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

JOINT STATUS REPORT AND DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26(f), Local Civil Rules 16(a)(2) and 26(f), and the Court's October 24, 2023 Order Regarding Initial Disclosures, Joint Status Report, and Early Settlement, counsel for Plaintiffs and counsel for Defendant Amazon.com, Inc. ("Amazon"), met and conferred via telephone conference on November 9 and December 7, 2023 and submit this Joint Status Report and Discovery Plan.

1. Statement of the Nature and Complexity of the Case

Plaintiffs' Position

Plaintiffs Federal Trade Commission and the Plaintiff States allege that Amazon engages in an interrelated course of conduct that unlawfully maintains Amazon's monopolies in two markets, the Online Superstore Market and the Online Marketplace Services Market, and

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constitutes an unfair method of competition. First, Amazon deploys a series of anticompetitive practices that suppress price competition and push prices higher across much of the internet by creating an artificial price floor and penalizing sellers that offer lower prices off Amazon. Second, Amazon coerces sellers into using its fulfillment service to obtain Prime eligibility and successfully sell on Amazon. Each of these tactics—independently and collectively—prevents Amazon's rivals from gaining scale and maintains Amazon's monopolies.

Amazon engages in a pattern and practice of stifling price competition, first by punishing third-party sellers for offering lower prices on other platforms, and second, through its first-party anti-discounting algorithm, which disciplines rivals from undercutting Amazon's prices. Without the ability to attract either shoppers or sellers through lower prices, rivals are unable to gain a critical mass of customers and meaningfully compete against Amazon. At the same time, Amazon's coercive fulfillment conduct both artificially stunts the growth of independent fulfillment providers and artificially raises the costs that sellers face when seeking to multihome (or offer their products across multiple websites). This limits seller multihoming, thereby suppressing Amazon's rivals' ability to compete for sellers by offering better terms and compete for shoppers by offering additional product selection. Amazon's exclusionary course of conduct works to suppress competition in both relevant markets, foreclosing even an innovative, high-quality rival or potential rival from competing on the merits. Amazon's conduct also harms consumers in both relevant markets by artificially inflating prices for both shoppers and sellers and by degrading product selection and platform quality.

Plaintiffs also allege that Amazon has engaged in an unfair method of competition through its Project Nessie pricing system, which manipulated other online stores' pricing algorithms to increase prices for shoppers.

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This case presents complex legal and factual issues that require substantial discovery. Plaintiffs bring this action under Section 5 of the FTC Act, 15 U.S.C. § 45, Section 2 of the Sherman Act, 15 U.S.C. § 2, and state competition and consumer protection laws.

Amazon's Position

Plaintiffs' Complaint uses novel legal theories to challenge common and procompetitive retail practices. Amazon competes every minute of every day with thousands of online and brick-and-mortar retailers. To meet that competition, Amazon has relentlessly innovated, delivering previously unimagined benefits for consumers and pushing competitors to do likewise, all to make every penny of a consumer's purchase count for more. To compete in the intensely competitive $7 trillion retail sector, Amazon matches rivals' discounts, features competitively priced deals rather than overpriced ones, and ensures best-in-class delivery for its Prime subscribers. Those practices—the targets of this antitrust Complaint—benefit consumers and are the essence of competition.

It is against this backdrop that Plaintiffs concede, as they must, that this case presents complex legal and factual issues that will require substantial discovery. If this case is not dismissed, as it should be, Amazon anticipates that there will be significant discovery from third-party witnesses located throughout the country, such as retail competitors of Amazon, competing fulfillment providers, and companies that sell their products in the Amazon store and in other competing retail channels. In addition to this unusually large amount of fact discovery, there will be a substantial amount of expert testimony on issues such as the proper relevant market and whether Plaintiffs have proven that Amazon's practices have caused anticompetitive effects. Finally, Amazon expects that this case will present substantial legal and factual issues that may be properly decided by the Court on the pending motion to dismiss and/or at summary judgment.

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As explained further herein, this is an exceptional case in its scope and complexity. The schedule that Plaintiffs have proposed is unrealistic given the amount of discovery that they claim that they need—*e.g.*, they seek the equivalent of 90 party depositions plus an additional 50 third-party depositions per side, they contemplate over a year for document discovery, *etc.* If Plaintiffs truly believe that this case must move quickly, as they contend, they must scale back their excessive discovery proposals.

2. Proposed Deadline for Joining Additional Parties

Plaintiffs' Position

Plaintiffs propose that the Court set the deadline to join any additional parties, including additional states or territories of the United States, as 60 days after the Court's order on Amazon's motion to dismiss.

Plaintiffs believe that giving other government enforcers time to join this case after the Court rules on Amazon's motion to dismiss will conserve public resources and allow for the efficient and prompt resolution of all government antitrust enforcement actions related to the conduct at issue here. Amazon's proposal would force government enforcers with similar claims to file separate cases, which would almost certainly be related to this litigation. Amazon's inefficient proposal would be more burdensome for government plaintiffs and the Court and could unnecessarily delay the progress of this case.

Plaintiffs do not anticipate seeking to join any additional parties other than additional states or territories of the United States.

Amazon's Position

Amazon proposes that the Court set the deadline to join any additional parties, including additional states or territories of the United States, as 30 days after the Court enters a Scheduling

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Order. Plaintiffs' position would result in needless duplication of effort and would disrupt the case schedule, as it would likely allow additional Plaintiffs to join the case well into the discovery period—written discovery requests have already been exchanged, and Amazon expects that depositions will have commenced by June 2024. Moreover, Amazon submits that a longer deadline is not needed given that the FTC previously conducted an extensive four-year pre-filing investigation and, with the benefit of the information gathered in that investigation, had ample time to discuss with States the possibility of joining this lawsuit.

3. Consent to Magistrate Judge

No.

4. Discovery Plan

The parties propose different schedules, as reflected in the table below. The parties' respective positions on their proposed schedules are set forth following the table.

Event	Plaintiffs' Proposed Deadline or Date	Amazon's Proposed Deadline or Date
Initial Disclosures	November 22, 2023 (already exchanged)	November 22, 2023 (already exchanged)
Deadline for Amazon to provide an Information Systems Diagram[1] showing sources of structured data that are potentially relevant to the parties' claims and defenses	14 days after the Court issues a scheduling order	None. This request is part of Plaintiffs' First Set of Requests for Production of Documents and will be addressed through the discovery process.

[1] Plaintiffs define "Information Systems Diagram" to mean an organized list, schematic, diagram, or other representation sufficient to show where and how Amazon stores all physical and electronic information in its possession, custody, or control, including but not limited to information systems (*e.g.*, email messages, voice-mail messages, communications logs, enterprise content management, instant messaging, database applications), Collaborative Work Environments, and locations where information is stored, including servers and backup systems (*e.g.*, physical Amazon facility, third-party vendor location, cloud-based storage).

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Event	Plaintiffs' Proposed Deadline or Date	Amazon's Proposed Deadline or Date
Deadline to join additional parties, including additional states or territories of the United States	60 days after the Court's order on Amazon's motion to dismiss	30 days after entry of the Scheduling Order
Deadline for parties to substantially complete document and structured data productions in response to Requests for Production issued on or before December 14, 2023	N/A: addressed by other deadlines proposed by Plaintiffs	July 1, 2024 (or within six months of the resolution of any disputes as to the fact or scope of production, whichever is later; approximately 16 months before the close of fact discovery)
Deadline for parties to substantially complete document production in response to Requests for Production issued on or before February 1, 2024	August 1, 2024 (6 months after the latest Requests for Production at issue; approximately 8.5 months before the close of fact discovery)	N/A: addressed by other deadlines proposed by Amazon
Deadline for parties to complete production of structured data in response to Requests for Production issued on or before February 1, 2024	August 1, 2024 (6 months after the latest Requests for Production at issue; approximately 8.5 months before the close of fact discovery)	N/A: addressed by other deadlines proposed by Amazon
Deadline for parties to substantially complete document production in response to Requests for Production issued on or before June 1, 2024	December 1, 2024 (6 months after the latest Requests for Production at issue; approximately 4.5 months before the close of fact discovery)	N/A: addressed by other deadlines proposed by Amazon
Deadline for parties to complete production of structured data in response to Requests for Production issued on or before June 1, 2024	December 1, 2024 (6 months after the latest Requests for Production at issue; approximately 4.5 months before the close of fact discovery)	N/A: addressed by other deadlines proposed by Amazon

