THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

AMAZON.COM, INC., a corporation,

Defendant.

CASE NO.: 2:23-cv-01495-JHC

PLAINTIFFS' OPPOSITION TO AMAZON'S SECOND MOTION TO COMPEL FURTHER RESPONSES TO ITS FIRST SET OF INTERROGATORIES

NOTE ON MOTION CALENDAR:
March 10, 2026

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INTRODUCTION

Amazon once again mischaracterizes Plaintiffs' interrogatory responses as inadequate. In doing so, Amazon glosses over important factual and legal issues, and fundamentally attempts to impose a legal burden on Plaintiffs that they do not have. In addition, despite Plaintiffs' repeated efforts to ascertain what Amazon purportedly lacks but believes Plaintiffs owe, substantiate Plaintiffs' positions in correspondence, and satisfy Amazon's demands through multiple supplemental responses, Amazon's position on what information it lacks remains elusive. At bottom, Plaintiffs' interrogatory responses are sufficient—Amazon just does not *like* them. But Amazon is not entitled to responses that support its views of the case, nor is it entitled to information beyond what Plaintiffs have supplied.

Plaintiffs have responded to Amazon's interrogatories consistent with their obligations. Amazon has repeatedly asserted that Plaintiffs have withheld responsive information, but that is incorrect. In May 2024 (nearly two years ago), Plaintiffs substantially completed their production of all responsive, non-privileged communications with third parties from Plaintiffs' pre-Complaint investigation. Further, Amazon has equal access to all factual information developed in this litigation, as well as its own ordinary course documents and data.

Amazon complains that discovery here is a one-way street. That is not so, as Plaintiffs have met and continue to meet their discovery obligations. But to the extent Amazon's gripe is that it has produced considerably more information than Plaintiffs, this is hardly surprising. This is a monopoly maintenance case against a lone defendant: Amazon. Plaintiffs are federal and state antitrust enforcers and do not possess their own business documents or data, or employ their own business executives. Unsurprisingly then, the parties' discovery focused more heavily on Amazon than Plaintiffs. But any purported asymmetry does not negate the sufficiency of Plaintiffs' interrogatory responses, and Amazon's dissatisfaction with the information it has

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received does not justify expending this Court's resources to hound Plaintiffs for information they do not possess. For the reasons discussed herein, the Court should deny Amazon's motion.

BACKGROUND

On July 30, 2024, Amazon served interrogatories on Plaintiffs. Plaintiffs timely served their responses and objections on August 29, 2024. *See* Dkt. #416. The parties met and conferred twice and corresponded several times throughout the fall of 2024 through early 2025. With negotiations ongoing, Amazon elected to file a motion to compel on February 19, 2025. Dkt. #414. On March 6, 2025, Plaintiffs opposed that motion because, among other issues, Amazon did not yet have the supplemental interrogatory responses Plaintiffs had already committed to serving and the motion was thus premature. Dkt. #434 at 6. On March 21, 2025, with Amazon's motion to compel still pending, Plaintiffs supplemented several interrogatory responses, as promised, including their response to Interrogatory No. 3.

On June 2, 2025, the Court denied Amazon's motion in significant part and granted it in other parts. Dkt. #488. Importantly, the Court did not have reason to review Plaintiffs' supplemental responses, nor did it rule on all of Plaintiffs' objections raised in their opposition to Amazon's motion to compel. *See, e.g.*, *id.* at 12 n.4. Following the Court's order to "more fully respond to Interrogatory No. 3," given that Amazon had "not withdrawn its motion," *id.* at 2, 18, Plaintiffs again supplemented their responses on June 12, 2025. *See* Dkt. #628.

The parties exchanged more correspondence, and Plaintiffs again supplemented their response to Interrogatory No. 3 on September 19, 2025. *See* Dkt. #628-1. Plaintiffs also supplemented their responses to Interrogatory Nos. 3, 4, 9, 13, and 16 on February 9, 2026. *See* Dkt. #628-2.

