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

14 **THE PEOPLE OF THE STATE OF**
15 **CALIFORNIA,**

16 Plaintiff/Cross-Defendant,

17 v.

18 **AMAZON.COM, INC,**

19 Defendant/Cross-Complainant.

Case No. CGC-22-601826

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THE
PEOPLE OF THE STATE OF
CALIFORNIA'S MOTION FOR
PRELIMINARY INJUNCTION TO
ENJOIN AMAZON'S RETAIL PRICE
FIXING SCHEME**

REDACTED VERSION

Date: April 14, 2026
Time: 11:00 a.m.
Dept: 304
Judge: Hon. Ethan P. Schulman
Action Filed: September 15, 2022
Trial Date: January 19, 2027

23
24 **FILED CONDITIONALLY UNDER SEAL--REDACTED VERSION**
25 **Public--Redacts Materials From Conditionally Sealed Record**
26
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1 **I. INTRODUCTION**

2 The People bring this motion to stop the plainly unlawful conduct that discovery has uncovered:
3 **price fixing**.¹ When faced with a competitor offering a lower price, Amazon does not compete fairly.
4 Instead, Amazon insulates itself from competition by strong-arming its vendors into raising prices offered
5 by its competitors, often with the explicit or implicit agreement of the competing retailer. These are not
6 general discussions about price—these are explicit agreements to increase retail prices, all so Amazon can
7 maintain its profit margins at the expense of consumers.

8 Evidence developed in discovery reveals that Amazon, its vendors, and competing retailers are
9 fixing retail prices. Time and again, across years and product categories, Amazon reaches out to its
10 vendors and instructs them to [REDACTED] retail prices on competitors’ websites, threatening dire consequences
11 if vendors do not comply. Vendors, cowed by Amazon’s overwhelming bargaining leverage and fearing
12 punishment, comply—agreeing to raise prices on competitors’ websites (often with the awareness and
13 cooperation of the competing retailer) or to remove products from competing websites altogether. The
14 scheme is neither subtle nor complex. It is price fixing, and it should be immediately enjoined.

15 Price fixing—*i.e.*, “[a]ny combination which tampers with price structures”—is universally
16 condemned under California’s Cartwright Act as illegal *per se*. (*See Mailand v. Burckle* (1978) 20 Cal.3d
17 367, 376 [citation omitted].) By “tampering with prices,” Amazon is undermining the bedrock principle
18 that prices “must be determined . . . by the interplay of the economic forces of supply and demand” and
19 not the dictates of a powerful market actor. (*Id.* at 377 [citation omitted].)

20 Amazon’s unlawful conduct must stop. The People respectfully request that Amazon be enjoined
21 from: (1) engaging in explicit price fixing with its vendors and its competitors; (2) communicating with
22 vendors about other retailers’ pricing; and (3) coercing its vendors to serve as the go-between with its
23 competitors by demanding money to make Amazon whole for price matching a lower-priced retailer. The
24 People further request that a monitor be installed to ensure Amazon’s compliance with the injunction.

25 **II. FACTUAL BACKGROUND**

26 Amazon, its vendors, and competing retailers are fixing retail prices of products sold to consumers.
27 This price fixing scheme typically begins with Amazon demanding that vendors [REDACTED]
28 [REDACTED] the prices of products on other retailers’ websites. More
euphemistically, Amazon instructs vendors to “manage” their “channels” (*i.e.*, other retailers) to increase
retail prices. These directives to vendors are backed by the threat of significant penalties for failure to
comply—ranging from [REDACTED]

¹ This motion relates exclusively to Amazon’s first party retail sales and wholesale relationships.

1 [REDACTED].²

2 These agreements to raise prices can be implemented in multiple ways and often take the form of
3 one or more of the following three price fixing schemes: (1) where Amazon and a competitor are price
4 matching one another,³ resulting in downward pressure on price, either Amazon or the competitor agrees,
5 through their common vendor, to break a price match on a product by increasing the retail price or making
6 the product temporarily unavailable, so that the other retailer can match the increased market price
7 (“Breaking the Price Match”); (2) a competitor offering a discounted price on a product will increase its
8 retail price at Amazon’s request (a request made through the vendor), so that Amazon can then match the
9 increased retail price (“Increasing the Competitor Retail Price”); or (3) the vendor removes a product from
10 a competing retailer who is offering a lower price than Amazon, so that the lower price is no longer
11 available in the market and Amazon then raises its retail price (“Removing the Product”).

12 **A. Amazon, Its Vendors, and Competing Retailers are Fixing Retail Prices**

13 Below are examples of the three price fixing schemes employed by Amazon, its vendors, and its
14 competitors. These communications are naked agreements on price.