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Event	Plaintiffs' Proposed Deadline or Date	Amazon's Proposed Deadline or Date
Deadline for parties to substantially complete document production in response to Requests for Production issued after December 14, 2023	N/A: addressed by other deadlines proposed by Plaintiffs	August 15, 2025 (approximately 4.5 months before the close of fact discovery)
Deadline for parties to complete production of structured data in response to Requests for Production issued on or before October 1, 2024	February 1, 2025 (4 months after the latest Requests for Production at issue; approximately 2.5 months before the close of fact discovery)	N/A: addressed by other deadlines proposed by Amazon
Deadline for parties to complete production of structured data in response to Requests for Production issued at least 7 months prior to the close of fact discovery (May 15, 2025)	N/A: addressed by other deadlines proposed by Plaintiffs	September 30, 2025 (2.5 months before the close of fact discovery)
Deadline for issuance of third-party subpoenas and for production of third-party declarations upon which any party intends to rely for the purposes of dispositive motions	February 17, 2025 (10 weeks before the close of fact discovery)	None. This deadline is not needed, as the parties will time their subpoenas in light of the fact discovery deadline.
Close of fact discovery	April 18, 2025 (approximately 17 months after start of fact discovery)	December 15, 2025 (approximately 25 months after start of fact discovery)
Opening expert reports from parties bearing the burden on an issue	June 13, 2025 (eight weeks after the close of fact discovery)	February 2, 2026 (seven weeks after the close of fact discovery)
Rebuttal expert reports	August 8, 2025 (eight weeks after opening reports); expert depositions of opening experts may occur during this period, provided that each expert may only be deposed once	March 23, 2026 (eight weeks after opening reports) (Expert depositions of opening experts may occur during this period)

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Event	Plaintiffs' Proposed Deadline or Date	Amazon's Proposed Deadline or Date
Reply expert reports	October 3, 2025 (eight weeks after rebuttal reports); expert depositions of rebuttal experts may occur during this period, provided that each expert may only be deposed once	May 4, 2026 (six weeks after rebuttal reports) (Expert depositions of rebuttal experts may occur during this period)
Close of expert discovery	October 31, 2025 (four weeks after reply reports); expert depositions may occur during this period, provided that each expert may only be deposed once	June 1, 2026 (four weeks after reply expert reports) (Expert depositions may occur during this period)
Dispositive and *Daubert* motions	December 5, 2025 (five weeks after the close of expert discovery, including Thanksgiving)	July 13, 2026 (six weeks after the close of expert discovery)
Oppositions to dispositive and *Daubert* motions	January 30, 2026 (eight weeks after opening briefs, including winter holidays and New Year's Day)	August 24, 2026 (six weeks after opening briefs)
Reply briefs in support of dispositive and *Daubert* motions	February 27, 2026 (four weeks after opposition briefs)	September 21, 2026 (four weeks after opposition briefs)
Plaintiffs' pretrial statement (LCR 16(h))	March 25, 2026 (30 days before the deadline to file a pretrial order)	October 14, 2026 (30 days before the deadline to file a pretrial order)
Defendants' pretrial statement (LCR 16(i))	April 3, 2026 (21 days before the deadline to file a pretrial order; 20 days falls on a Saturday)	October 23, 2026 (21 days before the deadline to file a pretrial order; 20 days falls on a Saturday)
Conference of attorneys (LCR 16(k))	April 14, 2026 (10 days before the deadline to file a pretrial order)	November 3, 2026 (10 days before the deadline to file a pretrial order)
Filing of Proposed Pretrial Order (LCR 16(e))	April 24, 2026 (32 days before trial ready date; 30 days falls on a Sunday)	November 13, 2026 (31 days before trial ready date; 30 days falls on a Saturday)
Final Pretrial Conference	As set by the Court	To be determined by the Court
Trial ready date	May 26, 2026	December 14, 2026

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Plaintiffs' Position

The case should move forward as quickly as possible. Amazon's monopolistic conduct affects tens of millions of American households, hundreds of thousands of sellers on Amazon, and hundreds of billions of dollars in commerce every year. Every day that passes is another day of harm inflicted on shoppers, sellers, and competition. Moreover, Congress has expressed a "clear intent to prioritize speedy and efficient resolution of government antitrust suits." *United States v. Google LLC*, 2023 WL 2486605, at *9 (E.D. Va. Mar. 14, 2023); *see FTC v. Vyera Pharms., LLC*, 2021 WL 76336, at *1 (S.D.N.Y. Jan. 8, 2021) ("The parties and the public have a significant interest in resolving the issues raised by the [government] plaintiffs' claims with due expedition."); *United States v. Dentsply Int'l, Inc.*, 190 F.R.D. 140, 145 (D. Del. 1999) (explaining that Congress recognized "the primacy of antitrust enforcement actions brought by the United States, and that such actions are of special urgency and serve a different purpose than private damages suits because they seek to enjoin ongoing anticompetitive conduct," and observing that the resolution of government enforcement actions "promotes judicial efficiency by fostering settlement" of related private actions).

Plaintiffs' proposed schedule would allow the Court to set this case for trial starting in May 2026, which balances the strong public interest in the speedy resolution of this case with sufficient time for the parties to conduct fact discovery, exchange expert reports and take expert depositions, brief dispositive and *Daubert* motions, and prepare this case for trial. Plaintiffs have proposed a number of measures to ensure that fact discovery moves quickly and stays on track, including:

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- A deadline for Amazon to produce information regarding sources of structured data, which will facilitate negotiations regarding data discovery (included in Plaintiffs' proposed schedule);
- Interim deadlines for document and data productions, which will ensure that discovery is moving forward in a steady and orderly manner, and which will help avoid a pile-up of discovery disputes or late-produced materials that could derail depositions and expert discovery (included in Plaintiffs' proposed schedule and Case Management Order);[2]
- Requirements for the parties to promptly meet and confer regarding custodians, search terms and/or the use of Technology-Assisted Review, and estimated production completion deadlines, which will facilitate the progress of document discovery (included in Plaintiffs' forthcoming proposed ESI protocol);
- An interim deadline for the issuance of third-party subpoenas and the production of third-party declarations upon which any party intends to rely for the purposes of dispositive motions, which will help avoid last-minute subpoenas and declarations that could lead to one-sided discovery of third parties or impact the fact discovery deadline (included in Plaintiffs' proposed schedule); and
- Bimonthly status conferences with the Court, which will put pressure on the parties to make steady progress in discovery, give the parties a forum to seek informal guidance from the Court on discovery issues, and allow the Court to

[2] Plaintiffs' proposed Case Management Order is attached as Exhibit A. Amazon does not believe that a Case Management Order is needed in addition to a Scheduling Order, but Amazon has submitted a revised Case Management Order, attached as Exhibit B, that reflects its positions on the issues addressed in Plaintiffs' proposed CMO A redline between the parties' CMO submissions is attached as Exhibit C.

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monitor the progress of discovery overall (included in Plaintiffs' proposed Case Management Order).

With these measures and good faith efforts by the parties, Plaintiffs believe this case can be tried in May 2026. Amazon's schedule, on the other hand, would push the trial of this case into at least December 2026, over three years after the filing of this case.

There are seven principal differences between the parties' proposed schedules and related proposed Case Management Orders:

Fact discovery: Plaintiffs propose approximately 17 months of fact discovery, starting from the date of the parties' initial Rule 26(f) conference on November 9, 2023, with interim deadlines for document and data productions. Amazon proposes approximately 25 months of fact discovery.

Plaintiffs believe that the parties can complete fact discovery within 17 months, with the assistance of the various measures Plaintiffs have proposed to keep discovery moving quickly. The longer schedule proposed by Amazon is unnecessarily extended and will needlessly delay the resolution of this case. The drawn-out fact discovery schedule proposed by Amazon will also complicate efforts to coordinate discovery between this case and related cases—in particular, *People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.) (the "California Action"), where fact discovery is currently scheduled to close on October 11, 2024. The more closely the fact discovery schedules for this case and the California Action are aligned, the more coordination between the two cases may be feasible, but Amazon's proposed schedule would push fact discovery in this case to over a year after the close of fact discovery in the California Action.

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Amazon's argument that more time will be needed due to third-party discovery and coordination issues does not hold water. Plaintiffs believe that significant discovery will be required in this case—both of Amazon witnesses and third parties—but do not believe that there is any discovery that can be taken in two years that cannot be accomplished in a year and a half. Amazon's proposal is particularly difficult to square with its attempt to limit Plaintiffs to only ten depositions of Amazon witnesses. As to coordination issues, which are discussed further below, Plaintiffs believe that a shorter schedule will facilitate coordination with the related cases that are in discovery—the California Action and the *Frame-Wilson* and *De Coster* cases before this Court.

Deadlines for Substantial Completion of Document Production: Plaintiffs' proposed schedule and Case Management Order (Section 2) include staged deadlines for the substantial completion of document production, requiring the parties to substantially complete document production by August 1, 2024 in response to requests for production issued on or before February 1, 2024, and substantially complete document production by December 1, 2024 in response to requests for production issued on or before June 1, 2024. These deadlines will ensure that the parties make steady progress in document discovery and avoid a pile-up of late document discovery that might otherwise derail the discovery schedule or depositions.