Plaintiffs' response to Interrogatory No. 3 identifies multiple third-party sellers on Amazon who have testified that they have used Amazon's fulfillment services in light of the

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policies challenged in Plaintiffs' Complaint, including effectively conditioning Prime eligibility, which is critical for sales, on the use of Amazon's fulfillment service. *See* Dkt. #628-2 at 14-17. Plaintiffs' response to Interrogatory No. 4 identifies, at a similar level of detail, multiple sellers who have testified that Amazon's price parity policies tend to cause them to maintain higher prices off Amazon. *See id.* at 17-23. (Amazon has not challenged this response.) Plaintiffs' response to Interrogatory No. 9 identifies multiple ways in which Amazon could meet the aims it claims are associated with its challenged conduct without adversely affecting competition. *See id.* at 25-45. (Amazon has also not challenged this response.) Plaintiffs' response to Interrogatory No. 13 states that Plaintiffs need not identify "every factor" that "Amazon permissibly can take into account" in determining which third-party product to feature in Amazon's Buy Box but points to Plaintiffs' detailed response to Interrogatory No. 9 about less restrictive alternatives to Amazon's anticompetitive conduct. *See id.* at 45-48. Plaintiffs' response to Interrogatory No. 16 identifies remedies that may be appropriate for the Court to consider following a trial on liability, which the Court has bifurcated from remedy proceedings. *See id.* at 48-51; Dkt. #289 at 51. Together, Plaintiffs' supplemental responses total over 50 pages. Amazon filed this motion to compel on February 17, 2026. Dkt. #626.[1]

ARGUMENT

I. AMAZON'S DISSATISFACTION WITH THE SUBSTANCE OF PLAINTIFFS' RESPONSE TO INTERROGATORY NO. 3 DOES NOT MAKE IT DEFICIENT

Amazon's Interrogatory No. 3 asks: "For each purported 'coercive tactic involving its order fulfillment business' alleged in Your Complaint, Identify all Persons who were coerced by

[1] Though filed on February 17, 2026, Amazon's motion states that "fact discovery closes today." Mot. at 9. Fact discovery in this case closed on January 30, 2026. Dkt. #577 at 2. The quoted language suggests that Amazon had drafted its motion by January 30 and may not have given due consideration to the supplemental interrogatory responses Plaintiffs served on February 9, 2026.

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the purported 'tactic,' the products they were coerced into fulfilling through Amazon, when that occurred, and the fulfillment provider(s) they would have used but-for the alleged coercive tactic." Amazon contends Plaintiffs have not sufficiently responded, but that is incorrect.

Most fundamentally, Amazon has long had equal access to all relevant evidence in this case, including about sellers affected by Amazon's anticompetitive fulfillment policies. Amazon claims it is "entitled to all information in Plaintiffs' possession, custody, or control that underlies Plaintiffs' assertions of coercion," Dkt. #627 Ex. 2 at 3, but Amazon already *has* that information. Plaintiffs long ago produced relevant materials from their pre-Complaint investigation, and Amazon has had equal access to all discovery, including third-party discovery, in this litigation. Simply put, Amazon has all of the evidence Plaintiffs have. To the extent Amazon believes the evidence of Amazon's coercive and anticompetitive conduct is not enough to support Plaintiffs' claims, it will have the opportunity to press its point at trial or summary judgment. "[M]ere disagreement with [a party's] answers does not render them evasive or incomplete." *Heilman v. Silva*, 2015 WL 1632693, at *2 (S.D. Cal. Apr. 13, 2015), *aff'd on reconsideration*, 2015 WL 14103223 (S.D. Cal. June 8, 2015). Further, "[the propounding party] may use interrogatories to discover what the facts are *as the responding party sees them*—not to require the responding party to adopt the facts as [the propounding party] sees them." *Id.* at *5 (emphasis added).

