

EXHIBIT A

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:11-cv-02110-WHA**

Gupta v. Apple, Inc.
Assigned to: Hon. William Alsup
Cause: 28:1331 Fed. Question

Date Filed: 04/28/2011
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory
Actions
Jurisdiction: Federal Question

Plaintiff

Arun Gupta
*individually and on behalf of all others
similarly situated*

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V.

Defendant

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a California corporation

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| Date Filed | # | Docket Text |
|------------|-----------|---|
| 04/28/2011 | <u>1</u> | CLASS ACTION COMPLAINT; Demand for Jury Trial against Apple, Inc. (Filing fee \$ 350.00, receipt number 34611059228). Filed by Arun Gupta. (Attachments: # <u>1</u> Civil Cover Sheet) (gba, COURT STAFF) (Filed on 4/28/2011) (Entered: 04/29/2011) |
| 04/28/2011 | <u>2</u> | Certificate of Interested Entities by Arun Gupta (gba, COURT STAFF) (Filed on 4/28/2011) (Entered: 04/29/2011) |
| 04/28/2011 | <u>3</u> | Summons Issued as to Apple, Inc.. (gba, COURT STAFF) (Filed on 4/28/2011) (Entered: 04/29/2011) |
| 04/28/2011 | <u>4</u> | ADR SCHEDULING ORDER: Case Management Statement due by 7/29/2011. Case Management Conference set for 8/5/2011 01:30 PM in Courtroom A, 15th Floor, San Francisco. (gba, COURT STAFF) (Filed on 4/28/2011) (Entered: 04/29/2011) |
| 04/28/2011 | | CASE DESIGNATED for Electronic Filing. (gba, COURT STAFF) (Filed on 4/28/2011) (Entered: 04/29/2011) |
| 05/02/2011 | <u>5</u> | Declination to Proceed Before a U.S. Magistrate Judge by Arun Gupta. (Reis, Sean) (Filed on 5/2/2011) (Entered: 05/02/2011) |
| 05/02/2011 | <u>6</u> | CLERK'S NOTICE of Impending Reassignment to U.S. District Judge (klhS, COURT STAFF) (Filed on 5/2/2011) (Entered: 05/02/2011) |
| 05/03/2011 | <u>7</u> | ORDER REASSIGNING CASE. Case reassigned to Judge Hon. Charles R. Breyer for all further proceedings. Judge Magistrate Judge Joseph C. Spero no longer assigned to the case.. Signed by Executive Committee on 5/3/11. (as, COURT STAFF) (Filed on 5/3/2011) (Entered: 05/03/2011) |
| 05/06/2011 | <u>8</u> | ORDER OF RECUSAL. Signed by Judge Charles R. Breyer on 5/6/2011. (beS, COURT STAFF) (Filed on 5/6/2011) (Entered: 05/06/2011) |
| 05/10/2011 | <u>9</u> | ORDER REASSIGNING CASE. Case reassigned to Judge Hon. William Alsup for all further proceedings. Judge Hon. Charles R. Breyer no longer assigned to the case.. Signed by Executive Committee on 5/10/11. (as, COURT STAFF) (Filed on 5/10/2011) (Entered: 05/10/2011) |
| 05/10/2011 | <u>10</u> | CLERKS NOTICE SCHEDULING INITIAL CASE MANAGEMENT CONFERENCE ON REASSIGNMENT Case Management Statement due by 7/28/2011. Initial Case Management Conference set for 8/4/2011 11:00 AM in Courtroom 9, 19th Floor, San Francisco. (fj, COURT STAFF) (Filed on 5/10/2011) (Entered: 05/10/2011) |
| 05/10/2011 | <u>11</u> | SUPPLEMENTAL ORDER TO ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE re <u>10</u> Clerks Notice, (fj, COURT STAFF) (Filed on 5/10/2011) (Entered: 05/10/2011) |
| 05/11/2011 | <u>12</u> | MOTION to Transfer Case <i>Apple Inc.'s Stipulated Administrative Motion for Intradistrict Transfer to San Jose Division</i> filed by Apple, Inc.. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Proposed Order)(McCabe, James) (Filed on 5/11/2011) (Entered: 05/11/2011) |
| 05/11/2011 | <u>13</u> | ORDER GRANTING STIPULATED ADMINISTRATIVE MOTION FOR INTRADISTRICT TRANSFER TO SAN JOSE DIVISION, granting <u>12</u> MOTION to Transfer Case <i>Apple Inc.'s Stipulated Administrative Motion for Intradistrict Transfer to San Jose Division</i> filed by Apple, Inc. Signed by Judge Alsup on May 11, 2011. (whalc2, COURT STAFF) (Filed on 5/11/2011) (Entered: 05/11/2011) |

