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20 **UNITED STATES DISTRICT COURT**  
 21 **DISTRICT OF ARIZONA**

22 JERIMIAH THOMAS MOREE, individually, ) No.  
 23 and on behalf of all others similarly situated, )  
 24 )  
 25 Plaintiffs, ) **COMPLAINT**  
 26 vs. )  
 27 )  
 28 CARRIER IQ, INC.; HTC, INC., HTC )  
 29 AMERICA, INC.; )  
 30 )  
 31 Defendants. )  
 32 )

1 COMES NOW Plaintiff, individually, and on behalf of all others similarly  
2 situated, by and through their undersigned counsel, on information and belief, and for  
3 their Complaint against Defendants Carrier IQ, Inc., HTC, Inc. and HTC America, Inc.  
4 state as follows:

5 1. Defendants have unlawfully intercepted private electronic  
6 communications emanating from private mobile phones, handsets and smart phones.  
7 This practice violates Federal Law.

8  
9 **PARTIES, JURISDICTION AND VENUE**

10 2. Jerimiah Thomas Moree is a natural person and citizen and resident of  
11 the State of Arizona.

12 3. All references to “Plaintiff(s)” throughout this Complaint are made on  
13 behalf of the named Plaintiff(s) and the proposed plaintiff class(es), and vice versa.

14 4. The amount in controversy in this action, as defined by 28 U.S.C. §  
15 1332(d)(6), exceeds \$5,000,000 exclusive of costs and interest.

16 5. Defendant, Carrier IQ, Inc. (hereinafter referred to as “CIQ”) is a citizen  
17 of California as defined by 28 U.S.C. § 1332(c) with its principal place of business in  
18 California.

19 6. Defendants HTC, Inc. and HTC America (collectively referred to as  
20 “HTC”) are citizens of Washington, with their principle place of business in Bellevue,  
21 Washington.

22 7. Defendants are residents of the District of Arizona as they have ongoing  
23 and systematic contacts with residents of the District of Arizona. Defendants have, at  
24 all material times, conducted business in the District of Arizona. Moreover,  
25 Defendants have sufficient minimum contacts with the State of Arizona such that the  
26

1 assumption of jurisdiction will not offend traditional notation of fair play and  
2 substantial justice.

3 8. When reference in this Complaint is made to any act or omission of  
4 Defendants, it should be deemed to mean that the officers, directors, agents,  
5 employees, or representatives of Defendants committed or authorized such act or  
6 omission, or failed to adequately supervise or properly control or direct their  
7 employees while engaged in the management, direction, operation, or control of the  
8 affairs of Defendants, and did so while acting within the scope of their employment or  
9 agency.

### 10 **STATEMENT OF FACTS**

11  
12 9. Defendant, CIQ is the leading provider of mobile services intelligence  
13 solutions to the wireless industry.

14 10. Defendant, CIQ claims on their website “As the only embedded analytics  
15 company to support millions of devices simultaneously, we give wireless carriers and  
16 handset manufacturers unprecedented insight into their customers mobile experience.”

17 11. Defendant, CIQ uses software in mobile phones to measure performance  
18 and user experience with no visible notice or impact to the user.

19 12. Defendant, CIQ’s data processing center collects the data for near real-  
20 time monitoring and intelligence.

21 13. Defendant, CIQ is the only company in the industry embedding  
22 diagnostic software in millions of mobile phones, having done so in over 130 million  
23 phones globally.

24 14. Defendant CIQ states on their website “Identify exactly how your  
25 customers interact with services and which ones they use. See which content they  
26 consume, EVEN OFFLINE “ (caps added).

1           15. They further state on their website that their software answers business  
2 critical questions including “How do users respond to mobile advertising”.

3           16. Their website further states that their software features include “View  
4 application and device feature usage, such as camera, music, messaging, browser and  
5 TV”.

6           17. Defendant CIQ further states that their services give “uniquely powerful  
7 insight into mobile service quality and USER BEHAVIOR”(caps added), allowing the  
8 customer to “identify new business opportunities”.

9           18. Defendant further states that their software “uses data directly from the  
10 mobile phone itself to give a precise view of how users interact with both their phones  
11 and the services delivered through them, EVEN IF THE PHONE IS NOT  
12 COMMUNICATING WITH THE NETWORK.... Identify exactly how your  
13 customers interact with services and which ones they use. SEE WHICH CONTENT  
14 THEY CONSUME, EVEN OFFLINE” (caps added).

15           19. Privacy concerns surrounding Carrier IQ initially arose after Trevor  
16 Eckhart, a security researcher, posted a video which seemingly demonstrated Carrier  
17 IQ’s keystroke logging, even offline.

