

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Rowena Silvera and Andrew Sanders, Individually, and on Behalf of all Similarly Situated Persons

DEFENDANTS
Carrier IQ, Inc., Samsung Electronics America, Inc., HTC America Inc., AT&T Inc., Sprint Communications Company, L.P.

(b) County of Residence of First Listed Plaintiff Fulton, GA (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Santa Clara, CA (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Mark G. Crawford
Skikos, Crawford, Skikos & Joseph
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San Francisco, CA 94105
415-546-7300

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
Attorneys (If Known)

JSC E-filing ADR

BY FAX 011-582-8888

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
18 USC §2511, §2512, §2520; 18 USC §1030
Brief description of cause:
Plaintiff alleges violation of above statutes.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$
CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE December 2, 2011 SIGNATURE OF ATTORNEY OF RECORD /s/ Mark G. Crawford

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

BY FAX

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[Handwritten Signature]
FILED
DEC - 2 2011
RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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

JSC

12 **ROWENA SILVERA and**)
13 **ANDREW SANDERS,**)
14 Individually, and on Behalf of all)
15 Similarly Situated Persons,)
16 Plaintiffs,)

CV No. 11 5821

17 vs.)
18 **CARRIER IQ, INC., SAMSUNG**)
19 **ELECTRONICS AMERICA, INC.,**)
20 **HTC AMERICA INC., AT&T, INC.**)
21 **SPRINT COMMUNICATIONS**)
22 **COMPANY, L.P.,**)
23 **JOHN DOE MANUFACTURERS (1-10),**)
24 **JOHN DOE CARRIERS (1-10).**)
25 Defendants.)

CLASS ACTION COMPLAINT FOR:

- 1) Violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2511
- 2) Violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2512
- 3) Defendants' Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

26 Plaintiffs Rowena Silvera and Andrew Sanders, individually and on behalf of all similarly
27 situated persons, by and through their undersigned attorneys allege the following upon information and
28 belief (except for those allegations pertaining to Plaintiffs, which are based on personal knowledge)
after due investigation by undersigned counsel.

NATURE OF THE ACTION

1 1. Plaintiffs bring this action on their own behalf and as a Class Action for the benefit of a
2 class consisting of all people who have contracted with Defendants AT&T or Sprint (collectively
3 referred to as the "Carrier Defendants") for carrier service for a smart phone manufactured by
4 Defendants Samsung or HTC (collectively referred to as the "Manufacturer Defendants"), and people
5 who communicated with said smart phones and whose electronic communications were intercepted by
6 a device made by Defendant Carrier IQ ("CIQ") called IQRD without the individual's authorization.

7 2. Plaintiffs and the Class seek injunctive and other equitable relief and damages arising
8 from and caused by Defendants' unlawful interception of electronic communications in violation of the
9 Federal Wiretap Act as amended by the Electronic Communications Privacy Act, and the Computer
10 Fraud Abuse Act.

11 3. Unbeknownst to Plaintiffs and the members of the Class, and without their
12 authorization, Defendants have been spying on the activities of Plaintiffs and Class members through
13 the use of CIQ which was designed to, and in fact did intercept electronic communications. This
14 spying device was installed and enabled without the consent of Plaintiffs or Class members.

15 **THE PARTIES, JURISDICTION AND VENUE**

16 4. Plaintiffs and the Class bring this action pursuant to §§ 2511, 2512 and 2520 of title 18
17 of the United States Code also known as the Electronic Communication Privacy Act ("ECPA") or
18 Wiretap Act; and § 1030 of the Computer Fraud and Abuse Act ("CFAA").

19 5. This Court has original jurisdiction of Plaintiffs' and the Class' federal law claims
20 pursuant to 28 U.S.C. §§ 1331 and 1337.

21 6. Plaintiff Rowena Silvera is a resident of Georgia and owns a Galaxy smart phone
22 manufactured by Samsung.

23 7. Plaintiff Andrew Sanders is a resident of Mississippi and owns an Evo smart phone
24 manufactured by HTC.

25 8. Defendant Carrier IQ, Inc. ("CIQ") is a California Corporation, with a principal place of
26 business in Mountain View, California. CIQ designed, manufactured, assembled, possessed, marketed,
27 advertised and sold to the Manufacturer and Carrier Defendants the IQRD device which permitted the
28 illegal and wrongful activity further described herein.

1 9. Defendant Samsung Electronics America, Inc. is a New York corporation having its
2 principal place of business at 105 Challenger Road, Ridgefield Park, NJ 07660. Samsung manufactures
3 smart phones that are sold throughout the United States. During the time relevant to this Complaint,
4 Samsung procured, purchased, installed and/or used IQRD on its smart phones including but not
5 limited to the Epic 4G, Epic 4G Touch, Galaxy S2, Moment, and the Infuse without authorization from
6 its customers.

