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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HRL

**CV11 6199**

COLLEEN FISCHER, a Wisconsin resident;  
KURT FAIRFIELD, a Wisconsin resident;  
HARRY SARAFIAN, a California resident;  
DAVID WILLIAMS, a California resident;  
STEPHANIE WIRTH, a California resident;  
JOHN SWAFFORD, a Florida resident; LUKE  
SZULCZEWSKI, an Illinois resident;  
RICHARD ROSENFELD, a Kentucky resident;  
MICHAEL ZEMARTIS, a New Jersey resident;  
TIMOTHY DODSON, a Texas resident; EVAN  
BROOKS, a Washington resident; MARCUS  
NEAL, a Washington resident; BRIAN  
SANDSTROM, a Washington resident; JOHN  
WOODS, a Washington resident; LEONARD  
HOBBS, a Nevada resident; and KENNETH  
TISHENKEL, an Ohio resident, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

CARRIER IQ, INC., a Delaware corporation;  
LG ELECTRONICS, INC., a Korean company;

CLASS ACTION COMPLAINT

- 1. VIOLATION OF FEDERAL WIRETAP ACT AS AMENDED BY THE ELECTRONIC COMMUNICATIONS PRIVACY ACT, 18 U.S.C. §§ 2510 *et seq.*
- 2. VIOLATION OF UNFAIR BUSINESS PRACTICES ACT [CAL. BUS. & PROF. CODE §§ 17200, *ET SEQ.*]

DEMAND FOR JURY TRIAL

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LG ELECTRONICS MOBILECOMM U.S.A., )  
INC., a California corporation; HTC )  
CORPORATION, a Taiwanese company; HTC )  
AMERICA, INC., a Washington corporation; )  
SAMSUNG ELECTRONICS CO., LTD., a )  
Korean company; SAMSUNG ELECTRONICS )  
AMERICA, Inc. a New York corporation; and )  
SAMSUNG TELECOMMUNICATIONS )  
AMERICA, INC., a Delaware corporation, )

Defendants.

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## I. INTRODUCTION

1. Defendant Carrier IQ, Inc. ("CIQ" or "Carrier IQ") created and provides software that is embedded on cellular devices manufactured by HTC Corporation; HTC America, Inc.; and Defendants Samsung Electronics, Inc.; Samsung Electronics America, Inc.; and Samsung Telecommunications America, Inc. (the "Device Manufacturers"). CIQ touts its software as a tool for cellular carriers and device manufacturers to improve end-user experience on cellular devices. CIQ claims that its software does not log key-strokes and thus does not intercept, store, and transfer consumer's electronic communications to third parties, *i.e.*, cellular carriers and device manufacturers.

2. In truth and fact, however, CIQ software does log keystrokes and does store and transmit to third parties detailed information, including the content of user messages sent and received.

3. Consumers using devices equipped with CIQ software are not notified that the software is actively running on their devices and have no idea that, and give no consent for, their private communications to be intercepted, stored, and transmitted to third parties.

4. By embedding the CIQ software in cellular and other devices that are sold to consumers whose electronic communications are then intercepted, stored, and transmitted by way of that software, Defendant CIQ and the Defendant Device Manufacturers engage in direct violations of federal wiretap law, as well as applicable state law.

5. Through this action, Plaintiffs seek to stop Defendants' unauthorized and illegal interception of electronic communications and to recover damages and other relief prescribed by law.

## II. JURISDICTION

6. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 in that Plaintiffs allege violations of federal law, namely the Federal Wiretap Act as amended by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510 *et seq.* The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367(a).



1           26. Defendant Carrier IQ, Inc. is a Delaware corporation, headquartered in Mountain  
2 View, California, with additional offices in Chicago, Boston, London (UK) and Kuala Lumpur  
3 (Malaysia). On its website, CIQ has a running tally of the number of devices on which its software  
4 has been deployed which, as of November 30, 2011, indicated over 141 million cellular devices.

5           27. Defendant LG Electronics, Inc. ("LG") is a Korean corporation and cellular device  
6 manufacturer located in Seoul, South Korea. LG has offices within the United States and sells its  
7 products throughout the United States, including throughout California. It also is the parent to  
8 defendant LG Electronics MobileComm U.S.A., Inc.

