

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA**

**CHRISTOPHER HARRIS, individually
and on behalf of all others similarly situated,**

Plaintiff,

v.

Case No. _____

**HARRISON RURAL ELECTRIFICATION
ASSOCIATION, a West Virginia non-profit
corporation; DCI, DIGITAL CONNECTIONS,
INC., a corporation; PATHWAYS, a corporation;
CALIX, INC., a corporation; SEGRA, INC., a
corporation; and DOES 1-10,**

Defendants.

CLASS ACTION COMPLAINT

Plaintiff Christopher Harris ("Plaintiff"), individually and on behalf of all others similarly situated, brings this class action complaint against Defendants Harrison Rural Electrification Association ("HREA"), DCI, Digital Connections, Inc. ("DCI"), Pathways ("Pathways"), Calix, Inc. ("Calix"), Segra, Inc. ("Segra"), and Does 1-10 (collectively "Defendants"). On information and belief, and pursuant to the investigation conducted thus far, Plaintiff alleges as follows on behalf of himself and all those other individuals similarly situated:

INTRODUCTION

1. This is a class action lawsuit brought under the Electronic Communications Privacy Act ("ECPA"), 18 U.S.C. § 2510 *et seq.*, and West Virginia state law, seeking damages and all additional appropriate relief for Defendants' systematic and unlawful interception, monitoring, access, and disclosure of the private internet communications and browsing activities of HREA's internet customers without their knowledge or consent.

2. Defendants provided HREA General Manager Terry Stout (“GM Stout”) with administrative tools and software that allowed him to fully access the private accounts of subscribing internet customers of HREA and monitor their internet activity, which he used to unlawfully monitor and disclose customers' private internet activities.
3. This conduct violates both Title I (Wiretap Act) and Title II (Stored Communications Act) of the ECPA, as well as West Virginia state laws regarding invasion of privacy and conspiracy.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1367 (supplemental jurisdiction over state law claims).
5. This Court has personal jurisdiction over all Defendants because they conducted substantial business activities within this judicial district and/or because the wrongful acts complained of occurred within this judicial district.
6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district and because Defendants are subject to personal jurisdiction in this judicial district.

PARTIES

A. Plaintiff

7. Plaintiff Christopher Harris is an adult resident of West Virginia who received both electric and internet services from HREA during the relevant time period.
8. Plaintiff is a member of the class of persons whose internet communications and activities were unlawfully intercepted, monitored, accessed, and disclosed by Defendants.

B. Defendants

9. Defendant HREA is an electric utility cooperative corporation.
10. HREA is a non-profit corporation that is publicly owned and democratically controlled by its members. HREA was congressionally created pursuant to the 1935 federal Rural Electrification Act, and continues to operate under this statutory authority.
11. HREA provides electric service to approximately 6,800 customers and internet service to approximately (without limitation) 1,360 customers. HREA is funded by utility payments from its customers and accepts millions of dollars from federal and state government grants.
12. Defendant DCI, Digital Connections, Inc. is the internet service provider selected to partner with HREA for the United States Department of Agriculture grant, offering internet service to the HREA customer base, though HREA bills directly for the internet service provided.
13. Defendant Pathways is an arm of DCI or works hand in hand with DCI to handle installation, and operates another company called Procom.
14. Defendant Calix is a national firm who provides managed technology services, internet software, and services.
15. Defendant Segra is a national firm providing technology solutions along with dark fiber.
16. The identities and capacities of the named Defendants sued herein are set forth on information and belief based on investigation and research. These Defendants (in addition to the identities of Defendants Does 1 through 10 that are currently unknown to Plaintiff at this time, but may present themselves throughout the course of discovery) were and remain engaged in a joint business venture, in that they associate to carry out a single

business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge. Said joint venture arises out of an oral, written, express and/or implied contractual relationships between these Defendants. These Defendants also operate as alter egos of each other, as defined by law, which renders them jointly liable for all of the current allegations. Moreover, an agency relationship exists between GM Stout and all named Defendants, thus creating joint-liability for the claims of Plaintiff and the proposed class members that are asserted herein.

FACTUAL ALLEGATIONS

A. HREA's Internet Service Operations

17. Citizens receiving electric service from HREA are determined by their addresses and do not have the option of choosing non-cooperative companies or any other entities to provide them with electric service.
18. HREA provides (without limitation) approximately and without limitation 1,360 customers with internet service in addition to electric service. Internet customers pay their internet bill directly to HREA. However, HREA is not an internet service provider ("ISP").
19. The ISPs providing internet service to HREA customers are a conglomeration of the third party defendants, including DCI, Pathways, Calix, and Segra, and related corporate partners and entities.

B. The Unlawful Monitoring System

20. Defendants provided GM Stout with administrative tools and software in the form of an electronic application accessible on his HREA-owned internet phone and computer, through which Stout could fully access the private accounts of subscribing internet customers of HREA and monitor their internet activity.

