

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ELIZABETH DE COSTER *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
corporation,

Defendant.

Case No. 2:21-cv-00693-RSM

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

NOTE FOR MOTION CALENDAR:
July 16, 2021

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I. INTRODUCTION

1
2 Plaintiffs¹ propose a leadership structure for these proposed class actions, which they
3 have agreed to consolidate. The proposed structure consists of Hagens Berman Sobol Shapiro
4 LLP (“Hagens Berman”) and Keller Lenkner LLC (“Keller Lenkner”) as Interim Co-Lead Class
5 Counsel, as well as Quinn Emanuel Urquhart & Sullivan, LLP (“Quinn Emanuel”) and Keller
6 Rohrback L.L.P. (“Keller Rohrback”) as members of a Plaintiffs’ Executive Committee (“PEC”).

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

II. STATEMENT OF FACTS

15
16 The above firms have filed three separate cases on behalf of consumers who were harmed
17 by Amazon’s anticompetitive conduct. In its agreement with third-party merchants that sell
18 products on its platform, Amazon imposed a “most favored nation” (MFN) clause to prevent
19 those merchants from selling their products for lower prices on competing online platforms.
20 This resulted in supra-competitive prices for those products, both on Amazon’s platform and on
21 competing online platforms. Last year, Hagens Berman and Keller Rohrback filed a proposed
22 class action against Amazon on behalf of consumers who paid inflated prices on online platforms
23 that compete with Amazon. *See Frame-Wilson et al. v. Amazon.com, Inc.*, 2:20-cv-00424-RAJ
24 (W.D. Wash.). At the time, Amazon required its own customers to litigate their claims
25 individually before private arbitrators, rather than as a class. When Amazon withdrew its
26

27 ¹ Plaintiffs are Elizabeth De Coster, Nemanja Krstic, John Mariane, Osahon Ojeaga, Emma
28 Zaballos, Kenneth David West, and Robert Taylor. Plaintiffs intend to update the caption to
include the *West* Plaintiffs, when filing their consolidated amended complaint.

1 mandatory arbitration clause and class action bar, Keller Lenkner, Hagens Berman, and Keller
2 Rohrback, and concurrently Quinn Emanuel, promptly filed proposed class actions on behalf of
3 Amazon customers who paid inflated prices as a result of the MFN clause. *See De Coster et al.*
4 *v. Amazon.com, Inc.*, 2:21-cv-00693-RSM (W.D. Wash.); *West et al. v. Amazon.com, Inc.*, 2:21-
5 cv-00694-RSM (W.D. Wash.). The *De Coster* and *West* Plaintiffs met and conferred with
6 Amazon, and the parties stipulated to consolidate the cases under the *De Coster* caption. Dkt.
7 14. After the Court granted the consolidation, Dkt. 15, an essentially identical proposed class
8 action was filed by the firm Milberg Coleman Bryson Phillips Grossman, PLLC. *See Smith. v.*
9 *Amazon.com, Inc.*, 2:21-cv-00838 (W.D. Wash.). Plaintiffs’ counsel here are conferring with
10 that firm and working cooperatively. Additionally, because the consolidated cases are premised
11 on the same facts and law as *Frame-Wilson*, Keller Lenkner and Quinn Emanuel have also
12 appeared, and now serve as plaintiffs’ counsel, in *Frame-Wilson*.

13 Plaintiffs’ counsel here also met, conferred, and agreed to the proposed leadership
14 structure. All Plaintiffs here agree that this leadership structure fairly recognizes Hagens
15 Berman’s and Keller Rohrback’s innovative work in filing the original consumer class action
16 against Amazon, Keller Lenkner and Quinn Emanuel’s role in enabling the *De Coster* and *West*
17 actions by prompting Amazon to withdraw its mandatory arbitration provision in its consumer-
18 facing agreements, and all four firms’ experience and ability in litigating complex antitrust class
19 actions. All Plaintiffs also agree that this leadership structure will facilitate the efficient and
20 successful litigation of all proposed class actions, particularly given that the four firms in the
21 proposed leadership structure also serve as counsel in the related *Frame-Wilson* case.

