

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY AND MATTHEW STREET,

Plaintiff,

v.

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

Defendant.

NO. 2:21-cv-00912

**PLAINTIFFS' MOTION FOR
LEAVE TO FILE AMENDED
COMPLAINT**

Plaintiffs Mary and Matthew Street ("Plaintiffs") file this Motion for Leave to File Amended Complaint as follows:

PROCEDURAL BACKGROUND

On July 8, 2021, Plaintiffs filed suit against Defendants Amazon.com, Inc. and Amazon Digital Services, Inc., asserting individual and class action claims related to the implementation and functionality of Amazon's "Sidewalk" program. Dkt. 1. Counsel for Amazon filed notices of appearance on July 13, 2021. Dkts. 11, 12, 14. Amazon waived service on July 27, 2021, which extended the deadline to answer the complaint to September 27, 2021. Dkts. 18, 19.

1 Before the Answer was due, counsel for Amazon represented that due to changes in
2 Amazon's corporate structure, Plaintiffs had incorrectly named the defendants. Amazon stated
3 that the correct entities were Amazon.com, LLC and Amazon Digital Services, LLC
4 ("Amazon"). The parties further discussed Amazon's contention that an arbitration clause
5 applied to the claims Plaintiffs asserted on behalf of "Ring" devices. Based on these
6 discussions, the Parties stipulated that Plaintiffs would file an amended complaint naming the
7 correct entities and removing claims related to Ring devices. Dkt. 28. The Court entered an
8 order approving the stipulation on September 30, 2021. Dkt. 29.

9 Pursuant to the stipulation and order, Plaintiffs filed their First Amended Complaint on
10 October 8, 2021. Dkt. 30. Amazon filed a motion to dismiss under FRCP 12(b)(6) on October
11 28, 2021. Dkt. 31. Plaintiffs filed a response on November 19, 2021. Dkt. 34. Amazon filed a
12 reply on December 3, 2021. Dkt. 37.

13 While the motion to dismiss was pending, counsel realized that the deadline for filing a
14 motion for class certification under this Court's local rules was not stayed. Accordingly, the
15 Parties filed a joint stipulation to stay the class certification briefing deadline and requested that
16 the Court issue a new scheduling order after the Court ruled on the motion to dismiss. Dkt. 38.
17 The Court granted the request to stay the class certification proceedings, but it also ordered the
18 parties "to proceed with discovery and initial disclosures if they have not already done so" and
19 to "file a joint status report and proposed scheduling order no later than 1/19/2022." Dkt. 39
20 (minute order). The Parties filed their Joint Status report on January 19, 2022 (Dkt. 40), and the
21 Court entered a scheduling order on February 10, 2022 (Dkt. 41).

22 Consistent with the Court's directive to begin discovery, Plaintiffs served document
23 requests and requests for admission to Amazon on February 11, 2022. Declaration of Jason T.
24 Dennett, ¶ 2. Amazon served responses to Plaintiffs' requests on March 14, 2022. *Id.* These
25 responses, however, did not include any documents. Instead, despite the Court's order that
26

1 discovery commence, Amazon refused to produce any documents until the Court ruled on the
2 motion to dismiss. *Id.*

3 PROPOSED AMENDMENTS

4 The Court issued its order granting Amazon’s motion to dismiss on March 21, 2022.
5 Dkt. 43 (“Order”). The Court’s rulings were premised on finding that Plaintiffs had not
6 included sufficient factual allegations to support their claims and, accordingly, directed
7 Plaintiffs to file a motion for leave to amend their complaint. *Id.* Plaintiffs’ proposed Second
8 Amended Complaint (“SAC”) pleads the following additional facts to address those
9 deficiencies as set forth in Exhibit A¹.

10 **1. The Streets plead that Sidewalk connected to and shared bandwidth**
11 **through the Streets’ Echo device, addressing the deficiency the Order noted at page 4.**
12 SAC at ¶¶ 46–53.

13 The Court noted that the Streets failed to include an explicit allegation that their own
14 personal Echo was ever actually connected to the Sidewalk network or shared their bandwidth
15 within that network. Plaintiffs could not do so because only Amazon has that information.

16 Plaintiffs’ Amazon Echo device does not display or otherwise allow them access to
17 information about Sidewalk’s use of bandwidth through that device. Declaration of Matthew
18 Strebe at ¶¶ 8–10. Nor can the Street Plaintiffs access this information through their Amazon
19 account or from their internet service provider, which would not show Sidewalk’s use of
20 bandwidth through Plaintiffs’ device. *Id.* Amazon encrypts the data that shows how much of
21 Plaintiffs’ bandwidth was used by Sidewalk, and only Amazon could decrypt it. *Id.* at ¶¶ 8–11.
22 Amazon alone would have access to the information, and Amazon refuses to share it with its
23 customers, the Streets. *Id.*; Dennett Decl., ¶ 3.