Plaintiffs' response to Interrogatory No. 3 amply details Plaintiffs' position and summarizes relevant evidence. First, Plaintiffs state that "all sellers who use FBA do so in light of the Amazon policies and actions challenged in the Second Amended Complaint" and that Amazon's conduct "affects substantially all or a wide range of sellers' products." Dkt. #628-2 at 13. Plaintiffs further note that "Amazon has in its own possession the identities of all FBA sellers

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and all products fulfilled through FBA." *Id*. And Plaintiffs further state that "[i]f sellers were not constrained by Amazon's conduct, sellers on Amazon could choose any fulfillment provider—whether Amazon or another provider—to fulfill orders placed on Amazon." *Id*. Plaintiffs' response goes on to identify numerous third-party sellers who testified during depositions conducted in this case—which Amazon participated in—about the impact of Amazon's fulfillment policies on their businesses. *Id*. at 14-17. Absent Amazon's anticompetitive conduct, these sellers could have used alternative fulfillment providers, including firms that have also been subject to discovery in this case, such as Flowspace, GEODIS, Ingram Micro, and ShipBob.[2]

Notably, Plaintiffs' response to Interrogatory No. 4, about sellers affected by Amazon's price parity policies, contains a similar level of detail, and Amazon has not challenged that response in its motion. Further, the court in the related *California* action found the plaintiff had satisfied its obligation to respond to a similar interrogatory by "providing . . . a succinct summary of the allegations . . . disclosed in the complaint." Ex. A at 46:15-20, 49:11-17, 50:17-21. Here, Plaintiffs have provided substantially more information to Amazon.

In its motion to compel, Amazon chastises Plaintiffs for not "providing any detail whatsoever as to any product that any seller was purportedly coerced into fulfilling through Amazon." Mot. at 3. Again, Amazon's arguments about the nature of the evidence in this case

[2] Amazon's demand that Plaintiffs identify the fulfillment providers sellers would have used if not coerced to use FBA is tantamount to imposing third-party discovery obligations on Plaintiffs solely for the purpose of responding to Amazon's interrogatory request. *See Heilman v. Vojkufka*, 2011 WL 677877, at *12-13 (E.D. Cal. Feb. 17, 2011), *report and recommendation adopted*, 2011 WL 3881023 (E.D. Cal. Sept. 2, 2011) (holding that, to respond to an interrogatory, there is no obligation to discover information from third parties on opponent's behalf; also denying plaintiff's motion to compel on certain interrogatories because defendant properly answered by providing "the facts as he kn[ew] them, as plaintiff asked.").

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are appropriate for trial or summary judgment, not a pre-trial discovery motion. Further, Amazon has not explained what additional detail it seeks beyond what Plaintiffs have already provided. When conferring with Plaintiffs, Amazon denied that it was seeking product-level data. Dkt. #627 Ex. 4 at 2. Now, Amazon insists the narrative response Plaintiffs provided ("substantially all or a wide range of sellers' products") is deficient, *see* Mot. at 6, but still has not explained what level of detail it desires but presently lacks. *See, e.g.*, Dkt. #627 Ex. 4 at 2-3. It is Amazon's burden to explain what is missing. *See Long v. Amazon.com Servs. LLC*, 2023 WL 6127301, at *3 (W.D. Wash. Sept. 19, 2023) (on a motion to compel discovery, as part of the moving party's initial burden of demonstrating relevance, "the moving party must identify each disputed discovery request, the response to each request, and an argument why the response is deficient."). Yet, despite multiple requests from Plaintiffs in pre-motion meet and confers, Amazon has not done so.

Amazon also complains it is entitled "to understand the full list of sellers that Plaintiffs will contend Amazon 'coerced' into using its fulfillment services, the specific 'coercive tactic' Amazon used, and the products these sellers were supposedly 'coerced' into fulfilling through Amazon." Mot. at 6. Plaintiffs have already satisfied this demand by stating that "all sellers who use FBA" do so in light of the challenged Amazon policies and noting that Amazon has in its own possession the identities of these sellers and all associated products fulfilled through FBA. Dkt. #628-2 at 13. Plaintiffs' response was unequivocal on each point.

Amazon's position that more is required is contradicted by relevant legal principles. Amazon takes issue with Plaintiffs' use of the term "coerce" and wants to impose its own narrow interpretation of that term, irrespective of context. But as Plaintiffs have explained to Amazon, their usage of the term is consistent with applicable antitrust principles. Dkt. #435-2 at 5; Dkt.