22 III. LEGAL STANDARD

23 Rule 23(g)(3) allows the Court to designate interim class counsel “to act on behalf of a
24 putative class before determining whether to certify a matter as a class action.” *McFadden v.*
25 *Microsoft Corp.*, No. C20-0640-RSM-MAT, 2020 WL 5642822, at *1 (W.D. Wash. Sept. 22,
26 2020). “Factors relevant to the appointment of counsel include: ‘(i) the work counsel has done in
27 identifying or investigating potential claims in the action; (ii) counsel’s experience in handling
28 class actions, other complex litigation, and the types of claims asserted in the action;

1 (iii) counsel’s knowledge of the applicable law; and (iv) the resources that counsel will commit
2 to representing the class.” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(A)). In addition, “[t]he Court
3 may also ‘consider any other matter pertinent to counsel’s ability to fairly and adequately
4 represent the interests of the class.’” *Id.* (quoting Fed. R. Civ. P. 23(g)(1)(B)). This includes
5 consideration of whether the leadership team reflects the diversity of the class and the legal bar.

6 IV. ARGUMENT

7 A. Counsel Have Already Done Substantial Work To Litigate Amazon’s MFN Clause

8 Hagens Berman, Keller Lenkner, Quinn Emanuel, and Keller Rohrback have each
9 already expended significant resources to investigate and to pursue antitrust claims arising out of
10 Amazon’s MFN clause. Rule 23(g)(1)(A)(i)—“the work counsel has done in identifying or
11 investigating potential claims in the action”—thus strongly favors their leadership appointments.

12 **Hagens Berman** filed the *Frame-Wilson* case on March 19, 2020. The allegations in that
13 case share the factual and legal bases for the claims asserted in the consolidated actions here.
14 The 50-page original complaint reflects Hagens Berman’s extensive pre-filing factual
15 investigation into Amazon’s MFN clause and its anticompetitive effects, and a careful legal
16 analysis of the relevant markets in which Amazon operates and has harmed competition.

17 For over a year, Hagens Berman has led the litigation of the *Frame-Wilson* case. Hagens
18 Berman has invested significant resources, and has continued to investigate and refine
19 allegations of Amazon’s antitrust violations, as reflected in its 90-page amended complaint. *See*
20 *Frame-Wilson*, 2:20-cv-00424-RAJ, Dkt. 15. Hagens Berman also led the *Frame-Wilson*
21 Plaintiffs’ opposition to Amazon’s motion to dismiss, explaining why Plaintiffs (1) have antitrust
22 standing, (2) adequately alleged that Amazon agreed to fix prices in violation of Section 1 of the
23 Sherman Act, and (3) plausibly pleaded that Amazon violated Section 2 of the Sherman Act by
24 wielding its monopoly power to unreasonably restrain price competition. *See Frame-Wilson*,
25 2:20-cv-00424-RAJ, Dkt. 19.

26 **Keller Lenkner** has been litigating Amazon’s anticompetitive conduct and the effects of
27 its MFN clause on behalf of close to 50,000 Amazon consumers in individual arbitrations.

28 Declaration of Zina Bash in Support of Motion for Appointment of Interim Lead Counsel and

1 Plaintiffs’ Executive Committee (“Bash Decl.”), at ¶ 8. The firm began filing arbitration
2 demands on behalf of those consumers six months ago, in January 2021. *Id.* Before that, Keller
3 Lenkner had spent months investigating the anticompetitive nature of Amazon’s MFN clause and
4 the harmful effects on Amazon’s customers. *Id.* As in the complaints at issue here, the 50,000
5 consumers whom Keller Lenkner represents in arbitration allege that they overpaid for products
6 on Amazon because of Amazon’s MFN clause. *Id.*

7 What’s more, it was Keller Lenkner’s innovative arbitration practice that made possible
8 the consumer class actions against Amazon at issue here. For years, Amazon had imposed on its
9 consumers a mandatory arbitration provision that specifically prohibited class actions. This
10 changed only recently, when Keller Lenkner filed tens of thousands of individual arbitration
11 demands against Amazon, including demands raising the same antitrust theories at issue in *De*
12 *Coster* and *West*. The pressure created by Keller Lenkner’s vigorous arbitration demands
13 prompted Amazon to withdraw its mandatory arbitration provision, allowing the *De Coster* and
14 *West* Plaintiffs to pursue their claims in court. *See* Sara Randazzo, *Amazon Faced 75,000*
15 *Arbitration Demands. Now It Says: Fine, Sue Us*, WALL STREET J. (June 1, 2021),
16 [https://www.wsj.com/articles/amazon-faced-75-000-arbitration-demands-now-it-says-fine-sue-](https://www.wsj.com/articles/amazon-faced-75-000-arbitration-demands-now-it-says-fine-sue-us-11622547000)
17 [us-11622547000](https://www.wsj.com/articles/amazon-faced-75-000-arbitration-demands-now-it-says-fine-sue-us-11622547000).