Amazon's counterproposals for interim document production deadlines differ from Plaintiffs' proposals in two significant respects. First, Amazon's proposed first deadline for the substantial completion of document production would apply only to the initial discovery requests the parties have already served—and run from the "resolution of any disputes as to the fact or scope of production," which eviscerates the usefulness of the deadline. Second, while the parties are close to an agreement in principle regarding a second deadline for the substantial completion

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of document production (Plaintiffs propose a deadline four and a half months before the close of fact discovery, while Amazon proposes a deadline four months before the close of fact discovery) the length of Amazon's overall fact discovery schedule would warrant a third intermediate deadline to ensure that document production does not languish until the end of the schedule. Overall, Plaintiffs' proposed deadlines are a more effective measure to ensure that document production proceeds on a rolling basis with enough time for depositions.

Finally, Amazon's suggestion that Plaintiffs' schedule would defer the majority of depositions until February 2025 is misguided. The staged deadlines for document and data production in Plaintiffs' proposals will help ensure that discovery moves forward on a rolling basis, but that will not prevent the parties from taking depositions earlier.

Deadline for Third-Party Subpoenas: A deadline for the issuance of third-party subpoenas and the production of third-party declarations upon which any party intends to rely for the purposes of dispositive motions will help avoid last-minute subpoenas and declarations that could lead to one-sided discovery of third parties and impact the deadline for the close of fact discovery. Amazon suggests that this deadline "ignores the need for coordination with respect to third-party discovery," but to the extent any such coordination means that the parties would issue subpoenas earlier in fact discovery, that would not conflict with a deadline. And if any coordination issues might otherwise lead the parties to issue subpoenas after Plaintiffs' proposed deadline—in the last ten weeks of fact discovery—that only underscores the need for a deadline to ensure that discovery stays on track.

Information Systems Diagram: Plaintiffs propose that the Court require Amazon to produce information regarding sources of structured data within 14 days after the Court enters a scheduling order, which will facilitate negotiations regarding data discovery and hopefully limit

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the need for Plaintiffs to conduct discovery to simply understand what discoverable information Amazon has. Amazon contends that this is unnecessary because Plaintiffs have already issued a discovery request for an Information Systems Diagram, but Amazon's response to that request is telling: Amazon asserts more than a page of objections (including objections to definitions), and then agrees to produce *some* of what Plaintiffs requested by March 1, 2024—three months after Amazon's responses and objections. This protracted approach to data discovery is precisely what Plaintiffs seek to avoid.

Structured Data, Samples, and Data Dictionaries: Plaintiffs' proposal would require any party that identifies sources of its own structured data in its Rule 26(a)(1) disclosures, or in supplements or amendments to such disclosures, to provide samples and data dictionaries for that data. Plaintiffs' proposal would also require any party to provide samples and data dictionaries for structured data called for in requests for production. These requirements eliminate the need for intermediate discovery seeking samples and data dictionaries, and are intended to streamline and speed up discovery negotiations regarding structured data.

Plaintiffs have also proposed two sets of deadlines for the completion of structured data production: requirements to produce data sets within a certain number of days after the parties agree to the scope of production, and global deadlines for the completion of data productions throughout the case. These deadlines will ensure that the parties make steady progress in data discovery and avoid a pile-up of late data that might otherwise derail the discovery schedule or expert discovery. Amazon's proposal, on the other hand, would only require the parties to complete structured data productions by two and half months before the close of fact discovery: a surefire recipe for delay that will severely prejudice Plaintiffs' efforts to analyze Amazon's data (which Amazon already has) and prepare for expert discovery.

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Expert discovery: Plaintiffs propose equal time for each exchange of expert reports (opening, rebuttal, and reply); Amazon proposes seven weeks for opening reports, eight weeks for rebuttal reports, and six weeks for reply reports. Plaintiffs anticipate that Amazon's rebuttal reports will include econometric, statistical, and other data-driven analyses which will require Plaintiffs to spend a significant amount of time to simply ingest and understand Amazon's underlying data. As a result, Plaintiffs request that the Court allocate equal time for rebuttal and reply expert reports.

Dispositive and Daubert Motions: Plaintiffs propose five weeks for opening briefs (including Thanksgiving), eight weeks for opposition briefs (including the winter holidays and New Years' Day), and four weeks for replies. Amazon proposes six weeks, six weeks, and four weeks, respectively. Because the parties can begin preparing dispositive and *Daubert* motions during expert discovery, Plaintiffs do not believe the parties need six weeks after the close of expert discovery to file opening briefs. On the other hand, Plaintiffs respectfully submit that if Amazon files a motion for summary judgment and multiple *Daubert* motions, Plaintiffs will need more than six weeks to respond given the extent of the factual record and legal issues in this case. Plaintiffs' proposed schedule also accounts for the fact that the deadlines for opening and opposition briefs would include holidays.

Amazon's Position

Plaintiffs' proposed schedule does not provide sufficient time for discovery and pretrial proceedings given the extensive discovery that Plaintiffs claim they should be entitled to take. Their proposed schedule does not account for the practical difficulties that will be encountered in a case involving extensive third-party discovery of out-of-state witnesses and entities or the effort needed to coordinate discovery among multiple related cases, including five cases pending

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before this Court. In addition, Amazon submits that Plaintiffs' proposed Case Management Order, which includes dates reflected in Plaintiffs' proposed schedule, is duplicative of the issues addressed in this Joint Status Report and Discovery Plan and thus unnecessary.

Amazon's proposed schedule accounts for the time necessary given Plaintiffs' excessive discovery plan and the need for coordination of depositions in related cases. Amazon's proposal is in line with the actual duration of the pretrial schedules in other major antitrust cases, such as the recent DOJ v. Google case (nearly three years between complaint and trial) and the FTC's case against Shire/Viro Pharma (more than 2.5 years between complaint and trial). If Plaintiffs want the case to proceed on a quicker schedule, they must present a more realistic discovery plan.

While Plaintiffs argue that the case should move forward as quickly as possible, their actions indicate otherwise. Plaintiffs' multi-year, pre-Complaint investigation was essentially completed in 2022 and yet they waited until September 26, 2023 to file suit. And their actual scheduling proposals are unreasonable and at odds with their stated goal of a quick process. For example, Plaintiffs propose a document production schedule of over one year (February 1, 2025). Reasonably assuming that most fact depositions will take place after documents have been produced, this would only leave **three months** (until May 9, 2025) to take the majority of the (already unrealistic and unnecessary) **90** 7-hour party depositions that Plaintiffs propose—not to mention the **50** 7-hour non-party depositions *per side* that they propose. Even if, as Plaintiffs argue, some depositions can be taken before the completion of document production, the reality is that most will not be, and the amount of time to complete all of Plaintiffs' proposed depositions will be extremely compressed.

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Plaintiffs are also dismissive of the need for a protocol for coordinating depositions in the related cases against Amazon in this Court and other courts, arguing that such coordination is "premature," and that coordination can be accomplished on an *ad hoc* and informal basis. Plaintiffs cannot urge that this case proceed at full speed, while arguing that nearly 200 depositions should be taken, and ignoring that Amazon's witnesses and third-party witnesses are potentially deponents in eight other cases that will proceed on an overlapping schedule and that will need to be coordinated in order to proceed in an efficient and less burdensome manner. Plaintiffs claim that a longer discovery schedule will complicate efforts to coordinate depositions with the *California* case, but this is counterintuitive—a longer schedule would allow coordinated depositions to be taken and also allow time for depositions that do not need to be coordinated.

With regard to the number of depositions (further discussed, *infra*, in Section 4(E), Changes to Limitations on Discovery), Amazon's position is that Plaintiffs' request for 90 7-hour depositions of party witnesses is excessive and unreasonable, especially given Plaintiffs' position that they will not have any of their own witnesses be deposed. Amazon has indicated that it is willing to discuss a more reasonable proposal, but Plaintiffs have declined to reconsider their number. Therefore, in the absence of a meaningful proposal, Amazon's view is that the Federal Rules of Civil Procedure should govern.

In developing its proposed schedule, Amazon considered the following issues that must be accounted for in this case:

First, this antitrust case will involve significant amounts of discovery from third parties throughout the country, such as the many retail competitors of Amazon and the businesses that sell their goods in the Amazon store. Plaintiffs' own proposed Case Management Order, which Amazon does not think is necessary, contemplates up to 100 third-party depositions. Based on

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experience in the *People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.), a case involving overlapping subject matter and substantially the same parties as this action, the process of subpoenaing documents from and deposing these entities is extraordinarily time-intensive because, among other reasons, Amazon's competitors have raised broad objections to producing categories of documents that are relevant to the issues in this case. The schedule in this case should provide sufficient time to allow expected discovery issues to be resolved, through negotiation if possible, so as to avoid burdening the Court with avoidable discovery disputes and repeated requests to modify the schedule.