18           20. Carrier IQ’s patent application #20110106942 contains claims regarding the  
19 collection of keystroke data, describing their product as a “method of collecting  
20 data...wherein the data relates to an end user’s interaction with the device...wherein  
21 the interaction with the device comprises the end user’s pressing of keys on the  
22 device”.

23           21. A CIQ representative has been quoted in response to the privacy concerns  
24 as follows:

25 ///

26 ///

1 Andrew Coward-Chief marketing officer

2 “We’re as surprised as anybody to see all that information flowing. It raises a  
3 lot of questions for the industry-and not (only) for Carrier IQ”. CARRIER IQ:  
4 WE’RE AS SURPRISED AS YOU. CNNMoney.com 12/02/11

5 “We do recognize the power and value of this data. We’re very aware that this  
6 information is sensitive. It’s a treasure trove....We’re seeing URLs and we can  
7 capture that information”. CARRIER IQ ADMITS HOLDING TREASURE  
8 TROVE OF CONSUMER DATA, BUT NOT KEYSTROKES: Wired.com  
9 12/02/2011

10 In an interview with Wired.com said “probably yes” when asked whether  
11 Carrier IQ could read mobile users’ text messages. CRITICS LINE UP TO  
12 BASH MAKER OF SECRET PHONE-MONITORING SOFTWARE:  
13 Wired.com 12/01/11

14 22. Defendant, CIQ captures and records every keystroke entered on the  
15 mobile device, as well as location and other data.

16 23. Defendant, HTC produces mobile phones and handsets, including  
17 “Android” smart phones.

18 24. The CIQ software is embedded in HTC Android phones.

19 25. The information collected by CIQ is transmitted to various service  
20 providers, including Sprint, AT&T and T-Mobile.

21 26. Plaintiff owns an HTC Android phone using the Sprint network. At all  
22 relevant times Plaintiff’s cell phone was used to electronically send over plaintiff’s cell  
23 phone network various types of private data. This data was not readily accessible to  
24 the general public. Plaintiff did not know that Defendants were surreptitiously  
25 monitoring and collecting this data, nor did Plaintiff give them permission to do so.

26 27. Defendants intercepted, recorded and collected information concerning  
the substance, purport, or meaning of the electronic communications transmitted  
without the authorization of the parties to those communications.



1 members of the class (or sub-classes) are readily obtainable from the Defendants and  
2 their agents and on information and belief are maintained in the computer database of  
3 Defendants and are easily retrievable.

4 32. Plaintiffs will fairly and adequately protect the interests of the class (or  
5 sub-classes) and have retained counsel that are experienced and capable in class action  
6 litigation. Plaintiffs understand and appreciate their duties to the class (or sub-classes)  
7 under Fed. R. Civ. P. 23 and are committed to vigorously protecting the rights of  
8 absent members of the class (or sub-classes).

9 33. Plaintiffs are asserting claims that are typical of the claims of each  
10 member of the class (or sub-classes) they seek to represent, in that the claims of all  
11 members of the class (or sub-classes), including Plaintiffs, depend upon a showing that  
12 the Defendants violated federal law. All claims alleged on behalf of the class (or sub-  
13 classes) flow from this conduct as well. Further, there is no conflict between any  
14 Plaintiff and other members of the class (or sub-classes) with respect to this action.

15 33. There is a well-defined community of interest in the questions of law and  
16 fact involved affecting the parties to be represented. Questions of law and fact arising  
17 out of Defendants' conduct are common to all members of the class (or sub-classes),  
18 and such common issues of law and act predominate over any questions affecting only  
19 individual members of the class (or sub-classes).

20 34. Common issues of law and fact include, but are not limited to, the  
21 following:

- 22 a. Whether the data collected from Plaintiffs' cellular phone devices  
23 are electronic communications protected by the Federal Wiretap  
24 Act.;
- 25 b. Whether Defendants' interception of data collected from  
26 Plaintiffs' devices was intentional within the meaning of the  
Federal Wiretap Act;
- c. The proper measure of damages under the Federal Wiretap Act;

1           35.    The relief sought is common to the entirety of the class (or sub-classes).

2           36.    Defendants have acted on grounds generally applicable to the class (or  
3 sub-classes), thereby making final injunctive relief or corresponding injunctive relief  
4 appropriate with respect to the class (or sub-classes) as a whole.

5           37.    This action is properly maintained as a class action in that the prosecution  
6 of separate actions by individual members would create a risk of adjudication with  
7 respect to individual members which would establish incompatible standards of  
8 conduct for the Defendants.