9           28. Defendant LG Electronics MobileComm U.S.A., Inc. ("LG Electronics") is a  
10 California corporation with its principal place of business in San Diego, California. LG Electronics  
11 sells its products throughout the United States, including throughout California.

12           29. LG and LG Electronics are collectively referred to as "LG."

13           30. Defendant HTC Corporation ("HTC") is a Taiwan corporation and cellular device  
14 manufacturer located in Taoyuan, Taiwan. HTC has offices within the United States and sells its  
15 products throughout the United States, including throughout California. It also is the parent to  
16 Defendant HTC America, Inc.

17           31. HTC America, Inc. ("HTC America") is a Washington corporation with its principal  
18 place of business in Bellevue, Washington. HTC America sells its products throughout the United  
19 States, including throughout California.

20           32. HTC and HTC America are collectively referred to as "HTC."

21           33. Defendant Samsung Electronics America, Inc. ("SEA") is a New York corporation  
22 with its principal place of business at Ridgefield Park, New Jersey. SEA has offices within the  
23 United States and California and sells its products throughout the United States, including  
24 throughout California.

25           34. Defendant Samsung Telecommunications America, Inc. ("STA") is a Delaware  
26 corporation with its principal place of business at Richardson, Texas. STA has offices within the  
27 United States and California and sells its products throughout the United States, including  
28 throughout California.



1           39. Acknowledging the serious implications of its interception, storage, and delivery of  
2 consumers' cellular device usage data, on the "Privacy and Security" page of its website,<sup>2</sup> Carrier  
3 IQ states:

4           Carrier IQ enables mobile operators, mobile device manufacturers,  
5 application vendors and other participants in the Mobile Ecosystem to deliver high  
6 quality products and services, based on what you want, where you want and to work  
7 and perform the way you expect.

8           In providing our products and services, Carrier IQ enables our customers to  
9 gather information on Mobile User Experiences. Carrier IQ's products were  
10 developed from inception to respect and protect user privacy and security. We have  
11 established "Best Practices" approach to privacy and security. Our products are  
12 designed and configured to work within the privacy policies of our end customers  
13 and include functions such as anonymization and encryption. When Carrier IQ's  
14 products are deployed, data gathering is done in a way where the end user is  
15 informed or involved.

16           With deployment on over 130 million phones globally, we have considerable  
17 experience in protecting the privacy of the end user and doing so in a highly secure  
18 manner. Information transmitted from enabled mobile devices is stored in a secure  
19 data center facility that meets or exceeds industry best practice guidelines for  
20 security policies and procedures.

21           Our data gathering and data storage policies are built from industry best  
22 practice. Our products allow us to address privacy & security requirements that vary  
23 country-by-country and customer-by-customer. There are a variety of techniques  
24 involved in protection of privacy and in implementation of security policy,  
25 including anonymization of certain user-identifiable data, aggregation of data and  
26 encryption of data, etc.

27           We work in partnership with our customers to ensure compliance with their  
28 data collection and protection policies. While much of the data we gather data is  
already available through alternate methods, we make it more efficient and useful –  
aimed at improving products, services and quality for the end user.

39. However, despite CIQ's statement that "[w]hen Carrier IQ's products are deployed,  
data gathering is done in a way where the end user is informed or involved[.]" Plaintiffs and  
members of the proposed Class were not informed and had no way to know that Carrier IQ's  
software was capturing their keystrokes and intercepting, storing, and transmitting their electronic  
communications.

41. And indeed, CIQ's own marketing materials paint a far different picture from that  
which CIQ has recently tried to paint. According to a CIQ Insight Experience Manager  
information sheet available online, CIQ touts as a feature of its Insight Experience Manager the  
ability to "[v]iew application and device feature usage, such as camera, music, messaging, browser

<sup>2</sup> [www.carrieriq.com/company/privacy.htm](http://www.carrieriq.com/company/privacy.htm) (last accessed November 30, 2011).



1 and TV,” among many other features and attributes. A true and correct of this information sheet is  
2 attached as Exhibit A to this complaint.

