

# CIVIL COVER SHEET

*Carroll*

JS 44 (Rev. 12/07) (CAND Rev 1/10)

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 PAGE TWO OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> LaVertue, Andre and Cribbs, Gary individually and on behalf of all others similarly situated  <b>(b) County of Residence of First Listed Plaintiff Hillsborough, N.H.</b> (EXCEPT IN U.S. PLAINTIFF CASES)  <b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b>  Mark A. Chavez and Nance F. Becker Chavez & Gertler LLP 42 Miller Ave. Mill Valley, CA 94941 (415)381-5599 [Add'l counsel listed on attachment]	<b>DEFENDANTS</b> Carrier IQ, Inc; HTC, Inc.; HTC America, Inc.; Samsung Electronics America, Inc.; Samsung Telecommunications America LLC  County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.  Attorneys (If Known)
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ADR

<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)	<b>III. CITIZENSHIP OF PRINCIPAL PARTY</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)
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1 U.S. Government Plaintiff      3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant      4 Diversity (Indicate Citizenship of Parties in Item III)

		PTF	DEF			PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)					
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>FORFEITURE/PENALTY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<b>BANKRUPTCY</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XV <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

01-696 MEJ

**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):  
 Wiretap Act, 18 U.S.C. section 2511 et seq.

Brief description of cause:  
 Collection and dissemination of personal electronic communications without plaintiffs' consent

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23     DEMAND \$ > \$5 million     CHECK YES only if demanded in complaint: JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE":  
 Silvera v. Carrier IQ et al., N.Dist.Cal. No. 3:11-cv-5821SI

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

SAN FRANCISCO/OAKLAND    
  SAN JOSE    
  EUREKA

DATE: Dec. 9, 2011

SIGNATURE OF ATTORNEY OF RECORD: *Nance F. Becker*

ORIGINAL

**Attachment to Civil Cover Sheet, *LaVertue v. Carrier IQ et al.***  
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10 Attorneys for Plaintiffs and the proposed class

11 *[Additional counsel appear on signature page]*

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA

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2011 DEC -9 P 2:47  
RICHARD W. WILLIAMS  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
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14 ANDRE LAVERTUE and  
15 GARY CRIBBS, on behalf of themselves  
16 and all others similarly situated,

17 Plaintiffs,

18 v.

19 CARRIER IQ, INC., HTC, INC.,  
20 HTC AMERICA, INC., SAMSUNG  
21 ELECTRONICS AMERICA, INC.; and  
22 SAMSUNG TELECOMMUNICATIONS  
23 AMERICA, LLC.,

24 Defendants

Case No. **CV11 6198**

COMPLAINT

CLASS ACTION

JURY TRIAL DEMANDED

MEJ



25 ORIGINAL

1 Plaintiffs Andre LaVertue and Gary Cribbs, on behalf of themselves and all others similarly  
2 situated, by and through their undersigned counsel, allege the following claims against Defendants  
3 Carrier IQ, Inc., HTC, Inc., HTC America, Inc., Samsung Electronics America, Inc., and Samsung  
4 Telecommunications America, LLC. Except as to those allegations pertaining to plaintiffs  
5 individually, which are based on personal knowledge, said claims are alleged on information and  
6 belief after due investigation by the undersigned counsel.  
7

### 8 NATURE OF THE CLAIMS

9 1. Plaintiffs bring this action to remedy Defendants' unlawful interception of private  
10 electronic communications emanating from private mobile phones, handsets and smart phones.  
11 Defendants' acts and practices violate federal law, and are an unlawful and unfair business practice.  
12

### 13 PARTIES, JURISDICTION AND VENUE

14 2. Andre LaVertue is a natural person and citizen and resident of the State of New  
15 Hampshire.

16 3. Gary Cribbs is a natural person and citizen and resident of the State of Maryland.

17 4. All references to "Plaintiffs" throughout this Complaint are made on behalf of the  
18 named Plaintiffs and the proposed plaintiff class, and vice versa.

19 5. This Court has subject matter jurisdiction over this action and Defendants pursuant  
20 to 28 U.S.C. § 1331 because this action arises under federal statutes, namely the Federal Wiretap  
21 Act, 18 U.S.C. § 2511, *et seq.* (the "Wiretap Act").  
22

23 6. Diversity jurisdiction also arises under CAFA, 28 U.S.C. § 1332(d).

