

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FILED
Jan. 25, 2013

Cynthia Johnson,)	
)	
Plaintiff)	
)	Case No. <u>W13CA022</u>
v.)	
)	
ONCOR ELECTRIC DELIVERY CO., LLC;)	
)	
TXU ENERGY RETAIL COMPANY LLC, and)	Jury Trial Demanded
)	
ENERGY FUTURE HOLDINGS CORP.,)	
)	
Defendants)	

**PLAINTIFF'S ORIGINAL PETITION FOR INTENTIONAL INFLICTION OF EMOTIONAL
DISTRESS, INVASION OF PRIVACY, CONVERSION, WIRETAPPING, & TRESPASS**

1. Plaintiff intends that discovery be conducted under Level 2 and affirmatively pleads that she seeks injunctive relief and monetary relief aggregating more than \$50,000.

I. PARTIES

2. Plaintiff, Cynthia Johnson (“Johnson”), is an individual residing in Bell County, Texas.
3. Defendant, ONCOR ELECTRIC DELIVERY COMPANY, LLC (“Oncor”), is a Delaware corporation whose principal office is located at 1601 Bryan Street, Dallas, Texas 75201 (according to records with the Texas Secretary of State's office). Oncor is authorized to do business in Texas and may be served with process by serving its registered agent for service of process, CT Corporation System at 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234.

4. Defendant, TXU ENERGY RETAIL COMPANY LLC (“TXU”), is a Texas corporation whose principal office is located at 1601 Bryan Street, Dallas, Texas 75201-3430 (according to information on file with Texas Sec. Of State's office). TXU is authorized to do business in Texas and may be served with process by serving its registered agent for service of process, CT Corporation System at 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234.

5. Defendant, ENERGY FUTURE HOLDINGS (“EFH”), is a Texas corporation whose principal office is located at 1601 Bryan Street, Dallas Texas 75201 (according to records on file at the Tex. Sec. Of State's office). EFH is authorized to do business in Texas and may be served with process by serving its registered agent for service of process, CT Corporation System at 350 N. St. Paul St., Ste. 2900, Dallas, Texas 75201-4234.

II. JURISDICTION & VENUE

6. This court has jurisdiction based on the Plaintiff's claim that Defendants have violated 18 U.S.C. §2511. Plaintiff has a private right of action for those violations as granted by 18 U.S.C. §2520. This court has supplemental jurisdiction over the additional state claims referenced in this petition.

7. Venue is proper in the Western District of Texas, Waco Division because all of the events or omissions occurred in Bell County, Texas and Plaintiff resided in this county at the time the cause of action accrued. Bell County, Texas is in the designated jurisdiction of the U.S. District Court specified above.

III. CAUSES OF ACTION (organized by defendant)

8. Causes of action will be organized by defendant. In other words, under the heading of each defendant will be all the causes of action against that defendant.

Defendant--ONCOR

9. The causes of action being brought against Oncor are:
- a) Intentional infliction of emotional distress;
 - b) Invasion of privacy;
 - c) Conversion;
 - d) Wiretapping (aka Illegal Interception of Communication); and
 - e) Unjust enrichment.

ONCOR--> Intentional Infliction of Emotional Distress

10. In this section, any reference to “Oncor” also includes Oncor's employees, agents, and contractors.

11. Plaintiff is a person suing in her capacity as an individual.

12. Between August 2010 and March 2011 (in the rest of this IIED section, referred to as “time in question”), Oncor engaged in an ongoing, intentional, malicious, retaliatory, and calculated campaign that was intended to terrorize, bully, frighten, intimidate, and harass Johnson because she would not allow Oncor to change the fully functional analog meter already present on Johnson's property to a “smart” meter. Both meters are intended to measure electric usage for the purpose of billing.

13. During the time in question, Oncor:

- a) Showed up at Plaintiff's isolated home on at least six (6) separate occasions, with no prior notice, for no reason that was expected or foreseeable by Plaintiff or any

- reasonable person, sometimes sitting parked outside for long periods of time with no attempt at communication with Plaintiff, causing her tremendous fear;
- b) Broke through Plaintiff's locked gate to access her property, with no prior notice and with no attempt at communication, causing her tremendous fear;
 - c) Provided false information to the police about a material fact in an incident involving the Plaintiff and Oncor;
 - d) Threatened, on multiple occasions, to disconnect Plaintiff's electricity, even though disconnection would have been a violation of the rules of the Public Utilities Commission of Texas ("PUCT), even though Plaintiff's bill was paid up-to-date, and even though no notice was sent to either Plaintiff's Retail Electric Provider ("REP") or Plaintiff herself, as required by Oncor's own "Tariff for Retail Delivery" and PUCT rules;
 - e) Provided false information in response to a PUCT complaint filed;
 - f) Had meter readers drive by Plaintiff's house at meter-reading time of the month without attempting to read the meter—for four (4) months in a row;
 - g) Failed to comply with their own "Tariff for Retail Delivery" and the PUCT rules with regard to their failure to read Plaintiff's meter and submitting estimated readings to the REP;
 - h) Intentionally submitted low estimated meter readings so that Plaintiff would eventually be hit with an accumulated bill that was very high and cause hardship for her to pay;

