

# EXHIBIT 3

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Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**ROWENA SILVERA** and )  
**ANDREW SANDERS,** )  
Individually, and on Behalf of all )  
Similarly Situated Persons, )  
 )  
Plaintiffs, )  
 )  
vs. )  
**CARRIER IQ, INC., SAMSUNG** )  
**ELECTRONICS AMERICA, INC.,** )  
**HTC AMERICA INC.,** )  
**JOHN DOE MANUFACTURERS (1-10),** )  
 )  
 )  
Defendants. )

Civil No. 3:11-cv-5821-SI

**PLAINTIFFS' REQUEST FOR  
EXPEDITED STATUS CONFERENCE**

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Plaintiffs, Rowena Silvera and Andrew Sanders, respectfully request a Status Conference, either by telephone or in person. Filed contemporaneously with this request, Plaintiffs have filed a Motion for a Preliminary Injunction because it is believed that, through Carrier IQ, there are likely to be material, widespread *and continuing* violations of the Federal Wiretap Act, 18 U.S.C. § 2511, 2512 and the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. In light of what Plaintiffs reasonably believe are continuing and substantial violations of Federal law, Plaintiffs request an expedited status conference

1 to discuss with the Court and Carrier IQ's counsel scheduling a hearing on Plaintiffs' Motion for  
2 Preliminary Injunction, including what documents and witnesses should be available for that hearing.<sup>1</sup>

3 In support of their request for an expedited status conference, Plaintiffs respectfully submit the  
4 following for the Court's consideration:

5  
6 1. As alleged in the Amended Complaint, (Doc. 6) and Plaintiffs' Motion for a Preliminary  
7 Injunction Against Carrier IQ, Inc. filed contemporaneously with this Request, Defendants are involved  
8 in massive violations of several federal statutes, including the Electronic Communications Privacy Act  
9 ("ECPA") [Amended Complaint, Counts I and II] and the Computer Fraud and Abuse Act ("CFAA")  
10 [Amended Complaint, Count III]. These violations, as reported, are so significant that the Chairman of  
11 the United States Senate's Subcommittee of Privacy Technology and the Law has demand answers  
12 from Carrier IQ on some of the questions raised by the Plaintiffs' Motion for a Preliminary Injunction.  
13 As set forth in a letter to the president of Carrier IQ from Chairman Franken:

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15  
16 I am very concerned that your company's software—preinstalled on  
17 smartphones used by millions of Americans—is logging and may be  
18 transmitting extraordinarily sensitive information from consumers' phones  
19 ...[and] that this software runs automatically every time you turn your  
20 phone on. *It also appears that the average user would have no way to  
21 know that this software is running—and that when the user finds out, he  
22 or she will have no reasonable means to remove or stop it.*

23 \* \* \*

24 I understand the need to provide usage and diagnostic information to  
25 carriers. I also understand that carriers can modify Carrier IQ's software.  
26 *But it appears that Carrier IQ's software captures a broad swath of  
27 extremely sensitive information from users that would appear to have  
28 nothing to do with diagnostics-including who they are calling, the  
contents of the texts they are receiving, the contents of their searches,  
and the websites they visit.*

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<sup>1</sup> Today, plaintiffs filed an Amended Complaint. Plaintiffs' counsel will endeavor to serve the defendants and their corporate counsel with this Amended Complaint and any and all other papers filed in this matter forthwith and will report to the Court upon doing so.

***These actions may violate federal privacy laws, including the Electronic Communications Privacy Act and the Computer Fraud and Abuse Act. This is potentially a very serious matter.***

See Letter from Senator Al Franken, Chairman, Congressional Subcommittee on Privacy Technology and the Law to Larry Lenhart, President and CEO Carrier IQ, Inc. (Nov. 30, 2011)[Exhibit 1] Carrier IQ is to respond to Senator Franken's letter by December 14, 2011.

2. Although some carriers have said that they are discontinuing the use of the Carrier IQ's software based upon these published reports (*see Wall Street Journal All Things Digital* dated December 1, 2011, copy attached as Exhibit 2), the violations are ongoing and will be ongoing. These violations include the interception and transmission of private information, commercial information and potentially sensitive government information transmitted through undisclosed and undetectable smart phone technology.

