

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MARY AND MATTHEW STREET,

NO. 2:21-cv-0912-BJR

Plaintiffs,

**ORDER GRANTING  
DEFENDANTS’ MOTION  
TO DISMISS; AND DIRECTING  
PLAINTIFFS TO FILE MOTION  
TO AMEND FAC**

v.

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

Defendants.

**I. INTRODUCTION**

Plaintiffs Mary and Matthew Street (“Plaintiffs” or the “Streets”) have filed this lawsuit against Defendants Amazon.com Services, LLC and Amazon Digital Services, LLC (collectively “Defendant” or “Amazon”), asserting claims on behalf of themselves and a putative class, for violations of the Washington Consumer Protection Act (“CPA”) and other state laws. The instant matter comes before the Court on a Motion to Dismiss filed by Amazon. Plaintiffs oppose the motion, and ask in the alternative for the opportunity to amend the Complaint. Having reviewed the parties’ briefs and supporting material filed in support of and opposition to the motion, the Complaint, and the relevant case law, the Court finds and rules as follows.

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## II. BACKGROUND

On June 8, 2021, Amazon launched a technology it calls Sidewalk, automatically connecting certain models of Amazon’s Echo smart speakers to other such devices in homes nearby, using Bluetooth and similar technology.<sup>1</sup> First Am. Compl., (“FAC”), ¶ 5. This “mesh network” of Echo-equipped homes helps eliminate interstitial gaps in WiFi, and allows low-bandwidth devices like pet trackers, outdoor security lights, and smart locks, which might otherwise be out of range, to more readily access the internet. Sidewalk performs this function by drawing on the bandwidth and data of private residential internet accounts belonging to owners of the Echo devices.<sup>2</sup> FAC ¶¶ 3, 5.

Amazon does not charge users of the pet-tracking and other devices that take advantage of the Sidewalk network to connect to the internet. However, Amazon also does not pay the owners of the Echo devices for the privilege of drawing from their private internet accounts. Furthermore, while an Echo owner can “opt-out” of the Sidewalk program by logging on to an app and disabling the feature, when Amazon activated Sidewalk in June 2021, all Sidewalk-compatible Echo models were automatically enlisted as part of the network where, in the absence of an owner taking steps to opt out, they continue to operate.

The Streets own a Sidewalk-compatible Echo Dot smart speaker, which they purchased in 2018. *Id.* ¶ 12. The Streets “pay Comcast for personal Internet bandwidth on a monthly basis” and “did not consent to share their personal Internet bandwidth for the Sidewalk network.” *Id.* ¶¶ 12-

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<sup>1</sup> Amazon’s Sidewalk-enabled devices include several of its newer models, listed at FAC ¶ 28. For the sake of simplicity this order will use “Echo” to refer to all such Sidewalk-enabled devices.

<sup>2</sup> “Data” refers to a total amount of data transmitted, while “bandwidth” refers to the rate at which such data can be transmitted.

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1 14. One may reasonably infer that the Streets disabled the Sidewalk feature on their Echo within  
2 several weeks or so of the network's June 2021 launch. *Id.* ¶ 55. They seek to have certified and  
3 to represent a class comprised of "All persons in the United States who bought or acquired and  
4 use an Amazon Sidewalk Device." *Id.* ¶ 34. The First Amended Complaint includes three counts:  
5 (1) for violation of the Washington Consumer Protection Act, RCW 19.86.010, *et seq.*; (2) for  
6 Theft of Telecommunications Services, under RCW § 9A.56.268 and .262; and (3) for Unjust  
7 Enrichment. They seek an award of damages and injunctive relief. FAC at p. 15.

### 8 III. DISCUSSION

#### 9 A. Standard on a Motion to Dismiss<sup>3</sup>

10 Upon a motion by a defendant, dismissal is appropriate if the complaint does not "state a  
11 claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). The complaint must "contain  
12 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face."  
13 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007).  
14 A claim has "facial plausibility" when the party seeking relief "pleads factual content that allows  
15 the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."  
16 *Id.* On a motion to dismiss under Rule 12(b)(6), the Court will accept all of plaintiff's plausible  
17 allegations as true and construe them in the light most favorable to the plaintiff. *Cousins v.*  
18 *Lockyer*, 568 F.3d 1063, 1067 (9th Cir. 2009).