15 **1. Amazon, [REDACTED] Agreed on Increased Retail Pricing for [REDACTED]**

16 Amazon, [REDACTED] agreed to fix prices on [REDACTED]. This exchange is
17 an example of Breaking the Price Match.

18 To start, Amazon sent [REDACTED]

19 [REDACTED]⁴ The next day, [REDACTED]

20 [REDACTED]

21 [REDACTED]⁵ [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]⁷ [REDACTED] reiterated [REDACTED]

25 [REDACTED]

26 [REDACTED]⁸ In response, Amazon

27 [REDACTED]

28 ² [REDACTED]. (See, e.g., Ex. 1 at 104:22-105:21.) Unless otherwise noted, all Exhibit
references refer to the Declaration of Nell Moley.

³ [REDACTED]. (See Ex. 58
(Compl.) ¶ 33; Ex. 2 at 17:19-22, 63:13-64:8, 75:9-22, 76:21-77:2.)

⁴ Ex. 3 (CAAGLit-AMZ_06837773) at 781.

⁵ *Id.* at 780.

⁶ [REDACTED].

⁷ Ex. 3 (CAAGLit-AMZ_06837773) at 778.

⁸ *Ibid.*

1 acknowledged that [REDACTED]
2 [REDACTED]⁹ The result of this price fixing agreement was that
3 [REDACTED] and Amazon both increased the price for a specific product to a specific level, as opposed to the
4 lower price that [REDACTED] had been offering.

5 **2. Amazon, [REDACTED] Agreed on Increased Retail Prices for [REDACTED]**

6 Amazon, vendor [REDACTED] fixed prices on [REDACTED]
7 [REDACTED]. This is also an example of Breaking the Price Match, but here, Amazon [REDACTED]
8 [REDACTED].

9 The plan was memorialized in an email from [REDACTED] [REDACTED]
10 [REDACTED]¹¹ [REDACTED]
11 [REDACTED]¹² In other words, [REDACTED]
12 [REDACTED]. In

13 response, Amazon insisted on [REDACTED]
14 [REDACTED]¹³ [REDACTED]
15 [REDACTED]¹⁴ [REDACTED]
16 [REDACTED]¹⁵ [REDACTED]
17 [REDACTED]
18 [REDACTED]¹⁶

19 The plan was realized [REDACTED]. [REDACTED]
20 [REDACTED]¹⁷ [REDACTED]
21 [REDACTED]¹⁸ [REDACTED]

22 The result of Amazon, [REDACTED] price fixing agreement was to increase the retail prices [REDACTED]
23 [REDACTED].

24 ⁹ *Id.* at 775.

25 ¹⁰ Ex. 4 (CAAGLit-AMZ_07709030) at 036.

26 ¹¹ *Ibid.*

27 ¹² *Ibid.*

28 ¹³ *Ibid.*

¹⁴ *Id.* at 035.

¹⁵ *Ibid.*

¹⁶ *Id.* at 032-033.

¹⁷ *Id.* at 030-031.

¹⁸ *Id.* at 030.

3. Amazon and Its Vendor [REDACTED] Agreed on Increased Retail Pricing at [REDACTED]

Amazon also fixed prices with a [REDACTED] vendor, [REDACTED].

This exchange illustrates the Increasing the Competitor Retail Price and Removing the Product price fixing schemes.

Here, Amazon demanded that [REDACTED]

[REDACTED].¹⁹ [REDACTED]

[REDACTED].²⁰ Amazon then told

the vendor it should be [REDACTED]

[REDACTED].²¹ Amazon sent [REDACTED]

emphasizing that [REDACTED].²²

Days later, [REDACTED] confirmed that it had “[REDACTED]

[REDACTED]

[REDACTED].²³ [REDACTED]

[REDACTED].²⁴ But Amazon later advised that [REDACTED]

[REDACTED].²⁵

The next day, [REDACTED]

[REDACTED].²⁶ In the email excerpt below, [REDACTED]

[REDACTED]

[REDACTED].²⁷ Amazon responded (highlighted) to the vendors’ questions, confirming

that [REDACTED].²⁸ [REDACTED]

[REDACTED].²⁹

[REDACTED]

¹⁹ Ex. 5 (CAAGLit-AMZ_05993124) at 128.

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Id.* at 127.

²³ *Id.* at 126-127.

²⁴ *Id.* at 126.

²⁵ *Id.* at 125.

²⁶ *Id.* at 124-125.

²⁷ *Ibid.* [highlighting added for clarity].

²⁸ *Ibid.*

²⁹ *Ibid.*

1 These exchanges show Amazon and [REDACTED] agreeing to and raising specific prices for
2 specific products at competing websites. They also show [REDACTED]
3 [REDACTED].