- i) Obtained a court order to install a smart meter on Plaintiff's property, installed the meter, then, without any notice, came back to Plaintiff's residence later in the day, with the police, causing Plaintiff tremendous fear, and claiming they had installed a defective meter and needed to install a second meter;
- j) After multiple months of Plaintiff seeing meter readers pass her house without reading her meter and sending her "estimated" bills, Plaintiff requested someone to come out to read the meter and she is charged for it;
- k) Sends meter reader to read Plaintiff's smart meter, with no notice, causing Plaintiff tremendous fright since the smart meter is supposed to eliminate the need for an in-person reading;
- l) Violated FCC requirements to give Plaintiff information on smart meter safety and operation; and
- m) Committed numerous other acts intended to cause Plaintiff emotional distress.

14. Oncor's behavior during the time in question was consistently so far outside anything considered legal, professional, ethical, or normal business conduct, that any reasonable person would consider it extreme and outrageous.

15. Oncor engaged in numerous violations of law and regulations or threatened to commit violations of law and regulations during the time in question.

16. During and after the time in question, as a direct result of Oncor's behavior, plaintiff Johnson suffered severe anxiety and emotional distress which is still ongoing. Johnson no longer feels safe, secure, or peaceful in her home or on her property and her daily routine has been, and continues to be, disrupted as a result.

17. Plaintiff Johnson has no alternative cause of action that would address the numerous, cumulative actions taken against her by Oncor.

18. Oncor owed Johnson a duty to follow Texas statutes, administrative regulations, their own policies & procedures, and reasonable & normal business practices.

19. Johnson owed no legal, contractual, or any other duty to Oncor to install the smart meter on her property.

20. Johnson suffered actual legally recognizable harm as a result of Oncor's breach of duty toward her.

21. The cumulative actions of Oncor toward Johnson during the time in question were clearly not those of one or two rogue employees or agents. The number of employees/agents involved were so numerous, and their job descriptions/positions with the company so varied, that their concerted actions could have only come from higher up in the company and could have only been calculated, malicious, retaliatory, and intended to cause Johnson as much emotional distress as possible. Alternatively, Oncor's behavior was, at best, grossly negligent.

22. Since, on or about, August 12, 2011, Johnson has lived with an improperly functioning guard light. For it to be fixed or the separate guard light account cancelled, Oncor would have to come to the property. Johnson was, and continues to be too traumatized by Oncor's past behavior to want them anywhere near her property, so she didn't call them to repair the light or terminate the service. Johnson wants to be compensated for the time period she paid for a guard light that wasn't properly functioning.

23. Johnson seeks damages for mental anguish.

24. Johnson seeks exemplary damages for the maliciousness, or alternatively gross negligence, of Oncor's behavior.

25. Johnson seeks interest, court costs, and attorney fees.

ONCOR--> Invasion of Privacy--Intrusion on Seclusion

26. Plaintiff Johnson brings this suit in her individual capacity.

27. Johnson was forced by a court order to allow Oncor to install a smart meter on her property on or about February 15, 2011.

28. Defendant Oncor intentionally intruded on Johnson's solitude, seclusion, and private affairs by using the smart meter to collect data about every electrical operation taking place in her home. This data is sent to Oncor at least every 15 minutes, and maybe more often. It gives anyone with access to this data an intimate look at the activities going on in Johnson's home in real time.

29. The data Oncor has collected from the smart meter is stored indefinitely, allowing anyone with access to it to know the intimate details of Johnson's activities at any time, on any past date since the smart meter was installed.

30. This kind of intrusion into the intimate activities inside a private residence would be, and is, offensive to reasonable people.

31. Johnson did not give her consent to the smart meter being installed, nor to it collecting any data about her constant private in-home activities. In fact, through Johnson's behavior (including filing a lawsuit and repeated refusals to allow the smart meter to be installed) and

multiple letters, she made it abundantly clear that she did NOT consent, but Oncor did nothing to rectify the situation.

32. As a direct result of Oncor's behavior, plaintiff Johnson suffered severe anxiety and emotional distress which is still ongoing. Johnson no longer feels safe, secure, or peaceful in her home or on her property and her daily routine has been, and continues to be, disrupted as a result.

33. Johnson seeks damages for mental anguish.

34. Johnson seeks exemplary damages for the maliciousness, or alternatively, gross negligence, of Oncor's behavior.

35. Johnson seeks equitable relief in the form of an order requiring Oncor to immediately remove the smart meter on Johnson's property and replace it with an analog meter exactly like the one that was there before.

36. Johnson also seeks equitable relief in the form of an order requiring Oncor to remove every single smart meter in their service area. Any building in which Johnson enters is a place that the smart meter can be monitoring her private activities inside that building.

