

THE HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY AND MATTHEW STREET,

Plaintiffs,

v.

AMAZON.COM SERVICES, LLC, a
Delaware Limited Liability Company, and
AMAZON DIGITAL SERVICES, LLC, a
Delaware Limited Liability Company,

Defendants.

Case No.: 2:21-cv-00912-BJR

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants Amazon.com Services, LLC and Amazon Digital Services, LLC respectfully request that the Court dismiss Plaintiffs’ First Amended Class Action Complaint (“FAC”) for failure to state a claim. Pursuant to the Court’s Standing Order for Civil Cases, the parties’ counsel conferred to determine whether Amazon’s motion could be avoided; because it is Amazon’s position that the Streets’ claims all fail as a matter of law, and cannot be salvaged by amendment, the parties were unable to agree on any middle ground that would obviate this Motion.

INTRODUCTION

Mary and Matthew Street are longtime Amazon customers. They use an Amazon device called the Echo Dot smart-speaker, which the Streets connect to the internet using Wi-Fi or to other devices using Bluetooth. Like most consumers, the Streets have undoubtedly experienced the frustration of situations when their devices lose connection or fail to function properly.

1 In September 2019, Amazon publicly announced development of Amazon Sidewalk.
2 Sidewalk is a program that allows low-cost, low-bandwidth, low-power devices—think lights,
3 sensors, pet-trackers—to extend their range by borrowing very small amounts of bandwidth from
4 more powerful Wi-Fi-connected devices. For example, a motion sensor at the end of a long
5 driveway might briefly connect to a neighbor’s Sidewalk-enabled device in order to transmit
6 data. The goal of the program is to enable small “neighbor-created networks” that allow a
7 variety of low-cost devices to perform better. Sidewalk costs the consumer nothing, and the
8 program is entirely voluntary: users may disable Sidewalk on their devices at any time.

9 In June 2021, after nearly two years of extensive publicity and media attention, Amazon
10 launched Sidewalk. Less than a month later, the Streets filed this lawsuit. They seek to
11 represent a nationwide class of every person who has purchased and used a Sidewalk-enabled
12 Echo device. The Streets claim that “Amazon is building an unprecedented national wireless
13 network but making its consumers foot the bill.” FAC ¶ 1. Even if that were true (it is not), the
14 Streets have no viable legal claim because they have suffered no harm. The Streets acknowledge
15 that they can simply turn off Sidewalk (and presumably have done so in light of their claims).
16 And they do not allege any actual harm; they allude to the “potential for overage charges” for
17 excess internet use, but do not allege that such overages have actually occurred (nor is there any
18 credible risk of overages given how little bandwidth Sidewalk uses). Because each of the
19 Streets’ three causes of action requires some form of harm, the Complaint should be dismissed.

20 BACKGROUND

21 In September 2019, Amazon publicly announced that it was developing Sidewalk.
22 See Declaration of Brian Buckley (“Buckley Decl.”), filed in support of this Motion, Ex. A.¹

23 ¹ It is well-established that the Court can take judicial notice of press releases and media
24 coverage, not for the truth of the statements in those media but for notice purposes. Rule 201 of
25 the Federal Rules of Evidence allows the court to judicially notice facts that are not subject to
26 reasonable dispute. Fed. R. Evid. 201(b), (d). Facts are not subject to reasonable dispute if they
27 “can be accurately and readily determined from sources whose accuracy cannot reasonably be
28 questioned.” Fed. R. Evid. 201(b)(2). The court “must take judicial notice if a party requests it
and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). Courts
routinely take judicial notice of publicly available documents such as corporate press releases
and facts in published news articles. See, e.g., *Ritter v. Hughes Aircraft Co.*, 58 F.3d 454, 458-

1 As Amazon explained in that announcement, many devices in our homes rely on Wi-Fi and
2 Bluetooth connections to operate, but those connections only extend so far. That leaves spaces
3 in and around homes for low-cost devices like sensors and lights that can benefit from low-
4 power, low-bandwidth connections. Sidewalk extends the working range of such devices by
5 allowing more powerful Wi-Fi connected devices, like some models of Echo smart-speakers and
6 Ring devices, to share small amounts of bandwidth with Sidewalk-enabled devices nearby. *Id.*