4 **4. After Amazon Threatened Vendor [REDACTED]
5 [REDACTED] Removed Products from Competing Retailers to Increase Pricing**

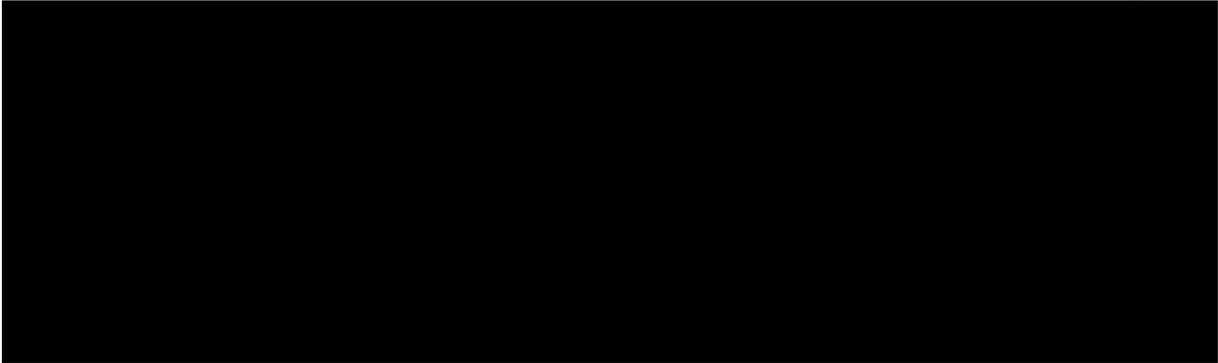
6 In another example of Removing the Product price fixing, Amazon brought [REDACTED]
7 [REDACTED],³⁰ [REDACTED]
8 [REDACTED]

9 [REDACTED]³¹ [REDACTED]
10 [REDACTED]
11 [REDACTED].³²

12 After further prodding from Amazon to [REDACTED] the vendor responded:

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]³³ In spite of this, Amazon responded that [REDACTED]
16 [REDACTED]³⁴ To

17 provide further clarity, Amazon included [REDACTED]
18 [REDACTED].³⁵ In that chart, Amazon was explicit about [REDACTED]
19 [REDACTED].³⁶



26 ³⁰ Ex. 6 (CAAGLit-AMZ_07698118) at 122-123.

27 ³¹ *Id.* at 121.

28 ³² *Ibid.*

³³ *Id.* at 119-120 [emphasis added].

³⁴ *Id.* at 118.

³⁵ *Id.* at 118-119 [highlighted and modified for clarity].

³⁶ *Ibid.*

1 The vendor assured Amazon that it would [REDACTED]

2 [REDACTED]
3 [REDACTED].³⁷ This example shows Amazon and [REDACTED] agreeing to remove products from
4 competing online retailers so that Amazon can raise its price.

5 **5. Amazon Communications Are Replete with Price Fixing**

6 The previous examples of Amazon’s price fixing are not outliers. Rather, they are illustrative of
7 countless interactions—spanning years and many different employees and product lines—in which
8 Amazon, vendors, and Amazon’s competitors agree to increase and [REDACTED] the prices of products on other
9 retail websites. Amazon’s goal is to insulate itself from price competition by preventing lower retail prices
10 in the market. As Amazon told one vendor explicitly: [REDACTED]

11 [REDACTED]³⁸

12 In the Increasing the Competitor Retail Price method of price fixing, Amazon provides exact
13 details of its competitors’ prices and directly asks vendors to [REDACTED] getting the competitors to increase
14 their prices. In one such case, Amazon directed vendor [REDACTED]

15 [REDACTED]
16 [REDACTED]³⁹ In another example, Amazon sent [REDACTED]

17 [REDACTED]⁴⁰ In another exchange, Amazon
18 sent vendor [REDACTED], asking if the vendor
19 was [REDACTED]⁴¹ [REDACTED] responded by telling Amazon [REDACTED]

20 [REDACTED]⁴² Amazon then confirmed that it was
21 [REDACTED]⁴³

22 In Breaking the Price Match price fixing, Amazon helps vendors to temporarily “break” the price
23 match between Amazon and its competitors to raise prices. Amazon and a competitor will knowingly stop
24 price matching each other, so that one retailer can increase its price, and the other retailer can match to the
25 new, higher price. Thus, both competitors start selling at a higher price, increase their profits, and

26 ³⁷ *Id.* at 118.

27 ³⁸ Ex. 7 (CAAGLit-AMZ_06691185) at 188.

28 ³⁹ Ex. 8 (CAAGLit-AMZ_06282053) at 053.

⁴⁰ Ex. 9 (CAAGLit-AMZ_08073831) at 831-833.

⁴¹ Ex. 10 (CAAGLit-AMZ_04146424) at 425-426.

⁴² *Id.* at 424-425.

⁴³ Ex. 11 (CAAGLit-AMZ_04146450) at 450.