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

26 8. Defendant, Carrier IQ, Inc. ("CIQ") is a citizen of California as defined by 28 U.S.C.  
27 § 1332(c) with its principal place of business in the Northern District of California.  
28

1 9. Defendants HTC, Inc. and HTC America (collectively, “HTC”) are citizens of  
2 Washington, with their principal place of business in Bellevue, Washington.

3 10. Defendant Samsung Electronics America, Inc. is a citizen of New Jersey as defined  
4 by 28 U.S.C. § 1332(c) with its principal place of business in New Jersey.

5 11. Defendant Samsung Telecommunications America, LLC is a citizen of Texas as  
6 defined by 28 U.S.C. § 1332(c) with its principal place of business in Texas. (Defendants Samsung  
7 Electronics America, Inc., and Samsung Telecommunications America, LLC are hereinafter  
8 referred to collectively as “Samsung.”)  
9

10 12. Defendants are subject to suit in the Northern District of California as they have  
11 business offices and/or ongoing and systematic contacts with residents of California. Defendants  
12 have, at all material times, conducted business in the Northern District of California. Moreover,  
13 Defendants have sufficient minimum contacts in California such that the assumption of jurisdiction  
14 will not offend traditional notation of fair play and substantial justice.  
15

16 13. When reference in this Complaint is made to any act or omission of Defendants, it  
17 should be deemed to mean that the officers, directors, agents, employees, or representatives of  
18 Defendants committed or authorized such act or omission, or failed to adequately supervise or  
19 properly control or direct their employees while engaged in the management, direction, operation,  
20 or control of the affairs of Defendants, and did so while acting within the scope of their  
21 employment or agency.  
22

### 23 **GENERAL ALLEGATIONS**

24 14. Defendant, CIQ is the leading provider of mobile services intelligence solutions to  
25 the wireless industry.  
26  
27  
28

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

4           16. Defendant, CIQ uses software in mobile phones to measure performance and user  
5 experience with no visible notice or impact to the user.

6           17. Defendant, CIQ’s data processing center collects the data for near real-time  
7 monitoring and intelligence.

8           18. Defendant, CIQ is the only company in the industry embedding diagnostic software  
9 in millions of mobile phones, having done so in over 130 million phones globally.

10           19. Defendant CIQ states on their website that its software allows users to, “Identify  
11 exactly how your customers interact with services and which ones they use. See which content they  
12 consume, EVEN OFFLINE” (caps added). The software is also represented to answer “business  
13 critical questions” including, “How do users respond to mobile advertising.”

14           20. CIQ’s website further states that their software features include, “View application  
15 and device feature usage, such as camera, music, messaging, browser and TV.” Defendant that  
16 their services give “uniquely powerful insight into mobile service quality and USER BEHAVIOR”  
17 (caps added), allowing the customer to “identify new business opportunities.”

18           21. In addition, Defendant CIQ’s website states that their software “uses data directly  
19 from the mobile phone itself to give a precise view of how users interact with both their phones and  
20 the services delivered through them, EVEN IF THE PHONE IS NOT COMMUNICATING WITH  
21 THE NETWORK....” Users can, “Identify exactly how your customers interact with services and  
22 which ones they use. SEE WHICH CONTENT THEY CONSUME, EVEN OFFLINE” (caps  
23 added).  
24  
25  
26  
27  
28

1           22.    Privacy concerns surrounding Carrier IQ initially arose after Trevor Eckhart, a  
2 security researcher, posted a video which appeared to demonstrate Carrier IQ's keystroke logging,  
3 even offline.

4           23.    Carrier IQ's patent application #20110106942 contains claims regarding the  
5 collection of keystroke data, describing their product as a "method of collecting data...wherein the  
6 data relates to an end user's interaction with the device...wherein the interaction with the device  
7 comprises the end user's pressing of keys on the device."