7 A year later, in September 2020, Amazon updated the public on Sidewalk’s progress.
8 *See* Buckley Decl., Ex. B. Amazon explained: “Operated by Amazon at no charge to customers,
9 Amazon Sidewalk uses Bluetooth Low Energy (BLE), the 900 MHz spectrum, and other
10 frequencies to simplify new device setup, extend the low-bandwidth working range of devices,
11 and help devices stay online and up-to-date even if they are outside the range of home Wi-Fi.”
12 *Id.* As Amazon explained further: “Customers will be able to access Sidewalk using two types
13 of devices operating on the network: Sidewalk Bridges and Sidewalk-enabled devices. Sidewalk
14 Bridges, including select Ring Floodlight Cams and Ring Spotlight Cams, are devices that
15 provide connections to Sidewalk. Sidewalk-enabled devices [such as smart lights at the end of
16 your driveway] connect to Sidewalk Bridges to access the network.” *Id.* Amazon also
17 announced that certain models of Amazon Echo devices would be equipped to act as Sidewalk
18 Bridges. *Id.*

19 The Streets’ FAC also references an Amazon website—maintained by Ring, which is
20 wholly owned by Amazon—that explains how Sidewalk functions. *See* FAC, ¶ 25, n.9² (citing
21 *Support Center, Amazon Sidewalk*, <https://support.ring.com/hc/en-us/articles/360032492292->

22 _____
23 *Mut., Inc. Sec., Derivative & ERISA Litig.*, 259 F.R.D. 490, 495 (W.D. Wash. 2009). Further,
24 Plaintiffs themselves cite repeatedly to media coverage of Sidewalk in support of arguments they
25 make in the FAC. *See, e.g.*, FAC ¶ 3, n.1.

26 ² Under the “incorporation by reference” doctrine, the Court can consider documents “whose
27 contents are alleged in a complaint and whose authenticity no party questions, but which are not
28 physically attached to the pleading.” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). *See also Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005) (incorporating by reference complete
copies of websites where the complaint included only excerpts because “[i]n evaluating the
context in which the statement appeared, we must take into account ‘all parts of the
communication that are ordinarily heard or read with it’”) (internal citations omitted).

1 [Amazon-Sidewalk-Information](#) (last visited October 27, 2021)). See Buckley Decl., Ex. C. As
2 that website explains, “Sidewalk works by sharing a little bit of your internet bandwidth with
3 your neighbors.” *Id.* The site also explains that Sidewalk is completely voluntary, costs users
4 nothing to enjoy, does not slow down users’ Internet connections, and “is designed with multiple
5 layers of privacy and security to secure data traveling on the network.” *Id.* (This negates the
6 Streets’ wholly unsupported and conclusory allegation that Sidewalk poses an “increased risk to
7 the security of their personal data.” FAC ¶ 6).

8 On June 8, 2021, Sidewalk officially launched. FAC ¶ 5. Leading up to the launch, there
9 was substantial media attention and coverage regarding Sidewalk’s functionality. Some of that
10 coverage had a negative slant, wrongly suggesting that Sidewalk was “stealing” customers’
11 internet bandwidth. See, e.g., Associated Press, *Own an Echo? Amazon may be helping itself to*
12 *your bandwidth*, N.Y. POST (June 9, 2021), [https://nypost.com/2021/06/09/own-an-echo-](https://nypost.com/2021/06/09/own-an-echo-amazon-may-be-helping-itself-to-your-bandwidth/)
13 [amazon-may-be-helping-itself-to-your-bandwidth/](https://nypost.com/2021/06/09/own-an-echo-amazon-may-be-helping-itself-to-your-bandwidth/) (Buckley Decl., Ex. D); Brenda Stolyar, *How*
14 *to check if Amazon Alexa is stealing your internet bandwidth for Sidewalk*, MSN.COM (Dec. 6,
15 2020), [https://www.msn.com/en-us/news/technology/how-to-check-if-amazon-alexa-is-stealing-](https://www.msn.com/en-us/news/technology/how-to-check-if-amazon-alexa-is-stealing-your-internet-bandwidth-for-sidewalk/ar-BB1bGj8s)
16 [your-internet-bandwidth-for-sidewalk/ar-BB1bGj8s](https://www.msn.com/en-us/news/technology/how-to-check-if-amazon-alexa-is-stealing-your-internet-bandwidth-for-sidewalk/ar-BB1bGj8s) (Buckley Decl., Ex. E). But there was
17 positive coverage too, highlighting the benefits of a free, shared, low-power network to make
18 low-cost devices operate more efficiently. See, e.g., Josephine Wolff, *Amazon Wants to Connect*
19 *Your Smart Speaker and Doorbell With Your Neighbor’s. It’s Actually Pretty Cool!*, SLATE (June
20 3, 2021), [https://slate.com/technology/2021/06/amazon-sidewalk-mesh-network-experiment-](https://slate.com/technology/2021/06/amazon-sidewalk-mesh-network-experiment-privacy.html)
21 [privacy.html](https://slate.com/technology/2021/06/amazon-sidewalk-mesh-network-experiment-privacy.html) (Buckley Decl., Ex. F); Michael Bizzaco, *Amazon Sidewalk is coming soon.*
22 *Here’s how it will improve smart home devices*, DIGITALTRENDS.COM (May 25, 2021),
23 <https://www.digitaltrends.com/home/amazon-sidewalk-and-what-it-means-for-you/>
24 (Buckley Decl., Ex. G); Kim Lyons & Russell Brandom, *Amazon will launch a new location-*
25 *tracking mesh network system later this year*, THE VERGE (Sept. 21, 2020),
26 [https://www.theverge.com/2020/9/21/21448926/amazon-sidewalk-ring-echo-tile-wifi-mesh-ble-](https://www.theverge.com/2020/9/21/21448926/amazon-sidewalk-ring-echo-tile-wifi-mesh-ble-location-tracking)
27 [location-tracking](https://www.theverge.com/2020/9/21/21448926/amazon-sidewalk-ring-echo-tile-wifi-mesh-ble-location-tracking) (Buckley Decl., Ex. H).