3 **B. Discovery of Carrier IQ’s interception of electronic communications**

4 42. In mid-November 2011, a software developer named Trevor Eckhart published on  
5 the web his discovery of the Carrier IQ software on his HTC brand smartphone cellular device.  
6 Mr. Eckhart described the CarrierIQ software as a “rootkit,” which is “software that enables  
7 continued privileged access to a computer while actively hiding its presence from administrators by  
8 subverting standard operating system functionality or other applications.” (Citing *Wikipedia*.)

9 43. Mr. Eckhart revealed that the CarrierIQ software on his device was virtually  
10 impossible to deactivate, and that it provided no notice that it was embedded and operating and was  
11 capable of logging virtually everything he did on his device, including key strokes, numbers dialed,  
12 SMS (text) messages, and secure (HTTPS) website log-ins and search terms.<sup>3</sup>

13 44. Shortly thereafter, CIQ sent Mr. Eckhart a cease and desist letter demanding in part  
14 that he retract his description of the CIQ software as a rootkit, accusing him of copyright  
15 infringement for posting materials he found on its own website, and threatening severe legal action  
16 if he did not capitulate to its demands. In response, the Electronic Frontier Foundation (“EFF”)  
17 stepped up to Mr. Eckhart’s defense and countered with a letter demonstrating that CIQ’s  
18 accusations were baseless and demanding that CIQ withdraw its letter and threatened legal action.<sup>4</sup>

19 45. On November 23, 2011, CIQ released a statement that provided:

20 As, of today, we are withdrawing our cease and desist letter to Mr. Trevor  
21 Eckhart. We have reached out to Mr. Eckhart and the Electronic Frontier  
22 Foundation (EFF) to apologize. Our action was misguided and we are deeply sorry  
23 for any concern or trouble that our letter may have caused Mr. Eckhart. We  
24 sincerely appreciate and respect EFF’s work on his behalf, and share their  
25 commitment to protecting free speech in a rapidly changing technological world.<sup>5</sup>

26 46. However, the November 23, 2011, CIQ statement also provided:

27 We would like to take this opportunity to reiterate the functionality of  
28 Carrier IQ’s software, what it does not do and what it does:

3 Eckhart’s initial publication can be found at <http://androidsecuritytest.com/features/logs-and-services/loggers/carrieriq/> (last accessed November 30, 2011).

4 The letter can be found at: [https://www.eff.org/sites/default/files/eckhart\\_c%26d\\_response.pdf](https://www.eff.org/sites/default/files/eckhart_c%26d_response.pdf)

5 <http://www.carrieriq.com/company/PR.EckhartStatement.pdf>

- 1 - Does not record your keystrokes.  
2 - Does not provide tracking tools.  
3 - Does not inspect or report on the content of your communications, such as the  
4 content of emails and SMSs.  
5 - Does not provide real-time data reporting to any customer.

6 47. Mr. Eckhart was not convinced by CIQ's denial and performed further analysis on  
7 his active device and an additional device which was no longer subscribed to a cellular service but  
8 was usable over a wi-fi connection.

9 48. On or about November 28, 2011, Mr. Eckhart published his further analysis in a  
10 report titled Carrier IQ Part 2.<sup>6</sup> His report included a 17 minute video in which he stepped through  
11 proof that the CIQ software did, in fact log his key strokes, record his SMS (text) messages, record  
12 dialed numbers, and tracked his internet use, including on HTTPS (secure) websites.

13 49. Mr. Eckhart's report was quickly picked up by the Internet press and broadly  
14 reported. Bryan Chafin, reporting for the *Mac Observer*, wrote:

15 ...the entire point of the application is to collect and send data  
16 to those servers, so it's not a great stretch to believe that every text,  
17 every search, ever button, and any and every other tap you make on  
18 your HTC Android devices, RIM BlackBerry device, and Nokia  
19 smartphones is being logged and sent to Carrier IQ and then shared  
20 with whichever company paid to have the app there in the first place.