7 10. Defendant HTC America, Inc. ("HTC America") is a Washington corporation with its
8 headquarters and principal place of business at 13920 SE Eastgate Way, Suite 400, Bellevue,
9 Washington 98005. HTC America manufactures smart phones that are sold throughout the United
10 States. During the time relevant to this Complaint, HTC procured, purchased, installed and/or used
11 IQRD on its smart phones including but not limited to the Evo without authorization from its
12 customers.

13 11. Defendant Sprint Communications Company, L.P. ("Sprint") is a Delaware limited
14 partnership with its headquarters and principal place of business in Kansas. Sprint operates as a carrier
15 for smart phones provides wireless communications services nationwide. During the time relevant to
16 this Complaint, Sprint procured, purchased, installed and/or used IQRD on its smart phones.

17 12. Defendant AT&T Inc. ("AT&T") is a corporation with a principal place of business in
18 Dallas, Texas. AT&T, through its operating subsidiaries, operates as a carrier for smart phones and
19 provides wireless communications services nationwide. During the time relevant to this Complaint,
20 AT&T procured, purchased, installed and/or used IQRD on its smart phones.

21 13. Defendant John Doe Manufacturers are smart phone manufacturers who have installed
22 and/or used IQRD on their smart phones.

23 14. Defendant John Doe Carriers are smart phone carriers who have procured the use of
24 smart phones containing IQRD.

25 15. Venue is proper in this district because IQRD was designed, developed, manufactured,
26 marketed, sold and/or operated by Defendants in or from this district, and Defendants received,
27 managed, accessed, intercepted and transmitted electronic communications collected in this district
28

1 through the use of IQRD that was intentionally installed on the aforementioned smart phones for use
2 throughout the country.

3 16. In connection with the acts and conduct complained of below, Defendants, directly or
4 indirectly, used the means and instrumentalities of interstate commerce, including the internet, or made
5 such use possible.

6 **CLASS ACTION ALLEGATIONS**

7 17. Plaintiffs bring this action on behalf of themselves and a Class of all other persons
8 similarly situated pursuant to Federal Rule of Civil Procedure 23 as defined as follows:

9 All people who have contracted with Defendants AT&T or Sprint for
10 carrier service for a smart phone manufactured by Defendants Samsung
11 or HTC and people who communicated with said smart phones whose
12 electronic communications were intercepted by a device designed,
13 developed, manufactured, marketed, sold and/or operated by Defendant
14 Carrier IQ called IQRD without the individual's authorization.

15
16 18. Specifically excluded from the Class are the Defendants themselves, any subsidiary of
17 any of the Defendants, any family members of the Defendants who are such customers, all employees
18 and directors of Defendants or any subsidiary, and their legal representatives.

19 19. The Class is so numerous that joinder of all members is impracticable.

20 20. Plaintiffs' claims are typical of the Class, as plaintiffs and all other Class members were
21 injured in exactly the same way – by the unauthorized interception of electronic communications
22 through IQRD installed on their cell phone.

23 21. Plaintiffs will fairly and adequately represent the interests of the Class and have retained
24 counsel competent and experienced in Class Action litigation.

25 22. Plaintiffs have no interests that are contrary to or in conflict with those of the Class.

26 23. A Class Action is superior to other available methods for the fair and efficient
27 adjudication of this controversy under the acts described below. Given the nature of these claims, the
28

1 expense and burden of individual litigation make it virtually impossible for the Class members
2 individually to seek redress for the unlawful conduct alleged.

3 24. Plaintiffs know of no difficulty that will be encountered in the management of this
4 litigation that would preclude its maintenance as a Class Action.

5 25. Common questions of law and fact exist as to all members of the Class and predominate
6 over any questions effecting solely individual members of the Class. Among the questions of law and
7 fact, common to the Class:

8 a. Whether Defendants' acts as alleged herein violated the ECPA and CFAA.

9 b. Whether Plaintiffs and members of the Class are entitled to statutory and
10 punitive damages pursuant to the ECPA and CFAA; and

11 c. Whether Plaintiffs and members of the Class are entitled to injunctive and other
12 equitable relief.