8           24.    CIQ marketing representative Andrew Coward has been quoted in response to the  
9 privacy concerns as follows:  
10

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

13                    "We do recognize the power and value of this data. We're very aware that this  
14 information is sensitive. It's a treasure trove....We're seeing URLS and we can  
15 capture that information." (CARRIER IQ ADMITS HOLDING TREASURE  
TROVE OF CONSUMER DATA, BUT NOT KEYSTROKES: Wired.com  
16 12/02/2011)

17                    In an interview with Wired.com, Coward said "probably yes" when asked whether  
18 Carrier IQ could read mobile users' text messages. (CRITICS LINE UP TO BASH  
MAKER OF SECRET PHONE-MONITORING SOFTWARE: Wired.com  
19 12/01/11)

20           25.    Defendant, CIQ captures and records every keystroke entered on the mobile device,  
21 as well as location and other data.

22           26.    Defendant, HTC produces mobile phones and handsets, including "Android" smart  
23 phones.

24           27.    The CIQ software is embedded in HTC phones, including the phone of Plaintiff  
25 LaVertue.

26           28.    Defendant, Samsung produces mobile phones and handsets, including "Android"  
27 smart phones.  
28

1 29. The CIQ software is embedded in Samsung phones, including the phone of Plaintiff  
2 Cribbs.

3 30. The information collected by CIQ is transmitted to various service providers,  
4 including Sprint, AT&T and T-Mobile.

5 31. Plaintiff Andre LaVertue owns an HTC 4 EVO phone. At all relevant times  
6 Plaintiff's cell phone was used to electronically send over his cell phone network various types of  
7 private data. This data was not readily accessible to the general public. Plaintiff did not know that  
8 Defendants were surreptitiously monitoring and collecting this data, nor did Plaintiff give them  
9 permission to do so.  
10

11 32. Plaintiff Gary Cribbs owns a Samsung Galaxy S2 Skyrocket phone. At all relevant  
12 times Plaintiff's cell phone was used to electronically send over his cell phone network various  
13 types of private data. This data was not readily accessible to the general public. Plaintiff did not  
14 know that Defendants were surreptitiously monitoring and collecting this data, nor did Plaintiff give  
15 them permission to do so.  
16

17 33. Defendants intercepted, recorded and collected information concerning the  
18 substance, purport, or meaning of the electronic communications transmitted without the  
19 authorization of the parties to those communications.

20 34. Plaintiffs and Class Members, as defined below, were unaware of Defendants'  
21 wrongful conduct, and were unable to discover it until the information was reported in the media in  
22 December 2011, as Defendants' conduct by nature was secret and concealed.  
23

#### 24 CLASS ACTION ALLEGATIONS

25 35. This action is brought as a class action by Plaintiffs on behalf of themselves and on  
26 behalf of all those similarly situated pursuant to Rule 23(a) and 23(b)(1), (2), and (3) of the Federal  
27 Rules of Civil Procedure. The proposed class is defined as follows:  
28



1 All United States residents who operate a cellular phone device  
2 manufactured by HTC or Samsung and from which Carrier IQ, Inc.  
3 collected electronic communications (the "Class" or "Class  
4 Members").

5 Specifically excluded from the class are: any Judge conducting  
6 proceedings in this action and their parents, spouses and children as  
7 well as any other member of their family residing in the judge's  
8 household; counsel of record in this action; and the legal  
9 representatives, heirs, successors and assigns of any excluded person.

10 36. The exact number of members of the class is not presently known, but is so  
11 numerous that joinder of individual members in this action is impracticable. The exact number of  
12 the members of the class can only be ascertained through discovery, because such information is in  
13 the exclusive control of Defendants. However, based on the nature of the activities alleged herein,  
14 Plaintiffs believe that the members of the class number in the millions and are geographically  
15 dispersed throughout the United States. The addresses of the members of the class are readily  
16 obtainable from the Defendants and their agents and on information and belief are maintained in the  
17 computer database of Defendants and are easily retrievable.

18 37. Plaintiffs will fairly and adequately protect the interests of the class and have  
19 retained counsel who are experienced and capable in consumer and class action litigation. Plaintiffs  
20 understand and appreciate their duties to the class under Fed. R. Civ. P. 23 and are committed to  
21 vigorously protecting the rights of absent members of the class.