Second, there are currently five related cases against Amazon pending before this Court, in addition to cases in other courts, including the California case, that overlap, in significant part, with this case. Discovery in these cases should be coordinated so that all of these cases may proceed in the most efficient manner possible. Among other goals, coordination will help to reduce the burden on witnesses so that they are not required to produce documents multiple times or appear for multiple depositions on the same topics in the related cases. Third-party witnesses in the California case have already requested scheduling accommodations so that they could attempt to coordinate with this case. Such coordination will involve aligning the schedules of the witnesses and the counsel in the related cases and will involve more effort than is typical, albeit for the purposes of achieving greater efficiency and less burden. Amazon has proposed a discovery coordination protocol to Plaintiffs intended to facilitate discovery coordination. Plaintiffs have not agreed that there should be a written protocol, claiming that it is "premature."

Third, Amazon and its counsel in this case have advised Plaintiffs that they are scheduled for trial on August 10, 2026 in the California case. The trial in the California case will be lengthy. Plaintiffs' proposed schedule is premised on a May 2026 trial date in this case,

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which is unrealistic as these proceedings—including post-trial briefing—will overlap with the previously scheduled California trial. The California case was filed a year prior to this case, in September 2022, and involves a subset of the issues raised by Plaintiffs in this case. The length of time that the California court provided for discovery and pretrial proceedings reflects the complexity and effort required in a case of this nature.

Finally, Amazon notes certain other items proposed by Plaintiffs that are not appropriate and should not be included in the Court's Scheduling Order:

1. **Information Systems Diagram**: Plaintiffs propose that the Court set a deadline of 14 days after the Court issues a scheduling order "for Amazon to provide an Information Systems Diagram showing sources of structured data that are potentially relevant to the parties' claims and defenses." This information is properly the subject of a discovery request, and in fact Plaintiffs have inquired into this subject in their pending document requests. This information is not properly the subject of a Scheduling Order entered without the benefit of briefing on this technical issue. Amazon is willing to meet and confer on Plaintiffs' request for production of this (and all other) information, as well as the nature of the information to be provided, which does not exist in the ordinary course and would be extraordinarily burdensome to generate, and on all of Plaintiffs' many discovery requests.

2. **Deadline to Serve Third-Party Subpoenas**: Plaintiffs propose that the Court order a "[d]eadline for issuance of third-party subpoenas and for production of third-party declarations upon which any party intends to rely for the purposes of dispositive motions." Amazon submits that there is no need to set a deadline for subpoenas two months in advance of the fact discovery deadline. In addition, such a deadline ignores the need for coordination with respect to third-party discovery among counsel in this and the five related cases against Amazon

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pending before this Court, as well as the cases pending in other courts, so as not to unnecessarily and unduly burden third-parties with seriatim discovery on overlapping topics. Moreover, to avoid any confusion, a deadline for producing third-party declarations should not absolve Plaintiffs of the obligation to produce in discovery any third-party declarations that they have obtained during their pre-filing investigation.

3. **Deadlines for Substantial Completion of Document Productions**: Despite noting the complexity and scope of discovery in this case, Plaintiffs propose both in the schedule above and in Section 2 of their proposed Case Management Order that the parties agree to substantially complete production within six months of the service of document requests. While Amazon agrees that the parties should provide estimated dates for when they will begin rolling document productions and good faith estimates for the completion of that production, Amazon cannot agree in the abstract to substantial completion deadlines for requests that have not yet been served and for which Amazon does not know the scope.

Plaintiffs request Amazon's blind commitment to substantially complete production for any request between now and February 1, 2024 by August 1, 2024. But nowhere do they provide any indication of the number or type of requests they anticipate serving between now and then. That is, Plaintiffs could serve countless requests for production on January 31, 2024 and seek to enforce a deadline of August 1, 2024 without regard to the burden those as-yet-to-be-disclosed requests impose. In particular, as it relates to potential requests that may require custodial searches, collection, review, and production, Plaintiffs' proposal is unrealistic. In the investigation the FTC sought documents from more than 130 current and former Amazon employees spanning a four-year period. The FTC agreed to a production schedule in the investigation that allotted more than 12 months for the rolling production of responsive

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materials. To meet those deadlines, Amazon had to employ a team of over 300 document reviewers working full-time for more than a year. To the extent Plaintiffs contemplate anything near that volume of custodial discovery in this litigation—which they noticeably remain silent on above and a volume to which Amazon would object—Plaintiffs' six-month deadlines would quickly become impractical.

Amazon has already agreed to substantially complete its production for Plaintiffs' pending 30 document requests by July 1, 2024 (as Plaintiffs initially requested). Plaintiffs object to Amazon's proposal to adjust that deadline based on the resolution of any disputes as to the fact or scope of production, but this is necessary as Amazon cannot commit in the abstract to a deadline for documents it objects to producing. Amazon then proposes that for document requests that have not yet been served, the parties agree to make their best efforts to substantially complete document production by August 15, 2025, four months before the close of fact discovery. (Plaintiffs proposed date for substantial completion of document production is 4.5 months before the close of discovery.) These deadlines do not, of course, obviate the parties' commitment to provide good faith estimates for the completion of document production in response to any given request, or to work to complete the production of documents as efficiently as possible.

Simply put, Plaintiffs attempt to secure deadlines *now* for requests that have not yet been served is only going to result in needless discovery disputes. Amazon's proposal to substantially complete production of documents responsive to Plaintiffs' pending requests by July 1, 2024 and any to-be-served requests four months prior to the close of fact discovery is eminently reasonable.

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4. **Requirements and Deadlines for Structured Data**: In Plaintiffs' schedule above and Section 3 of their proposed Case Management Order, Plaintiffs propose artificial requirements and deadlines on the production of structured data that are unnecessary and will almost exclusively apply to (and burden) Amazon and not Plaintiffs. Moreover, the information described by Plaintiffs is of the type that can be requested through discovery requests and meet and confer discussions between the parties, rather than through a Court order. Finally, these artificial, one-sided deadlines are unrealistic and are more likely to cause unnecessary disputes than to result in a more streamlined discovery process.

A request for structured data will likely include a request for financial, transactional, and other voluminous data sets. Based on precedent in the pre-suit investigation and related litigations, this will amount to terabytes of data. To handle this volume of data, while also turning around datasets in a realistic and timely manner, Amazon has agreed to complete production in response to Plaintiffs' pending requests for structured data by July 1, 2024. Amazon has also proposed completing production of structured data in response to additional requests served at least seven months before the close of fact discovery no later than 2.5 months prior to the close of fact discovery (the same amount of time allotted under Plaintiffs' proposal).

By contrast, Plaintiffs' proposal would obligate Amazon to produce samples and data dictionaries within 45 days after the request was *served* and then to produce the data within 20 to 60 days after the parties agree on the scope of production depending on the size of the data. This proposal is not workable for Amazon for at least two reasons that Plaintiffs completely disregard.

First, requiring Amazon to produce samples and data dictionaries unnecessarily increases the time, expense, and effort required to provide the data. The data sets requested in the pre-Complaint investigation (and that Amazon anticipates Plaintiffs will request in the litigation) are

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bespoke data sets. Once requested, a data engineer must engage in numerous steps to put the data in producible form. For example, a data engineer must first write the code necessary to pull the requested data, the code must then be tested to determine if it captures the requested data, and once tested and validated to confirm the code is working as intended, the data must then be pulled and inspected for any errors. Only after this process, and assuming everything worked as intended along the way, is the data ready for production. It is much more efficient for Amazon to undertake this process only once per data set, rather than repeat steps for a sample. In addition, and given that these data sets are bespoke, data dictionaries do not exist in the ordinary course and would need to be manually compiled, if possible. Instead of requiring samples and data dictionaries as a matter of course, Amazon proposes that the same obligations to meet and confer for document productions also apply to requests for structured data, including meeting and conferring as to the need for and burden of producing samples and data dictionaries for any particular structured data request.

Second, Plaintiffs deadlines on the production of structured data are not realistic. Plaintiffs seek to obligate Amazon to produce structured data within 20 to 60 days after the parties agree on the scope of production depending on the size of the data. But the time needed to undertake the steps necessary to pull the data can, depending on the request, take more time than Plaintiffs allot for the production of data, itself. Indeed, the data sought by Plaintiffs in the investigation was voluminous, totaling over 100 terabytes (each terabyte is the equivalent of approximately 50 million pages (or 2,000 boxes)).[3] Amazon anticipates that Plaintiffs will make similar requests in the litigation (as they have already served requests for financial data). Given

[3] Frank Vecella et al., *And You May Find Yourself In a Large Document Review*, Association of Corporate Counsel (May 1, 2009). For comparison, NASA's Hubble science data processing generates just 10 terabytes of new archive data per year.

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that there are known issues with the timelines proposed by Plaintiffs, and Amazon has proposed a reasonable alternative, it makes no sense to impose Plaintiffs' proposed deadlines on Amazon.

(A) Initial Disclosures

As the Court ordered, the parties exchanged initial disclosures on November 22, 2023.