37. Johnson seeks interest, court costs, and attorney fees.

ONCOR--> Conversion

38. Plaintiff re-alleges above paragraphs.

39. Texas Utilities Code 39.107(b) states:

“All meter data, including all data generated, provided, or otherwise made available, by advanced meters and meter information networks, shall belong to a

customer, including data used to calculate charges for service, historical load data, and any other proprietary customer information.”

40. Since the smart meter has been installed, Johnson has been the only person inhabiting the property in question, therefore she is the only person whose activities are being monitored by the smart meter installed on her premises. She is the owner, possessor, and/or person with an interest in the constant data being collected by the smart meter since February 2011.

41. The smart meter data is Johnson's personal property.

42. Oncor, without consent from Johnson, and over numerous objections from Johnson, has continuously, and still continues, to collect and take the smart meter usage data. Oncor has, and continues to, wrongfully exercise dominion and control over the data belonging to Johnson.

43. Oncor is selling this data to others, including to the website SmartMeterTexas.com, enriching themselves by selling stolen property.

44. Johnson seeks actual damages or, alternatively, at least nominal damages.

45. Johnson seeks exemplary damages for the maliciousness, or alternatively, gross negligence, of Oncor's behavior.

46. Johnson seeks equitable relief in the form of an order requiring Oncor to immediately remove the smart meter on Johnson's property and replace it with an analog meter exactly like the one that was there before.

47. Johnson seeks interest, court costs, and attorney fees.

ONCOR--> Wiretapping

48. The Texas Code of Criminal Procedure, Art. 18.20(15) and 18 USC § 2510(12) define “electronic communication” as:

“...[A] transfer of...data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.”

49. The Texas Penal Code Section 16.02(b)(1) and 18 USC § 2511 state:

“A person commits an offense if the person intentionally intercepts...a wire, oral, or electronic communication.”

50. Plaintiff Johnson resides in a house and on a property with a smart meter installed.

51. Johnson's data communication of electric usage is being constantly intercepted by the smart meter and then transmitted (at least every 15 minutes, all day, every day—but it could be more often than every 15 minutes) to Oncor wirelessly.

52. The interception of this data is being done intentionally, without Johnson's consent, and over clearly stated objections to Oncor by Johnson.

53. Texas Penal Code §16.02(b)(2) and 18 USC §2511 state:

“A person commits an offense if the person intentionally discloses...to another person the contents of a wire, oral, or electronic communication if the person knows or has reason to know the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection.”

54. Oncor is disclosing Johnson's illegally intercepted smart meter data at least to a website called SmartMeterTexas.com (which domain name registration records suggest is owned by IBM Corporation) and to Johnson's Retail Electric Provider ("REP") TXU.

55. It is believed that Oncor may also be disclosing the illegally intercepted data to other, currently unknown, persons or entities.

56. Oncor certainly knows that they are illegally intercepting this data, at the very least because Johnson informed them of it in a letter.

57. If Oncor should claim they didn't know the disclosed information was intercepted illegally, there is every reason that they should have known. They had years to prepare to undertake a massive plan to install millions of smart meters across their entire service area. Given how much money they have available to hire attorneys to look into the legal issues of such a large plan, and given how many attorneys they DO employ, there is every reason that they should have known about any legal issues the smart meters had before they were installed.

58. Texas Penal Code §16.02(b)(2) and 18 USC §2511 state:

"A person commits an offense if the person intentionally uses or endeavors to use the contents of a wire, oral, or electronic communication if the person knows or is reckless about whether the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection."

59. Oncor is intentionally using, or endeavoring to use, the smart meter data from Johnson's smart meter installed on her property.

60. Oncor knows, or is reckless about whether, the data is being obtained illegally.

61. Plaintiff re-alleges paragraphs 56 and 57.

62. Plaintiff Johnson did not ever consent to her communications being intercepted, disclosed or used. In fact, she sent multiple letters to Oncor demanding that they stop their behavior and pointing them to the specific statutes they were violating. Oncor did nothing to rectify the situation and continue to violate the law to this day.

63. Texas Code of Criminal Procedure art. 18.20, §16(a)(1)-(3) states:

“A person whose wire, oral, or electronic communication is intercepted, disclosed, or used in violation of this article, or in violation of Chapter 16, Penal Code, has a civil cause of action against any person who intercepts, discloses, or uses or solicits another person to intercept, disclose, or use the communication and is entitled to recover from the person

(1) actual damages but not less than liquidated damages computed at a rate of \$100 a day for each day of violation or \$1,000, whichever is higher;

(2) punitive damages; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.”

64. 18 USC §2520(a) states:

“...[A]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used in violation of this chapter may in a civil action recover from the person or entity...which engaged in that violation such relief as may be appropriate.”

65. 18 USC §2520(b) states:

“In an action under this section, appropriate relief includes--

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) damages under subsection (c) and punitive damages in appropriate cases; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.”

66. 18 USC §2520(c)(2) states:

“In any...action under this section, the court may assess as damages whichever is the greater of--

(A) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation; or

(B) statutory damages of whichever is the greater of \$100 a day for each day of violation or \$10,000.”