1 consumers pay more. For example, Amazon emailed vendor [REDACTED]
2 [REDACTED]
3 [REDACTED]⁴⁴ [REDACTED]
4 [REDACTED]⁴⁵
5 [REDACTED]⁴⁶

6 In Removing the Product price fixing, vendors respond to Amazon's demands for increased retail
7 prices by simply removing inventory from other retailers' sites so that the Amazon price will then increase.

8 In response to Amazon [REDACTED]
9 [REDACTED]⁴⁷ Similarly, Amazon asked vendor [REDACTED]
10 [REDACTED]⁴⁸ [REDACTED]
11 [REDACTED]⁴⁹ Further examples of

12 these price fixing schemes include:

- 13 • Amazon complained to vendor [REDACTED]
14 [REDACTED]⁵⁰
- 15 • Amazon told vendor [REDACTED]
16 [REDACTED]
17 [REDACTED]⁵¹ The next day, the vendor confirmed that [REDACTED]
18 [REDACTED]
19 [REDACTED]⁵²
- 20 • Amazon asked vendor [REDACTED]
21 [REDACTED]⁵⁴
- 22 • Amazon complained to vendor [REDACTED]

23 _____
24 ⁴⁴ Ex. 12 (CAAGLit-AMZ_08584057) at 059.
25 ⁴⁵ *Id.* at 058.
26 ⁴⁶ *Id.* at 057.
27 ⁴⁷ Ex. 13 (CAAGLit-AMZ_08439799) at 801 [modified for clarity].
28 ⁴⁸ Ex. 14 (CAAGLit-AMZ_09362177) at 180.
⁴⁹ *Id.* at 179.
⁵⁰ Ex. 15 (CAAGLit-AMZ_07849492) at 492 [emphasis added].
⁵¹ Ex. 16 (CAAGLit-AMZ_08238106) at 106-110.
⁵² *Id.* at 106.
⁵³ Ex. 17 (CAAGLit-AMZ_06749887) at 887.
⁵⁴ *Ibid.*

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁵⁵

- Amazon complained to vendor [REDACTED]
[REDACTED]⁵⁶ [REDACTED]
[REDACTED]⁵⁷

- [REDACTED] Amazon that
its [REDACTED]
[REDACTED]⁵⁸ In response, Amazon [REDACTED]
[REDACTED]⁵⁹

- Amazon told vendor [REDACTED]
[REDACTED]⁶⁰ [REDACTED]
[REDACTED]
[REDACTED]⁶¹ Amazon [REDACTED]
[REDACTED]⁶²

- Amazon told vendor [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]⁶³

- Amazon sent vendor [REDACTED]
[REDACTED]⁶⁴ In
response, [REDACTED]
[REDACTED]⁶⁵

- Amazon emailed vendor [REDACTED]

⁵⁵ Ex. 18 (CAAGLit-AMZ_06693065) at 072 [emphasis added].
⁵⁶ Ex. 19 (CAAGLit-AMZ_07388817) at 818.
⁵⁷ *Ibid.* [emphasis added].
⁵⁸ Ex. 20 (CAAGLit-AMZ_06668836) at 837.
⁵⁹ *Id.* at 837.
⁶⁰ Ex. 21 (CAAGLit-AMZ_06347569) at 570-571.
⁶¹ *Id.* at 569.
⁶² *Ibid.*
⁶³ Ex. 22 (CAAGLit-AMZ_07894392) at 392.
⁶⁴ Ex. 23 (CAAGLit-AMZ_09936564) at 564-569.
⁶⁵ *Id.* at 564.

1 [REDACTED]

2 [REDACTED]⁶⁶ [REDACTED]

3 [REDACTED]⁶⁷ The following morning, [REDACTED]

4 [REDACTED]

5 [REDACTED]⁶⁸

- Amazon sent [REDACTED]

6 [REDACTED]⁶⁹ After the vendor responded [REDACTED]

7 [REDACTED] Amazon told the vendor to [REDACTED]

8 [REDACTED]⁷⁰

9 **B. Amazon’s Coerces Vendors into Price Fixing with its Online Retail Competitors**

10 Amazon’s substantial bargaining leverage over vendors enables it to coerce vendors into acting as
11 a go-between for Amazon and its retail competitors to increase retail prices in the market. The price fixing
12 is not driven by the vendors. Rather, Amazon tells vendors what prices it wants to see to maintain its own
13 profitability. Amazon can do this because it is the world’s largest, most powerful online retailer, and
14 vendors must comply with Amazon’s demands or risk repercussions.

15 **1. Amazon Wields Substantial Bargaining Leverage Over Its Vendors in Negotiations**

16 Amazon is a powerhouse in retail e-commerce, with a reported revenue of over \$387 billion and
17 an operating income of \$24.9 billion in North America alone in 2024.⁷¹ There are over [REDACTED]
18 Amazon Prime members in the United States, with millions more customers shopping on Amazon without
19 a Prime membership.⁷²

20 Due to this unparalleled access to customers, sales on Amazon represent a substantial portion of
21 business for many vendors.⁷³ To stop conducting business with Amazon is often not an option for vendors.