9           38.    This action is properly maintained as a class action in that the prosecution  
10 of separate actions by individual members of the class (or sub-classes) would create a  
11 risk of adjudications with respect to individual members of each class (or sub-classes)  
12 which would, as a practical matter, be dispositive of the interests of the other members  
13 not parties to the adjudication, or would substantially impair or impede their ability to  
14 protect their interests.

15           39.    A class action is superior to other available methods for the fair and  
16 efficient adjudication of the claims asserted herein given that, among other things:

17                   (i)    significant economies of time, effort, and expense will  
18                   inure to the benefit of the Court and the parties in litigating  
19                   the common issues on a class-wide instead of a repetitive  
                          individual basis.

20                   (ii)   the size of the individual damage claims of most members  
21                   of the class (or sub-classes) is too small to make individual  
22                   litigation an economically viable alternative, such that few  
23                   members of the class (or sub-classes) have any interest in  
24                   individually controlling the prosecution of a separate  
                          action;

25                   (iii)   without the representation provided by Plaintiffs herein,  
26                   few, if any, members of the class (or sub-classes) will  
                          receive legal representation or redress for their injuries;



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- (iv) class treatment is required for optimal deterrence;
- (v) despite the relatively small size of the claims of many individual members of the class (or sub-classes), their aggregate volume coupled with the economies of scale inherent in litigating similar claims on a common basis, will enable this case to be litigated as a class action on a cost effective basis, especially when compared with respective individual litigation;
- (vi) no unusual difficulties are likely to be encountered in the management of this class action;
- (vii) plaintiffs and members of the class (or sub-classes) have all suffered irreparable harm and damages as a result of Defendants' unlawful and wrongful conduct;

40. Concentrating this litigation in one forum would aid judicial economy and efficiency, promote parity among the claims of the individual members of the class (or sub-classes), and result in judicial consistency.

**COUNT I**

41. Plaintiffs incorporate the allegations contained in Paragraphs 1 through 33 as if fully set out herein.

42. The Omnibus Crime Control and Safe Streets Act of 1968, also known as the Federal Wiretap Act, 18 U.S.C. § 2510 et seq., provides:

[A]ny person who-- ... intentionally intercepts, endeavors to intercept, ... any wire, oral, or electronic communication; ... shall be punished as provided in subsection (4) or shall be subject to suit as provided in subsection (5).

18 U.S.C.A. § 2511.

1           43. At all times relevant hereto, Plaintiffs, and Class Members were persons  
2 entitled to the protection of 18 U.S.C. § 2511 as they were individuals who were party  
3 to electronic communications.

4           44. On information and belief, Defendants intercepted information  
5 concerning the substance, purport, or meaning of Plaintiffs' electronic communications  
6 on more than one occasion.

7           45. The Federal Wiretap Act also provides that:

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

12                   In an action under this section, appropriate relief includes --  
13 ... (2) damages under subsection (c) and punitive damages  
14 in appropriate cases; and (3) a reasonable attorney's fee and  
15 other litigation costs reasonably incurred ... [T]he court  
16 may assess as damages whichever is the greater of – (A) the  
17 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 violation or \$10,000.

18 18 U.S.C. § 2520

19           WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in  
20 their favor and against Defendants as follows:

- 21           a. Ordering that this action be maintained as a class action pursuant  
22 to Rule 23 of the Federal Rules of Civil Procedure, and  
23  
24           b. Declaring that Defendant's collection of electronic  
25 communications violates 18 U.S.C. §2511; and  
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- c. Awarding Plaintiffs and Class Members statutory damages pursuant to 18 U.S.C. § 2520, including punitive damages, costs of suit, and attorneys’ fees; and
- d. Injunctive and declaratory relief as deemed appropriate.

**COUNT II**

- 1. Plaintiff incorporates by reference and re-alleges paragraphs 1-45 as if set forth fully herein.
- 2. That Defendants’ actions were in violation of the Arizona state wiretap statute (A.R.S. Sec 12-731).
- 3. The Arizona statute provides a remedy in addition to the Federal statute and is not pre-empted by the Federal statute.

WHEREFORE, Plaintiffs and the Class pray that the Court enter judgment in their favor and against Defendants as follows:

- a. Ordering that this action be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and
- b. Declaring that Defendant’s collection of electronic communications violates A.R.S. Sec 12-731; and
- c. Awarding Plaintiffs and Class Members statutory damages pursuant to A.R.S. Sec 12-731, including punitive damages, costs of suit, and attorneys’ fees; and
- d. Injunctive and declaratory relief as deemed appropriate.

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DATED this 7<sup>th</sup> day of December, 2011.

By: /s/Burt Rosenblatt, Esq.  
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