67. Plaintiff Johnson is statutorily entitled to recover from Oncor no less than the greater of:
(i) her actual damages; or (ii) statutory liquidated damages of the greater of \$1,000 or \$100 a day (\$10,000 or \$100 a day under Federal law) for each day of each separate (interception, disclosure, and use) violation.

68. Plaintiff Johnson is entitled to recover reasonable attorney fees and other litigation costs.

69. Oncor's behavior with regard to illegally intercepting, disclosing, and using Johnson's smart meter data has been intentional and malicious, or alternatively, at least grossly negligent. Accordingly, Johnson is entitled to punitive damages under Texas Code of Criminal Procedure art. 18.20, §16(a)(2) and 18 USC §2520(b)(2).

70. Plaintiff Johnson also seeks injunctive relief to stop Oncor from continuing to intercept, disclose, and use Johnson's smart meter data. Since the smart meter can't be reliably turned off, the only way to stop the illegal interception of data is to remove the smart meter and replace it with a completely analog meter, exactly like the one installed previously.

ONCOR--> Unjust Enrichment

71. Plaintiffs re-allege the above paragraphs regarding wiretapping and conversion.

72. Oncor has been unjustly enriched by their wrongful actions described above in the sections about wiretapping and conversion.

73. Oncor has retained the benefits and profits that they obtained and realized from their unauthorized acquisition, interception, disclosure, use, and conversion of Johnson's smart meter data.

74. Data about people's personal life and activities is a highly-valued commodity. The data that Oncor has illegally taken from Johnson has contributed to enhancing the overall economic value of Oncor's company valuation for fundraising, stock prices, and other purposes.

75. It is believed that Oncor has re-sold to others for value portions of the smart meter data wrongfully obtained from Johnson. Oncor has retained or made use of the proceeds of any such sales.

76. As a result of Oncor's wrongful conduct described herein, they have received, directly or indirectly, funds and other valuable benefits which each company was not rightfully or equitably entitled to, and has been unjustly enriched by it.

Defendant--TXU

TXU--> Intentional Infliction of Emotional Distress--> *Principal-Agent Liability*

77. Plaintiff re-alleges above paragraphs pertaining to the claim against Oncor for Intentional Infliction of Emotional Distress (“IIED”).

78. TXU is liable for IIED under the concept of principal-agent liability.

79. Oncor is an agent of TXU. TXU pays Oncor for the use and maintenance of electric delivery equipment in the parts of Texas in which Oncor operates.

80. Oncor was acting within the scope of its agency with TXU when it committed the tort of IIED against Johnson.

81. Consequently, TXU is jointly and severally liable to Johnson for all of the harm and damages described herein.

TXU--> Intentional Infliction of Emotional Distress--> *Aiding / Abetting (Alternative theory of liability)*

82. If TXU is found not to be liable under principal-agent liability, then, in the alternative, TXU is certainly guilty of assisting and encouraging Oncor's tortious behavior.

83. Plaintiff re-alleges above paragraphs pertaining to the claim against Oncor for IIED.

84. TXU knew, or should have known, that Oncor's campaign against Johnson was tortious.

85. TXU had intent to assist Oncor in carrying out their campaign against Johnson. This was evident when Plaintiff contacted TXU about Oncor's threats to illegally disconnect her electric service, even though Plaintiff's bill was paid up-to-date, and TXU refused to take any action to stop Oncor's behavior. TXU also took no action to stop the ongoing intentional refusal of Oncor to read Plaintiff's analog meter, even after TXU had been notified by Plaintiff multiple times.

86. TXU gave Oncor assistance or encouragement in carrying out their campaign against Johnson, as evidenced by the circumstances specified in the paragraph immediately preceding this one.

87. TXU's assistance and encouragement were substantial factors in causing Oncor's tort.

88. TXU breached their duty to Johnson under the contract for electric service, with their disregard of Texas law and Public Utility Commission of Texas rules, and under their duties to not commit general negligence, as evidenced by the circumstances specified in the previous paragraphs of this section.

89. Consequently, TXU is jointly and severally liable to Johnson for all of the harm and damages described herein.

TXU--> Invasion of Privacy—Intrusion on Seclusion--> *Principal-Agent Liability*

90. Plaintiff re-alleges above paragraphs regarding claims against Oncor for Invasion of Privacy--Oncor's use of the smart meter to collect intimate data about Johnson's private in-home activities and having that data transmitted to them at least 96 times per day (every 15 minutes).

91. TXU is liable for Invasion of Privacy under the concept of principal-agent liability.

92. Oncor is an agent of TXU. TXU pays Oncor for the use and maintenance of electric delivery equipment in the parts of Texas in which Oncor operates.

93. Oncor was and is acting within the scope of its agency with TXU when it committed, and continues to commit, the tort of Invasion of Privacy against Johnson.

94. Consequently, TXU is jointly and severally liable to Johnson for all of the harm and damages described herein.

TXU--> Invasion of Privacy—Intrusion on Seclusion--> Aiding / Abetting (Alternative theory of liability)

95. If TXU is found not to be liable under principal-agent liability, then, in the alternative, TXU is certainly guilty of assisting and encouraging Oncor's tortious behavior.