19 Where a defendant argues that a plaintiff's factual allegations are insufficient to state a  
20 claim, the court reviews the allegations under the liberal pleading standard of Federal Rule 8(a),

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21  
22 <sup>3</sup> The Court rejects both sides' attempts to submit material outside the pleadings, as the Court was able to resolve  
23 this motion without reliance on or reference to any of it. Amazon's request for judicial notice and Plaintiffs' Motion  
24 for Judicial Notice are denied.

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1 which requires that a plaintiff provide only “a short and plain statement of the claim showing that  
2 the pleader is entitled to relief.” Thus, a complaint need not contain detailed factual allegations,  
3 but it must provide the grounds for entitlement to relief and not merely a “formulaic recitation” of  
4 the elements of a cause of action. *Twombly*, 550 U.S. at 570 (2007).

### 5 **B. Count I: Washington Consumer Protection Act Claim**

6 To state a claim for relief under the Washington CPA, a plaintiff must establish: (1) an  
7 unfair or deceptive act or practice (2) occurring in trade or commerce, (3) a public interest impact,  
8 (4) injury to the plaintiff's business or property, and (5) causation. *Hangman Ridge Training*  
9 *Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn. 2d 778 (1986). Amazon challenges two elements of  
10 Plaintiffs' CPA claim, arguing that Plaintiffs have failed to allege facts that support a finding of  
11 (1) an injury, and (2) an “unfair or deceptive practice.” The Court reviews each challenge in turn.

#### 12 *1. Whether Plaintiffs Have Sufficiently Alleged Injury*

13 Amazon's first challenge to the CPA claim is that Plaintiffs have not alleged sufficient  
14 facts to support a cognizable injury. Generally speaking, the injury claimed in the FAC is an  
15 “amount . . . including but not limited to the value of [Plaintiffs'] personal Internet bandwidth,  
16 time spent learning about the Sidewalk network, time spent disabling the Sidewalk function on  
17 Sidewalk Devices, [and] costs of Internet data use overages charged by Internet service  
18 providers.” FAC ¶ 55. Despite these averments, Amazon argues that the Streets failed to include  
19 in their FAC an explicit allegation that their own personal Echo was ever actually connected to  
20 the Sidewalk network, or shared their bandwidth or data within that network; that they have a  
21 limited data plan exposing them to possible overage charges for exceeding their data allocation;  
22 or that they personally expended time and resources disabling the Sidewalk feature.

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1 Amazon is correct. The Streets fail to include in their FAC any allegation *their* Echo ever  
2 actually connected through Sidewalk, or that *their* data and bandwidth were ever actually shared.  
3 As Amazon further points out, the Streets also fail to allege that they subscribe to a limited data  
4 plan; the taking of data from an unlimited plan, even without compensation or consent, Amazon  
5 argues, is not an injury. *See Cousineau v. Microsoft Corp.*, 992 F. Supp. 2d 1116, 1128 (finding  
6 “unauthorized data transmission would be a cognizable injury to a cell phone user's personal  
7 property *where that user purchased a finite allowance of data*” and dismissing CPA claim where  
8 plaintiff failed to allege she paid for “a finite allowance rather than an unlimited usage plan”)  
9 (emphasis added). The FAC also does not include any allegation that the Streets in fact spent any  
10 time disabling the Sidewalk feature on their Echo.

11 If the Streets aspire to represent an entire class of plaintiffs who claim these injuries, they  
12 must at a minimum allege at this stage that they have suffered these injuries themselves. The  
13 Court does not conclude at this stage, however, that Plaintiffs will be incapable of alleging any  
14 injuries under the CPA. Dismissal of the CPA claim for failure to allege an injury is therefore  
15 without prejudice and, as outlined more fully below, Plaintiffs may move to amend the FAC and  
16 take the opportunity to state their claims by alleging, if they can, the facts that their pleading  
17 currently lacks.

## 18 2. *Whether Plaintiffs Have Alleged Unfair or Deceptive Practices*

### 19 a. *Whether Plaintiffs Must Meet Heightened Pleading Standard Under Rule 9(b)*

20 Amazon also moves for dismissal of the CPA claim on the grounds that Plaintiffs have  
21 failed to adequately allege it committed “unfair or deceptive acts.” Amazon first argues that  
22 Plaintiffs are obligated to plead the circumstances constituting any purportedly deceptive acts

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