13 26. Plaintiffs bring this action under Rule 23(b)(2) because Defendants have acted or
14 refused to act on grounds generally applicable to all members of the Class, thereby making final
15 injunctive relief concerning the Class as a whole appropriate. In the absence of appropriate injunctive
16 relieve, Defendants will continue to unlawfully violate the rights of Plaintiffs and the members of the
17 Class by illegally intercepting, accessing and/or transmitting personal and private information and
18 communications contrary to federal law. Defendants' uniform conduct towards Plaintiffs and the other
19 members of the Class makes certification under Rules 23 (b)(2) appropriate.

20 27. Plaintiffs also bring this action under Rule 23(b)(3) because common questions of law
21 and fact identified in paragraph 23 above predominate over questions of law and fact affecting
22 individual members of the Class. Indeed, the predominate issue in this class is whether Defendants are
23 violating and have violated the law by the unauthorized, inappropriate and undisclosed remote
24 interception and transmission of communications and information secretly obtained by smart phones
25 sold to said Class members, and in the intentional unauthorized interception and use electronic
26 communications, including keystrokes relating to email messages, text messages and internet usage.
27 Certification under Rule 23(b)(3) is appropriate because:

1 a. by virtue of the secret nature of the spying device in this complaint, individual
2 class members may not be aware that they have been wronged and are thus unable to prosecute
3 individual claims;

4 b. concentration of the litigation concerning this matter in this Court is desirable;

5 c. the claims of the representative Plaintiffs are typical of the claims of the
6 members of the purported class;

7 d. a failure of justice will result from the absence of a class action; and

8 e. the difficulties likely to be encountered in the management of this class action
9 are not great.

10 **SUBSTANTIVE ALLEGATIONS**

11 28. CIQ designed, developed, manufactured, marketed, sold and/or operated a device, and
12 continues to market, sell and operate such device as that term is defined by the ECPA A called IQRD
13 for smart phones that advertises to smart phone carriers that it can “measure performance and user
14 experience with no visible impact to your customers.”

15 29. IQRD is a “rootkit.” A rootkit is software that enables continued privileged access to a
16 computer while actively hiding its presence from administrators by subverting standard operating
17 system functionality or other applications.

18 30. IQRD is installed on Defendant Manufacturers and Defendant Carriers’ smart phones
19 with no ability for Plaintiffs to opt-out.

20 31. IQRD records information about app activity and battery life, and also notes when users
21 press any key on the phone and acts as a “key logger” contemporaneously intercepting all keystrokes
22 including but not limited to keys pressed, apps opened, SMS received, media statistics and location
23 statistics and data recording in a supposedly secure HTTPS session (recorded unencrypted by IQRD).

24 32. The contemporaneously intercepted electronic data is transmitted back to CIQ’s
25 Portal.

26 33. CIQ’s portal administrators access, disclose, use and/or transmit Plaintiffs’
27 intercepted electronic communications to the Carrier Defendants.
28

1 injuries, entitling Plaintiffs and Class members to remedies including injunctive relief as provided by
2 18 U.S.C. § 2510.

3
4 **COUNT II**

5 **(Violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2512)**

6 45. Plaintiffs, on behalf of themselves and the Class, hereby incorporate by reference the
7 allegations contained in all of the preceding paragraphs of this complaint.

8 46. Defendants have intentionally manufactured, assembled, possessed, sold, and/or
9 advertised a device, knowing or having reason to know that the design of such device renders it
10 primarily useful for the purpose of the surreptitious interception of electronic communications and that
11 such device or advertisement relating to such device has been or will be sent through the mail or
12 transported in interstate in violation of 18 U.S.C. § 2512.

13 47. Defendants violated 18 U.S.C. § 2512(1)(a) by intentionally sending and/or carrying
14 through the mail or interstate commerce a device, knowing or having reason to know that the design of
15 such device renders it primarily useful for the purpose of the surreptitious interception of electronic
16 communications.

17 48. Defendants violated 18 U.S.C. § 2512(1)(b) by intentionally manufacturing, assembling,
18 possessing and/or selling a device, knowing or having reason to know that the design of such device
19 renders it primarily useful for the purpose of the surreptitious interception of electronic
20 communications, and that such device or any component thereof has been or will be sent through the
21 mail or transported in interstate commerce.

22 49. Defendants violated 18 U.S.C. § 2512(1)(c)(i) by intentionally advertising a device,
23 knowing the content of the advertisement and knowing or having reason to know that the design of
24 such device renders it primarily useful for the purpose of the surreptitious interception of electronic
25 communications, knowing the content of the advertisement and having reason to know that such
26 advertisement will be sent through the mail or transported in interstate commerce.

27 50. Defendants violated 18 U.S.C. § 2512(1)(c)(ii) by intentionally advertising a device,
28 where such advertisement promotes the use of such device for the purpose of the surreptitious

1 interception of electronic communications, knowing the content of the advertisement and having reason
2 to know that such advertisement will be sent through the mail or transported in interstate commerce.