96. Plaintiff re-alleges above paragraphs pertaining to the claim against Oncor for Invasion of Privacy.

97. TXU knew, or should have known, that Oncor's unauthorized collection of Johnson's smart meter data was tortious.

98. TXU had intent to assist Oncor in continuing to invade the privacy of Johnson by continuing to collect her smart meter data because when notified by Plaintiff of the violations, TXU ignored her and took no action to stop the violations.

99. TXU gave Oncor assistance or encouragement in carrying out their unauthorized collection of Johnson's smart meter data, invading her privacy, as evidenced by the fact that TXU ignored Plaintiff when she notified them of Oncor's ongoing violations.

100. TXU's assistance and encouragement were substantial factors in causing Oncor's tort.

101. TXU breached their duty to Johnson under the contract for electric service, with their disregard of Texas law and Public Utility Commission of Texas rules, and under their duties to not commit general negligence.

102. Consequently, TXU is jointly and severally liable to Johnson for all of the harm and damages described herein.

TXU--> Conversion--> *Individual liability for their own tort*

103. Plaintiff re-alleges above paragraphs concerning the claims against Oncor for conversion.

104. Multiple parties can be held responsible for conversion if they receive property they know was stolen.

105. TXU has received, and continues to receive, Johnson's stolen smart meter data.

106. TXU knows it's stolen because Johnson has sent multiple letters informing them of that fact and they continue to do nothing to stop the illegal behavior.

107. Plaintiff seeks the same damages, severally, against TXU that are sought in the above paragraphs from Oncor for Conversion.

TXU--> Conversion--> *Principal-Agent Liability*

108. Plaintiff re-alleges above paragraphs concerning the claims against Oncor for conversion.

109. TXU is liable for Conversion under the concept of principal-agent liability.

110. Oncor is an agent of TXU. TXU pays Oncor for the use and maintenance of electric delivery equipment in the parts of Texas in which Oncor operates.

111. Oncor was and is acting within the scope of its agency when it committed, and continues to commit, the tort of Conversion with regard to the unauthorized taking of Johnson's smart meter data.

112. Consequently, TXU is jointly and severally liable to Johnson for all of the harm and damages described herein.

TXU--> Wiretapping--> *Individual liability for their own tort*

113. Plaintiff re-alleges above paragraphs.

114. TXU is believed to be disclosing to others, and using for their own purposes, Johnson's illegally intercepted detailed electric usage data.

115. TXU knows that they have no consent to use or disclose that data because Johnson has sent multiple letters to them informing them of that fact.

116. TXU knows that the detailed electric usage data was illegally obtained by Oncor in violation of Texas Penal Code §16.02 and 18 USC §2511(1) because Johnson sent TXU multiple letters informing them of that fact.

117. Before Johnson sent the letters, TXU knew, or had every reason to know, that the detailed electric usage data was being collected in violation of Texas Penal Code §16.02 and 18 USC §2511(1).

118. TXU is independently and severally liable for their use and disclosure of Johnson's detailed electric usage data.

119. In accordance with Texas Code of Criminal Procedure art. 18.20, §16(a)(1)-(3) and 18 USC §2520(b), plaintiff Johnson is statutorily entitled to recover from TXU no less than the greater of: (i) her actual damages; or (ii) statutory liquidated damages of the greater of \$1,000 or \$100 a day (\$10,000 or \$100 a day under Federal statute) for each day of each (interception, disclosure, and use) violation.

120. Plaintiff Johnson is entitled to recover reasonable attorney fees and other litigation costs.

121. TXU's behavior with regard to illegally disclosing and using Johnson's detailed electric usage data has been intentional and malicious, or alternatively, at least grossly negligent. Accordingly, Johnson is entitled to punitive damages under Texas Code of Criminal Procedure art. 18.20, §16(a)(2) and 18 USC §2520(b)(2).

122. Plaintiff Johnson also seeks injunctive relief to stop TXU from continuing to disclose and use Johnson's detailed electric usage data and require that they delete all illegally obtained data immediately, thoroughly, and permanently. Since the smart meter can't be reliably turned off, the only way to stop the illegal interception of data is to remove the smart meter and replace it with a completely analog meter, exactly like the one installed previously.

TXU--> Wiretapping--> Principal-Agent Liability

123. In addition to TXU's own illegal use and disclosure of Johnson's detailed electric usage data (as alleged in the previous paragraphs), TXU is also jointly and severally liable for Oncor's illegal interception, use, and disclosure (wiretapping) of Johnson's detailed electric usage data under principal-agent liability.

124. Oncor is an agent of TXU. TXU pays Oncor for the use and maintenance of electric delivery equipment in the parts of Texas in which Oncor operates.

125. Oncor was acting within the scope of its agency when it illegally intercepted, used, and disclosed Johnson's detailed smart meter data, and Oncor continues to intercept, use, and disclose said data.