(B) Subjects, Timing, and Potential Phasing of Discovery

Plaintiffs' Position

Plaintiffs anticipate that discovery will be needed regarding all of Plaintiffs' claims and all of Defendants' anticipated defenses. Plaintiffs anticipate extensive discovery, including documents and data regarding:

- Structural and direct evidence of Amazon's monopoly power, including the scope of relevant markets;
- Amazon's anti-discounting conduct;
- Amazon's fulfillment conduct; and
- Project Nessie.

Plaintiffs do not believe that phased discovery is necessary, other than separation of fact and expert discovery; however, Plaintiffs believe that the Court will need to closely oversee discovery to ensure that this case moves forward in a timely fashion and can be tried by mid-2026. Plaintiffs have proposed several measures to keep discovery on track with respect to document production, data production, and third-party discovery. Those measures, which include interim deadlines, are included in Plaintiffs' proposed Case Management Order.

Plaintiffs also request that the Court set regular status conferences so that the Court can track the progress of discovery and the parties can readily obtain guidance from the Court. Plaintiffs propose that the Court schedule a bimonthly video or telephonic status conference

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starting two months after the Court sets a scheduling order, and direct the parties to file a joint status report regarding the status of discovery, any discovery disputes where the Court's guidance could be productive, and any other matters the parties wish to bring to the Court's attention no later than three business days before each scheduled status conference.

Amazon's Position

If this case is not dismissed, Amazon anticipates that discovery will be needed regarding all of Plaintiffs' claims and all of Amazon's anticipated defenses. Relevant discovery will include discovery on the following topics:

- Documents and information relied on in the Complaint;
- Competition in offline and online retail and the appropriate relevant market;
- Competitive conditions in the markets alleged in the Complaint, including potential substitutions and the policies and practices of Amazon's competitors;
- The prices and terms at which Amazon's competitors, including other retailers, marketplaces, third-party sellers, and other participants in the retail market offered products and services;
- The benefits to competition resulting from the Amazon store; and
- The remedies sought by Plaintiffs.

Amazon anticipates that it will need extensive discovery from Plaintiffs and third parties located throughout the country, such as the many retail competitors of Amazon and the businesses that sell their goods on the Amazon store.

Amazon believes that discovery should be phased, with fact discovery preceding expert discovery, as reflected in both sides' proposed schedules.

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Amazon does not object to regular status conferences with the Court, but bimonthly status conferences, as Plaintiffs' propose, would be too frequent and not an efficient use of time. Amazon submits that quarterly status conferences would be sufficient, and that the parties could request additional conferences should a time-sensitive dispute arise that cannot be resolved through the meet and confer process. Amazon believes that status conferences would be most productive if conducted in person.

(C) Electronically Stored Information

The parties are meeting and conferring regarding an ESI Protocol that is a modified version of the Western District of Washington Model Agreement Regarding Discovery of Electronically Stored Information.

(D) Privilege Issues

The parties are meeting and conferring regarding a proposed Federal Rule of Evidence 502(d) order to address inadvertent disclosure. The parties will advise the Court if they believe that an additional order is needed to address further privilege issues.

(E) Changes to Limitations on Discovery

Plaintiffs' Position

Plaintiffs propose the following changes to limitations on discovery, which are included in Plaintiffs' proposed Case Management Order. Plaintiffs propose that:

- Each side is limited to 40 interrogatories in total (the parties are in agreement on this point).
- Each side is limited to 200 requests for admission in total. Requests for admission relating solely to the authentication or admissibility of documents, data,

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or other evidence (which are issues that the parties must attempt to resolve initially through negotiation) do not count against these limits.

- Each side is limited to 630 total deposition hours for party witnesses (including former employees of a party being deposed in that capacity) and 350 total deposition hours for nonparty witnesses. These time limitations refer to the time of testimony actually taken on the record and apply only to fact discovery. The following do not count against these limitations: (a) depositions of the parties' expert witnesses; (b) sworn testimony taken during Plaintiffs' pre-Complaint investigation or in any other litigation or government investigation; and (c) depositions taken for the sole purpose of establishing the authenticity or admissibility of documents, data, or other evidence, provided that such depositions must be designated as such at the time they are noticed.
- Each side may ask the Court for leave to serve additional interrogatories, serve additional requests for admission, or for additional deposition time.

Plaintiffs' case against Amazon challenges conduct that is at the core of Amazon's business, and involves multiple arms of Amazon's operations, including its first-party Retail and third-party Marketplace business units, its online superstore, advertising services, Prime subscription program, and fulfillment services. Amazon has been engaged in the challenged conduct for years to maintain monopolies that affect tens of millions of American households, hundreds of thousands of sellers on Amazon, and hundreds of billions of dollars in commerce every year.

Plaintiffs have proposed discovery caps for depositions that reflect a measured attempt to realistically estimate the discovery that is "proportional to the needs of the case, considering the

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importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the importance of the discovery in resolving the issues, and whether the burden or expense of [discovery] outweighs its likely benefit." *See* Fed. R. Civ. P. 26(b)(1). Courts have adopted similar discovery caps in other major antitrust enforcement actions, and this case is even broader in scope than those actions. *See, e.g.*, *United States v. Google LLC*, No. 20-cv-03010 (D.D.C. Feb. 3, 2021), Dkt. #108-1 (80 fact depositions per side, including up to 16 14-hour depositions); *FTC v. Meta Platforms, Inc.*, No. 20-cv-03590 (D.D.C. Mar. 3, 2022), Dkt. #103 (840 deposition hours per side); *FTC v. Qualcomm Inc.*, No. 17-cv-0220 (N.D. Cal.), Dkt. #71, 75, 206 (no limit on depositions).

Amazon's request to limit party depositions to 10 depositions per side is wholly unrealistic, at odds with Amazon's own initial disclosures, and inconsistent with Amazon's proposal for two years of fact discovery. Courts routinely increase the number of depositions parties may take to fit the needs of a case. Limiting Plaintiffs to 10 party depositions for a major antitrust enforcement action against one of the largest companies in the world defies common sense and is a naked attempt by Amazon to hamstring Plaintiffs in discovery. Further, Amazon's own initial disclosures identify eighteen current and former Amazon witnesses and six broad categories of third parties. Even if Amazon's disclosures were a realistic guide to the scope of discovery—and they are not, at least as to Amazon witnesses—Amazon's deposition proposal would prevent Plaintiffs from deposing many of the witnesses Amazon itself contends are likely to have relevant information. Finally, Amazon's proposal to tightly limit the number of depositions cannot be reconciled with its argument that Amazon needs more than two years in fact discovery, and that the 18 months proposed by Plaintiffs "does not provide sufficient time for discovery . . . in a case of this magnitude and complexity."

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Amazon argues that Plaintiffs should be limited in discovery because Plaintiffs have previously taken testimony from Amazon witnesses as part of their pre-Complaint investigation. That position is unfounded. Investigations serve a different purpose than discovery in litigation, and courts have long recognized that a government agency's pre-complaint investigation is not a substitute for, and should not limit, post-complaint discovery. *See Oklahoma Press Pub Co. v. Walling*, 327 U.S. 186, 201 (1946) (agency investigations are intended "to discover and procure evidence, not to prove a pending charge or complaint, but upon which to make one if, in the Administrator's judgment, the facts thus discovered should justify doing so."); *S.E.C. v. Sargent*, 229 F.3d 68, 80 (1st Cir. 2000) ("[T]here is no authority which suggests that it is appropriate to limit the SEC's right to take discovery based upon the extent of its previous investigation into the facts underlying its case[.]") (quoting *SEC v. Saul,* 133 F.R.D. 115, 118 (N.D. Ill. 1990)); *SEC v. Jasper*, 678 F.3d 1116, 1128-29 (9th Cir. 2012) (pre-complaint interview of defendant was not a substitute for deposition because of "the difference in nature of the SEC's motivation during an early investigation, at which open-ended questions are typically asked without expectation the witness will be needed at trial, and its motivation at an adverse witness deposition, when battle lines have already been drawn"); *see also United States v. GAF Corp.*, 596 F.2d 10, 14 (2d Cir. 1979) ("It is important to remember that the [Justice] Department's objective at the pre-complaint stage of the investigation is not to 'prove' its case but rather to make an informed decision on whether or not to file a complaint.") (internal citation omitted); *FTC v. Texaco, Inc.*, 555 F.2d 862, 874 (D.C. Cir. 1977) ("In the pre-complaint stage, an investigating agency is under no obligation to propound a narrowly focused theory of a possible future case."). Plaintiffs conducted investigational hearings before filing a Complaint to determine whether to bring an enforcement action, and to determine the scope of any enforcement action. Now that

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this case has been filed, depositions will seek testimony to prove up the specific allegations set forth in the Complaint and lay a foundation for trial. Plaintiffs are not aware of any significant antitrust enforcement action in which the Court has maintained a cap of 10 depositions for party witnesses because the government has previously conducted a pre-complaint investigation, and Amazon has not offered any such authority.