3. To address these serious and ongoing issues, Plaintiffs have filed a Motion for Preliminary Injunction under FRCP 65 asserting that they and the class of persons they represent will be irreparably harmed because of the continuing illegal activities of Defendant Carrier IQ unless their wrongful conduct is immediately stopped.

4. While many of the issues raised in the motion for Preliminary Injunction are admitted by Defendants (*i.e.*, that a large percent of cell phones used in the United States use carrier IQ's software; that the software is surreptitiously embedded in the smart phones without the consumers' knowledge; that the software is capable of intercepting electronic data from smart phones, including websurfing and text messaging), there are still some things that remain in dispute. Thus, to prosecute their motion, Plaintiffs will need immediate disclosure of at least the following:<sup>2</sup>

- The type of data transmitted off of a users' phone.

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<sup>2</sup> Answers to these questions are also being sought by Senator Al Franken. See Letter from Senator Al Franken, Exhibit 1.

- 1 • The frequency and format the data is transmitted.
- 2 • The location of the servers where Carrier IQ transmits the data.
- 3 • The steps Carrier IQ is taking to protect this data against hackers and other security threats.

4  
5 5. In making this motion, plaintiffs understand that numerous cases have been filed in this  
6 Federal District and throughout the Country. Plaintiffs also appreciate that a Motion for MDL  
7 treatment has been filed before the Judicial Panel for Multi District Litigation requesting that these  
8 cases be centralized in this District. *See* Case MDL No. 2330, Doc. 1-1, (12/02/11). However, the  
9 consolidation motion won't be heard until January 26, 2012 and presumably the JPML will not assign a  
10 transferee Court until the spring of 2012. This delay makes Plaintiffs' current request for an expedited  
11 conference timely and necessary.

12  
13 6. Until a transferee Court is engaged, this Court retains jurisdiction to decide this urgent  
14 and timely mater and the filing of a motion for transfer does not stay proceedings. *See* David F. Herr,  
15 Multidistrict Litigation Manual: Practice Before the Judicial panel on Multidistrict Litigation, § 3:15  
16 (2010); *General Elec. Co. v. Byrne*, 611 F.2d 670 (7<sup>th</sup> Cir. 1979; *General Tire & Rubber Co. v.*  
17 *Jefferson Chemical Co.*, 50 F.R.D. 112 (S.D. N.Y. 1970). The exercise of this jurisdiction is  
18 particularly important where, as here, there will be continuing harm to the class by Defendants  
19 continued violation—of the various federal wiretap statutes as alleged in the Amended Complaint.

20  
21  
22 6. Given the importance of the issues involved, time is of the essence and therefore,  
23 Plaintiffs request that this Court set a status conference hearing immediately to schedule the pending  
24 Motion for Preliminary Injunction and coordinate the witnesses and documents required for said  
25 hearing.  
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28

1 7. Plaintiffs and their counsel are making every effort to serve the general Counsel and  
2 presidents of the Defendant Companies and we would be happy to meet with Counsel for Defendants as  
3 son as practical to decide these disclosures.

4 Based on the foregoing, Plaintiffs respectfully request that this Court set a Status Conference to  
5 determine the best course of action with respect to Plaintiffs' Motion for Preliminary Injunction.

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7  
8 **Dated** December 7, 2011

**SKIKOS, CRAWFORD, SKIKOS & JOSEPH,  
LLP**

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**CERTIFICATE OF SERVICE**

I, Andrea S. Hirsch, certify that I served the above document on the following parties via  
Federal Express this 7<sup>th</sup> Day of December, 2011:

Carrier IQ  
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Mountain View, California 94041

HTC America Holding, Inc.  
13920 SE Eastgate Way  
Suite 400  
Bellevue, WA 98005

Samsung Electronics America  
85 Challenger Road  
Ridgewood Park, New Jersey 07660

/s/ Andrea S. Hirsch  
Andrea S. Hirsch