FILED
2011 APR 28 P 2:59
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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9 *Pro hac vice admission to be sought

E-filing

10 ATTORNEYS FOR PLAINTIFF AND THE PUTATIVE CLASS

JCS

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA

14 ARUN GUPTA, individually and on)
15 behalf of all others similarly)
16 situated,)

Case **CV 11 2110**

17 Plaintiff,)

) **COMPLAINT FOR:**

18 v.)

-) (1) Violations of the Stored Communications Act, 18 U.S.C. § 2701, *et seq.*
-) (2) Violations of the Electronic Communications Privacy Act, 18 U.S.C. § 2510, *et seq.*
-) (3) Violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200
-) (4) Unjust Enrichment
-) (5) Breach of Fiduciary Duty
-) (6) Breach of Contract

19 APPLE, INC., a)
20 California corporation,)

21 Defendant.)

) **DEMAND FOR JURY TRIAL**

) **CLASS ACTION**

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COMPLAINT

FAXED

1 Plaintiff Arun Gupta (“Plaintiff”), by and through his attorneys, upon personal
2 knowledge as to himself and his own acts, and upon information and belief as to all other
3 matters, complain and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. Plaintiff Gupta brings this Class Action Complaint against Defendant Apple, Inc.
6 (“Apple” or “Defendant”) for its unlawful collection of information correlated to its customer’s
7 geolocation.

8 2. Apple manufactures the popular smartphone, the iPhone. Apple also developed
9 the proprietary software used to operate the iPhone.

10 3. By default, geolocation information is regularly collected from customers’
11 iPhones and transmitted to Apple’s servers.

12 4. Through its documentation and public statements, Apple has consistently
13 maintained that iPhone customers who object to having their geolocation collected by Apple can
14 manually turn off the “Locations Services” function through the device’s settings.

15 5. However, in clear contradiction to the company’s assertions above, Apple
16 intentionally designed the iPhone to regularly transmit information correlated to users’
17 geolocation to Apple’s servers, *after a customer turns “Off” Locations Services*. See, iPhone
18 Geolocation Investigation Report (the “Report”), attached hereto as **Exhibit A**.

19 6. As a result, iPhone users who seek to preserve their privacy have been deceived
20 into a false sense of security. Apple continues to collect information about iPhone users’
21 locations, even after these customers have expressly denied Apple access to their mobile devices.

22 7. Not only do Apple’s actions demonstrate a wholesale disregard for consumers’
23 privacy rights, Apple’s practice of collecting this data without permission violates numerous
24 state and federal laws.

25 **PARTIES**

26 8. Plaintiff Gupta is a natural person and citizen of Pennsylvania.
27
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1 9. Defendant Apple, Inc. is a California corporation with its principal place of
2 business at 1 Infinite Loop, Cupertino, California 95014.

3 **JURISDICTION AND VENUE**

4 10. This Court has subject matter jurisdiction over Plaintiff's claims arising under the
5 laws of the United States pursuant to 28 U.S.C. § 1331, and, as to all other claims, pursuant to 28
6 U.S.C. § 1367.