18 **Quinn Emanuel and Keller Rohrback** have also invested significant resources litigating
19 Amazon’s anticompetitive restrictions. Quinn Emanuel was co-counsel with Keller Lenkner in
20 litigating many of the tens of thousands of individual arbitration demands against Amazon that
21 resulted in Amazon removing its arbitration clause. Declaration of Steig D. Olson in Support of
22 Motion for Appointment of Interim Lead Counsel and Plaintiffs’ Executive Committee (“Olson
23 Decl.”), ¶ 3. And Keller Rohrback coordinated with Hagens Berman to file the *Frame-Wilson*
24 case and then litigate it for well over a year.

25 **B. Counsel Have Significant Experience With Complex Class Actions And Deep**
26 **Knowledge Of Antitrust Law And Problems Posed By Large Technology Firms**

27 Hagens Berman, Keller Lenkner, Quinn Emanuel, and Keller Rohrback have vast
28 experience with and knowledge of antitrust cases. Together, counsel represent the most robust

1 team of lawyers that could be assembled to litigate an antitrust class action against one of the
 2 world’s biggest companies. Rule 23(g)(1)(A)(ii)-(iii)—“counsel’s experience in handling class
 3 actions, other complex litigation, and the types of claims asserted in the action” and “counsel’s
 4 knowledge of the applicable law”—strongly favors the proposed leadership structure.

5 **1. Hagens Berman**

6 Hagens Berman has decades of experience representing class plaintiffs in antitrust cases,
 7 which has culminated several awards and its current prominent role in some of the nation’s
 8 biggest ongoing antitrust class actions. Declaration of Steve W. Berman in Support of Motion
 9 for Appointment of Interim Lead Counsel and Plaintiffs’ Executive Committee (“Berman
 10 Decl.”), ¶ 3 and Ex. A (firm resume). As two recent examples, Hagens Berman currently
 11 represents app developers against both Google and Apple in *In re Google Play Store Antitrust*
 12 *Litig.*, No. 3:21-md-02981-JD (N.D. Cal.), and *Cameron v. Apple Inc.*, No. 4:19-03074-YGR
 13 (N.D. Cal.), where they are acting as lead counsel, in cases alleging that these tech giants
 14 wrongfully obtained monopoly power over the distribution of apps and in-app products. *Id.* ¶ 7;
 15 Ex. B (listing examples of the firm’s antitrust cases).

16 **Steve Berman** is the founding partner of Hagens Berman and the nationwide managing
 17 partner of its nine offices. *Id.* ¶ 1. Mr. Berman has served as lead or co-lead counsel in antitrust,
 18 securities, consumer, products liability, and employment class actions, and complex litigations
 19 too numerous to count. *Id.* ¶ 4. For example, Mr. Berman served as co-lead trial and appellate
 20 counsel in *Alston v. National Collegiate Athletic Association (In re NCAA Ath. Grant-In-Aid Cap*
 21 *Antitrust Litig.)*, No. 14-md-02541-CW (N.D. Cal.). Mr. Berman obtained a \$208 million
 22 damages settlement on behalf of tens of thousands of current and former NCAA Division 1
 23 college athletes and prevailed at a separate trial on injunctive relief. A unanimous Supreme
 24 Court affirmed the injunction prohibiting the NCAA from restricting the education-related
 25 benefits that its members may offer student athletes under the rule of reason and rejected the
 26 NCAA’s request that its compensation restrictions be analyzed under an extremely deferential
 27 standard. *Id.* ¶ 2. Mr. Berman has a record of securing significant settlements for plaintiffs. As
 28 co-lead counsel, with only one other firm, in *In re Visa Check/Mastercard Antitrust Litig.*, No.

1 96-cv-05238 (E.D.N.Y.), he secured a settlement on the eve of trial for over \$3 billion in cash
 2 and over \$20 billion in injunctive relief, making it one of the largest antitrust settlements in
 3 history and represented. *Id.* Mr. Berman and his firm also represented 13 states in the historic
 4 litigation against the tobacco industry and served as co-lead trial counsel to secure a global
 5 settlement worth \$206 billion, still the largest recovery in history. *Id.* ¶ 4. In *In re Toyota Motor*
 6 *Corp. Unintended Acceleration Marketing, Sales Practices, & Products Liability Litigation*,
 7 No.10-ml-2151 JVS (FMOx) (C.D. Cal.) the court *sua sponte* identified Mr. Berman as a
 8 presumptive co-lead counsel. *Id.*; *see also* ¶¶ 3-4 (other notable cases and awards).