21. The previous Human Resources manager of HREA ("HR Manager") witnessed GM Stout on separate occasions accessing and monitoring the internet activity of customers without their consent. On one occasion, GM Stout was monitoring and accessing the internet activity of an HREA employee's spouse. On the other occasion, GM Stout was monitoring and accessing the internet activity of another HREA internet customer.
22. On both occasions, GM Stout disclosed the internet activity of these individuals accessed to the HR Manager, and on information and belief, to other representatives of the Defendants. When the HR Manager commented, "it doesn't seem right that you can do that" and questioned the legality of his actions, GM Stout responded: "I provide the internet, I can see what I want".
23. On information and belief, GM Stout regularly and unlawfully conducted (and on information and belief has continued to conduct) additional unlawful internet monitoring and access regarding Plaintiff and the proposed class of HREA internet customers.
24. GM Stout used administrative tools that were provided by Defendants on his company-owned phone and computer to monitor and disclose the internet activity of HREA members, without their consent, pursuant to the capability and access granted to him by the Defendants named herein.

C. Systematic Violation of Customer Privacy and Violation of Federal Law

25. The monitoring system provided by Defendants allowed systematic access to and interception of the private electronic communications and internet activities of all HREA internet customers.
26. Defendants' actions were part of a uniform pattern and practice affecting all members of the proposed class.

27. On information and belief, at no time did any class member consent to the monitoring, interception, access, or disclosure of their private internet communications and activities.
28. Despite GM Stout's claim that "I provide the internet, I can see what I want," HREA is not actually an internet service provider, and nonetheless, Stout's actions were unlawful and each Defendant is liable therefor.

CLASS ACTION ALLEGATIONS

29. Plaintiff brings this action on behalf of himself and as a class action on behalf of all other persons similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3).
30. The proposed class is defined as follows: **"All persons who subscribed to internet service through HREA and whose internet communications or activities were and/or were subject to interception, monitoring, access, or disclosure through administrative tools provided by one or more of the Defendants throughout the applicable class period."**
31. **Numerosity:** The class consists of approximately (and without limitation) 1,360 customers whose internet communications or activities were and/or were subject to interception, monitoring, access, or disclosure, and who subscribe to internet service offered by HREA. The exact number and identities of class members are ascertainable from Defendants' records. The class is so numerous that joinder of all members is impracticable.
32. **Commonality and Typicality:** Common questions of law and fact exist as to all class members whose internet communications or activities were and/or were subject to interception, monitoring, access, or disclosure, and who subscribe to internet service

offered by HREA, and these common questions predominate over questions affecting only individual class members. These common questions include (without limitation): a. Whether Defendants violated the ECPA by intercepting electronic communications; b. Whether Defendants violated the ECPA by accessing stored electronic communications; c. Whether Defendants violated the ECPA by disclosing electronic communications; d. Whether Defendants' actions constitute invasion of privacy under West Virginia law; e. Whether statutory damages are available under the ECPA; and; f. The appropriate measure and amount of damages.

33. **Adequacy:** Plaintiff's claims are typical of the claims of all class members. Plaintiff and his counsel will fairly and adequately protect the interests of the class.

34. **Superiority:** A class action is superior to other available methods for fairly and efficiently adjudicating this controversy because individual litigation would be impracticable of individual claims compared to the cost of litigation, and class action treatment will provide judicial efficiency and economy of scale.

COUNT I: VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT - TITLE I (WIRETAP ACT) - 18 U.S.C. § 2511

35. Plaintiff realleges and incorporates by reference all preceding paragraphs.

36. The Wiretap Act prohibits any person from intentionally intercepting or attempting to intercept any wire, oral, or electronic communication. *See* 18 U.S.C. § 2511(1)(a).

37. Defendants intentionally intercepted Plaintiff's and the class members' electronic communications by monitoring their real-time internet activities and browsing without authorization.

38. Defendants also disclosed the contents of intercepted electronic communications in violation of 18 U.S.C. § 2511(1)(c).

39. Defendants' conduct falls outside any exception provided in 18 U.S.C. § 2511(2), including the service provider exception, because: a. HREA is not actually an internet service provider; b. The monitoring was not conducted in the normal course of business; c. The monitoring was not necessary for the rendition of internet services; and; d. The monitoring was conducted for personal curiosity rather than protection of rights or property.

40. As a result of Defendants' violations, Plaintiff and the class are entitled to (without limitation) damages pursuant to 18 U.S.C. § 2520, including statutory damages of not less than \$10,000 per violation, or \$100 per day of violation, whichever is greater.