7 11. This Court has personal jurisdiction over Apple because it maintains its corporate
8 headquarters in this District and the improper conduct alleged in the Complaint occurred in, was
9 directed and/or emanated from California.

10 12. This Court is an appropriate venue for the adjudication of this controversy
11 because a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

12 **INTRADISTRICT ASSIGNMENT**

13 13. Pursuant to Civil Local Rule 3-2(e), this case shall be assigned to the San Jose
14 Division.

15 **FACTUAL BACKGROUND**

16 **I. Apple Stands to Profit from Collecting its Customers' Location Data**

17 14. As New York Times writer Miguel Hefst aptly put it, "you may not know it, but if
18 you carry a smartphone in your pocket, you are probably doing unpaid work for Apple."¹

19 15. Indeed, Apple is slowly building a comprehensive database containing
20 information about cellular towers and wireless networks in order to more accurately deploy
21 targeted advertisements to mobile phone users in the future. The mobile phone advertising
22 market is projected to become a \$2.5 billion dollar industry by 2015.

23 16. In order to collect the information for the database described above, Apple
24 designed the iPhone to constantly collect and send geolocation data to Apple's servers, including
25 information about nearby cell towers and wireless networks.

26
27 ¹ Apple and Google Use Location Data to Map the World,
<http://www.nytimes.com/2011/04/26/technology/26locate.html> (last visited April 28, 2011).

1 17. Accordingly, consumers' iPhones transmit geolocation data to Defendant on a
2 routine basis.

3 **II. Apple Promises Not to Collect Geolocation Data About its Customers Without**
4 **User Consent**

5 18. In a July 2010 letter to Rep. Ed Markey and Rep. Joe Barton, Apple asserted that
6 "customers have always had the ability to turn "Off" all location-based service capabilities with a
7 single "On/Off" toggle switch ... [if] customers toggle the switch to "Off," they may not use
8 location-based services, and no location-based information will be collected."²

9 19. More recently, under increasing scrutiny over failing to respect the privacy of its
10 customers, Apple's senior vice president of iPhone software, Scott Forstall, stated that "the
11 company doesn't allow apps, including its own, to use location data without the user's consent."³

12 20. Unfortunately for consumers, the statements above ring hollow in light of the
13 facts presented below.

14 **III. Apple Breaks its Promise**

15 21. Through his attorneys, Plaintiff has engaged an independent security expert to
16 determine whether Apple collects location information from iPhone users without consent. (Ex.
17 A.)

18 22. The research detailed in the Report clearly shows that, even after an iPhone user
19 turns off the Location Services function and despite Apple's statements to the contrary, the
20 device continues to transmit information to Apple's servers revealing the closest cellular tower
21 and wireless network to the user. (Ex. A.)

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25 ² Apple Letter, <http://www.scribd.com/doc/54054316/Apple-s-Letter-do-Rep-Ed-Markey-and-Joe-Barton>
(last visited April 27, 2011).

26 ³ Jobs Tries to Calm iPhone Imbroglio,
27 <http://online.wsj.com/article/SB10001424052748703367004576288790268529716.html> (last visited April 27,
2011).

1 23. Even more shocking, the information collected and sent from the user's iPhone to
2 Apple can easily be inputted into a publicly searchable database, which in turn reveals a very
3 precise estimate of the user's exact location. (Ex. A.)

4 24. As a result, Apple—or anyone with access to this data—is able to approximate the
5 exact location of thousands, if not millions, of United States citizens, even after these users
6 unequivocally denied Defendant authorization to determine their whereabouts.

7 **FACTS RELATING TO PLAINTIFF**

8 25. Plaintiff Gupta owns an iPhone and has, since purchasing the device, turned his
9 Location Services off.

10 26. Plaintiff Gupta's iPhone transmitted location data to Apple without his consent.