22 Vendor [REDACTED] said that if it had to, it would probably [REDACTED]

23 [REDACTED]⁷⁴ Vendor [REDACTED] said

24 ⁶⁶ Ex. 24 (CAAGLit-AMZ_04338258) at 259-260.

25 ⁶⁷ *Id.* at 259.

26 ⁶⁸ *Id.* at 258.

27 ⁶⁹ Ex. 25 (CAAGLit-AMZ_09204351) at 351-352.

28 ⁷⁰ *Id.* at 351.

29 ⁷¹ Request for Judicial Notice, Ex. A (Amazon.com, Inc.’s 2024 Form 10-K), pp. 24, 27.

30 ⁷² Ex. 26 at 122:1-5; Ex. 27 (AMZN-RTL-FTC-14430144) at 149. In approximately [REDACTED] of all US
31 households, at least one person has a Prime membership. Ex. 26 at 164:7-166:8; Ex. 27 (AMZN-RTL-
32 FTC-14430144) at 149.

33 ⁷³ See Ex. 28 at 85:17-86:3 [REDACTED]; Ex. 29 at 23:23-24:4 [REDACTED]; Ex. 30 at 28:8-21.

34 ⁷⁴ Ex. 28 at 139:15-21.

1 that if Amazon [REDACTED]

2 [REDACTED]⁷⁵

3 Every negotiation between Amazon and a vendor takes place in the context of these uneven power
4 dynamics. Amazon exercises its leverage over vendors to coerce them to raise prices at Amazon's
5 competitors.

6 **2. Amazon Punishes Vendors if They Allow Lower Prices on Other Retailers' Websites**

7 Amazon employs a variety of enforcement mechanisms to pressure its vendors into acting as a go-
8 between to fix the price of goods sold on other retailers' websites. Among the coercive tactics Amazon
9 uses to ensure compliance with its price fixing scheme are GMMs (Guaranteed Minimum Margin
10 Agreements) and Matching Compensation Program (MCP) payments, which penalize vendors monetarily
11 if vendors' products are offered on a competing retailer's site at a price below Amazon's.⁷⁶

12 In addition to monetary demands, Amazon uses other methods to coerce vendors to increase prices,
13 including threatening to [REDACTED],⁷⁷
14 [REDACTED];⁷⁸ threatening to [REDACTED]
15 [REDACTED]; and/or imposing other
16 unfavorable terms [REDACTED].⁷⁹

17 Coercive exchanges with vendors abound in Amazon documents. In one exchange, Amazon

18 [REDACTED]
19 [REDACTED]⁸⁰ [REDACTED]
20 [REDACTED] but then Amazon told [REDACTED]
21 [REDACTED]⁸¹ [REDACTED]
22 informed Amazon that it [REDACTED]

23 ⁷⁵ Ex. 31 at 308:10-22.

24 ⁷⁶ GMMs require vendors to pay Amazon for drops in profitability resulting from a price match. (See Ex.
25 58 (Compl.) ¶ 6; Ex. 32 at 181:18-182:18; Ex. 33 at 103:15-104:10; Ex. 34 at 335:12-25.) MCP payments
26 operate like a GMM but are retroactive. (See Ex. 58 (Compl.) ¶¶ 178, 180-181, 200; Ex. 35 at 70:2-14;
27 Ex. 36 at 193:18-194:19.) [REDACTED]

28 [REDACTED] (Ex. 37 at 205:16-206:10; Ex. 38 at 45:1-23; Ex. 39 (CAAGLit-
29 AMZ_05996791) at slide 3; Ex. 40 (CAAGLit-AMZ_08264180) at slide 3; see also Ex. 41 (CAAGLit-
30 AMZ_17308358) at 358 [REDACTED]

31 This is also known as [REDACTED]. (See Ex. 42 at
32 282:20-283:6; Ex. 35 at 188:4-9.)

33 ⁷⁸ Ex. 33 at 210:25-211:17, 215:14-25; Ex. 35 at 188:4-190:1; Ex. 39 (CAAGLit-AMZ_05996791) at slide
34 17; Ex. 40 (CAAGLit-AMZ_08264180) at slide 9; Ex. 43 (CAAGLit-AMZ_04739026) at 026.

35 ⁷⁹ Ex. 39 (CAAGLit-AMZ_05996791) at slide 17; Ex. 40 (CAAGLit-AMZ_08264180) at slide 9.

36 ⁸⁰ Ex. 44 (CAAGLit-AMZ_08559908) at 912-913.

37 ⁸¹ *Id.* at 911-912.