3 51. Section 2520 of the ECPA provides for a private cause of action and allows for
4 declaratory and equitable relief as appropriate and statutory damages of the greater of \$10,000 or \$100
5 a day for each day of violation, actual and punitive damages, and reasonable attorney's fees and costs.

6 52. Unless restrained and enjoined, Defendants have been and will continue to commit such
7 acts. Plaintiffs' remedy at law is not adequate to compensate them for these inflicted and threatened
8 injuries, entitling Plaintiffs and Class members to remedies including injunctive relief as provided by
9 18 U.S.C. § 2510.

10 **COUNT III**
11 **(Defendants' Violations of the**
12 **Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq.)**

13 53. Plaintiffs, on behalf of themselves and the Class, hereby incorporate by reference the
14 allegations contained in all of the preceding paragraphs of this complaint.

15 54. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030 as amended ("CFAA"), makes it
16 unlawful to intentionally access a protected computer or communication without authorization or by
17 exceeding authorized access to such a computer, thereby obtaining information from such a protected
18 computer, within the meaning of 18 U.S.C. § 1030(a)(2)(C).

19 55. Defendants violated 18 U.S.C. § 1030 by intentionally accessing Plaintiffs' and Class
20 members' computers without authorization or by exceeding authorization, thereby obtaining
21 information from such a protected computer.

22 56. The CFAA 18 U.S.C. § 1030(g) provides a civil cause of action to "any person who
23 suffers damage or loss by reason of a violation of CFAA.

24 57. Plaintiffs' smart phone is a "protected computer . . . which is used in interstate
25 commerce and/or communication" within the meaning of 18 U.S.C. § 1030(e)(2)(B).

26 58. Defendants violated 18 U.S.C. § 1030(a)(5)(A)(ii) by intentionally accessing Plaintiffs'
27 and Class members' protected computers without authorization, and as a result of such conduct,
28 recklessly caused damage to Plaintiffs' and Class members computers by draining the life of the smart

1 phone's battery, retarding the speed of the smart phone, decreasing the performance of the smart phone
2 and increasing the Plaintiffs' data usage.

3 59. Defendants violated 18 U.S.C. § 1030(a)(5)(A)(iii) by intentionally accessing Plaintiffs'
4 and Class members' protected computers without authorization, and as a result of such conduct, caused
5 damage and loss to Plaintiffs and Class members.

6 60. Plaintiffs and Class members suffered damage by reason of these violations, as defined
7 in 18 U.S.C. § 1030(e)(8), by the "impairment to the integrity or availability of data, a program, a
8 system or information."

9 61. Plaintiffs and Class members suffered monetary damage by reason of these violations,
10 as defined in 18 U.S.C. § 1030(e)(8).

11 62. Plaintiffs and Class members suffered damage by reason of these violations, including,
12 without limitation, violation of the right of privacy, and disclosure of personal information that is
13 otherwise private, confidential, and not of public record.

14 63. As a result of these takings, Defendants' conduct has caused a loss to one or more
15 persons during any one-year period aggregating at least \$5,000 in value in real economic damages.

16 64. Defendants' unlawful access to Plaintiffs' and Class members' smart phones and
17 electronic communications has caused Plaintiffs and Class Members irreparable injury. Unless
18 restrained and enjoined, Defendants will continue to commit such acts.

19 65. Plaintiffs and Class members' remedy at law is not adequate to compensate it for these
20 inflicted and threatened injuries, entitling Plaintiff and class members to remedies including injunctive
21 relief as provided by 18 U.S.C. § 1030(g).

22 WHEREFORE, Plaintiffs and all members of the Class request judgment in their favor and
23 against Defendants, jointly and severally, as follows:

24 a. For an order certifying the Class under the appropriate provisions of Rule 23 and
25 appointing Plaintiffs and their legal counsel to represent the Class;

26 b. Awarding damages as provided by the Electronic Communications Privacy Act,
27 including injunctive relief, declaratory relief, punitive damages and reasonable attorneys' fees
28 and costs to counsel for the Class pursuant;

1 c. Awarding damages as provided by the Computer Fraud and Abuse Act,
2 including injunctive relief, declaratory relief, punitive damages and reasonable attorneys' fees
3 and costs to counsel for the Class pursuant; and

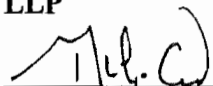
4 d. Granting such other and further relief as is just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiffs and the members of the Class hereby demand a trial by jury on all issues for which a
7 right to jury trial exists.

8
9 Dated December 12, 2011

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



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