11 **CLASS ALLEGATIONS**

12 27. **Definition of the Class:** Plaintiff Gupta brings this action pursuant to Fed. R.
13 Civ. P. 23(b)(2) and (3) on behalf of himself and a Class of similarly situated individuals,
14 defined as follows:

15 All individuals and entities in the United States and its territories that have turned
16 off Location Services on their iPhones and unwittingly transmitted location data
to Apple's servers.

17 Excluded from the Class are 1) Defendant, Defendant's agents, subsidiaries, parents,
18 successors, predecessors, and any entity in which the Defendant or their parents have a
19 controlling interest and their current and former employees, officers, and directors, 2) the
20 Judge or Magistrate Judge to whom this case is assigned and the Judge's or Magistrate
21 Judge's immediate family, 3) persons who execute and file a timely request for exclusion,
22 and 4) the legal representatives, successors, or assigns of any such excluded person.
23

24 28. **Numerosity:** The exact number of the members of the Class is unknown and is
25 not available to Plaintiff at this time, but individual joinder in this case is impracticable. The
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1 Class consists of millions of individuals and other entities. Class members can be easily
2 identified through Defendant's records and public records.

3 29. **Commonality:** There are many questions of law and fact common to the claims
4 of Plaintiff and the other members of the Class, and those questions predominate over any
5 questions that may affect individual members of the Class. Common questions for the Class
6 include but are not limited to the following:

7 (a) whether Apple continues to collect location data from iPhones even after
8 the user turns "Off" the Locations Services function;

9 (b) whether Apple profits, or intends to profit from, the collection of
10 geolocation data described more fully herein;

11 (c) whether Apple's conduct described herein violated the Stored
12 Communications Act (18 U.S.C. § 2701, *et seq.*);

13 (d) whether Apple's conduct described herein violated the Electronic
14 Communications Privacy Act (18 U.S.C. §§ 2510, *et seq.*);

15 (e) whether Apple's conduct described herein violated the Unfair Competition
16 Law (Cal. Bus. & Prof. Code § 17200, *et seq.*);

17 (f) whether Apple has been unjustly enriched by Plaintiff and the Class;

18 (g) whether Apple has breached its fiduciary duty to Plaintiff and the Class.

19 30. **Typicality:** The factual and legal bases of Apple's liability to Plaintiff and to the
20 other members of the Class are the same and resulted in injury to Plaintiff and all of the other
21 members of the Class. Plaintiff and the other members of the Class have all suffered harm as a
22 result of Apple's wrongful conduct

23 31. **Adequate Representation:** Plaintiff will fairly and adequately represent and
24 protect the interests of the Class members, and have retained counsel competent and experienced
25 in complex class actions. Plaintiff has no interest antagonistic to those of the Class and
26 Defendant has no defenses unique to Plaintiff.

1 foreign commerce...” 18 U.S.C. § 2510(12). The Stored Communications Act (the “SCA”)
2 incorporates this definition.

3 36. Pursuant to the ECPA and the SCA, “electronic storage” means any “temporary
4 storage of a wire or electronic communication incidental to the electronic transmission thereof.”
5 18 U.S.C. § 2510(17)(A). This type of electronic storage includes communications in
6 intermediate electronic storage that have not yet been delivered to their intended recipient.

7 37. The SCA mandates, among other things, that it is unlawful for a person to obtain
8 access to stored communications on another’s computer system without authorization. 18 U.S.C.
9 § 2701.

10 38. Congress expressly included provisions in the SCA to address this issue so as to
11 prevent “unauthorized persons deliberately gaining access to, and sometimes tampering with,
12 electronic or wire communications that are not intended to be available to the public.” Senate
13 Report No. 99–541, S. REP. 99-541, 35, 1986 U.S.C.C.A.N. 3555, 3589.