21 As you can see in the video, Carrier IQ's claim that the  
22 company is not, "recording keystrokes or providing tracking tools" is  
23 completely false.<sup>7</sup>

24 50. Andy Greenberg, reporting for *Forbes*, wrote:

25 As Eckhart's analysis of the company's training videos and  
26 the debugging logs on his own HTC Evo handset have shown,  
27 Carrier IQ captures every keystroke on a device as well as location  
28 and other data, and potentially makes that data available to Carrier  
IQ's customers. The video he's created (below) shows every  
keystroke being sent to the highly-obscured application on the phone  
before a call, text message, or Internet data packet is ever  
communicated beyond the phone. Eckhart has found the application  
on Samsung, HTC, Nokia and RIM devices, and Carrier IQ claims on

26 <sup>6</sup> <http://androidsecuritytest.com/features/logs-and-services/loggers/carrieriq/carrieriq-part2/>

27 <sup>7</sup> [http://www.macobserver.com/tmo/article/carrier iq collects everything on android rim nokia p  
28 hones/](http://www.macobserver.com/tmo/article/carrier_iq_collects_everything_on_android_rim_nokia_phones/)

1 its website that it has installed the program on more than 140 million  
2 handsets.<sup>8</sup>

3 51. Mr. Greenberg, in the *Forbes* article, went on to quote Carrier IQ as recently stating  
4 in part:

5 The information gathered by Carrier IQ is done so for the exclusive  
6 use of that customer, and Carrier IQ does not sell personal subscriber  
7 information to 3rd parties. The information derived from devices is  
8 encrypted and secured within our customer's network or in our  
9 audited and customer-approved facilities.

10 52. Russell Holly, reporting for Geek.com, wrote:

11 Eckhart put together a video of him turning on an HTC  
12 Evo3D with a completely stock (provided by HTC) ROM. He  
13 demonstrates that nowhere in the startup does any mention of  
14 CarrierIQ. There's nothing indicating that this software exists on the  
15 phone. When the applications are discovered, the ability to shut the  
16 apps down the same way you would any other app in Android has  
17 been circumvented. So, you now have a series of applications that  
18 you have to be extremely knowledgeable to find, and when you do  
19 find them they *cannot be turned off*. This is demonstrated in the first  
20 five minutes of the video, and these steps can be easily re-created if  
21 you have access to LogCat on your computer.

22 When you receive a text, the video demonstrates that the  
23 CarrierIQ software is aware of the text message and its contents  
24 before the phone notifies you that you have a message. CarrierIQ and  
25 Sprint both were adamant that the body of an SMS was not recorded,  
26 and yet we can clearly see in the video that the text contents are read  
27 and transmitted via the CarrierIQ applications. In an attempt to clear  
28 this matter up, I reached out to CarrierIQ again, who refused to  
comment and noted that they "are looking forwarding to our meeting  
with EFF this week and will continue to keep you updated."

The video also demonstrates how this software records the  
keys that are pressed in the dialer, before a call is even made.  
Anytime you press a key in the dialer app, even if you just press  
random numbers and then close the application, that information is  
logged by CarrierIQ. If you place a call, that information is recorded  
as well, along with network strength values. This way if anything  
happens that would interrupt the call, your carrier can see why it  
happened and fix it. There's a real benefit to the CarrierIQ software,  
but it is clear that far more is being recorded than is necessary.

....

This video has demonstrated a truly significant volume of  
information is being recorded. Passwords over HTTPS, the contents  
of your text messages, and plenty more are recorded and sent to the  
customers of CarrierIQ. A significant part of what was demonstrated  
is not included in any privacy agreement, and some of it was a direct

<sup>8</sup> <http://www.forbes.com/sites/andygreenberg/2011/11/30/phone-rootkit-carrier-iq-may-have-violated-wiretap-law-in-millions-of-cases/>

1 contradiction of the statements that were made by these companies. It  
2 looks like we're being lied to, our information is being recorded, and  
3 there is nothing we can do about it.<sup>9</sup>

4 53. More recently, in a December 8, 2011 online *Computerworld* article by Jaikumar  
5 Vijayan entitled "Google's Schmidt calls Carrier IQ software a keylogger," the Executive  
6 Chairman of Google, Eric Schmidt, was quoted as saying at an "Internet freedom conference" in  
7 the Netherlands "that Carrier IQ's software is a keylogger that 'actually does keep your  
8 keystrokes.'" Mr. Schmidt also was quoted as stating: "We certainly don't work with them and we  
9 certainly don't support it." In addition, he was quoted as saying, "Android is an open platform, so  
10 it's possible for people to build software that's actually not very good for you, and this appears to  
11 be one." Google, of course, is the Android operating system's creator. A true and correct copy of  
12 this article is attached as Exhibit B to this complaint.