Plaintiffs do not believe that any party depositions of Plaintiffs will be warranted in this case. Unlike Amazon, Plaintiffs do not have fact witnesses with relevant personal knowledge of this matter who are likely to testify at trial. Plaintiffs are government agencies and offices acting in their law enforcement capacity, and the individuals with knowledge of this case are attorneys, economists, and other experts acting at the direction of counsel. As a result, any depositions of Plaintiffs, including depositions of office-holders or staff, would seek the practical equivalent of an examination of opposing counsel. *See SEC v. Jasper*, 2009 WL 1457755, at *2-3 (N.D. Cal. May 26, 2009); *FTC v. U.S. Grant Resources, LLC*, 2004 WL 144951, at *9-11 (E.D. La. June 25, 2004). Such depositions are disfavored, and generally permitted only upon a showing that "(1) no other means exist to obtain the information; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case." *Jasper*, 2009 WL 1457755, at *2 (citing *Shelton v. American Motors*, 2000 WL 116082, at *9 (N.D. Ill. Jan. 24, 2000)). However, Plaintiffs do not believe the Court needs to address this issue unless and until Amazon seeks depositions from Plaintiffs.

The parties also disagree as to the number of requests for admission that each side may serve. Plaintiffs believe their proposal of 200 requests for admissions per side, not including requests for admission relating solely to the authentication or admissibility of documents, data, or other evidence, is reasonable. Requests for admission can be a useful discovery tool to

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establish undisputed issues or identify points of dispute, and are less burdensome than depositions or interrogatories. Moreover, FRCP 36 does not set a default limit on requests for admissions.

Amazon's Position

As explained further herein, Amazon proposes the following changes to limitations on discovery:

- Each side is limited to 40 interrogatories in total (the parties are in agreement on this point).
- Each side is limited to 25 requests for admission in total. Requests for admission relating solely to the authentication or admissibility of documents, data, or other evidence (which are issues that the parties must attempt to resolve initially through negotiation) do not count against these limits.
- Federal Rule of Civil Procedure 30(a)(2) limits on depositions do not apply to third-party depositions or expert depositions. Party depositions are subject to Rule 30(a)(2).
- Each side may ask the Court for leave to serve additional interrogatories, serve additional requests for admission, or for additional deposition time.

Amazon disagrees with several of Plaintiffs' proposals for the reasons stated below. Again, the extensive scope of discovery proposed by Plaintiffs is at odds with their stated desire for a quick schedule. Amazon also reiterates that Plaintiffs' proposed Case Management Order is unnecessary and should not be entered, as Plaintiffs acknowledge that it covers the same subjects discussed in this Joint Status Report.

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Limitations on Discovery. The scope of discovery in this case must be considered in light of the extensive, four-year investigation that the FTC and certain plaintiff States conducted prior to filing their Complaint.

During that investigation, Amazon produced to the FTC and certain States approximately 1.7M documents (totaling nearly 10 million pages) from more than 130 custodians negotiated with the FTC (using search terms requested by the FTC), more than 100 terabytes of data, and responded to 21 interrogatories (not including subparts) resulting in 130 pages of written responses by Amazon, and numerous informal requests for information. Despite this massive record, Plaintiffs are now proposing extensive discovery that far exceeds what would be allowed in even a large civil case.

Interrogatories and Requests for Admission: The parties agree that the total number of interrogatories the parties may serve be limited to 40. Amazon proposes that the total number of requests for admissions the parties may serve not exceed 25. Plaintiffs' proposal for 200 requests for admission is excessive, even when considered in light of the other antitrust enforcement actions on which Plaintiffs rely. In a case as complex as this, requests for admission are more likely to cause discovery disputes than to meaningfully reduce the disputed issues for trial. This case involves complex issues such as the appropriate relevant market definition, whether the business practices challenged had anticompetitive effects, and whether an equitable remedy should be imposed and, if so, its nature. The amount of discovery proposed by Plaintiffs is extensive—the equivalent of nearly 200 depositions of Amazon-affiliated and third-party witnesses. (Amazon does not agree with this proposal, except that it agrees that third-party discovery will be extensive.) It is unlikely that requests for admission will meaningfully narrow the issues in dispute on a record this large and complicated. It is far more likely that they will

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involve extensive time and effort and disputes that do not create significant efficiencies in the resolution of this action. Moreover, the need for requests for admission is diminished where, as here, the parties must state the facts on which there is no dispute in their pretrial statement. *See* Local Rules W.D. Wash. LCR 16(h)-(i).

Depositions. Plaintiffs' proposal for conducting depositions in this case is one-sided and prejudicial to Amazon.

a. **Party Depositions**.

Plaintiffs propose that each side be allowed to take 630 hours of party depositions. That is the equivalent of **90** 7-hour depositions of Amazon. This proposal is contrary to the Federal Rules, unduly burdensome in light of the voluminous discovery available to Plaintiffs from the pre-suit investigation, and unfairly favors Plaintiffs. During the meet and confer, Amazon indicated that it would be willing to discuss a more reasonable proposal by Plaintiffs, but Plaintiffs failed to offer one. Therefore, absent agreement, the Federal Rules of Civil Procedure should apply. First, Federal Rule of Civil Procedure 30(a)(2) provides a presumptive limit of 10 depositions per side. This limit is imposed in cases, unlike here, where one side did not have the benefit of a multi-year investigation prior to filing suit. Indeed, the FTC and the investigating States took transcribed, sworn testimony from 30 current and former Amazon employees and an unknown number of third parties, and they attended the questioning, and have transcripts, of more than 30 witnesses subpoenaed by the California Attorney General during its overlapping investigation. Given that Plaintiffs already have the benefit of the extensive pre-filing discovery, there is no need for them to take 80 additional depositions beyond the default amount permitted by the Federal Rules. If Plaintiffs believe that additional party depositions are warranted, they

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should seek leave of Court and make a showing as to their reasons for each such deposition, as contemplated by Rule 30.

Plaintiffs argue that the extensive testimony and documents that they gathered during the investigation should not be considered because the investigation was for a "different purpose." But the subjects of witness examination and document productions during the investigation were the same as those involved in this case. Importantly, Plaintiffs do not represent that they will not use any of the evidence gathered in their investigation in this case; in effect, they argue that they should be entitled to two separate discovery records to use in this case. And although Plaintiffs insist that that an agency investigation "should not limit[] post-complaint discovery," the cases they cite do not hold so, and instead address wholly different issues. *See Okla. Press Pub Co. v. Walling*, 327 U.S. 186, 194–202 (1946) (discussing whether investigative subpoenas violate the Fourth Amendment and exceed congressional intent); *United States v. GAF Corp.*, 596 F.2d 10, 12–14 (2d Cir. 1979) (discussing whether an investigative subpoena can reach documents collected in discovery in other cases); *FTC v. Texaco, Inc.*, 555 F.2d 862, 873–74 (D.C. Cir. 1977) (discussing the proper standard of relevance for an investigative subpoena); *SEC v. Jasper*, 678 F.3d 1116, 1127–27 (9th Cir. 2012) (discussing whether, in an investigative interview, the agency had motivation to cross-examine the witness such that a hearsay exception applied). Only one, *SEC v. Sargent*, 229 F.3d 68 (1st Cir. 2000), speaks to the question here. But in that case, the district court allowed the agency *no* discovery in the civil suit. *Id.* at 74.

Plaintiffs' proposal for **90** depositions must be considered in light of the voluminous testimony acquired in the pre-suit investigation. Given that Plaintiffs already have the benefit of sworn testimony from more than 30 witnesses in the FTC investigation and 30 more in the California investigation, and that Plaintiffs will surely rely on that testimony in their case,

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Plaintiffs' proposal is excessive and unduly burdensome. Plaintiffs are proposing to depose Amazon personnel on every workday for the equivalent of four and a half months. The disruption to Amazon's business would be enormous and not proportional to the needs of the case (nor proportional to the number of depositions that Plaintiffs believe Amazon should be permitted to take). Amazon invited Plaintiffs to make a more reasonable proposal in response to Amazon's proposal to revert to the default limit, but they did not do so. And while Plaintiffs claim they are aware of no "significant" antitrust enforcement action in which the Court has maintained the default deposition limits, the Court in *Qualcomm* did just that prior to the parties' agreement to expand the limit.

Second, Plaintiffs assert that no depositions of their own witnesses will be warranted in this case, and so their proposal on the number of depositions is both excessive and one-sided. Plaintiffs took the position in the meet and confer that depositions of Plaintiffs' party witnesses should be prohibited. As discussed below, this position would be contrary to law, but regardless of how Plaintiffs express their position, the net effect would be to allow Plaintiffs to take 90 more depositions than Amazon is permitted to take.

b. **Third-Party Depositions**.