126. Consequently, TXU is jointly and severally liable to Johnson for all of the harm and damages described herein.

TXU--> Wiretapping--> Aiding / Abetting (Alternative theory of liability)

127. If TXU is found not to be liable under principal-agent liability, then, in the alternative, TXU is certainly guilty of assisting and encouraging Oncor's tortious behavior.

128. Plaintiff re-alleges above paragraphs pertaining to the claim against Oncor for wiretapping/illegal interception of communication.

129. TXU knew, or had every reason to know, that Oncor's smart meters were illegally intercepting communications, and that Oncor was going to use and disclose those communications in violation of Texas Penal Code §16.02 and 18 USC §2511(1).

130. TXU had intent to assist Oncor in carrying out their illegal interception, use, and disclosure of detailed electric usage data.

131. TXU gave Oncor assistance or encouragement to illegally intercept, use, and disclose detailed electric usage data.

132. TXU's assistance and encouragement were substantial factors in causing Oncor's tort.

133. TXU breached their duty to Johnson under Texas law, the contract for electric service, with their disregard of Texas law and Public Utility Commission of Texas rules, and under their duties to not commit general negligence.

134. Consequently, TXU is jointly and severally liable to Johnson for all of the harm and damages described herein.

TXU--> Unjust Enrichment

135. Plaintiffs re-allege the above paragraphs regarding wiretapping and conversion.

136. TXU has been unjustly enriched by their wrongful actions described above in the sections about wiretapping and conversion.

137. TXU has retained the benefits and profits that they obtained and realized from their unauthorized acquisition, interception, disclosure, use, and conversion of Johnson's detailed smart meter data.

138. Data about people's personal life and activities is a highly-valued commodity. The data they have illegally taken from Johnson has contributed to enhancing the overall economic value of TXU's company valuation for fundraising, stock prices, and other purposes.

139. It is believed that TXU has re-sold to others for value portions of the detailed electric usage data wrongfully obtained from Johnson. TXU has retained or made use of the proceeds of any such sales.

140. As a result of TXU's wrongful conduct described herein, they have received, directly or indirectly, funds and other valuable benefits which each company was not rightfully or equitably entitled to, and has been unjustly enriched by it.

Defendant--EFH

EFH--> Intentional Infliction of Emotional Distress--> *Aiding / Abetting*

141. Plaintiff re-alleges above paragraphs regarding Oncor committing IIED.

142. EFH knew, or had reason to know, that Oncor's conduct constituted a tort.

143. EFH had intent to assist Oncor in committing IIED.

144. EFH gave Oncor assistance or encouragement in carrying out their campaign of terror against Johnson.

145. EFH being the controller of Oncor's affairs means EFH's assistance or encouragement was a substantial factor in causing Oncor's tort.

146. EFH has certain duties under Texas and United States law and EFH breached those duties to Johnson.

147. Accordingly, EFH is jointly and severally liable with Oncor for damages and costs caused as a result of Oncor's tort of IIED against Johnson.

EFH--> Intentional Infliction of Emotional Distress--> *Conspiracy (Alternative theory of liability)*

148. Plaintiff re-alleges above paragraphs regarding Oncor's tort of IIED.

149. EFH and Oncor had a meeting of the minds on the course of action used to terrorize Johnson to get her to allow a smart meter to be installed on her property.

150. Johnson suffered injuries as a result of Oncor's calculated campaign of terror.

151. Accordingly, EFH is jointly and severally liable with Oncor for damages and costs caused as a result of Oncor's tort of IIED against Johnson.

EFH--> Invasion of Privacy—Intrusion on Seclusion--> *Aiding / Abetting*

152. Plaintiff re-alleges above paragraphs regarding the claim against Oncor for Invasion of Privacy.

153. EFH knew, or should have known, that Oncor's installation of smart meters, which, by their very nature, collect real-time intimate data of a building's occupants' activities, constituted a tort.

154. EFH intended to assist, aid, or encourage Oncor in installing smart meters that, by definition, would invade Johnson's privacy.

155. EFH provided assistance or encouragement to Oncor in their efforts to install privacy-invading smart meters on Johnson's property and that assistance or encouragement was a substantial factor in causing Oncor's commission of invasion of privacy.

156. EFH had / has a duty under Texas law and under concepts of general negligence to Johnson and breached those duties.

157. Accordingly, EFH is jointly and severally liable with Oncor for damages and costs caused as a result of Oncor's tort of Invasion of Privacy—Intrusion on Seclusion against Johnson.

EFH--> Conversion--> *Individual liability for their own tort*

158. Plaintiff re-alleges above paragraphs regarding the claim against Oncor for Conversion.

159. Multiple parties can be held responsible for conversion if they receive property they know was stolen.

160. It is believed that EFH has received, and continues to receive, Johnson's stolen detailed electric usage data.

161. It is believed that EFH knows, or should have known, that the data was stolen.

162. Plaintiff seeks the same damages, severally, against EFH that are sought in the above paragraphs from Oncor for Conversion.