9 **Barbara Mahoney** is a partner at Hagens Berman and counsel in *Frame-Wilson*, the
 10 first-filed antitrust class action against Amazon, and in *In Re Amazon.com, Inc. eBook Antitrust*
 11 *Litigation*, No. 1:21-cv-351-GHW-DCF (S.D.N.Y), where the firm was appointed interim lead
 12 counsel on behalf of a proposed class action against Amazon and the five largest trade book
 13 publishers for conspiring to fix the price of eBooks. *Id.* ¶ 9. She is also counsel in *In Re:*
 14 *Generic Pharmaceuticals Pricing Antitrust Multi-District Litigation*, No. 2:16-md-02724 (E.D.
 15 Pa.), where the firm was appointed to the interim direct purchaser steering committee in a multi-
 16 district class action litigation alleging conspiracies among dozens of generic drug manufacturers
 17 to fix the prices of over 150 generic drugs. *Id.*; *see also id.* ¶¶ 8-9 (listing other notable cases).

18 2. Keller Lenkner

19 After being formed three years ago by veterans of the defense bar, Keller Lenkner has
 20 become one of the leading complex litigation firms for plaintiffs. *See* Bash Decl. ¶ 2, Ex. F (firm
 21 resume). The firm serves hundreds of thousands of clients in litigation and arbitration matters
 22 and acts as plaintiffs' counsel in high-stakes class and public-enforcement actions. More than
 23 60% of Keller Lenkner's partners and associates served as law clerks at a federal court—four of
 24 them at the U.S. Supreme Court. *See id.* ¶ 2. And a majority of its attorneys joined the firm after
 25 having practiced at AmLaw 25 firms and elite trial boutiques. *See id.*

26 Keller Lenkner's complex litigation practice includes high-profile antitrust and
 27 consumer-rights cases. *See id.* ¶¶ 4-5, Ex. F. For example, it represents several States in a multi-
 28 state antitrust case against Google: *The State of Texas, et al. v. Google, LLC*, No. 4:20-cv-00957

1 (E.D. Tex.). The firm is also lead counsel in a class action against LinkedIn for its inflated ad
2 metrics, *TopDevz, LLC et al. v. LinkedIn Corp.*, 5:20-cv-08324-SVK (N.D. Cal.).

3 Since its formation, Keller Lenkner’s lawyers have been recognized nationally for
4 developing groundbreaking legal arguments and strategies. For example, the firm has pioneered
5 the strategy of pursuing individual arbitrations for tens of thousands of employees and
6 consumers simultaneously, which, as reported by the *New York Times*, has left defendants
7 “scared to death.” See Bash Decl., Ex. F. In connection with that practice, and in thwarting a
8 defendant’s attempt to avoid its own arbitration clause, a judge of the L.A. Superior Court
9 recently praised the firm’s work, commenting “Let’s give [the] . . . Keller Firm . . . a toast. Good
10 work.” *Id.*, ¶ 4, Ex. C. Indeed, the firm has won numerous precedent-setting victories requiring
11 defendants to comply with arbitration obligations they impose on customers and associates.

12 **Zina G. Bash** is a Partner at Keller Lenkner, where she founded the firm’s Texas office.
13 Before joining the firm, Ms. Bash served as senior counsel to the Texas Attorney General. In
14 that capacity, she coordinated major multi-state cases with attorneys general across the country,
15 and she advised on significant litigation and antitrust matters. Previously, she practiced as a
16 litigator at the Washington office of Gibson Dunn. Ms. Bash also served as a law clerk to Justice
17 Samuel Alito of the U.S. Supreme Court and Justice Brett Kavanaugh when he sat on the U.S.
18 Court of Appeals for the D.C. Circuit. Ms. Bash was born in Monterrey, Mexico and is a native
19 Spanish speaker.