28

1 The media coverage also explained to consumers that Sidewalk is entirely voluntary,
2 and many articles offered instructions on how to opt out. *See, e.g.,* Laurel Wamsley, *Your*
3 *Amazon Echo Will Share Your Wireless Network With Neighbors, Unless You Opt Out*, NAT'L
4 PUB. RADIO (June 4, 2021), [https://www.npr.org/2021/06/02/1002590964/your-amazon-echo-](https://www.npr.org/2021/06/02/1002590964/your-amazon-echo-will-share-your-wi-fi-network-with-neighbors-unless-you-opt-out)
5 [will-share-your-wi-fi-network-with-neighbors-unless-you-opt-out](https://www.npr.org/2021/06/02/1002590964/your-amazon-echo-will-share-your-wi-fi-network-with-neighbors-unless-you-opt-out) (Buckley Decl., Ex. I);
6 Barbara Krasnoff, *How to opt out of (or into) Amazon's Sidewalk network*, MSN.COM (June 1,
7 2021), [https://www.msn.com/en-us/news/technology/how-to-opt-out-of-or-into-amazon-e2-80-](https://www.msn.com/en-us/news/technology/how-to-opt-out-of-or-into-amazon-e2-80-99s-sidewalk-network/ar-AAKBENZ)
8 [99s-sidewalk-network/ar-AAKBENZ](https://www.msn.com/en-us/news/technology/how-to-opt-out-of-or-into-amazon-e2-80-99s-sidewalk-network/ar-AAKBENZ) (Buckley Decl., Ex. J).

9 That extensive media coverage evidently reached the Streets. On July 8, 2021, exactly
10 30 days after Sidewalk launched, the Streets filed this lawsuit. They allege that in October 2018
11 they bought an Echo Dot third generation smart speaker for their home. FAC ¶ 12. They note
12 the benefits of Sidewalk, namely that “Sidewalk works by sharing a little bit of your internet
13 bandwidth with your neighbors. By combining it with bandwidth donated by others in the
14 neighborhood, Sidewalk creates a low-bandwidth, low-power network that can be used by
15 neighbors to help one another in new ways.” *Id.* ¶ 26. The Streets also acknowledge that they
16 and other consumers are free to opt out of Sidewalk at any time. *Id.* ¶ 30. Yet, with knowledge
17 of how Sidewalk functions, the Streets continue to use and enjoy their Echo device. *Id.* ¶ 49.

18 In the FAC, the Streets assert three causes of action against Amazon: (1) violation of the
19 Washington Consumer Protection Act (“CPA”); (2) theft of telecommunication services under
20 RCW § 9A.56.268; and (3) unjust enrichment. As explained below, those claims all fail for
21 various reasons, including that the Streets do not allege that they have been harmed.

22 ANALYSIS

23 At the pleading stage, Rule 12(b)(6) allows the Court to dispense with spurious or
24 legally flawed complaints before the parties begin the expensive and burdensome discovery
25 process, particularly in a putative class action like this one. To survive a Rule 12(b)(6) motion, a
26 complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell*
27 *Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim only has “facial plausibility when the
28

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.