

## Wiretap and Apps: One of These Things Does Not Belong

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A federal court in California recently ruled that a class of plaintiffs could not support their claims under the federal Wiretap Act (18 USC § 2510, et seq.) that the Golden State Warriors basketball team's mobile app illegally recorded user phone calls. The plaintiffs alleged that the app recorded conversations without user knowledge or consent. In particular, that a phone's microphone was automatically turned on while the app was open, and the app would record any audio conversations within range.

The defendants argued—and the Court agreed—that they did not “intercept” an “oral communication” as required by the federal statute because they did not acquire the contents of a communication. Here, the court held that the Warriors and the app developer never exercised “possession or control”—the key determinants of acquisition—over the communication, because the defendants never did anything with that information, such as process or transmit it. Further, the court found that merely asserting that the recording device was with the plaintiff in locations where she was likely to have a conversation was not sufficiently concrete an allegation of an “oral communication” under the pleading standards.

The court did uphold the plaintiff's standing and granted leave to amend the complaint. It is unknown at this point whether plaintiff will indeed amend the complaint to address the shortcomings identified by the court. The case is *Satchell v. Sonic Notify, Inc.*, 16-4961 (N.D. Cal.).

**TIP: Although the claims here were dismissed, the case is a reminder that plaintiffs' attorneys are looking closely at the technologies used in apps, and companies may want to proactively do so as well.**

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