20 Ms. Bash is counsel for the States of Texas, Idaho, Mississippi, North Dakota, and South
21 Dakota in the multi-state antitrust litigation against Google mentioned above. She is also part of
22 the Keller Lenkner team that brought an action on behalf of putative class plaintiffs pursuing
23 antitrust claims against Facebook for the company’s monopolization of the social media and
24 social network markets, *Klein et al. v. Facebook, Inc.*, No. 5:20-cv-08570-LHK (N.D. Cal.), and
25 the team representing tens of thousands of claimants pursuing antitrust claims against Amazon in
26 individual arbitrations. More broadly, Ms. Bash has served as counsel or advisor for public-
27 entity plaintiffs in numerous high-profile and complex matters. Bash Decl. ¶ 10.

1 **Warren D. Postman** is a Partner at Keller Lenkner, where he combines a deep
2 understanding of the civil litigation system with broad substantive expertise to solve complex
3 litigation challenges. He has been recognized by *Lawdragon* as one of the 500 Leading Lawyers
4 in America and was selected as one of the *National Law Journal*'s Plaintiff's Lawyers
5 Trailblazers for his work building the firm's mass arbitration practice. That practice devotes
6 unparalleled resources to resolving antitrust and other claims of consumers and employees
7 subject to forced-arbitration clauses, and Mr. Postman has won precedent-setting victories
8 requiring defendants to comply with those clauses in their agreements. Before joining the firm,
9 Mr. Postman was Vice President and Chief Counsel for Appellate Litigation at the U.S. Chamber
10 Litigation Center and an attorney at Jones Day. Mr. Postman served as a law clerk to Justice
11 David Souter at the U.S. Supreme Court and Judge William A. Fletcher of the U.S. Court of
12 Appeals for the Ninth Circuit.

13 Mr. Postman has litigated major antitrust matters for both defendants and plaintiffs. For
14 example, he represented Sirius XM in its defense of private antitrust claims in *Blessing v. Sirius*
15 *XM*, No. 09-cv-10035 (S.D.N.Y.), and he was appointed as one of two members of the Plaintiffs
16 Executive Committee in the consolidated antitrust cases against Facebook mentioned above. He
17 also represents several States in the litigation against Google, as well as consumer plaintiffs
18 pursuing antitrust claims against Live Nation and Ticketmaster in *Olivia Van Iderstine et al. v.*
19 *Live Nation Entertainment, Inc. et al.*, No. 2:20-cv-03888 (C.D. Cal.). And as part of the firm's
20 mass arbitration practice, Mr. Postman leads the representation of over 100,000 clients pursuing
21 antitrust claims in individual arbitrations.

22 **Albert Y. Pak** is an Associate at the firm, where he represents clients in high-stakes
23 disputes, including consumer and antitrust matters. Mr. Pak, a graduate of Yale Law School,
24 served as a law clerk to Judge John Rogers of the U.S. Court of Appeals for the Sixth Circuit.

25 3. **Quinn Emanuel**

26 Quinn Emanuel is the world's largest law firm devoted solely to business litigation.
27 Quinn Emanuel has been named a "litigation powerhouse" by *The American Lawyer*, a "global
28 force in litigation" by *The Wall Street Journal*, one of "The Four Firms that GCs Fear The Most"

1 by BTI Consulting Group, a “Tier One” antitrust practice by *Benchmark Litigation*, “Antitrust
2 Litigation Department of the Year” by *The Recorder*, and “Class Action Group of the Year” by
3 *Law360*. Olson Decl., Exs. H-L. Quinn Emanuel has a long string of victories on behalf of
4 antitrust and class plaintiffs and defendants. *See, e.g., In re Credit Default Swaps Antitrust*
5 *Litig.*, No. 13-md-02476 (S.D.N.Y.) (obtaining over \$1.87 billion in settlements); *ISDAfix*
6 *Antitrust Litig.*, No. 14-cv-7126 (S.D.N.Y.) (obtaining more than \$500 million in settlements);
7 *see also* Olson Decl. ¶¶ 5-6 (listing cases).

8 **Steig D. Olson** was one of the principal attorneys in *In re: Credit Default Swaps Antitrust*
9 *Litigation*, resulting in one of the largest antitrust class actions in history. *See* Olson Decl. ¶ 7.
10 The mediator there declared that “this was one of the finest examples of efficient and effective
11 lawyering by plaintiffs’ counsel that I have ever witnessed.” *Id.*; *see also id.* ¶ 8 (discussing Mr.
12 Olson’s involvement in *ISDAfix Antitrust Litigation*); Olson Decl., Ex. S (Mr. Olson’s firm
13 profile). Mr. Olson was named a “Rising Star” in the field of competition law by legal journal
14 *Law360* and a “Leading Lawyer” by *Legal 500 USA*. *Id.*, Exs. M-N. In 2021, he was awarded a
15 Chambers rating for Antitrust: Mainly Plaintiff, where he was described as “fantastic, whip-
16 smart and an incredible writer.” *Id.*, Ex. O. Following his graduation from Harvard Law School,
17 he clerked on the Northern District of California, for Judge Vaughn R. Walker, and on the
18 Second Circuit, for Judge Barrington D. Parker, Jr. *See id.* ¶ 9.