13 54. Android developer Tim Schofield extensively researched the presence of the CIQ  
14 software on multiple Android smartphone platforms. He noted that in addition to the privacy  
15 issues, the embedded CIQ software necessarily degrades the performance of any device on which it  
16 is installed. The CIQ software is *always operating and cannot be turned off*. It necessarily uses  
17 system resources, thus slowing performance and decreasing battery life. As a result, because of the  
18 CIQ software, in addition to having their private communications intercepted, Plaintiffs and Class  
19 members are not getting the optimal performance of the smartphone devices that they purchased,  
20 and which are marketed, in part, based on their speed, performance, and battery life.

21 55. Another harm suffered by Plaintiffs and the Class is that devices running CIQ  
22 embedded software are more vulnerable to data theft than those not running the software. CIQ  
23 software, whether it is transmitting data or not, is capable of intercepting keystrokes and incoming  
24 and outgoing communications. As a result, devices embedded with the CIQ software are  
25 vulnerable to malware, which could piggyback on the CIQ platform to intercept or capture users'  
26 private information and communications.

27 <sup>9</sup> <http://www.geek.com/articles/mobile/security-researcher-responds-to-carrieriq-with-video-proof-20111129/>

1           56. Eckhart's test showed his keystrokes being logged and messages intercepted even  
2 when his device was only connected via wi-fi to the Internet. There is no reasonable basis for a  
3 device metric application, which is what Carrier IQ calls its software, to monitor and track device  
4 actions when the device is not connected to a mobile network. This also creates a vulnerability to  
5 data theft and interception via malware transmitted or accessed through wireless connections.

6           **C. Plaintiffs' Cellular Devices Were Embedded With Carrier IQ Software and Their**  
7           **Communications Were Intercepted Without Authorization**

8           57. Plaintiff Colleen Fischer owns an LG Optimus smartphone operating on the Sprint  
9 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
10 receives SMS (text) messages, and transmits and receives other private information and data, on  
11 her LG device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions  
12 of the CIQ software, Plaintiff's private and personal communications have been illegally  
13 intercepted and transmitted by and to Defendants Carrier IQ and LG. In addition, Plaintiff has not  
14 been able to use her smartphone device at the performance levels it is capable of because the CIQ  
15 software is always operating in the background.

16           58. Plaintiff Kurt Fairfield owns an LG Optimus smartphone operating on the Sprint  
17 mobile network. This device is embedded with the CIQ software. Plaintiff regularly sends and  
18 receives SMS (text) messages, and transmits and receives other private information and data, on his  
19 LG device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
20 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted  
21 and transmitted by and to Defendants Carrier IQ and LG. In addition, Plaintiff has not been able to  
22 use his smartphone device at the performance levels it is capable of because the CIQ software is  
23 always operating in the background.

24           59. Plaintiff Harry Sarafian owns an HTC EVO 3D smartphone operating on the Sprint  
25 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
26 receives SMS (text) messages, and transmits and receives other private information and data, on his  
27 HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
28 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted

1 and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able  
2 to use his smartphone device at the performance levels it is capable of because the CIQ software is  
3 always operating in the background.

4 60. Plaintiff David Williams owns an HTC EVO smartphone operating on the Sprint  
5 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
6 receives SMS (text) messages, and transmits and receives other private information and data, on his  
7 HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
8 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted  
9 and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able  
10 to use his smartphone device at the performance levels it is capable of because the CIQ software is  
11 always operating in the background.

12 61. Plaintiff Stephanie Wirth owns an HTC EVO 4G smartphone operating on the  
13 Sprint mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends  
14 and receives SMS (text) messages, and transmits and receives other private information and data,  
15 on her HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable  
16 functions of the CIQ software, Plaintiff's private and personal communications have been illegally  
17 intercepted and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has  
18 not been able to use her smartphone device at the performance levels it is capable of because the  
19 CIQ software is always operating in the background.

