

Warriors Deny Eavesdropping On Fans In Wiretap Suit

By **Kat Sieniuc**

Law360, New York (November 3, 2016, 6:41 PM EDT) -- The NBA's Golden State Warriors want a California federal judge to toss a proposed class action alleging the basketball team's smartphone app secretly listened in on fans, telling an Oakland court this week that allegations of illegal wiretapping miss the mark.

Warriors fan Latisha Satchell claims the app in question — advertised as a source of scores, game schedules, news, statistics and other information about the team — recorded her conversations without her knowledge, using beacon technology employed by platform operator Signal360 that constantly ran in the background even when her phone was turned off. Some of those conversations were under circumstances during which she had a reasonable expectation of privacy, violating the Electronic Communications Privacy Act, also commonly referred to as the Wiretap Act, Satchell's August complaintsaid.

But the Warriors say that's just not true: the app, developed by YinzCam Inc., doesn't "listen" to human communications because the technology employed isn't even designed to record or intercept that kind of audio information, the team said in a dismissal motion filed Monday, on to which fellow defendant Signal360 also signed. The app uses the phone's microphone to track a user's location through audio signals emitted by beacons at various locations, yes, but those signals are inaudible to humans and are only temporarily stored on the user's own device, the defendants said in their motion.

As such, the Warriors argued the app doesn't intercept anyone's communications within the meaning of the Wiretap Act, which says a defendant must actually acquire someone's private wire, oral or electronic communication.

"It is insufficient to merely allege that recordings of audio data were created that remained at all times on plaintiff's own phone," they said.

While Satchell "goes to great lengths to portray the beacon technology as some sinister form of surveillance" — namely, that the app is listening in on its users — "the reality could not be more different," the team said.

The motion continued, "the complaint does not allege, because it is not true, that the app ever caused any audio data of any kind (let alone the contents of an oral communication) to be transmitted beyond [Satchell's] phone to any server or device controlled by any defendant," adding that "this glaring omission effectively confirms that defendants never came into possession of the contents of [Satchell's]

oral communications in any sense.”

Even if Satchell had alleged facts sufficient to show a Wiretap Act violation, the suit would still be doomed because the plaintiff was never harmed, the team added, saying that under the U.S. Supreme Court's *Spokeo v. Robins* ruling, Article III standing requires plaintiffs to show they've suffered a concrete and personal injury traceable to the defendant's actions.

“Recognizing that there is no viable claim of any privacy-related injury, plaintiff relies instead on allegations that the app in dispute caused unspecified 'wear and tear' on her phone and depleted the phone's battery power. But these are not the kinds of harm the Wiretap Act was intended to protect against, and thus cannot support Article III standing for plaintiff's Wiretap Act claims,” they said.

Satchell, seeking to represent anyone who downloaded the app or anyone who downloaded any app that uses Signal360's beacon technology, claimed that she downloaded the app in April and continued to use it through July, when she discovered it was allegedly recording.

In a separate motion filed Tuesday, fellow defendant YinzCam also pushed the court to nix the suit, echoing the arguments advanced by the Warriors and Signal360 that Satchell had failed to identify a single communication that was intercepted by any defendant within the meaning of the Wiretap Act and that the plaintiff lacked Article III standing because she didn't suffer a concrete injury.

The app developer added that, aside from the introductory and jurisdictional paragraphs, YinzCam is only mentioned in two paragraphs of the 15-page complaint.

"In lieu of further factual allegations directed to YinzCam, plaintiff's claims against YinzCam depend entirely on allegations of conduct by defendants, collectively and without differentiation," the app developer's motion said. "However, even as to these unspecific collective allegations, plaintiffs' complaint remains factually sparse."

Counsel for Satchell did not immediately respond to requests for comment on Thursday.

Satchell is represented by Stewart R. Pollock of Edelson PC.

The Warriors and Signal360 are represented by Max Bernstein, Michael Graham Rhodes and Whitty Somvichian of Cooley LLP. YinzCam is represented by Stephen M. Flynn and Scott M. Hare.

The case is *Latisha Satchell v. Sonic Notify Inc. d.b.a. Signal 360 et al.*, case number 3:16-cv-04961, in the United States District Court for the Northern District of California.

--Additional reporting by Rich Archer. Editing by Bruce Goldman.