COUNT II: VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT - TITLE II (STORED COMMUNICATIONS ACT) - 18 U.S.C. § 2701

41. Plaintiff realleges and incorporates by reference all preceding paragraphs.

42. The Stored Communications Act prohibits intentional access to a facility through which an electronic communication service is provided and obtaining access to wire or electronic communications while in electronic storage without authorization. *See* 18 U.S.C. § 2701(a).

43. Defendants intentionally accessed stored electronic communications of Plaintiff and the class members, including browsing history, account information, and other stored communications data without authorization.

44. Defendants obtained access to stored communications while they were in electronic storage by third-party service providers.

45. Defendants acted without authorization or exceeded any authorization they possessed.

46. As a result of Defendants' violations, Plaintiff and the class are entitled to damages pursuant to 18 U.S.C. § 2707, including statutory damages of not less than \$1,000 per violation.

COUNT III: VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT - TITLE II (STORED COMMUNICATIONS ACT) - 18 U.S.C. § 2702

47. Plaintiff realleges and incorporates by reference all preceding paragraphs.

48. The Stored Communications Act prohibits providers of electronic communication services from knowingly divulging the contents of communications while in electronic storage to persons other than the addressee or intended recipient. *See* 18 U.S.C. § 2702(a).

49. Defendants knowingly divulged the contents of stored electronic communications of Plaintiff and class members to unauthorized third parties.

50. The communications were in electronic storage at the time of disclosure.

51. The recipients were not addressees or intended recipients of the communications.

52. As a result of Defendants' violations, Plaintiff and the class are entitled to damages pursuant to 18 U.S.C. § 2707, including (without limitation) statutory damages of not less than \$1,000 per violation.

COUNT IV: INVASION OF PRIVACY - INTRUSION UPON SECLUSION (WEST VIRGINIA COMMON LAW)

53. Plaintiff realleges and incorporates by reference all preceding paragraphs.

54. Under West Virginia law, the tort of invasion of privacy by way of intrusion upon seclusion occurs when someone intentionally intrudes upon the private affairs or seclusion of another person in a manner that would be highly offensive to a reasonable person.

55. Defendants intentionally intruded upon the private affairs and seclusion of Plaintiff and the class members by monitoring, accessing, and disclosing their private internet communications and browsing activities.

56. Defendants' intrusion was highly offensive to reasonable persons as it involved secret monitoring of private internet activities without consent or legitimate justification.

57. As a result of Defendants' intrusion, Plaintiff and the class have suffered damages including loss of privacy, emotional distress, and diminished value of their internet services.

COUNT V: CIVIL CONSPIRACY (WEST VIRGINIA COMMON LAW)

58. Plaintiff realleges and incorporates by reference all preceding paragraphs.

59. Defendants conspired and agreed among themselves to provide and maintain the unlawful monitoring system that violated Plaintiff's and the class members' privacy rights.

60. The third-party defendants provided HREA with the tools and capability to unlawfully monitor customer communications, knowing or having reason to know that such monitoring would violate federal and state privacy laws.

61. Defendants took overt acts in furtherance of the conspiracy, including (without limitation) providing administrative software, configuring monitoring systems, and facilitating access to customer data.

62. As a result of Defendants' conspiracy, Plaintiff and the class have suffered the damages described above.

COUNT VI: VIOLATION OF WEST VIRGINIA CRIMINAL INVASION OF PRIVACY STATUTE - W. VA. CODE § 61-8-28

63. Plaintiff realleges and incorporates by reference all preceding paragraphs.

64. West Virginia Code § 61-8-28 criminalizes invasion of privacy, creating a civil cause of action for violations.

65. Defendants violated this statute by unlawfully monitoring and accessing the private communications of Plaintiff and the class members.

66. Plaintiff and the class are entitled to civil remedies for these statutory violations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, respectfully requests that this Court:

A. Certify this case as a class action pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3);

B. Appoint Plaintiff as the representative of the class;

C. Appoint Plaintiff's counsel as class counsel;

D. Enter judgment against all Defendants and in favor of Plaintiff and the class;

E. Award statutory damages pursuant to 18 U.S.C. § 2520 in the amount of not less than \$10,000 per class member for Wiretap Act violations, or \$100 per day of violation, whichever is greater;

F. Award statutory damages pursuant to 18 U.S.C. § 2707 in the amount of not less than \$1,000 per class member for each Stored Communications Act violation;

G. Award actual damages, including compensatory damages for loss of privacy, emotional distress, and diminished value of services;

H. Award all compensatory damages available for Defendants' federal statutory violation as well as the common law state actions detailed above;

I. Award punitive damages as permitted by law;

J. Award reasonable attorneys' fees and costs pursuant to 18 U.S.C. § 2520 and all other applicable laws;

K. Award pre- and post-judgment interest;

L. Issue appropriate injunctive relief prohibiting Defendants from continuing the unlawful practices alleged herein; and;

M. Award such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ Sean W. Cook

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