutes affirmative action leading to involuntary acquiescence of sellers. (See *Kolling*, 137 Cal.App.3d at 721-722 [affirming judgment for plaintiff distributor, which was supported by evidence that, among other things, defendant had a "definitive pricing policy" pursuant to which it dealt with "dissident" distributors by strongly suggesting a price roll back, and that some distributors unwillingly lowered their price schedules to adhere to the policy; "Given the company's vastly superior bargaining strength, such 'suggestions' were in fact thinly disguised and threatening commands"].)

Accordingly, Amazon is not entitled to summary adjudication.

D. Summary Adjudication Likewise Must Be Denied As To The People's Derivative UCL Claim.

Having concluded that Amazon is not entitled to summary adjudication that SC-FOD does not violate the Cartwright Act, the Court necessarily reaches the same conclusion as to the People's UCL claim, which is largely if not entirely derivative of its antitrust claim. (See *In re Automobile Antitrust Cases I & II*, 1 Cal.App.5th at 132 fn. 1 ["since the two causes of action stand or fall together, we will not separately discuss the [People's] unfair competition claim"].)[20]

[20] The Court's conclusion renders it unnecessary to address the parties' dispute regarding whether conduct can be "unfair" under the UCL even if it does not violate the Cartwright Act. (Compare Opening Brief, 19-21 [arguing that "conduct alleged to be unfair because of its effect on competition cannot support a

CONCLUSION

Amazon's motion for summary adjudication of its seventh cross-claim is denied.

IT IS SO ORDERED.

Dated: April 15, 2026

Ethan P. Schulman
Judge of the Superior Court

UCL claim when the same conduct fails to restrain competition within the meaning of the Cartwright Act"] with Opposition, 25-26 ["there is no question that conduct can be unfair under the UCL even if it is not unlawful under the Cartwright Act"].)

CERTIFICATE OF ELECTRONIC SERVICE

(CCP 1010.6, and CRC 2.251)

I, Edward Santos, 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 April 15, 2026, I electronically served:

ORDER DENYING AMAZON.COM INC.'S MOTION FOR SUMMARY ADJUDICATION OF ITS SEVENTH CROSS-CLAIM

via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Date: APR 15 2026

Brandon E. Riley, Court Executive Officer

By: Edward J. SL

Edward Santos, Deputy Clerk