20 62. Plaintiff John Swafford owns an HTC EVO 4G smartphone operating on the Sprint  
21 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
22 receives SMS (text) messages, and transmits and receives other private information and data, on his  
23 HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
24 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted  
25 and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able  
26 to use his smartphone device at the performance levels it is capable of because the CIQ software is  
27 always operating in the background.

1           63. Plaintiff Luke Szulczewski owns an HTC EVO 4G smartphone operating on the  
2 Sprint mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends  
3 and receives SMS (text) messages, and transmits and receives other private information and data,  
4 on his HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable  
5 functions of the CIQ software, Plaintiff's private and personal communications have been illegally  
6 intercepted and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has  
7 not been able to use his smartphone device at the performance levels it is capable of because the  
8 CIQ software is always operating in the background.

9           64. Plaintiff Richard Rosenfeld owns HTC EVO 4G and HTC EVO 3D smartphones  
10 operating on the Sprint mobile network. These devices are imbedded with the CIQ software.  
11 Plaintiff regularly sends and receives, or has sent and received, SMS (text) messages, and has  
12 transmitted and received other private information and data, on his HTC devices. By virtue of the  
13 unknown, not assented-to, automatic, and unpreventable functions of the CIQ software, Plaintiff's  
14 private and personal communications have been illegally intercepted and transmitted by and to  
15 Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able to use his smartphone  
16 devices at the performance levels they are capable of because the CIQ software is always operating  
17 in the background.

18           65. Plaintiff Michael Zemartis owns an HTC EVO 3D smartphone operating on the  
19 Sprint mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends  
20 and receives SMS (text) messages, and transmits and receives other private information and data,  
21 on his HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable  
22 functions of the CIQ software, Plaintiff's private and personal communications have been illegally  
23 intercepted and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has  
24 not been able to use his smartphone device at the performance levels it is capable of because the  
25 CIQ software is always operating in the background.

26           66. Plaintiff Timothy Dodson owns an HTC EVO 3D smartphone operating on the  
27 Sprint mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends  
28 and receives SMS (text) messages, and transmits and receives other private information and data,

1 on his HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable  
2 functions of the CIQ software, Plaintiff's private and personal communications have been illegally  
3 intercepted and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has  
4 not been able to use his smartphone device at the performance levels it is capable of because the  
5 CIQ software is always operating in the background. Plaintiff also owned two HTC EVO 4Gs  
6 previously. It is believed, and therefore alleged, that these phones also were embedded with the  
7 CIQ software, such that the other allegations in this paragraph likewise apply to those phones.

8 67. Plaintiff Evan Brooks owns an HTC EVO smartphone operating on the Sprint  
9 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
10 receives SMS (text) messages, and transmits and receives other private information and data, on his  
11 HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
12 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted  
13 and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able  
14 to use his smartphone device at the performance levels it is capable of because the CIQ software is  
15 always operating in the background.

16 68. Plaintiff Marcus Neal owns an HTC EVO smartphone operating on the Sprint  
17 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
18 receives SMS (text) messages, and transmits and receives other private information and data, on his  
19 HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
20 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted  
21 and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able  
22 to use his smartphone device at the performance levels it is capable of because the CIQ software is  
23 always operating in the background.

24 69. Plaintiff Brian Sandstrom owns an HTC EVO smartphone operating on the Sprint  
25 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
26 receives SMS (text) messages, and transmits and receives other private information and data, on his  
27 HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
28 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted



1 and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able  
2 to use his smartphone device at the performance levels it is capable of because the CIQ software is  
3 always operating in the background.

4 70. Plaintiff John Woods owns an HTC EVO smartphone operating on the Sprint  
5 mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends and  
6 receives SMS (text) messages, and transmits and receives other private information and data, on his  
7 HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable functions of  
8 the CIQ software, Plaintiff's private and personal communications have been illegally intercepted  
9 and transmitted by and to Defendants Carrier IQ and HTC. In addition, Plaintiff has not been able  
10 to use his smartphone device at the performance levels it is capable of because the CIQ software is  
11 always operating in the background.