1 [REDACTED].⁸² [REDACTED]
2 [REDACTED].⁸³ In another example, Amazon
3 [REDACTED]
4 [REDACTED]⁸⁴

5 Amazon's message to vendors is clear: Ensure that prices at other retailers stay high or face
6 consequences. Vendors, dependent on Amazon and unable to pay the steep monetary penalties threatened
7 by Amazon or withstand the drastic loss in sales from a [REDACTED], respond by turning to one of
8 the three price fixing schemes described above to raise prices across the other channels on which they sell.

9 C. Amazon Conceals Evidence of Price Fixing

10 The full extent of Amazon's unlawful conduct reaches beyond the documentary record. This is
11 because Amazon [REDACTED]
12 [REDACTED]. For example, [REDACTED]
13 [REDACTED]

14 [REDACTED]⁸⁵ Similarly, an email to
15 Amazon employees cautions that, even though [REDACTED]
16 [REDACTED]

17 [REDACTED]⁸⁶ Amazon urges its employees to [REDACTED]
18 [REDACTED].⁸⁷ In line with this training, an
19 Amazon vendor manager told a vendor [REDACTED]
20 [REDACTED]⁸⁸

21 Exchanges like these demonstrate that Amazon's price fixing is even more widespread than the already-
22 voluminous documentary record suggests.

23 III. LEGAL STANDARD FOR PRELIMINARY INJUNCTIONS IN CALIFORNIA

24 When the government seeks a preliminary injunction, once it establishes a reasonable probability
25

26 ⁸² *Id.* at 910.

27 ⁸³ *Id.* at 908.

28 ⁸⁴ Ex. 45 (CAAGLit-AMZ_07413388) at 388-392.

⁸⁵ Ex. 46 (CAAGLit-AMZ_07401954) at slide 3 [emphasis in original]. [REDACTED]

⁸⁶ Ex. 47 (CAAGLit-AMZ_06707119) at 120; *see also* Ex. 48 (CAAGLit-AMZ_07115844) at 847; Ex. 49
(CAAGLit-AMZ_06687596) at 596 [REDACTED] [emphasis added]; Ex. 50
(CAAGLit-AMZ_04671018) at 028 [REDACTED]

[REDACTED] [second emphasis added].

⁸⁷ *See* Ex. 40 (CAAGLit-AMZ_08264180) at slide 8; Ex. 34 at 386:4-389:5.

⁸⁸ Ex. 51 (CAAGLit-AMZ_06107279) at 281.

1 of prevailing on the merits, “a rebuttable presumption arises that the potential harm to the public outweighs
2 the potential harm to the defendant.” (*People v. Uber Techs., Inc.* (2020) 56 Cal.App.5th 266, 283–84
3 [citation omitted].) Indeed, “[w]here a legislative body has enacted a statutory provision proscribing a
4 certain activity, it has already determined that such activity is contrary to the public interest.” (*IT Corp. v.*
5 *Cty. of Imperial* (1983) 35 Cal.3d 63, 70.) Only if the defendant can show that “it would suffer grave or
6 irreparable harm from the issuance of the preliminary injunction” does the court “examine the relative
7 actual harms to the parties.” (*Id.* at 72; *see also Water Replenishment Dist. of S. Cal. v. City of Cerritos*
8 (2013) 220 Cal.App.4th 1450, 1463.) The People seek relief under the Cartwright Act, which specifically
9 authorizes injunctive relief. (Bus. & Prof. Code § 16754.5.) Accordingly, the *IT Corp.* presumption
10 applies.

11 **IV. ARGUMENT**

12 **A. The People are Highly Likely to Prevail Because Amazon is Fixing Retail Prices**

13 **1. Price Fixing in Any Form Is *Per Se* Unlawful Under the Cartwright Act**

14 The Cartwright Act “generally outlaws any combinations or agreements which restrain trade or
15 competition or which fix or control prices, and declares that, with certain exceptions, every trust is
16 unlawful, against public policy and void.” (*In re Cipro Cases I & II* (2015) 61 Cal.4th 116, 136; *see also*
17 *Speegle v. Bd. of Fire Underwriters of the Pac.* (1946) 29 Cal.2d 34, 42–44.) The Cartwright Act explicitly
18 prohibits the following pricing combinations or agreements:

19 “[t]o . . . increase the price of merchandise or of any commodity” (Bus. & Prof. Code
20 § 16720(b)); “[t]o fix at any standard or figure, whereby its price to the public or consumer
21 shall be in any manner controlled or established” (*id.* at § 16720(d)); to “[b]ind
22 themselves not to sell . . . any article . . . below a common standard figure, or fixed value”
23 (*id.* at § 16720(e)(1)); to “[a]gree in any manner to keep the price of such article . . . at a
24 fixed or graduated figure” (*id.* at § 16720(e)(2)); and to “[e]stablish or settle the price of
25 any article . . . between them or themselves and others, so as . . . to preclude a free and
26 unrestricted competition among themselves, or any purchasers or consumers in the sale . .
27 . of any such article.” (*id.* at § 16720(e)(3).)