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#628-2 at 11-13. Coercion in antitrust cases can be effectuated through contracts and policies; there is no requirement that a third party be deprived of any specific choice for their conduct to be coerced. For example, a contractual arrangement may be coercive where a seller uses its market power to "force a purchaser to do something that he would not do in a competitive market." *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 14 (1984); *see also Times-Picayune Pub. Co. v. United States*, 345 U.S. 594, 605 (1953) ("By conditioning his sale of one commodity on the purchase of another, a seller coerces the abdication of buyers' independent judgment as to the 'tied' product's merits and insulates it from the competitive stresses of the open market."). Simply put, coercion in antitrust cases does not require evidence of a gun to a counterparty's head.

Amazon's demand that Plaintiffs name the fulfillment provider(s) that coerced sellers "would have used but-for the alleged coercive tactic" similarly runs afoul of relevant law. As Plaintiffs have repeatedly explained to Amazon,[3] Plaintiffs are not required to prove competitive conditions but-for Amazon's anticompetitive conduct to show that Amazon violated the law. *See, e.g.*, *United States v. Google LLC*, 747 F. Supp. 3d 1, 153 (D.D.C. Aug. 5, 2024) (quoting *United States v. Microsoft Corp.*, 253 F.3d 34, 79 (D.C. Cir. 2001)); *McWane Inc. v. FTC*, 783 F.3d 814, 833 (11th Cir. 2015) (citing *United States v. Dentsply Int'l, Inc.*, 399 F.3d 181, 187 (3d. Cir. 2005)).

Amazon also incorrectly suggests the Court has already found Plaintiffs' response to Interrogatory No. 3 deficient in some way. As of the time of Amazon's prior motion to compel, Plaintiffs had already committed to supplement their response to Interrogatory No. 3 (among

[3] Plaintiffs have objected to providing this information since Amazon first served its interrogatories. *See*, *e.g.*, Dkt. #416 at 15; Dkt. #415 Ex. 2 at 3; Dkt. # 435-2 at 6; Dkt. #627 Ex. 4 at 1-2; Dkt. #628 at 16; Dkt. #628-1 at 9-10; Dkt. #628-2 at 12.

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others). *See* Dkt. #488 at 2. In its June 2, 2025 order on Amazon's prior motion, the Court ordered Plaintiffs to "more fully respond" to Amazon's Interrogatory No. 3. *Id.* at 18. Plaintiffs did so when they supplemented their response to Interrogatory No. 3 (and others) on March 21, 2025—as they had already agreed they would. *Id.* at 2. Plaintiffs further supplemented their response to Interrogatory No. 3 on June 12, 2025. *See* Dkt. #628. Contrary to Amazon's assertion that the Court "overrul[ed] Plaintiffs' objections," Mot. at 2, in its June 5, 2025 order, the Court did not have a reason to rule on the sufficiency of Plaintiffs' initial response to Interrogatory No. 3 or their March 21, 2025 supplemental response. *See* Dkt. #488 at 5-6, 11 (only analyzing Interrogatory No. 3 for purposes of counting total interrogatories served).

Finally, Plaintiffs are not required to respond to Interrogatory No. 3 as Amazon demands merely because their core response to Amazon's prior motion to compel was to note that they had already agreed to supplement their response to Interrogatory No. 3. *See* Mot. at 5 (arguing that Plaintiffs waived their objections). As an initial matter, since the time of their March 21, 2025 supplemental response to Interrogatory No. 3, Plaintiffs have further supplemented their substantive response. Further, Plaintiffs timely asserted relevant objections in their initial responses and reasserted them in every supplemental response thereafter, as well as in associated correspondence with Amazon. *See, e.g.*, Dkt. #416 at 1-11, 14-16, Dkt. #415 Ex. 2 at 2-4; Dkt. #628 at 2-12, 15-20; Dkt. #628-1 at 1-14; Dkt. #627 Ex. 4 at 1-2; Dkt. #628-2 at 1-17; Dkt. #435-2 at 1-2, 5-6; Dkt. #435-1 at 1-2; Dkt. #434 at 1-2. Under governing precedent, this is enough to preserve Plaintiffs' objections. *See generally Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992); *Muller v. Syndicated Office Sys., LLC*, 2018 WL 2765535, at *4 (W.D. Wash. June 8, 2018). Amazon's reliance on *dicta* in an out-of-Circuit district court decision involving very different circumstances is thus misplaced. *See Black &*