22 38. Plaintiffs are asserting claims that are typical of the claims of each member of the  
23 class they seek to represent, in that the claims of all members of the class, including Plaintiffs,  
24 depend upon a showing that the Defendants violated federal law. All claims alleged on behalf of  
25 the class flow from the same actions and course of conduct by the Defendants, and each of them.  
26 Further, there is no conflict between any Plaintiff and other members of the class with respect to  
27 this action.  
28

1           39.    There is a well-defined community of interest in the questions of law and fact  
2 affecting the parties to be represented. Questions of law and fact arising out of Defendants' conduct  
3 are common to all members of the class, and such common issues of law and fact predominate over  
4 any questions affecting only individual members of the class. The common issues of law and fact  
5 include, but are not limited to, the following:

- 6                   A.    Whether the data collected from Plaintiffs' cellular phone devices are  
7                   electronic communications protected by the Federal Wiretap Act;  
8                   B.    Whether Defendants' interception of data collected from Plaintiffs' devices  
9                   was intentional within the meaning of the Federal Wiretap Act; and  
10                  C.    The proper measure of damages under the Federal Wiretap Act.

11           40.    The relief sought is common to all members of the class.

12           41.    Defendants have acted on grounds generally applicable to the class, thereby making  
13 injunctive and declaratory relief appropriate with respect to the class as a whole.

14           42.    This action is properly maintained as a class action in that the prosecution of  
15 separate actions by individual members would create a risk of inconsistent judgments establishing  
16 incompatible standards of conduct for the Defendants, and would create an unnecessary burden on  
17 the courts.

18           43.    This action is properly maintained as a class action in that the prosecution of  
19 separate actions by individual members of the class would create a risk of adjudications with  
20 respect to individual members of each class (or potential sub-classes) which would, as a practical  
21 matter, be dispositive of the interests of the other members not parties to the adjudication, or would  
22 substantially impair or impede their ability to protect their interests.  
23

24           44.    A class action is superior to other available methods for the fair and efficient  
25 adjudication of the claims asserted herein given that, among other things:  
26  
27  
28

- 1 A. significant economies of time, effort, and expense will inure to the benefit of  
2 the Court and the parties in litigating the common issues on a class-wide  
3 instead of a repetitive individual basis;
- 4 B. the size of the individual damage claims of most members of the class is too  
5 small to make individual litigation an economically viable alternative, such  
6 that few members of the class have any interest in individually controlling  
7 the prosecution of a separate action;
- 8 C. without the representation provided by Plaintiffs herein, few, if any, members  
9 of the class will receive legal representation or redress for their injuries;
- 10 D. class treatment is required for optimal deterrence;
- 11 E. despite the relatively small size of the claims of many individual members of  
12 the class, their aggregate volume coupled with the economies of scale  
13 inherent in litigating similar claims on a common basis, will enable this case  
14 to be litigated as a class action on a cost effective basis, especially when  
15 compared with respective individual litigation;
- 16 F. no unusual difficulties are likely to be encountered in the management of this  
17 class action; and
- 18 G. plaintiffs and members of the class have all suffered irreparable harm and  
19 damages as a result of Defendants' unlawful and wrongful conduct.

20 45. Concentrating this litigation in one forum would aid judicial economy and  
21 efficiency, promote parity among the claims of the individual members of the class, and result in  
22 judicial consistency.

### 23 **COUNT I – FEDERAL WIRETAP ACT**

24 46. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

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

27 [A]ny person who ... intentionally intercepts, [or] endeavors to  
28 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).

1           48.    At all times relevant hereto, Plaintiffs and Class Members were persons entitled to  
2 the protection of 18 U.S.C. § 2510, et seq. as they were individuals who were party to electronic  
3 communications.

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

6           50.    The Federal Wiretap Act also provides that:

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

11                   In an action under this section, appropriate relief includes ... (2)  
12 damages under subsection (c) and punitive damages in appropriate  
13 cases; and (3) a reasonable attorney's fee and other litigation costs  
14 reasonably incurred ... [T]he court may assess as damages whichever  
15 is the greater of – (A) the sum of the actual damages suffered by the  
16 plaintiff and any profits made by the violator as a result of the  
17 violation; or (B) statutory damages of whichever is the greater of  
18 \$100 a day for each violation or \$10,000.

19 18 U.S.C. § 2520.

20           51.    Plaintiffs are, accordingly, entitled to damages, penalties, and attorneys' fees under  
21 the Federal Wiretap Act as prayed for below.