14 39. Apple has violated 18 U.S.C. § 2701(a)(1) because it intentionally accessed
15 consumers’ communications without authorization and obtained, altered, or prevented authorized
16 access to a wire or electronic communication while in electronic storage by collecting location
17 data from Plaintiff and the Class’s iPhones after Locations Services was turned “Off.”
18 Defendant had actual knowledge of, and benefited from, this practice.

19 40. Additionally, Defendant has violated 18 U.S.C. § 2701(a)(2) because it
20 intentionally exceeded authorization to access consumers’ communications and obtained, altered,
21 or prevented authorized access to a wire or electronic communication while in electronic storage
22 by collecting location data from Plaintiff and the Class’s iPhones after Locations Services was
23 turned “Off.” Defendant had actual knowledge of, and benefited from, this practice.

24 41. As a result of Defendant’s conduct described herein and its violation of § 2701,
25 Plaintiff and the Class have suffered injuries. Plaintiff, on his own behalf and on behalf of the
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1 Class, seeks an order enjoining Defendant's conduct described herein and awarding himself and
2 the Class the maximum statutory and punitive damages available under 18 U.S.C. § 2707.

3 **SECOND CAUSE OF ACTION**
4 **Violations of the Electronic Communications Privacy Act**
5 **(18 U.S.C. § 2510, *et seq.*)**
6 **(On Behalf of Plaintiff and the Class)**

7 42. Plaintiff incorporates the forgoing allegations as if fully set forth herein.

8 43. The Electronic Communications Privacy Act, 18 U.S.C. § 2510 *et seq.* (the
9 "ECPA") broadly defines an "electronic communication" as "any transfer of signs, signals,
10 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a
11 wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or
12 foreign commerce..." 18 U.S.C. § 2510(12).

13 44. The ECPA defines "electronic communications system" as any wire, radio,
14 electromagnetic, photooptical or photoelectronic facilities for the transmission of wire or
15 electronic communications, and any computer facilities or related electronic equipment for the
16 electronic storage of such communications. 18 U.S.C. § 2510(14).

17 45. The ECPA broadly defines the contents of a communication. Pursuant to the
18 ECPA, "contents" of a communication, when used with respect to any wire, oral, or electronic
19 communications, include any information concerning the substance, purport, or meaning of that
20 communication. 18 U.S.C. § 2510(8). "Contents," when used with respect to any wire or oral
21 communication, includes any information concerning the identity of the parties to such
22 communication or the existence, substance, purport, or meaning of that communication. The
23 definition thus includes all aspects of the communication itself. No aspect, including the identity
24 of the parties, the substance of the communication between them, or the fact of the
25 communication itself, is excluded. The privacy of the communication to be protected is intended
26 to be comprehensive.

1 53. Apple has violated the fraudulent prong of the UCL in that Defendant continues
2 to collect geolocation data from its customers, in clear contradiction to its assertions to honor
3 users' decision to turn "Off" Location Services.

4 54. Apple has violated the unfair prong of the UCL in that, Defendant does now, or
5 plans in the future to, profit from Plaintiff and the Class's geolocation data, although they
6 attempted to prevent Apple from accessing that information.

7 55. Apple has violated the unlawful prong of the UCL in that Defendant's conduct
8 violated the Stored Communications Act (18 U.S.C. § 2701 *et seq.*) and the Electronic
9 Communications Privacy Act (18 U.S.C. § 2510 *et seq.*).

10 56. Pursuant to Cal. Bus. & Prof. Code § 17203, Plaintiff seeks an order of this Court
11 permanently enjoining Apple from continuing to engage in the unfair and unlawful conduct
12 described herein. Plaintiff seeks an order requiring Defendant to (1) immediately stop the
13 unlawful practices stated in this Complaint; (2) pay attorney's fees, and costs pursuant to Cal.
14 Code Civ. Proc. § 1021.5.