Plaintiffs propose that each side be allowed 350 total hours for non-party depositions, which is the equivalent of 50 7-hour depositions. While the FTC and certain States had the benefit of pre-Complaint depositions, including from third-parties, Amazon had no such opportunity. Accordingly, Amazon proposes that the Fed. R. Civ. P. 30(a)(2) limit on the number of depositions *not* apply to third-party depositions in this case, and that no limits be imposed on the number of third-party depositions. Third-party discovery will be vital to Amazon's defense, and Plaintiffs' proposal is far lower than their proposal for the party

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depositions that will be Plaintiffs' focus. Third-party discovery is critical in any antitrust case, especially this one. Amazon anticipates that it will seek discovery on its defenses and Plaintiffs' claims from the Plaintiffs and numerous third parties. For example, discovery of competitors will be needed to establish the threshold issue of what the relevant market is for this case. Discovery of competitors and other participants in the market will be needed to establish or disprove the alleged anticompetitive effects alleged in the Complaint.

Response to Plaintiffs' justification for its proposed discovery limitations. Amazon's proposed number of requests for admission account for the unprecedented volume of material provided by Amazon during the FTC's multi-year pre-suit investigation. While Plaintiffs point to discovery caps in other antitrust enforcement actions, the wide-ranging caps across those orders highlight the individual nature of discovery in each case. Plaintiffs also fail to acknowledge that some of the limits in those other cases were by agreement of the parties. For example, in *FTC v. Qualcomm Inc.*, No. 17-cv-0220 (N.D. Cal.), Dkt. #75, with the exception of a cap on 20 interrogatories, the Court ordered that "[t]he discovery limitations in the Federal Rules of Civil Procedure otherwise govern this case." It was only five months later, and by agreement of the parties, that the Court ordered that "leave is granted to all Parties to conduct in excess of ten (10) depositions per side." *Id.* Dkt. #207. And contrary to Plaintiffs' assertion, there is nothing to suggest the Court embraced "no limit" on depositions.

Likewise, Plaintiffs' reliance on *Google* is misleading. Plaintiffs neglect to mention that the case order they cite—docket 108—is the second case management order in the case, not the first. The original order simply memorialized the parties' agreed upon numbers of depositions, interrogatories, and requests for admission. *United States v.* Google, 20-cv-03010 (D.D.C.) Dkt. #85 (ordering 65 depositions, 45 interrogatories, and 37 requests for admission). After the court

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entered that order, parties to the consolidated case, *Colorado v. Google*, No. 20-cv-3715, filed a Rule 26 statement. *See id.*, Dkt. #105. In response, Google suggested a small increase to the amounts already ordered in *United States v. Google* (such as five additional depositions), whereas the State parties sought a much larger increase (such as sixty additional depositions, thirty per side). The order the Plaintiffs cite—docket 108—was the court's compromise, which "largely adopted the approach proposed by Google" and denounced the State plaintiffs' proposal as "disincentivizing cooperation." *Id.*, Dkt. #108 at 1–2.

***Depositions of government parties and witnesses*:** Plaintiffs contend that party depositions of Plaintiffs will not be warranted in this case, and in a meet and confer, they took the position that party depositions of Plaintiffs should be prohibited. Thus, it is evident that Plaintiffs are of the view that their proposed number of party depositions will apply only to Amazon's witnesses, and the Court should consider Plaintiffs' position when balancing the parties' proposals. In any event, Amazon notes that government parties *are* subject to Rule 30(b)(6) depositions. Rule 30(b)(6) explicitly states that "a party may name as the deponent . . . a governmental agency." Fed. R. Civ. P. 30(b)(6). Numerous decisions in this Circuit have approved or involved Rule 30(b)(6) depositions of government parties. *See See In re U.S. Dep't of Educ.*, 25 F.4th 692, 704 (9th Cir. 2022); *FTC v. DIRECTV, Inc.*, No. 15-cv-01129, 2016 WL 4154851, at *2-3 (N.D. Cal. Aug. 5, 2016) (allowing Rule 30(b)(6) deposition of FTC); *Ibrahim v. U.S. Dep't of Homeland Sec.*, 912 F.3d 1147, 1162-63 (9th Cir. 2019).

(F) The Need for Discovery Related Orders

The parties are meeting and conferring regarding a Protective Order, Expert Order, ESI Protocol, and Discovery Coordination Protocol. The parties have also met and conferred regarding a Case Management Order. Amazon believes that Plaintiffs' Case Management Order

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is unnecessary because it is duplicative of this Joint Status Report. Nonetheless, to preserve its position, Amazon is submitting its own version of Plaintiffs' Case Management Order to set forth its positions on disputed issues. Amazon also believes that a Discovery Coordination Protocol is appropriate to coordinate depositions and minimize burden in the eight related cases, and it has proposed such an order to Plaintiffs.

5. Items Set Forth in LCR 26(f)(1)

(A) Prompt Case Resolution

The parties agree to work together in good faith to promptly resolve the case in compliance with the Federal Rules, Local Rules of Civil Procedure, and all Court orders.

(B) Alternate Dispute Resolution

The parties have considered the possibility of using alternative dispute resolution procedures but do not believe that the case would benefit from such procedures at this time.

(C) Related Cases

The parties agree that the following cases are related to this case:

- *Frame-Wilson v. Amazon.com, Inc.*, No 2:20-cv-00424 (W.D. Wash.), Judge John H. Chun
- *De Coster v. Amazon.com, Inc.*, No. 2:21-cv-00693 (W.D. Wash.), Judge John H. Chun
- *Hogan v. Amazon.com, Inc.*, No. 2:21-cv-00996 (W.D. Wash.), Judge John H. Chun
- *Hopper v. Amazon.com, Inc.*, No. 2:23-cv-01523 (W.D. Wash.), Judge John H. Chun (consolidated with *Hogan* on November 27, 2023)

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- *Zulily v. Amazon.com, Inc.*, No. 2:23-cv-01900 (W.D. Wash.), Judge Barbara J. Rothstein

The parties agree that the following cases pending in other jurisdictions involve all or a material part of the same subject matter and all or substantially the same parties as this action:

- *People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.), Judge Ethan P. Schulman
- *District of Columbia v. Amazon.com, Inc.*, No. 2021 CA 001775 B (D.C. Super. Ct.), Judge Hiram E. Puig-Lugo; dismissed, appeal pending, No. 22-CV-657 (D.C. Ct. App.)
- *Mbadiwe v. Amazon.com, Inc.*, No. 1:22-cv-09542 (S.D.N.Y.), Judge Vernon S. Broderick

Plaintiffs' Position

Plaintiffs will work in good faith to coordinate discovery between the related cases to the extent it is reasonably possible to do and are willing to continue meeting and conferring with Amazon regarding a potential Discovery Coordination Protocol. However, Plaintiffs believe that a Discovery Coordination Protocol is premature at this time. Plaintiffs cannot make concrete plans for discovery or meaningfully discuss coordination issues with the plaintiffs in the related cases until a discovery schedule has been set in this case and Plaintiffs know how many depositions they will be able to take. As a result, Plaintiffs propose to meet and confer further regarding a Discovery Coordination Protocol after the Court has issued a scheduling order and either ruled on discovery caps or provided some guidance to the parties regarding depositions.

Amazon's Position

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Amazon and numerous non-party witnesses are facing voluminous depositions covering overlapping topics in this case, in five related cases pending before this Court, and in three other cases against Amazon in other courts that involve the same types of claims and subject matter. Amazon proposed a straightforward coordination protocol to Plaintiffs to facilitate deposition discovery of common Amazon and non-party witnesses in those cases. Such a coordination protocol is needed in order to help efficiently manage these related and overlapping cases, and to establish a process to avoid burdening Amazon witnesses and non-party witnesses with multiple and overlapping depositions in these related cases.

(D) Discovery Management

(i) The parties agree to manage discovery in accordance with the Federal Rules of Civil Procedure and the Local Civil Rules, as modified in Section 4.E above.

(ii) The parties agree that they may benefit from sharing third party discovery and associated costs (if any) and will explore whether such an agreement is feasible when appropriate.

(iii) The parties agree that the Court should set regular status conferences so that the Court can track the progress of discovery and the parties can readily obtain guidance from the Court. Plaintiffs propose that the Court schedule a bimonthly video or telephonic status conference starting two months after the Court sets a scheduling order and direct the parties to file a joint status report regarding the progress of discovery and any disputes no later than three business days before each scheduled conference.

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Amazon proposes that quarterly status conferences are sufficient, and that status conferences should be held in person.

(iv) The parties agree that the parties may use the expedited joint motion procedure in LCR 37(a)(2), at the moving party's election. The parties agree that the parties may file discovery motions using the standard procedure set forth in LCR 7, or such other procedure as the Court may direct.

(v) The parties do not request the assistance of a magistrate judge for settlement conferences at this time.

(vi) The parties do not request an abbreviated pre-trial order at this time.