19 **Adam B. Wolfson** currently serves on the Executive Committee in *In re 3M Combat*
20 *Arms Earplug Products Liability Litig.*, No. 19-md-2885 (N.D. Fla.), a mass tort seeking
21 compensation for over 250,000 former service members injured by defective earplugs, *see* Olson
22 Decl. ¶ 11, and has played significant roles in a number of other antitrust and class actions
23 including *Mackmin et al. v. Visa Inc. et al.*, No. 11-cv-01831 (D.D.C.), and *Polyurethane Foam*
24 *Antitrust Litig.*, No. 10-md-02196 (N.D. Ohio), *see* Olson Decl. ¶ 12 (listing cases); Olson Decl.,
25 Ex. T (Mr. Wolfson’s firm profile). Mr. Wolfson has also taken class actions to final judgment,
26 including recovering \$5.4 billion for two classes of health insurers. *See* Olson Decl., ¶ 13. Mr.
27 Wolfson has been named a “Rising Star” in the field of class actions by *Law360*, listed among
28 the top 500 plaintiffs’ financial lawyers in the nation by *Lawdragon*, and as one of the “key

1 lawyers” in Quinn Emanuel’s ranked antitrust defense practice by *Legal 500 USA*. *Id.*, Exs. P-R

2 .
3 **Alicia Cobb** is Of Counsel in and heads up Quinn Emanuel’s Seattle office. Ms. Cobb
4 represents plaintiffs in significant antitrust cases including *The Home Depot v. Visa Inc. et al.*,
5 No. 16-cv-5507 (E.D.N.Y), and *In re Rail Freight Fuel Surcharge Antitrust Litigation*, MDL No.
6 1869 (D.D.C.). *See* Olson Decl., ¶¶ 14-16. Ms. Cobb clerked for Judge Edward R. Korman in
7 the Eastern District of New York. *See* Olson Decl., ¶ 17; Olson Decl., Ex. U (Ms. Cobb’s firm
8 profile).

9 **4. Keller Rohrback**

10 Keller Rohrback has three decades of experience representing plaintiffs in large-scale,
11 complex cases involving corporate wrongdoing, and has recovered over \$23.25 billion for its
12 clients to date. Courts nationwide have appointed Keller Rohrback attorneys to leadership
13 positions in many of the most competitive, newsworthy, and high-stakes cases across the
14 country. Declaration of Derek Loeser in Support of Motion for Appointment of Interim Lead
15 Counsel and Plaintiffs’ Executive Committee (“Loeser Decl.”), ¶¶ 3-4, 10. Keller Rohrback’s
16 experience and ability in managing class actions has been recognized in numerous published
17 opinions. *See, e.g., In re WorldCom, Inc. ERISA Litig.*, No. 02-4816, 2004 WL 2338151, at *10
18 (S.D.N.Y. Oct. 18, 2004) (“Lead Counsel [Keller Rohrback] has performed an important public
19 service in this action and has done so efficiently and with integrity. It has cooperated completely
20 and in novel ways with Lead Counsel for the Securities Litigation, and in doing so all of them
21 have worked to reduce legal expenses and maximize recovery for class members.”).

22 **Derek Loeser** is a senior partner at Keller Rohrback and a member of the firm’s
23 Executive Committee. Mr. Loeser maintains a national practice prosecuting class actions and
24 large-scale individual cases, and he frequently serves in a leadership role. He has recently been
25 appointed lead or co-lead counsel in complex matters involving electrical utility Commonwealth
26 Edison’s bribery of the Illinois state legislature, the Wells Fargo unauthorized account scandal,
27 and the MDL stemming from the Facebook/Cambridge Analytica scandal, among numerous
28 other high-profile cases. Loeser Decl. ¶¶ 6-8.