15 **FOURTH CAUSE OF ACTION**
16 **Unjust Enrichment**
17 **(On Behalf of Plaintiff and the Class)**

18 57. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

19 58. Plaintiff and members of the Class conferred a monetary benefit on Defendant by
20 purchasing an iPhone from Apple that Defendant claimed would not transmit geolocation data
21 after the Location Services function was turned "Off." Defendant received and retained money
22 through this transaction and by developing a database of location data collected from Plaintiff
23 and the Class as a result of the unlawful and/or wrongful conduct alleged herein.

24 59. Defendant appreciates or has knowledge of such benefit.

25 60. Under principles of equity and good conscience, Defendant should not be
26 permitted to retain the money obtained by selling information about Plaintiff and members of the
27 Class, which Defendant has unjustly received as a result of its unlawful actions.

1 61. Accordingly, Plaintiff and the Class seek full disgorgement and restitution of any
2 amounts Apple has retained as a result of the unlawful and/or wrongful conduct alleged herein.

3 **FIFTH CAUSE OF ACTION**
4 **Breach of Fiduciary Duty**
5 **(On Behalf of Plaintiff and the Class)**

6 62. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

7 63. Because Apple was entrusted to honor Plaintiff's and the Class's right to privacy,
8 Defendant owed a fiduciary duty to Plaintiff and the Class to (a) discontinue the collection of
9 location data from its customer's iPhones after the user turned "Off" the Location Services
10 function.

11 64. Defendant breached its fiduciary duty to Plaintiff and Class members by:

- 12 a) Failing to discontinue collection of location data from its customers'
13 iPhones after users turned "Off" the Location Services function.
14 b) Failing to act in compliance with the Stored Communications Act (18
15 U.S.C. § 2701, *et seq.*), Electronic Communications Privacy Act (18
16 U.S.C. § 2510, *et seq.*)

17 65. Under principles of equity and good conscience, Defendant should not be
18 permitted to retain the money obtained by selling information about Plaintiff and members of the
19 Class to third parties, which Defendant has received as a result of breaching its fiduciary duties.

20 66. Accordingly, Plaintiff and the Class seek full disgorgement and restitution of any
21 amounts Apple has retained as a result of the unlawful and/or wrongful conduct alleged herein.

22 **SIXTH CAUSE OF ACTION**
23 **Breach of Contract**
24 **(On Behalf of Plaintiff and the Class)**

25 67. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

26 68. Apple requires all iPhone users to agree to its Terms and Conditions before using
27 their iPhone.

28 69. Apple's Terms and Conditions state:

1 Location Data: Apple ... may provide certain services through your
2 iPhone that rely upon location information. To provide these services,
3 where available, Apple ... may transmit, collect, maintain, process and use
4 your location data, including the real-time geographic location of your
5 iPhone ... By using any location-based services on your iPhone, you agree
6 and consent to Apple's ... transmission, collection, maintenance,
7 processing and use of your location data to provide such products and
8 services. *You may withdraw consent at any time by ... turning off the*
9 *Location Services setting on your iPhone[.]*

10 (Terms and Conditions, ¶ 4(b)) (emphasis added.)

11 70. At all relevant times, Plaintiff's Location Services was turned "Off."

12 71. Despite the fact that Plaintiff withdrew his consent pursuant to Paragraph 4(b) of
13 Apple's iPhone Terms and Conditions, Apple continued to transmit geographic location
14 information from his iPhone.

15 72. Apple's transmission of Plaintiff's geographical location information without
16 Plaintiff's consent constitutes a material breach of the contract.

17 73. As a result of the breach, Plaintiff suffered, and will continue to suffer, actual and
18 pecuniary harm including, but not limited to, anxiety, emotional distress, and loss of privacy, as
19 well as, other economic and non-economic losses.