28 Consistent with the text of the Cartwright Act, California courts have long held that price fixing
agreements are *per se* illegal and are thus condemned on their face. “[P]rice fixing is illegal *per se*, so that
any combination which tampers with price structures constitutes an unlawful activity.” (*Kolling v. Dow*
Jones & Co. (1982) 137 Cal.App.3d 709, 721.) “[A]greements fixing or tampering with prices are illegal
per se.” (*Oakland-Alameda Cty. Builders’ Exchange v. F.P. Lathrop Constr. Co.* (1971) 4 Cal.3d 354,
363; *see also Cellular Plus, Inc. v. Super. Ct.* (1993) 14 Cal.App.4th 1224, 1243–44; *People v. Building*
Maintenance Contractors’ Ass’n (1953) 41 Cal.2d 719, 726–28.)

The *per se* rule applies to both horizontal and vertical price fixing schemes. (*Mailand, supra*, 20
Cal.3d at 376; *see also Building Maintenance, supra*, 41 Cal.2d at 726–28.) Vertical price fixing “destroys

1 horizontal competition as effectively as would a horizontal agreement among distributors or retailers and
2 is per se unlawful under the Cartwright Act.” (*Kunert v. Mission Fin. Servs. Corp.* (2003) 110 Cal.App.4th
3 242, 263 [citation omitted].) Coercion of downstream distributors to fix wholesale prices is *per se*
4 unlawful. (*R.E. Spriggs Co. v. Adolph Coors Co.* (1979) 94 Cal.App.3d 419, 428.)

5 **2. Amazon is Engaged in Price Fixing Under California Law**

6 Parties engage in price fixing when they “seek to determine the price at which goods or services
7 shall be offered to third parties.” (*Building Maintenance, supra*, 41 Cal.2d at 728.) Amazon, its vendors,
8 and competing retailers are doing precisely that by Breaking the Price Match, Increasing the Competitor
9 Retail Price, and Removing the Product. More specifically, in the Breaking the Price Match example
10 highlighted above, Amazon, ██████████ agreed on a higher retail price ██████████
11 ██████████, increasing the retail price charged to consumers on Amazon ██████████
12 ██████████.⁸⁹ In the Increasing the Competitor Retail Price and Removing the Product example
13 above, Amazon told ██████████

14 ██████████.⁹⁰ To ensure that prices were high enough for Amazon, ██████████
15 ██████████.⁹¹ As a
16 result, the vendor had ██████████
17 ██████████.⁹² Once again, this resulted in a clear agreement to increase the retail
18 price of ██████████ products, both on Amazon and on other websites. And in another Removing the
19 Product example, ██████████ and Amazon explicitly agreed to raise retail prices on ██████████
20 ██████████.⁹³ ██████████
21 ██████████ from being able to offer those products at all, by
22 removing the products from the competitors’ websites.⁹⁴ Once the products were removed from the
23 competitors, prices increased on Amazon to the agreed price.

24 Simply put, each of these methods constitutes price fixing. This price fixing scheme is driven by
25 Amazon, and it occurs against the backdrop of Amazon’s substantial bargaining leverage over its vendors
26 and its threats of steep penalties for vendors’ failure to comply. As the *Spriggs* court noted, “[defendant’s]
27 ideas about proper prices at the wholesale and retail level may only have been couched in terms of

28 ⁸⁹ Ex. 3 (CAAGLit-AMZ_06837773) at 773-781.

⁹⁰ Ex. 5 (CAAGLit-AMZ_05993124) at 127-128.

⁹¹ *Id.* at 126.

⁹² *Id.* at 126-127.

⁹³ Ex. 6 (CAAGLit-AMZ_07698118) at 118-123.

⁹⁴ *Id.* at 119-121.

1 suggestions, but having in mind [defendant’s] relative economic clout” there is clear evidence that the
2 defendant engaged in price fixing “through suggestions which the distributors could not refuse.” (*Spriggs*,
3 *supra*, 94 Cal.App.3d at 425.) Just as in *Spriggs*, unable to refuse Amazon’s pricing demands, vendors are
4 coerced into acting as intermediaries for Amazon and its online retail competitors to fix online retail prices.
5 By agreeing with its vendors and competitors on retail prices, Amazon is “tampering with prices.”
6 (*Lathrop, supra*, 4 Cal.3d at 363.) This conduct violates at least five separate pricing provisions of the
7 Cartwright Act. (Bus. & Prof. Code §§ 16720(b), (d), (e)(1), (e)(2), and (e)(3).) As a *per se* violation of
8 the Cartwright Act, the People are likely to prevail.