12 71. Plaintiff Leonard Hobbs owns a Samsung Galaxy S smartphone operating on the  
13 Sprint mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends  
14 and receives SMS (text) messages, and transmits and receives other private information and data,  
15 on his HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable  
16 functions of the CIQ software, Plaintiff's private and personal communications have been illegally  
17 intercepted and transmitted by and to Defendants Carrier IQ and Samsung. In addition, Plaintiff  
18 has not been able to use his smartphone device at the performance levels it is capable of because  
19 the CIQ software is always operating in the background.

20 72. Plaintiff Kenneth Tishenkel owns a Samsung Epic 4G smartphone operating on the  
21 Sprint mobile network. This device is imbedded with the CIQ software. Plaintiff regularly sends  
22 and receives SMS (text) messages, and transmits and receives other private information and data,  
23 on his HTC device. By virtue of the unknown, not assented-to, automatic, and unpreventable  
24 functions of the CIQ software, Plaintiff's private and personal communications have been illegally  
25 intercepted and transmitted by and to Defendants Carrier IQ and Samsung. In addition, Plaintiff  
26 has not been able to use his smartphone device at the performance levels it is capable of because  
27 the CIQ software is always operating in the background.

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## V. CLASS ALLEGATIONS

73. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a proposed Class consisting of:

All persons in the United States that own or owned LG, HTC, or Samsung brand telephones or other devices on which Cellular IQ software was installed or embedded.

Excluded from the proposed Class are Defendants; Defendants' affiliates and subsidiaries; Defendants' current or former employees, officers, directors, agents, and representatives; and the district judge or magistrate judge to whom this case is assigned, as well as those judges' immediate family members.

74. **Numerosity:** The exact number of the members of the proposed class is unknown and is not available to the Plaintiffs at this time, but individual joinder in this case is impracticable. Based on Defendant CIQ's representation that its software is installed on over 140 million devices, it is likely that the proposed class consists of tens or hundreds of thousands, or even millions, of members.

75. **Commonality:** Numerous questions of law and fact are common to the claims of the Plaintiffs and members of the proposed class. These include:

a. Whether CIQ software installed on Plaintiffs' and proposed class members' communication devices has intercepted, and whether it has re-transmitted, Plaintiffs' and proposed Class members' SMS text messages, keystrokes, telephone numbers, and other information, all without the device owners' knowledge or consent, and whether it continues to do so.

b. Whether CIQ and the Device Manufacturers have violated the Federal Wiretap Act, 18 U.S.C. § 2510 *et seq.*, including the prohibition on the interception, disclosure, and use of wire, oral, or electronic communications, or otherwise, by way of the acts and omissions set forth in this complaint.

c. Whether CIQ and the Device Manufacturers have violated the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* by way of the acts and omissions set forth in this complaint.

1 d. Whether CIQ and the Device Manufacturers have unlawfully profited from their  
2 conduct, and whether they must disgorge profits to the Plaintiffs and members of the proposed  
3 Class.

4 e. Whether Plaintiffs and members of the proposed Class are entitled to statutory and  
5 other damages, civil penalties, punitive damages, restitution, and/or declaratory or injunctive relief.

6 76. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the  
7 proposed Class. The factual and legal bases of Defendants' liability to Plaintiffs and other  
8 members of the proposed Class are the same and resulted in injury to Plaintiffs and all of the other  
9 members of the proposed Class.

10 77. **Adequate representation:** Plaintiffs will represent and protect the interests of the  
11 proposed Class both fairly and adequately. They have retained counsel competent and experienced  
12 in complex class-action litigation. Plaintiffs have no interests that are antagonistic to those of the  
13 proposed Class, and their interests do not conflict with the interests of the proposed Class members  
14 they seek to represent.

15 78. **Predominance and Superiority:** This proposed class action is appropriate for  
16 certification. Class proceedings on these facts and this law are superior to all other available  
17 methods for the fair and efficient adjudication of this controversy, given that joinder of all  
18 members is impracticable. Even if members of the proposed Class could sustain individual  
19 litigation, that course would not be preferable to a class action because individual litigation would  
20 increase the delay and expense to all parties due to the complex factual and legal controversies  
21 present in this controversy. Here, the class action device will present far fewer management  
22 difficulties, and it will provide the benefit of a single adjudication, economies of scale, and  
23 comprehensive supervision by this Court. Further, uniformity of decisions will be ensured.