20 PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following
22 relief:

23 A. Certify this case as a class action on behalf of the Class defined above, appoint
24 Arun Gupta as class representative, and appoint his counsel as class counsel;

25 B. Declare that Apple's actions, as described herein, violate the Stored
26 Communications Act (18 U.S.C. § 2701, *et seq.*), Electronic Communications Privacy Act (18
27 U.S.C. § 2510, *et seq.*), and the California Unfair Competition Law (Cal. Bus. & Prof. Code §
28 17200, *et seq.*);

C. Award injunctive and other equitable relief as is necessary to protect the interests
of the Class, including, *inter alia*: (i) an order prohibiting Apple from engaging in the wrongful

1 and unlawful acts described herein; and (ii) requiring Apple to stop collecting geolocation data
2 from its customers' iPhones after the user has turned "Off" Location Services;

3 D. Award damages, including statutory damages of \$1,000 per violation under the
4 Stored Communications Act, 18 U.S.C. § 2707(c), and punitive damages where applicable, to
5 Plaintiff and the Class in an amount to be determined at trial;

6 E. Award Plaintiff and the Class their reasonable litigation expenses and attorneys'
7 fees;

8 F. Award Plaintiff and the Class pre- and post-judgment interest, to the extent
9 allowable; and

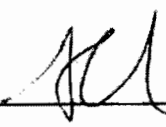
10 G. Award such other and further relief as equity and justice may require.

11 **JURY TRIAL**

12 Plaintiff demands a trial by jury for all issues so triable.

13
14 Dated: April 28, 2011

Respectfully submitted,

15
16 By: /s/ Sean Reis 
17 Sean Reis
One of the Attorneys for Plaintiff

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EXHIBIT A

Research by Samy Kamkar
samy@samy.pl
<http://samy.pl>
 April 27, 2011

Summary:

My research has shown that iPhone devices are sending cellular tower information and Wi-Fi BSSID addresses to Apple regardless of whether or not "Location Services" is set to "On" or "Off".

Test device: CDMA iPhone 4 on activated Verizon Wireless account
 Further tests were ran on a GSM iPhone 3G on an activated AT&T account which displayed similar results.

When the iPhone 4 has "Location Services" set to "Off" under the Settings->General section, it continues to send packets that can be decoded to information that can easily lead to accurate coordinates of the device.

Example packets:

4/27/2011 12:44:49 PM PST:

iPhone 4 sends HTTPS POST to <https://gs-loc.apple.com/cils/wloc>

Content (decrypted from SSL):

```
00000000 00 01 00 05 65 6e 5f 55 53 00 00 00 0b 34 2e 32          en_US 4.2
00000010 2e 36 2e 38 45 32 30 30 00 00 01 00 00 00 1a          .6.8E200
00000020 18 00 20 00 aa 01 13 08 b6 02 18 02 20 34 28 c2          4(
00000030 0b 38 02 40 00 48 a9 03 50 5c                          8 e H P\
```

4/27/2011 12:44:50 PM PST:

iPhone 4 sends HTTPS POST to <https://gs-loc.apple.com/cils/wloc>

Content (decrypted from SSL):

```
00000000 00 01 00 05 65 6e 5f 55 53 00 00 00 0b 34 2e 32          en_US 4.2
00000010 2e 36 2e 38 45 32 30 30 00 00 01 00 00 00 bb          .6.8E200
00000020 12 12 0a 10 30 3a 32 34 3a 33 36 3a 61 64 3a 63          0:24:36:ad:c
00000030 32 3a 61 33 12 13 0a 11 33 34 3a 65 66 3a 34 34          2:a3 34:ef:44
00000040 3a 65 39 3a 66 31 3a 37 31 12 12 0a 10 30 3a 31          :e9:f1:71 0:1
00000050 62 3a 66 63 3a 32 31 3a 37 36 3a 65 36 12 12 0a          b:fc:21:76:e6
00000060 10 30 3a 31 65 3a 38 63 3a 62 38 3a 32 30 3a 66          0:1e:8c:b8:20:f
00000070 33 12 12 0a 10 30 3a 32 34 3a 33 37 3a 64 38 3a          3 0:24:37:d8:
00000080 37 38 3a 35 30 12 13 0a 11 33 30 3a 34 36 3a 39          78:50 30:46:9
00000090 61 3a 34 34 3a 62 65 3a 35 33 12 11 0a 0f 30 3a          a:44:be:53 0:
000000a0 31 65 3a 38 63 3a 63 64 3a 65 3a 35 39 12 13 0a          1e:8c:cd:e:59
000000b0 11 31 30 3a 39 61 3a 64 64 3a 38 34 3a 34 65 3a          10:9a:dd:84:4e:
000000c0 62 37 12 13 0a 11 31 36 3a 39 61 3a 64 64 3a 38          b7 16:9a:dd:8
000000d0 34 3a 34 65 3a 62 37 18 00 20 00                          4:4e:b7
```