24 On April 5, 2022, counsel for Plaintiff reached out to Amazon’s counsel to request
25 “documents, including logs, showing the Sidewalk activity on the Streets’ Echo device during

26 _____
¹ A redlined version of the SAC is attached as Exhibit B.

1 the time that Sidewalk was enabled,” noting that these documents were responsive to
2 previously served document requests. Dennett Decl., ¶ 3, Ex. 1. Although these requests sought
3 documents pertaining to potential class members, in addition to the Streets, Plaintiffs proposed
4 “to narrow those requests to this limited information given the Court’s order [on the motion to
5 dismiss].” *Id.* Amazon took the position that its customers, the Streets, were not entitled to
6 know how Sidewalk used their bandwidth through their Echo device, even in discovery. *Id.*

7 The Streets now plead that (1) Amazon activated Sidewalk on June 8, 2021; (2)
8 Amazon designed the Sidewalk components within the Streets’ Echo device for no purpose
9 other than to automatically connect to other Amazon devices and use the Streets’ bandwidth
10 without notice to the Streets; (3) the Streets live in a densely populated area near downtown
11 Miami; (4) Amazon gave the Streets no notice before activating Sidewalk on their Echo device;
12 and (5) the Streets did not opt out of Sidewalk until June 26, 2021. SAC at ¶¶ 46–53. If
13 Sidewalk worked as Amazon designed it to during the 18 days that it was active on the Streets’
14 Echo device, the Streets have sufficient evidence to plead on information and belief that
15 Sidewalk used their bandwidth.

16 **2. The Streets plead that they have a limited data plan, addressing the**
17 **deficiency the Order noted at page 4. SAC at ¶ 16.**

18 **3. The Streets plead that Amazon obtained telecommunications services,**
19 **addressing the deficiency the Order noted at page 8–9. SAC at ¶¶ 30–40; 82–83.**

20 Amazon created Sidewalk by taking private Internet bandwidth from Amazon
21 consumers without compensation. SAC at ¶ 1. Amazon then sells access and use of Sidewalk
22 wireless network to partner companies. *Id.* The partner companies sell devices that connect to
23 Sidewalk via Bluetooth. *Id.* at ¶¶ 34–35. When such a device sends a packet of data to Amazon
24 through an Echo device, it uses the Echo device owner’s personal Internet bandwidth. *Id.* at ¶
25 36. Put another way, Amazon takes Internet bandwidth from the Streets and Class Members
26

1 and resells it to partner companies like Tile, without compensating or reimbursing the Streets or
2 Class Members. *Id.* at ¶ 38.

3 Amazon obtains telecommunication services when Sidewalk devices use bandwidth
4 from the Streets and the Putative Class to create Sidewalk. Amazon then sells Sidewalk
5 network services, including data use, to partner companies like Tile. Amazon obtains
6 telecommunication services from the Streets and the Putative Class when Amazon's partner
7 companies' Bluetooth devices like Tile send packets of data through Sidewalk to Amazon's
8 servers. *Id.* at ¶¶ 82-83.

9 **4. The Streets plead that Amazon received a benefit from Sidewalk at the**
10 **expense of Plaintiffs and was unjustly enriched, addressing the deficiency the Court's**
11 **Order noted at pages 9–10. SAC at ¶¶ 30–40; 93.**

12 The Court further noted that the Plaintiffs had failed to allege a specific benefit that
13 Amazon received from the Streets sufficient to support a claim for unjust enrichment. Plaintiffs
14 now allege that Amazon receives compensation—the details of which are not publicly available
15 and are in Amazon's possession—from third-party companies, such as Tile, for access and use
16 of the Sidewalk network through Amazon. Because the network is built from the internet
17 bandwidth of putative Class Members, including the Streets, Amazon is directly compensated
18 for the use of internet bandwidth that rightfully belongs to the Streets and others. Although the
19 specific details of this compensation are unknown and unavailable to the Streets, it is
20 reasonable to infer that Amazon would not provide access to Sidewalk and devote resources to
21 improving the functionality of services offered by Tile and other partner companies without
22 financial incentives.

23 ARGUMENT

24 The Court ordered Plaintiffs to file this motion for leave to amend their complaint. Dkt.
25 43. “[A] court should liberally allow a party to amend its pleading.” *Sonoma Cty. Assoc. of*
26 *Retired Emps. v. Sonoma Cty.*, 708 F.3d 1109, 1117 (9th Cir. 2013). When faced with a request

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