8 **B. Amazon Cannot Overcome *IT Corp.*’s Rebuttable Presumption of Public Harm**

9 Because the People are likely to succeed on the merits of their claims that Amazon’s price fixing
10 violates the Cartwright Act, a “rebuttable presumption arises that the potential harm to the public
11 outweighs the potential harm to the defendant.” (*IT Corp., supra*, 35 Cal.3d at 72.) The burden thus shifts
12 to Amazon to demonstrate it “would suffer grave or irreparable harm from the issuance of the preliminary
13 injunction.” (*Ibid.*) Amazon cannot meet this burden.

14 Amazon cannot show that *any* harm arises from a prohibition against illegal acts. “[A] party suffers
15 no grave or irreparable harm by being prohibited from violating the law,” (*Uber, supra*, 56 Cal.App.5th
16 at 306), and “as a matter of law, the cost of ceasing illegal conduct is not a cognizable injury” (*BBBB*
17 *Bonding Corp. v. Caldwell* (2021) 73 Cal.App.5th 349, 378). The purpose of the proposed injunction is to
18 restrain Amazon from engaging in illegal price fixing schemes with its vendors and retail competitors,
19 and Amazon can comply with the injunction by simply ceasing its illegal behavior.⁹⁵ Amazon has no legal
20 right to engage in price fixing, and thus cannot claim harm arising out of a prohibition against doing that
21 which it has no right to do in the first place.

22 Neither does financial loss suffice to show grave or irreparable harm. (*IT Corp., supra*, 35 Cal.3d
23 at 75.) In *IT Corp.*, the California Supreme Court found that although “the injunction would cause IT a
24 substantial economic loss . . . IT failed to show that the injunction would cause harm sufficient to constitute
25 grave or irreparable injury” given that the injunction would prohibit only specific activities and otherwise
26 allowed the defendant to continue to operate. (*Ibid.*) Any financial burden Amazon might incur to ensure
27 that it refrains from illegal price fixing simply does not rise to the level of grave or irreparable harm.⁹⁶

26 ⁹⁵ Appointment of a monitor to oversee Amazon’s compliance is well within the Court’s “broad powers
27 to fashion a remedy.” (*Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1040,
28 1044-45 [citation omitted].) The role of the monitor would ensure that Amazon does not engage in illegal
price fixing and would not require Amazon to substantially reshape its daily operations.

⁹⁶ Although the Court need not balance the relative harms, the balance of harms tips sharply in the People’s
favor. Amazon’s price fixing is taking money out of the pockets of millions of California consumers every

(continued...)

1 **V. CONCLUSION**

2 For the reasons set forth above, the People request the following interim relief, which is targeted
3 to restraining Amazon’s most egregiously unlawful conduct pending trial:

- 4 • That Amazon be enjoined from agreeing with its vendors and non-Amazon retailers to set, fix,
5 control, maintain, stabilize, and/or tamper with retail prices for the vendors’ products at any non-
6 Amazon retailer.
- 7 • That Amazon be enjoined from:
 - 8 ○ agreeing with a non-Amazon retailer, through their common vendor, to break a price match on
9 a product to increase the retail price;
 - 10 ○ coercing, requesting, or agreeing with a vendor to act as an intermediary to break a price match
11 with a non-Amazon retailer;
 - 12 ○ agreeing with a non-Amazon retailer, through their common vendor, to increase the retail price
13 of a product on a non-Amazon retailer;
 - 14 ○ coercing, requesting, or agreeing with a vendor to act as an intermediary to increase the retail
15 price of a product on a non-Amazon retailer; and
 - 16 ○ coercing, requesting, or agreeing with a vendor to make a product unavailable on a non-
17 Amazon retailer so that Amazon can increase the retail price.
- 18 • That Amazon be prohibited from communicating with vendors—whether by phone, in person, or by
19 email, chat, text, or other electronic means—concerning:
 - 20 ○ The price of a vendor’s product(s) at any non-Amazon retailer;
 - 21 ○ Amazon’s matching of the price of a vendor’s product(s) at any non-Amazon retailer;
 - 22 ○ Sales and/or promotions affecting a vendor’s product(s) at any non-Amazon retailer; and
 - 23 ○ Whether to remove or withdraw a vendor’s product(s) from any non-Amazon retailer.
- 24 • That Amazon be prohibited from requesting that vendors pay Amazon money because Amazon is
25 price matching a lower retail price on a product offered by a non-Amazon retailer.
- 26 • That a monitor be appointed to oversee and enforce Amazon’s compliance with the above injunction.

27 _____
28 day and reducing available product selection/choice. Protecting California consumers from suffering
higher prices on everything from diapers to clothing to furniture greatly outweighs whatever harm
Amazon may experience to comply with the law.

1 DATED: February 23, 2026

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