EFH--> Conversion--> *Aiding / Abetting*

163. Plaintiff re-alleges paragraphs regarding the claims against Oncor for Conversion.

164. EFH knew, or should have known, that Oncor's collection of data from Johnson's smart meter without her consent constituted a tort.

165. EFH intended to assist Oncor in installing the smart meters without getting anyone's consent to collect the data that Texas law defines as belonging to the customer.

166. EFH provided Oncor with assistance and/or encouragement and it was a substantial factor in causing Oncor's tort against Johnson.

167. EFH owed Johnson a duty under Texas law—a duty they breached.

168. Accordingly, EFH is jointly and severally liable with Oncor for damages and costs caused as a result of Oncor's tort of Conversion against Johnson.

EFH--> Wiretapping--> Individual liability for their own tort

169. Plaintiff re-alleges above paragraphs relating to claims against Oncor for wiretapping.

170. EFH is believed to be disclosing to others, and using for their own purposes, Johnson's illegally intercepted detailed smart meter data.

171. EFH knows, or has every reason to know, that they have no consent to use or disclose that data.

172. EFH knows, or has every reason to know, that the detailed smart meter data was illegally obtained by Oncor in violation of Penal Code §16.02 and 18 USC §2511(1).

173. EFH is independently and severally liable for their use and disclosure of Johnson's detailed smart meter data.

174. In accordance with Texas Code of Criminal Procedure art. 18.20, §16(a)(1)-(3) and 18 USC §2520(b), plaintiff Johnson is statutorily entitled to recover from EFH no less than the greater of: (i) her actual damages; or (ii) statutory liquidated damages of the greater of \$1,000 or \$100 a day (\$10,000 or \$100 a day in the Federal statute) for each day of each (interception, disclosure, and use) violation.

175. Plaintiff Johnson is entitled to recover reasonable attorney fees and other litigation costs.

176. EFH's behavior with regard to illegally disclosing and using Johnson's detailed smart meter data has been intentional and malicious, or alternatively, at least grossly negligent. Accordingly, Johnson is entitled to punitive damages under Texas Code of Criminal Procedure art. 18.20, §16(a)(2) and 18 USC §2520(b)(2).

177. Plaintiff Johnson also seeks injunctive relief to stop EFH from continuing to disclose and use Johnson's detailed smart meter data and require that they delete all illegally obtained data immediately, thoroughly, and permanently. Since the smart meter can't be reliably turned off, the only way to stop the illegal interception of data is to remove the smart meter and replace it with a completely analog meter, exactly like the one installed previously.

EFH--> Wiretapping--> Aiding / Abetting

178. In addition to committing their own tortious act of using and disclosing Johnson's detailed electric usage data without consent, EFH is also liable for assisting and encouraging Oncor's tortious behavior.

179. Plaintiff re-alleges above paragraphs pertaining to the claim against Oncor for wiretapping/illegal interception of communication.

180. EFH knew, or had every reason to know, that Oncor's smart meters were illegally intercepting communications, and that Oncor was going to use and disclose those communications in violation of Texas Penal Code §16.02 and 18 USC §2511(1).

181. EFH had intent to assist Oncor in carrying out their illegal interception, use, and disclosure of detailed smart meter data.

182. EFH gave Oncor assistance or encouragement to illegally intercept, use, and disclose detailed smart meter data.

183. EFH's assistance and encouragement were substantial factors in causing Oncor's tort.

184. EFH breached their duty to Johnson with their disregard of Texas law and Public Utility Commission of Texas rules, and under their duties to not commit general negligence.

185. Consequently, EFH is jointly and severally liable to Johnson for all of the harm and damages described herein.

EFH--> Unjust Enrichment

186. Plaintiff re-alleges the above paragraphs regarding wiretapping and conversion.

187. EFH has been unjustly enriched by their wrongful actions described above in the sections about wiretapping and conversion.

188. EFH has retained the benefits and profits that they obtained and realized from their unauthorized acquisition, interception, disclosure, use, and conversion of Johnson's detailed electric usage data.

189. Data about people's personal life and activities is a highly-valued commodity. The data that has been illegally taken from Johnson has contributed to enhancing the overall economic value of EFH's Oncor's company valuation for fundraising, stock prices, and other purposes.

190. It is believed that EFH has re-sold to others for value portions of the detailed smart meter data wrongfully obtained from Johnson. EFH has retained or made use of the proceeds of any such sales.

191. As a result of EFH's wrongful conduct described herein, they have received, directly or indirectly, funds and other valuable benefits which each company was not rightfully or equitably entitled to, and has been unjustly enriched by it.