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Veatch Corp. v. Aspen Ins. (UK) Ltd., 297 F.R.D. 611, 614 (D. Kan. 2014) (granting motion to compel production of purportedly privileged documents with limited analysis of waiver).[4]

II. PLAINTIFFS' RESPONSE TO INTERROGATORY NO. 13 IS SUFFICIENT IN LIGHT OF APPLICABLE LAW

Amazon's Interrogatory No. 13 demands Plaintiffs "Identify every factor that you believe Amazon permissibly can take into account in deciding whether third-party offers should not be 'Featured Offers' in Amazon's store, and Identify the impact upon the marketplace of Amazon withholding 'Featured Offer' status on that basis." Amazon's interrogatory is based on an erroneous premise that successful antitrust litigation results in a declaration about what conduct is permissible, as opposed to an injunction against unlawful conduct.

Plaintiffs seek to stop and remedy particular illegal behavior; specifically, the conduct Plaintiffs challenge in the Second Amended Complaint. This case will not result in a declaration of all the things Amazon may permissibly do (which is a theoretically unbounded thought exercise), nor is Amazon entitled to such a declaration at the conclusion of this litigation. *See*, *e.g.*, *United States v. Google LLC*, 803 F. Supp. 3d 18, 68 (D.D.C. Sept. 2, 2025) ("'[T]he district court is empowered to fashion appropriate *restraints* on [defendant's] future activities both to avoid a recurrence of the violation and to eliminate its consequences.' . . . Consistent with that authority, the court may *prohibit* 'practices connected with acts actually found to be illegal.' . . .") (emphases added) (quoting *Massachusetts v. Microsoft Corp.*, 373 F.3d 1199, 1216 (D.C. Cir. 2004); *United States v. U.S. Gypsum Co.*, 340 U.S. 76, 89 (1950)). Further, Amazon's interrogatory functionally asks Plaintiffs to predict this Court's factual findings and attempt to

[4] Amazon's waiver argument on Interrogatories Nos. 13 and 16 fails for the same reason it does for Interrogatory No. 3. Further, in concluding in its June 2025 order that "responses to these interrogatories are premature before additional discovery, the Court [did] not reach Plaintiffs' alternative contentions as to these interrogatories." Dkt. #488 at 12 n.4.

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prescribe the contours of a remedy before such findings and a liability determination have been made. *See infra* section III. In the unlikely event the Court sees fit to provide Amazon with an exhaustive list of permissible factors it can consider or actions it may take, that would be part of the remedies phase of this case. Forcing Plaintiffs to engage in this sort of hypothetical exercise now would defeat the purpose of the Court's bifurcation order.

Since serving their initial interrogatory responses, Plaintiffs have consistently maintained this interrogatory "misconstrues the applicable legal inquiry" and improperly places the burden on Plaintiffs to show "every factor" that "Amazon [can] permissibly take into account" or any associated "impact upon the marketplace."[5] At most, to the extent Amazon is able to establish legally cognizable, non-pretextual procompetitive justifications for its conduct, Plaintiffs need only show that these aims could be achieved by "less anticompetitive means." *PLS.com v. Nat'l Ass'n of Realtors*, 32 F.4th 824, 834 (9th Cir. 2022) (quoting *Ohio v. Am. Express Co.*, 585 U.S. 529, 541 (2018)); *FTC v. Qualcomm, Inc.*, 969 F.3d 974, 992 (9th Cir. 2020) (same).

Even though Amazon has not established non-pretextual justifications for its conduct, Plaintiffs have identified potential less restrictive alternatives to the challenged conduct in their response to Interrogatory No. 9 and identified potential remedies in their response to Interrogatory No. 16. Dkt. #628-2 at 25-45, 48-51.[6] Amazon has not and cannot explain what further response would be warranted. Critically, Amazon has not cited any case law showing it is Plaintiffs' burden to identify everything that is permissible under the antitrust laws in lieu of anticompetitive conduct. Plaintiffs have asked Amazon to provide any support for its position,

[5] *See, e.g.*, Dkt. #416 at 31-33; Dkt. #628-2 at 45-46.

