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The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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DEBORAH FRAME-WILSON, CHRISTIAN SABOL, SAMANTHIA RUSSELL, ARTHUR SCHAREIN, LIONEL KEROS, NATHAN CHANEY, CHRIS GULLEY, SHERYL TAYLOR-HOLLY, ANTHONY COURTNEY, DAVE WESTROPE, STACY DUTILL, SARAH ARRINGTON, MARY ELLIOT, HEATHER GEESEY, STEVE MORTILLARO, CHAUNDA LEWIS, ADRIAN HENNEN, GLENDA R. HILL, GAIL MURPHY, PHYLLIS HUSTER, and GERRY KOCHENDORFER, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware corporation,

Defendant.

No. 2:20-cv-00424-RAJ

MOTION FOR APPOINTMENT OF INTERIM CO-LEAD CLASS COUNSEL AND PLAINTIFFS' EXECUTIVE COMMITTEE

NOTE FOR MOTION CALENDAR:
January 27, 2023

TABLE OF CONTENTS

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

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23

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27

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TABLE OF AUTHORITIES

Page(s)

CASES

OTHER AUTHORITIES

I.   INTRODUCTION

Under Federal Rule of Civil Procedure 23(g)(3), the Court "may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action." Fed. R. Civ. P. 23. The court should "designate interim counsel during the pre-certification period if necessary to protect the interests of the putative class." *In re Stubhub Refund Litig.*, 2020 WL 8669823, at *1 (N.D. Cal. Nov. 18, 2020). Appointment of lead counsel is necessary because Plaintiffs recently learned of a substantially similar proposed class action recently filed in the Southern District of New York. *See* Dkt. 80. To avoid duplicative efforts, minimize costs, and avoid risks to the Class by conflicting representation, Plaintiffs seek leave to appoint their counsel as interim lead counsel. Plaintiffs further propose a leadership structure for the current proposed class action, consisting of Hagens Berman Sobol Shapiro LLP ("Hagens Berman") and Keller Postman LLC ("Keller Postman") as Interim Co-Lead Class Counsel, as well as Quinn Emanuel Urquhart & Sullivan, LLP ("Quinn Emanuel") and Keller Rohrback L.L.P. ("Keller Rohrback") as members of a Plaintiffs' Executive Committee ("PEC").

These appointments are warranted pursuant to Federal Rule of Civil Procedure 23(g)(3). The above firms have already invested substantial time and resources to investigate, file, and litigate the claims at issue in the proposed class actions. They have deep experience prosecuting complex class actions and antitrust cases and will bring that experience, and the firms' vast resources, to these cases. Counsel will coordinate closely with one another to prosecute the class actions efficiently and effectively, without duplication of effort, and will represent the diversity of our society and the legal profession with their varied backgrounds and experiences. Plaintiffs, therefore, respectfully request that the Court adopt the proposed leadership structure.

II.   STATEMENT OF FACTS

The above firms are counsel in the current action on behalf of consumers who were harmed by Amazon's anticompetitive conduct. In March 2020, Plaintiffs filed a complaint alleging that in Amazon's agreement with third-party merchants that sell products on its platform, Amazon imposed a "most favored nation" (MFN) clause to prevent those merchants from selling their products for lower prices on competing online platforms. This resulted in

1   supra-competitive prices for those products, both on Amazon's platform and on competing

2   online platforms. In March 2022, the Court denied Amazon's motion to dismiss Plaintiffs'

3   federal monopoly and rule of reason antitrust claims and allowed Plaintiffs to amend their

4   dismissed claims (Dkt. 48). While Amazon's motion to dismiss Plaintiffs' amended claims is

5   pending before this Court, after the Court granted Plaintiffs' motion to compel Amazon's

6   participation in a 26(f) conference (Dkt. 63), the parties have proceeded to discovery over the

7   last several months. *See* Dkt. 70 (discovery case schedule). Meanwhile, Plaintiffs' counsel first

8   learned on December 30 of the substantially similar action filed in the Southern District of New

9   York in November 2022—nearly three years after the filing of the instant action.

10   The proposed leadership structure fairly recognizes Hagens Berman's and Keller

11   Rohrback's innovative work in filing the original consumer class action against Amazon, and

12   Keller Postman's and Quinn Emanuel's role furthering the litigation. All Plaintiffs also agree that

13   this leadership structure will facilitate the efficient and successful litigation of all proposed class

14   actions, particularly given that the four firms in the proposed leadership structure also serve as

15   counsel in the related case, *De Coster, et al. v. Amazon.com, Inc.*, 2:20-cv-00424-RAJ (W.D.

16   Wash.) (the "*De Coster*" action).

17   **III.   LEGAL STANDARD**

18   Rule 23(g)(3) allows the Court to designate interim class counsel "to act on behalf of a

19   putative class before determining whether to certify a matter as a class action." *McFadden v.*

20   *Microsoft Corp.*, 2020 WL 5642822, at *1 (W.D. Wash. Sept. 22, 2020). "Factors relevant to the

21   appointment of counsel include: '(i) the work counsel has done in identifying or investigating

22   potential claims in the action; (ii) counsel's experience in handling class actions, other complex

23   litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the

24   applicable law; and (iv) the resources that counsel will commit to representing the class.'" *Id.*

25   (quoting Fed. R. Civ. P. 23(g)(1)(A)). In addition, "[t]he Court may also 'consider any other

26   matter pertinent to counsel's ability to fairly and adequately represent the interests of the class.'"

27   *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(B)). This includes consideration of whether the leadership

28   team reflects the diversity of the class and the legal bar.

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