22           **COUNT II -- CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 ("UCL")**

23           52.    Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

24           53.    Plaintiffs are entitled to assert claims against Defendants under California law  
25 because Carrier IQ is based in California and because the conduct at issue in this action either  
26 occurred in California by virtue of the centralized business practices of Carrier IQ, or arose as the  
27 result of policies and procedures that originated from Carrier IQ's home offices in California.  
28 Further, the wrongful scheme at issue herein was planned and implemented by the Defendants in  
California.

1           54.     The majority of wrongful acts complained of emanated from or occurred in  
2 California including, without limitation, the development of the Carrier IQ software at issue, and  
3 the plan to secretly embed that software in mobile devices without the knowledge of device users.

4           55.     California Business & Professions Code §§ 17200 et seq. (the “Unfair Competition  
5 Law” or “UCL”) is a consumer protection statute that prohibits any “unlawful, unfair or fraudulent  
6 business act or practice.” The UCL authorizes this Court to issue whatever orders or judgments may  
7 be necessary to prevent unfair or unlawful practices, or to “restore to any person in interest any  
8 money or property, real or personal, which may have been acquired by means of such unfair  
9 competition.” *Id.* § 17203.

11          56.     Defendants engaged in *unlawful* conduct in violation of the UCL in that the acts and  
12 practices alleged herein violate the Federal Wiretap Act.

13          57.     Defendants engaged in *unfair* business acts and practices in violation of the UCL by,  
14 among other things: (a) secretly embedding software in mobile devices that is designed to provide  
15 Defendants with information about the user’s private communications; (b) failing to provide notice  
16 that such software is embedded on mobile devices; (c) failing to provide a mechanism for mobile  
17 device users to remove such software from mobile phones or to render it inoperable; (d) failing to  
18 disclose that private information of mobile device users would be collected, stored and/or used for  
19 commercial purposes; and (e) failing to remedy its violations of law upon reasonable notice.

21          58.     The foregoing acts and practices violate the right of privacy protected by the  
22 California Constitution, were likely to mislead the public as to the privacy of their personal  
23 communications, and were unjustified by any legitimate business need.

24          59.     Defendants engaged in *fraudulent* business acts and practices in violation of the  
25 UCL in that Defendants’ collection and dissemination of the information regarding their customers’  
26 cell phone use was knowingly hidden and concealed.  
27  
28

1           60. By reason of the foregoing, Defendants have been unjustly enriched at the expense  
2 of Plaintiffs and the Class and should be required to make restitution to the Plaintiffs, the general  
3 public and the members of the Class, and/or be enjoined from continuing in such practices, pursuant  
4 to §§17203 and 17204 of the California Business & Professions Code. Among other things, the  
5 Defendants charged the Plaintiffs more for the devices with the Carrier IQ software embedded than  
6 they would have charged for the same devices without the hidden software. Further, some  
7 Defendants, or all of them, received compensation in exchange for secretly recorded information.

8           61. The foregoing acts and practices have caused substantial harm to the Plaintiffs, the  
9 general public, and the members of the class. As a result of these violations and unlawful, unfair,  
10 and fraudulent business practices, Plaintiffs suffered injury in fact and lost money, including but not  
11 limited to, payment of amounts greater than the fair value of the products at issue without the  
12 hidden software.  
13

14           62. Pursuant to California Business and Professions Code §17200 et seq., Plaintiffs are  
15 entitled to enjoin Defendants' practices.  
16

17           63. Pursuant to Code of Civil Procedure § 1021.5, Plaintiffs are entitled to recover their  
18 reasonable attorney's fees, costs, and expenses incurred in bringing this action.

19                           **PRAYER FOR RELIEF**

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

- 22           A.       Ordering that this action be maintained as a class action pursuant to Rule 23  
23                   of the Federal Rules of Civil Procedure, and
- 24           B.       Declaring that Defendants' collection of electronic communications violates  
25                   18 U.S.C. §2511; and
- 26           C.       Awarding Plaintiffs and Class Members restitution and statutory damages  
27                   pursuant to 18 U.S.C. § 2520, including punitive damages, costs of suit, and  
28                   attorneys' fees; and

1 D. Ordering injunctive and declaratory relief as deemed appropriate.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiffs demand a trial by jury on all issues so triable.

4  
5 December 9, 2011

Respectfully submitted

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