## 24 VI. CLAIMS FOR RELIEF

### 25 COUNT I 26 VIOLATION OF THE FEDERAL WIRETAP ACT

27 79. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.  
28

1           80. Plaintiffs bring this claim on their own behalf and on behalf of each member of the  
2 proposed Class described above

3           81. Defendants Carrier IQ and the Device Manufacturers, by way of the Carrier IQ  
4 software and their own implementing or ancillary software, have intentionally intercepted,  
5 endeavored to intercept, or procured others to intercept or endeavor to intercept, wire and/or  
6 electronic communications as described herein, all without the knowledge, consent or authorization  
7 of Plaintiffs or the Class, in violation of 18 U.S.C. § 2511(1). *See* 18 U.S.C. § 2511(1)(a).

8           82. Defendants Carrier IQ and the Device Manufacturers, by way of the Carrier IQ  
9 software and their own implementing or ancillary software, have intentionally disclosed, or  
10 endeavored to disclose, to other persons the contents of wire and/or electronic communications,  
11 knowing or having reason to know that the information was obtained through the interception of  
12 wire or electronic communications, as described in 18 U.S.C. § 2511(1)(c). Accordingly, these  
13 Defendants have violated 18 U.S.C. § 2511(1).

14           83. As a result of these violations of law, Plaintiffs and the class and suffered harm and  
15 injury, including the interception and transmission of private and personal communications and the  
16 degraded performance level of the devices in question.

17           84. As a result of these violations of law, Defendants Carrier IQ and the Device  
18 Manufacturers are subject to civil suit, and Plaintiffs are entitled to appropriate relief, including  
19 that set forth in 18 U.S.C. § 2520(b). 18 U.S.C. § 2520(a). Such appropriate relief includes  
20 “preliminary or other equitable or declaratory relief as may be appropriate”; “damages” as  
21 described in the statute; and “a reasonable attorney’s fee and other litigation costs reasonably  
22 incurred.” 18 U.S.C. § 2520(b). As for damages, “the court may assess as damages whichever is  
23 the greater of—(A) the sum of the actual damages suffered by the Plaintiff and any profits made by  
24 the violator as a result of the violation; or (B) statutory damages of whichever is the greater of \$100  
25 a day for each day of violation or \$10,000.” 18 U.S.C. § 2520(c)(2).

26           85. Plaintiffs, on their own behalf and on behalf of the proposed Class, seek all such  
27 appropriate relief, including but not limited to statutory damages as set forth above.

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**COUNT II**  
**VIOLATION OF THE UNFAIR COMPETITION LAW**  
**(CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.)**

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

87. Plaintiffs bring this claim on their own behalf and on behalf of each member of the proposed Class described above.

88. California's Unfair Competition Law (the "UCL") defines unfair competition to include any "unlawful, unfair, or fraudulent" business act or practice. Cal. Bus. & Prof. Code §§ 17200 *et seq.*

89. Defendants engaged in "unlawful" business practices under the UCL because they violated the Federal Wiretap Act, 18 U.S.C. § 2511.

90. Defendants engaged in "unlawful" business practices under the UCL because they violated the California Consumer Protection Against Spyware Act, Cal. Bus. & Prof. Code §§ 22947-22947.6.

91. Defendants engaged in "fraudulent" business practices under the UCL because they secretly installed the CIQ software on Plaintiffs' devices, failed to disclose that the CIQ software was always operating on such devices, failed to disclose that the CIQ software was capable of intercepting Plaintiffs' private communications and, in fact intercepted such communications, and failed to disclose that the CIQ software degraded the performance and battery life of the devices on which it was installed. Defendants' omissions and failures to disclose were "material" to Plaintiff and the class within the meaning of *In re Tobacco II Cases* 46 Cal. 4<sup>th</sup> 298, 325 (Cal. 2009).

92. Defendants engaged in "unfair" business practices under the UCL based on the foregoing, and because they violated the laws and underlying legislative policies designed to protect the privacy rights of Californians and the rights of others which are affected by companies operating out of California. In particular, Cal. Bus. & Prof. Code §§ 22947-22947.6 and the California Constitution, which provides:

ARTICLE 1 DECLARATION OF RIGHTS

SECTION 1. All people are by nature free and independent and have

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