IV. CONDITIONS PRECEDENT

192. All conditions precedent to Plaintiff's claims for relief have been performed and/or occurred.

V. RELIEF

193. **Injunctive Relief.** Plaintiff is entitled as alleged herein to permanent injunctive relief, including the following:

- (i) an order directing Oncor, at no present or future cost to Johnson, to immediately remove the smart meter on Johnson's property and replace it with an analog (dial) meter, just like the one that was there previous to the smart meter installation;
- (ii) an order directing TXU to remove all future fees from Johnson's electric bill related to the smart meter, including, but not limited to, fees related to installation and use of the smart meter;
- (iii) an order prohibiting (as verified by an independent third party data security company, chosen or approved by Plaintiff, and paid for by Defendants) all Defendants from any use or disclosure of any of Johnson's detailed smart meter data that was illegally intercepted and converted;
- (iv) an order requiring all Defendants to immediately and securely (so it can't be recovered using even the most powerful forensic software or tools) delete (as verified by an independent third party data security company, chosen or approved by Plaintiff, and paid for by Defendants) every bit of Johnson's illegally intercepted and converted detailed smart meter data;

- (v) an order enjoining Defendants' violations of any of the criminal laws cited herein;
- (vi) an order directing the Defendants to preserve and maintain throughout the course of this proceeding all evidence pertaining to this matter—including, but not limited to, computer and electronic records, records relating to anyone who used or had access to Johnson's detailed electric usage data and any other evidence, documents, or records of any matter pertaining, in any way, to any of the allegations contained in this petition;
- (vii) an order directing Oncor and TXU to set up a program whereby Johnson can read her own analog meter (after the replacement) and report the reading to the appropriate place by a preset date and no one will visit her property for that purpose;
- (viii) an order directing Oncor to pay for any repairs to Johnson's electric delivery equipment (repairs that would normally be repaired by Oncor) by a qualified third party chosen or approved by Johnson, as a means to keep Oncor and any of their employees, agents, contractors, and associates away from Johnson's property;
- (ix) an order directing Oncor, and any subsequent entities that may take over Oncor, to remove the smart meter and install an analog (dial-type) meter on any property within their service area upon demand by Johnson (up to 10 separate properties per year for Johnson's lifetime); and
- (x) an order directing all Defendants to turn over the names and relevant contact information of any person or entity that used, accessed, or obtained Johnson's

detailed smart meter data and for Defendants to use every ability they have under contracts, statutes, and other means to direct those people and entities to securely delete all pieces of information relating to Johnson's illegally intercepted, used, disclosed, and converted detailed smart meter data (all deletion to be verified by third party data security company at Defendants' expense).

194. **Damages.** As a direct and/or proximate result of the Defendants' wrongful actions and/or inaction (as described above), Plaintiff suffered (and continues to suffer) damages as alleged above. Plaintiff is also entitled to recover nominal damages and the following statutory damages:

- ◆ liquidated damages under TEX. CODE CRIM. PROC. art. 18.20, § 16(a) of no less than the greater of \$1,000 or \$100 a day (no less than the greater of \$10,000 or \$100 a day under 18 USC §2520(c)(2)(B)) for each day of each violation (interception, disclosure, and use) from each Defendant who has harmed Johnson;
- ◆ from TXU, a refund of all smart-meter-related charges that Plaintiff has ever been billed for;
- ◆ any profits realized by Defendants from the unauthorized use or dissemination of the Plaintiff's detailed smart meter data; and,
- ◆ additional damages under TEX. CIV. PRAC. & REM. CODE § 134.005(a)(1) of up to \$1,000 (as determined by the trier of fact) for each separate instance of theft of any portion of Plaintiff's detailed electric usage data.
- ◆ damages appropriate according to 18 USC §2520.

Plaintiff's damages were foreseeable by the Defendants and exceed the minimum jurisdictional limits of this Court.

195. **Exemplary & Punitive Damages.** Plaintiff is also statutorily and otherwise entitled to recover exemplary and punitive damages, as specified herein, as punishment and to deter such wrongful conduct in the future.

196. **Equitable Relief.** To prevent the unjust enrichment of the Defendants, Plaintiff is also entitled to equitable relief, including an award of (i) any profits or benefits Defendants received, obtained or realized from their wrongful access of Plaintiff's detailed smart meter data; and (ii) to compensate for the accelerated growth of Defendants' business via the use of portions of Plaintiff's detailed smart meter data, a percentage to be determined at trial of (a) each such Defendant's outstanding equity on a fully-diluted basis and any proceeds from any sale thereof; and (b) the gross proceeds received or promised on any sale or disposition of the equity or operational business segment of any such Defendant.

197. **Attorney Fees, Litigation Expenses, and Costs.** Plaintiff is also entitled to recover reasonable attorney fees, litigation expenses and court costs in prosecuting this action and these claims.

VI. PRAYER

198. Accordingly, Plaintiff respectfully requests that: (a) Defendants be cited to appear and answer this lawsuit, and (b) immediate and temporary relief be provided as requested above. Plaintiff further requests that upon final trial or hearing, judgment be awarded against Defendants, in favor of Plaintiff for such damages and costs referenced above and for such other and further relief that this Court deems just and proper.

VII. JURY DEMAND

199. Plaintiff requests a jury trial on all issues triable in this action.

I declare under penalty of perjury that the above information is true and understand that a false statement may result in a dismissal of my claims.

Respectfully submitted,

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