

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THOMAS DOROBIALA,  
  
Plaintiff,  
  
v.  
  
AMAZON.COM, INC., a Delaware  
corporation,  
  
Defendant.

Case No. 2:22-cv-01600

**PLAINTIFF'S OPPOSITION TO  
AMAZON'S MOTION FOR  
CONSOLIDATION**

**TABLE OF CONTENTS**

|   | <b><u>Page</u></b> |
|---|--------------------|
| I. INTRODUCTION .....   | 1                  |
| II. BACKGROUND .....  | 2                  |
| III. ARGUMENT .....   | 4                  |
| A. Consolidation does not serve the interests of judicial economy because there is little factual overlap and no common claim with the other lawsuits. ....   | 5                  |
| B. Consolidating the claims of the separate plaintiffs' groups into a single complaint creates needless confusion and prejudices the rights of the various classes asserted by each plaintiff group. .... | 9                  |
| IV. CONCLUSION .....  | 11                 |

## TABLE OF AUTHORITIES

Page(s)

## CASES

|  |       |
|--|-------|
| <i>Almeida v. Barr</i> ,<br>2020 U.S. Dist. LEXIS 64537 (W.D. Wash. Apr. 10, 2020).....  | 4, 7  |
| <i>Anderson Living Tr. v. WPX Energy Production, LLC</i> ,<br>297 F.R.D. 622 (D.N.M. 2014).....                                | 9     |
| <i>Bedrock Masonry, Inc. v. Innovative Construction &amp; Design Ltd.</i> ,<br>2020 WL 4196036 (E.D. Wash. July 21, 2020)..... | 8     |
| <i>Cascade Yarns, Inc. v. Knitting Fever, Inc.</i> ,<br>2013 WL 6008308 (W.D. Wash 2013).....                                  | 8     |
| <i>De Coster v. Amazon</i> ,<br>2022 U.S. Dist. LEXIS 9960 (W.D. Wash. Jan. 19, 2022).....                                     | 5, 10 |
| <i>Ekin v. Amazon Services, LLC</i> ,<br>2014 WL 12028588 (W.D. Wash. May 23, 2014).....                                       | 8     |
| <i>Fairhaven Health, LLC v. BioOrigyn, LLC</i> ,<br>2021 U.S. Dist. LEXIS 241794 (W.D. Wash. Dec. 17, 2021).....               | 10    |
| <i>Gray v. Suttell &amp; Associates</i> ,<br>2010 WL 11437034 (E.D. Wash. Dec. 29, 2010).....                                  | 8     |
| <i>Harry &amp; David v. ICG Am., Inc.</i> ,<br>2010 U.S. Dist. LEXIS 92961 (D. Or. Sept. 7, 2010).....                         | 9, 11 |
| <i>Jackson v. Berkey</i> ,<br>2020 U.S. Dist. LEXIS 72786 (W.D. Wash. Apr. 24, 2020).....                                      | 7     |
| <i>Marlow v. Hotchkiss</i> ,<br>2015 WL 5254250 (E.D. Wash. Sept. 9, 2015) .....   | 8     |
| <i>Pecznick v. Amazon.com, Inc.</i> ,<br>2022 WL 4483123 (W.D. Wash. Sept. 27, 2022).....                                      | 8     |
| <i>Pierce v. County of Orange</i> ,<br>526 F.3d 1190 (9th Cir. 2008) .....   | 4     |
| <i>Rittmann v. Amazon.com, Inc.</i> ,<br>2019 WL 2994634 (W.D. Wash. July 9, 2019) .....                                       | 8     |
| <i>Tashiro-Townley v. Bank of New York Mellon</i> ,<br>2016 U.S. Dist. LEXIS 85642 (W.D. Wash. June 30, 2016).....             | 7     |

*Terwilleger v. Grays Harbor Cty.*,  
2019 WL 2118776 (W.D. Wash May 14, 2019).....9

*Ultimate Timing, L.L.C. v. Simms*,  
2010 U.S. Dist. LEXIS 55831 (W.D. Wash. May 10, 2010).....6

*Uniloc USA, Inc. v. HTC Am., Inc.*,  
2018 WL 2059565 (W.D. Wash. May 3, 2018).....9

# **OTHER AUTHORITIES**

Fed. R. Civ. P. 12(g)(2).....10

Fed. R. Civ. P. 30(d)(1).....10

## I. INTRODUCTION

Plaintiff Thomas Dorobiala objects to Amazon's motion to consolidate the instant action with *Nicholas v. Amazon.com, Inc.*, No. 2:22-cv-01616-RSM ("*Nicholas* action"), and *Daly v. Amazon.com, Inc.*, No. 2:22-cv-00910-RSM ("*Daly* action"), because consolidation does not serve any valid purpose. Amazon's superficial depiction of the allegations of dark patterns as the common thread among the three complaints ignores the fact that Plaintiff seeks to represent a different class, challenges different conduct, and seeks different remedies than the plaintiffs in the *Nicholas* and *Daly* actions. Amazon does not identify any common claims or factual issues that warrant consolidation to preserve judicial resources, nor is consolidation needed to prevent inconsistent rulings, given that the same Court already presides over all three cases. By contrast, consolidating the claims of three disparate plaintiff groups into a single complaint obscures the logical structures of their respective actions, jeopardizes the representation of the respective classes they assert and the prosecution of their respective claims, and senselessly forces a leadership battle among their respective counsel.

Specifically, in the instant action Plaintiff relies on Amazon's contractual choice of law provision and seeks to recover damages on behalf of a single national class under the Washington Consumer Protection Act caused by Amazon's implementation of dark patterns in the online cancelation procedure for Prime subscriptions. Plaintiff would be substantially prejudiced in his defense of dispositive motions, class certification, and at trial if, instead of defending a single claim on behalf of a single class of consumers injured by a single course of conduct, he was forced to defend seven classes, thirteen claims, varying monetary remedies, and requests for injunctive relief based on a broader set of actions concerning Amazon's advertising, enrollment, credit card charging, and cancelation procedures for 11 subscription services from Amazon and an indefinite number of products available through Amazon's Subscribe and Save program. Equally, Plaintiff would be prejudiced in discovery, where instead of having a presumptive right to take up to 10 depositions or serve up to 26 interrogatories to obtain the testimony he needs to pursue his case, he would have to vie with the other plaintiffs' groups, who would also rely on those presumptive limitations to support their collective claims.

# 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.