[6] Notably, Amazon does not challenge the level of detail in Plaintiffs' response to Interrogatory No. 9. Nonetheless, Plaintiffs may supplement their response to this interrogatory in the course of expert discovery, after Amazon serves its relevant expert report(s), if merited.

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and Amazon has remained silent. *See, e.g.*, Dkt. #415 Ex. 2 at 2 ("During the January 30 meet and confer, Amazon maintained this inquiry was relevant and appropriate for Plaintiffs to answer. In our January 28 letter and during the January 30 meet and confer, Plaintiffs requested Amazon provide caselaw substantiating its position. If Amazon has any such authority, we are willing to consider it and discuss this objection further.").

III. PLAINTIFFS' RESPONSE TO INTERROGATORY NO. 16 IS SUFFICIENT IN LIGHT OF THE COURT'S BIFURCATION ORDER

Amazon grossly mischaracterizes Plaintiffs' response to Interrogatory No. 16,[7] which asks, "Describe each and every remedy and form of relief that You intend to seek in this Action, including, but not limited to, any 'structural remedy.'" In their February 9, 2026 supplemental responses, Plaintiffs responded to Interrogatory No. 16 with a list of goals that any remedies sought would be designed to achieve and provided specific examples of potential remedies across the various categories of Amazon's conduct Plaintiffs challenge as unlawful. *See* Dkt. #628-2 at 48-51.

Plaintiffs' response is appropriate at this stage of the case and fully justified by the Court's order bifurcating liability and remedy proceedings. Dkt. #289 at 51. While that order does not limit the scope of fact discovery, it recognizes that bifurcation may economize this litigation. *Id.* at 49. Economy includes the ability to shape and weigh detailed remedy proposals in light of the evidence presented at the liability trial and the specific factual and legal findings the Court may make following the trial. Requiring a more detailed remedy proposal before the trial record has been developed and the Court has made its findings of fact would result in a premature, costly, and potentially unnecessary hypothetical exercise not tailored to the Court's ultimate findings. *See, e.g.*, *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1088 (9th Cir. 2002)

[7] *See* Mot. at 7 ("Plaintiffs have provided no response to any of these requests.").

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(bifurcation may "defer[] costly and possibly unnecessary proceedings pending resolution of potentially dispositive preliminary issues."); *Kraft Foods Glob., Inc. v. United Egg Producers, Inc.*, 2023 WL 5177501, at *10 (N.D. Ill. Aug. 11, 2023) (bifurcation allows parties and the court to focus on remedies that are "actually in play after [a] liability verdict"). For these reasons, detailed remedy proposals have been advanced *after* liability findings in similar bifurcated cases. *See, e.g.*, Order, *United States v. Google LLC*, No. 23-108, Dkt. #1428 (E.D. Va. May 2, 2025) (setting schedule for post-trial remedies proposals and related proceedings); Order, *United States v. Google LLC*, No. 20-3010, Dkt. #1043 (D.D.C. Sept. 18, 2024) (same); *cf. FTC v. Meta Platforms, Inc.*, 2025 WL 3458822 (D.D.C. Dec. 2, 2025) (outcome of liability proceedings rendered remedy phase unnecessary, pending appeal).

Amazon cannot answer why more is needed now, and Plaintiffs have satisfied their obligations to respond to Interrogatory No. 16 as written. Moreover, the Court's bifurcation order justifies the level of detail in Plaintiffs' response, as it is appropriately tailored to this stage of the proceedings. In advance of a trial record and the Court's legal and factual findings to guide the contours of any proposed remedy, Plaintiffs' response is more than sufficient.

CONCLUSION

For the foregoing reasons, Amazon's motion to compel should be denied.

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Dated: March 4, 2026

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I certify that this memorandum contains 3,817 words, in compliance with the Local Civil Rules.

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