

## Omni Says Class Must Return Sprint Customers' Records

By **Maya Rajamani**

*Law360, New York (July 21, 2015, 9:02 PM ET)* -- Omni Hotels Management Corp. urged a California federal judge to compel a class that alleged the hotel company illegally recorded phone conversations to return documents produced by Sprint Corp., arguing that the class is refusing to recognize the privacy rights of Sprint's subscribers "like they are lower-class citizens."

The class has said it should be allowed to keep Sprint documents produced before U.S. District Judge Christina Snyder's decision in May that cellular carriers are subject to California law restricting how phone companies share subscribers' information. But in its reply in support of the motion ordering them to return the documents, Omni argued that the matter should not be before the court because of a May ruling that held that wireless telephone subscribers' personal data is protected under California Public Utility code and cannot be produced without subscribers' written consent.

"Plaintiffs fight the court at every turn, first by demanding an interlocutory appeal, now by refusing to recognize the privacy rights of Sprint's subscribers like they are lower-class citizens," Omni wrote in its reply.

Named plaintiff Steven Ades filed the class action in March 2013, claiming he called Omni's toll-free number to make a reservation, and during the ensuing conversation, he revealed sensitive information, including credit card numbers, to the call center representative in order to book accommodations. Ades alleges he was never told the call was being recorded

In November, the class subpoenaed nonparties Verizon Wireless, AT&T Inc. and Sprint for information on subscribers who had called Omni on their cellphones, including their names and addresses, details of the calls to Omni and location of the cell towers that transmitted the calls. Omni responded in March with a motion to compel the plaintiffs to disclose the notice Verizon would send customers telling them about the subpoena.

Judge Snyder then questioned whether a section of California Public Utilities Code prohibiting "telephone or telegraph" corporations from disclosing of subscriber call pattern and demographic information without their express consent also applied to the wireless carriers. She later ruled that the law does protect cell phone subscribers.

In its reply on Monday, Omni alleges the plaintiffs are asking the court to treat Sprint subscribers' rights as inferior to AT&T's and Verizon's subscriber rights and argued that there are no distinctions among the three and that the plaintiffs' refusal to return the personal information was "frivolous."

The company said the court had the authority to protect Sprint subscribers' privacy, pointing out that the court already rejected the arguments the plaintiffs offered in the context of the AT&T and Verizon subpoenas.

Omni argued against the plaintiffs' argument that Sprint subscribers could sue Sprint for releasing their personal data, saying those subscribers could protect their privacy rights immediately via the return of the protected data.

In addition, Omni disputed the plaintiffs' claims that it could not seek relief because it only raised the issue after the plaintiffs' counsel funded an analysis of Sprint subscribers' legal protections, saying they were "barking up the wrong tree" because the non-party subscribers did not have notice that Sprint released their personal information to the plaintiffs.

Omni also called the plaintiffs "flat wrong" in claiming that some of the information produced by Sprint was not protected under the Public Utility code, and said that even if it were, the plaintiffs could serve an amended subpoena to regain that particular information.

In a memorandum in opposition to a previous motion by Omni, the plaintiffs said they should be allowed to keep Sprint documents produced before Judge Snyder's decision in May that cellular carriers are subject to California law restricting how phone companies share subscribers' information. They added that if Judge Snyder does make them return Sprint records, the order should be limited to information covered by the California law.

After ruling that the law does protect cell phone subscribers, Judge Snyder directed AT&T and Verizon, which had not yet produced documents, to send the relevant subscribers notices asking them to consent to releasing their information to the plaintiffs. In June, she refused to certify the order for interlocutory appeal, reasoning that the discovery issue won't determine the case's outcome.

In a separate filing on Monday, Omni Hotels urged the judge to deny the plaintiffs' attempts to "circumvent, confuse, delay, and interfere" a court order ruling that wireless telephone companies can't release customer data.

Attorneys for the class and Omni did not immediately respond to requests for comment Tuesday.

The plaintiffs are represented by Zev B. Zysman of the Law Offices of Zev B. Zysman and by James F. Clapp, James T. Hannink and Zach P. Dostart of Dostart Clapp & Coveney LLP.

Omni is represented by Angela C. Agrusa and David B. Farkas of Liner LLP and Robert M. Hoffman of Andrews Kurth LLP.

The case is Steven Ades et al. v. Omni Hotels Management Corp. et al., case number 2:13-cv-02468, in the U.S. District Court for the Central District of California.

-- Additional reporting by Jeff Zalesin and Jody Godoy. Editing by Patricia K. Cole.

---