(vii) The parties are meeting and conferring regarding a Protective Order, Expert Order, ESI Protocol, and Discovery Coordination Protocol. The parties have also met and conferred regarding a Case Management Order. Amazon believes that Plaintiffs' Case Management Order is unnecessary because it is duplicative of this Joint Status Report. Nonetheless, to preserve its position, Amazon is submitting its own version of Plaintiffs' Case Management Order to set forth its positions on disputed issues.

(E) Anticipated Discovery Sought

The parties anticipate that discovery will be needed regarding all of Plaintiffs' claims, including remedies sought by Plaintiffs, and all of Amazon's anticipated defenses, as described above in Section 4.B (Subjects, Timing, and Potential Phasing of Discovery).

(F) Phasing Motions

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The parties do not believe at this time that phasing motions will facilitate early resolution of potentially dispositive issues.

(G) Preservation of Discoverable Information

Plaintiffs' Position

Plaintiffs are concerned that Amazon has not met its obligation to preserve potentially relevant ESI, including ESI created through messaging applications and collaboration tools, during Plaintiffs' pre-suit investigation. Plaintiffs sought confirmation from Amazon that it is continuing to preserve documents created through Signal, Wickr, Slack, and Brainscape in particular. Plaintiffs intend to seek discovery on Amazon's compliance with its preservation obligations and, if necessary, raise any related disputes to the Court promptly.

Amazon's Position

Amazon has met and continues to meet its preservation obligations, including for the sources identified by the FTC and Investigating States. During the four-year pre-Complaint investigation, Amazon cooperatively and voluntarily provided information to the FTC and Investigating States about messaging services they identified, such as Signal, Wickr, Slack, and Brainscape, as well as multiple other data sources that led to the production of millions of documents in response to their requests. Specifically, with respect to Signal, Amazon spent over a year corresponding with the FTC and Investigating States, providing information about employees' use of Signal in response to their requests, inviting staff to review non-responsive messages *in camera*, and producing a witness to testify on issues of preservation and ephemeral messaging. Amazon and will continue to cooperate with reasonable requests for relevant information and documents in this matter.

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Amazon also expects that the FTC and Plaintiff States have ensured the preservation of all ESI relating to this matter, including but not limited to any communications involving FTC Commissioners, Front Office personnel, and Staff on personal devices or ephemeral messaging platforms like Signal—from their inception through the present. Plaintiffs should inform Amazon what steps, if any, they have taken in this regard, so that any preservation issues in this case can be examined in a principled and bilateral fashion.

(H) Inadvertent Production and Privilege Waiver Issues

The parties are meeting and conferring regarding a proposed Federal Rule of Evidence 502(d) order to address inadvertent disclosure.

(I) Model Protocol for Discovery of ESI

(i) Plaintiffs' discoverable ESI consists of emails and other documents located on Plaintiffs' servers and internal systems (e.g., Microsoft Outlook) as well as on third-party messaging applications and collaboration tools and personal devices to the extent used for communications relevant to this investigation. Amazon's discoverable ESI consists of emails and other documents located on Amazon's servers and internal systems as well as the messaging applications and collaboration tools listed above.

(ii) As stated in Section 4.C. (Electronically Stored Information), the parties are meeting and conferring regarding an ESI Protocol that is a modified version of the Western District of Washington Model Agreement Regarding Discovery of Electronically Stored Information in Civil Litigation.

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(J) Alternative to Model Protocol

As stated in Section 4.C (Electronically Stored Information), the parties are discussing a modified version of the Western District of Washington Model Agreement Regarding Discovery of Electronically Stored Information.

6. Discovery Completion Date

Plaintiffs' Proposal

Plaintiffs propose that fact discovery be completed by April 18, 2025 (approximately 17 months after the start of fact discovery), and that expert discovery be completed by October 31, 2025, as described in the chart at the beginning of Section 4.

Amazon's Proposal

Amazon proposes that fact discovery be completed by December 15, 2025 (24 months from the filing of this Joint Status Report and Discovery Plan) and that expert discovery be completed June 1, 2026 (5.5 months after the close of fact discovery), as described in the chart at the beginning of Section 4.

7. Bifurcation

Plaintiffs' Proposal

Plaintiffs propose that trial should address only Amazon's liability under Section 5 of the FTC Act, Section 2 of the Sherman Act, and applicable state competition and consumer protection laws. If the Court renders a decision finding Amazon liable, the parties will then promptly submit a proposal regarding a schedule for any separate remedy hearing, if necessary. This proposal would not limit the ability of any party to take discovery regarding remedies during the time for fact discovery. This approach will allow the Court and the parties to focus on liability issues before turning to the issue of what relief is necessary to stop Amazon's unlawful

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activities, restore fair competition, and remedy the harm to competition caused by Amazon's conduct.

Amazon's Proposal

All issues, both liability and remedy, should be tried together. It is significantly more efficient for the Court, the witnesses, and the parties to participate in one trial rather than in two separate trials. Moreover, as described above, the FTC and Investigating States spent four years investigating Amazon prior to filing suit and gathered an enormous amount of data, documents, and testimony prior to filing this lawsuit. The FTC and the Plaintiff States who chose to join this lawsuit should already have a position on the remedies that they are seeking, and they should announce that position to the Court in order to provide guidance on the issues to be resolved and the discovery that Amazon will need to develop to defend against Plaintiffs' requested remedies. If, on the other hand, Plaintiffs do not know what remedy they are seeking, they should advise the Court and Amazon, as it would be remarkable if Plaintiffs brought such a complex lawsuit without an idea of what relief they will ask the Court to enter.

8. Whether the Pretrial Statements and Pretrial Order Called for by Local Civil Rules 16I, (h), (i), and (k), and 16.1 Should Be Dispensed With in Whole or in Part for the Sake of Economy

The parties believe that the case will need to develop further before they can assess whether to dispense in whole or part with the use of pretrial statements and a pretrial order under LCR 16(e), (h), (i), and (l), and under LCR 16.1.

9. Whether the Parties Intend to Utilize the Individualized Trial Program Set Forth in Local Civil Rule 39.2 or any ADR Options Set Forth in Local Civil Rule 39.1

The parties do not intend to use the Individualized Trial Program set forth in LCR 39.2 or the ADR options set forth in LCR 39.1.

10. Any Other Suggestions for Shortening or Simplifying the Case

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The parties will in good faith seek to identify opportunities to streamline the case.

11. The Date the Case Will Be Ready for Trial

Under Plaintiffs' proposed schedule, this case will be ready for trial on May 26, 2026, as described in the chart at the beginning of Section 4. Under Amazon's proposed schedule, this case will be ready for trial in or after December 2026.

12. Whether the Trial Will Be Jury or Non-Jury

The parties are not requesting a jury trial at this time.

13. The Number of Trial Days Required

Plaintiffs' Position

Plaintiffs respectfully submit that it would be premature to estimate the number of trial days needed for this matter until the parties have engaged in fact discovery and can better assess the evidence each side is likely to present at trial. Subject to the foregoing, Plaintiffs estimate that this case will require at least four full weeks of trial.

Amazon's Position

Amazon believes that no trial is necessary as the case should be dismissed prior to trial. To the extent a trial is required, Amazon respectfully submits that it would be premature to estimate the number of trial days needed for this matter until the parties have a chance to undertake discovery and better assess the testimonial and documentary evidence each plans to present at trial. Subject to the foregoing and reserving all rights, Amazon estimates that the case will require at least six full weeks of trial.

14. The Names, Addresses, and Telephone Numbers of All Trial Counsel

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15. The Dates on Which the Trial Counsel may Have Complications to Be Considered in Setting a Trial Date

Plaintiffs' trial counsel have no known complications at this time. Amazon's trial counsel are currently scheduled for trial in *People of the State of California v. Amazon.com, Inc.*, No. CGC-22-601826 (Cal. Super. Ct.), Judge Ethan P. Schulman, commencing on August 10, 2026.

16. If, on the due date of the Report, all defendant(s) or respondent(s) have not been served, counsel for the plaintiff shall advise the Court when service will

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be effected, why it was not made earlier, and shall provide a proposed schedule for the required FRCP 26(f) conference and FRCP 26(a) initial disclosures.

Defendant Amazon has been served.

17. **Whether Any Party Wishes a Pretrial FRCP 16 Conference With the Judge Prior to Entry of Any Order Pursuant to Rule 16 or Setting of a Schedule For This Case**.

Plaintiffs request an in-person, video, or telephonic FRCP 16 conference with the Court prior to entry of an order setting a schedule for this case. Amazon submits that an in-person conference would be most productive and requests that the FRCP 16 conference be in person.

18. The Dates Each Nongovernmental Corporate Party Filed its Disclosure Statement Pursuant to FRCP 7.1 and LCR 7.1.

Amazon filed its disclosure statement pursuant to FRCP 7.1 and LCR 7.1 on October 2, 2023 (Dkt. #14).

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Dated: December 15, 2023

Respectfully submitted,

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