1 **Ryan McDevitt** and **Matthew Gerend** are partners in Keller Rohrback’s Complex
2 Litigation group with more than twenty years’ combined experience representing consumers,
3 institutional and individual investors, employees, and competitors in consumer protection, fraud,
4 antitrust, ERISA, and intellectual property matters nationwide. Mr. McDevitt has recent
5 leadership experience in complex consumer and antitrust matters including consumer class
6 actions against numerous major automakers and in the sprawling Delta Dental antitrust litigation.
7 *Id.* ¶ 11. Mr. Gerend has successfully argued dispositive motions and appeals in ERISA
8 litigation against some of the largest health care systems in the country and recovered hundreds
9 of millions of dollars for ERISA plans and beneficiaries. *Id.* ¶ 12.

10 **C. Counsel Will Bring Extensive Human and Financial Resources To Litigate These**
11 **Proposed Class Actions**

12 Standing alone, each of Hagens Berman, Keller Lenkner, Quinn Emanuel, and Keller
13 Rohrback has vast human and financial resources to litigate a complex matter like this. **Hagens**
14 **Berman** has 85 lawyers nationwide and consistently advances millions of dollars of litigation
15 costs, without third-party funding, in matters of exceptional size and complexity. **Keller**
16 **Lenkner**, in just three years since its formation, has secured over \$300 million in settlements for
17 its clients and grown from a seven-lawyer boutique to a firm of over 37 lawyers handling some
18 of the nation’s largest antitrust cases. **Quinn Emanuel** is the world’s largest law firm devoted
19 solely to business litigation, with more than 800 lawyers across 25 offices on 4 continents,
20 including an office in Seattle. **Keller Rohrback** has approximately 70 lawyers and 100 staff
21 across six offices nationwide and has an in-house e-discovery team that can efficiently reduce or
22 obviate the need for third-party discovery vendors.

23 Together, counsel will provide unparalleled resources to prosecute these proposed class
24 actions against Amazon. Rule 23(g)(1)(A)(iv)—“the resources that counsel will commit to
25 representing the class”—strongly favors the proposed leadership appointments.

26 **D. Counsel Bring Diverse Backgrounds, Experiences, And Perspectives To The Case**

27 Counsel’s diverse backgrounds, experiences, and perspectives enhance their “ability to
28 fairly and adequately represent the interests of the class” under Rule 23(g)(1)(B). Diversity in

1 MDL proceedings has received increased attention in recent years, with many judges seeking to
2 make appointments “that are consistent with the diversity of our society and the justice system.”
3 Bash Decl. ¶ 6, Ex. D (Resolution on Diversity in Trial Court Appointments, National
4 Association of Women Judges). One of the proposed standards and best practices for large and
5 mass-tort MDLs asks transferee judges to “take into account whether the leadership team
6 adequately reflects the diversity of legal talent available and the requirements of the case.” *Id.* ¶
7 6, Ex. E (Standards and Best Practices for Large and Mass-Tort MDLs). Recommended best
8 practices ask judges to appoint a diverse group of attorneys, taking into account gender, race and
9 national origin, age, and sexual orientation, while also being “mindful of creating a team with
10 diversity of experience, balancing the benefits of selecting leadership members who have worked
11 well together in the past.” Hagens Berman, Keller Lenkner, Quinn Emanuel, and Keller
12 Rohrback each believes strongly in the value of a diverse legal team. To that end, they have
13 proposed a combined team in this case that includes members of different genders, ages, sexual
14 orientation, racial and ethnic identities, and life experiences whose diversity will reflect and
15 benefit the proposed classes.

16 V. CONCLUSION

17 Plaintiffs’ proposed leadership structure brings together four firms, with vast experience
18 litigating complex matters, including antitrust class actions against corporate giants—and over a
19 year’s worth of experience investigating and litigating, in court and in arbitration, the precise
20 issue underlying these cases: Amazon’s MFN clause. These firms bring the unmatched human
21 and financial resources needed to pursue this complex case through all aspects of litigation for as
22 long as the litigation might persist. For the foregoing reasons, Plaintiffs respectfully request that
23 the Court appoint Hagens Berman and Keller Lenkner as Interim Co-Lead Class Counsel, and
24 Quinn Emanuel and Keller Rohrback as members of a Plaintiffs’ Executive Committee.
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1 DATED: June 30, 2021

Respectfully submitted,

2 HAGENS BERMAN SOBOL SHAPIRO LLP

3 By /s/ Steve W. Berman
4 Steve W. Berman (WSBA No. 12536)

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