The first 32 bytes of both packets include unknown options as well as UTF-encoded locale (country and language), UTF-encoded version information about the firmware of the iPhone (4.2.6.8E200), and the unknown values 1 (short), 1 (int), and the length of the data to follow (int).

In the first packet, all data after the first 32 bytes decodes to cellular tower information once decoded via Google's protocol buffer format:

```
3: 0
4: 0
21 {
  1: 310
  3: 2
  4: 52
  5: 1474
  7: 2
  8: 0
  9: 425
  10: 92
}
```

21:1 = MCC
21:2 = MNC (missing on CDMA iPhones, sent on GSM iPhones)
21:3 = Cell ID
21:4 = LAC

In the second packet, all data after the first 32 bytes decodes to unique wi-fi BSSID addresses once decoded via Google's protocol buffer format:

```
2 {
  1: "0:24:36:ad:c2:a3"
}
2 {
  1: "34:ef:44:e9:f1:71"
}
2 {
  1: "0:1b:fc:21:76:e6"
}
2 {
  1: "0:1e:8c:b8:20:f3"
}
2 {
  1: "0:24:37:d8:78:50"
}
2 {
  1: "30:46:9a:44:be:53"
}
2 {
  1: "0:1e:8c:cd:e:59"
}
2 {
  1: "10:9a:dd:84:4e:b7"
}
```

```

2 {
  1: "16:9a:dd:84:4e:b7"
}
3: 0
4: 0

```

All of these BSSIDs can then be taken and plugged into a public database, such as Google's freely available geolocation API, in order to locate the mobile device.

You can test this here:

<http://samy.pl/androidmap/>

You can see how accurate the results are by inputting those into the website and comparing the results with the actual location of the device. Here are direct links demonstrating this:

<http://samy.pl/androidmap/index.php?mac=0%3A24%3A36%3Aad%3Ac2%3Aa3&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=34%3Aef%3A44%3Ae9%3Af1%3A71&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=0%3A1b%3Afc%3A21%3A76%3Ae6&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=0%3A1e%3A8c%3Ab8%3A20%3Af3&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=0%3A24%3A37%3Ad8%3A78%3A50&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=30%3A46%3A9a%3A44%3Abe%3A53&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=0%3A1e%3A8c%3Acd%3Ae%3A59&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=10%3A9a%3Add%3A84%3A4e%3Ab7&commit=Probe>

<http://samy.pl/androidmap/index.php?mac=16%3A9a%3Add%3A84%3A4e%3Ab7&commit=Probe>

In all cases, the accuracy of the mapping was within a few buildings (when verifying with satellite view) easily allowing one to determine that the mobile device was in the area. Further triangulation based off of comparing which networks were seen or averaging the location of the wifi networks can also lead to further information on the location of the phone.

The iPhone 4 is clearly sending information that can lead to accurate location information of the mobile device regardless of whether the "Location Services" feature is enabled or disabled. Similar packets with similar content is sent while "Location Services" is enabled.

Screenshot of the Settings->General and Settings->General->Location Services screens while in "Location Services off" mode:

