

** E-filed January 19, 2012 **

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13 Attorneys for Defendant, HTC AMERICA,
14 INC.

15 *Additional Counsel listed on signature page*

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 MICHAEL ALLAN, on behalf of himself
20 and all others similarly situated,

21 Plaintiffs,
v.

22 CARRIER IQ, INC., a Delaware
corporation, HTC CORPORATION, a
23 Taiwan company; HTC AMERICA, INC.,
a Washington corporation; and DOES 1-
100,

24 Defendants.

25 CASE NO. CV-11-06613 HRL

26 **STIPULATION EXTENDING TIME FOR
DEFENDANTS TO RESPOND TO
COMPLAINT AND [PROPOSED] ORDER
(MODIFIED BY THE COURT)**

1 WHEREAS the above-referenced plaintiff filed the above-captioned case;
2 WHEREAS the above-referenced plaintiff alleges violations of the Federal
3 Wiretap Act and other laws by the defendants in this case;

4 WHEREAS over 50 other complaints have been filed to-date in federal district
5 courts throughout the United States by plaintiffs purporting to bring class actions on behalf of
6 cellular telephone and other device users on whose devices software made by defendant Carrier
7 IQ, Inc. is or has been embedded (collectively, including the above-captioned matter, the “CIQ
8 cases”);

9 WHEREAS, a motion is pending before the Judicial Panel on Multidistrict
10 Litigation to transfer the CIQ cases to this jurisdiction for coordinated or consolidated pretrial
11 proceedings pursuant to 28 U.S.C. § 1407, and numerous responses to the motion supporting
12 coordination or consolidation have been filed;

13 WHEREAS plaintiff anticipates the possibility of one or more consolidated
14 amended complaints in the CIQ cases;

15 WHEREAS plaintiff and defendants Carrier IQ, Inc. and HTC America, Inc. have
16 agreed that an orderly schedule for any response to the pleadings in the CIQ cases would be more
17 efficient for the parties and for the Court;

18 WHEREAS plaintiff agrees that the deadline for defendants Carrier IQ, Inc. and
19 HTC America, Inc. to answer, move, or otherwise respond to their complaint shall be extended
20 until the earliest of the following dates: (1) forty-five days after the filing of a consolidated
21 amended complaint in the CIQ cases; or (2) forty-five days after plaintiff provides written notice
22 to defendants that plaintiff does not intend to file a consolidated amended complaint; or (3) as
23 otherwise ordered by this Court or the MDL transferee court; *provided*, however, that in the event
24 that Carrier IQ, Inc. or HTC America, Inc. should agree to an earlier response date in any of the
25 CIQ cases, Carrier IQ, Inc. or HTC America, Inc., whichever of these two defendants has so
26 agreed, will respond to the complaint in the above-captioned case on that agreed date;

27 WHEREAS plaintiff further agrees that this extension is available, without further
28 stipulation with counsel for plaintiff, to all named defendants who notify plaintiff ~~in~~ ^{and the court} writing of

1 their intention to join this Stipulation;

2 WHEREAS this Stipulation does not constitute a waiver by HTC America, Inc. of
3 any defense, including but not limited to the defenses of lack of personal jurisdiction, subject
4 matter jurisdiction, improper venue, sufficiency of process or service of process;

5 WHEREAS, with respect to any defendant joining the Stipulation, this Stipulation
6 does not constitute a waiver of any defense, including but not limited to the defenses of lack of
7 personal jurisdiction, subject matter jurisdiction, improper venue, sufficiency of process, or
8 service of process; and

9 WHEREAS, plaintiff and defendants Carrier IQ, Inc. and HTC America, Inc., as
10 well as any defendant joining this Stipulation, agree that preservation of evidence in the CIQ
11 cases is vital, that defendants have received litigation hold letters, that they are complying with
12 and will continue to comply with all of their evidence preservation obligations under governing
13 law, and that that the delay brought about by this Stipulation should not result in the loss of any
14 evidence;

15 Now, therefore, pursuant to Civil Local Rules 6-1, 6-2, and 7-12, plaintiff in the
16 above-referenced case and defendants Carrier IQ, Inc. and HTC America, Inc., by and through
17 their respective counsel of record, hereby stipulate as follows:

18 1. The deadline for Carrier IQ, Inc. and HTC America, Inc. to answer, move, or
19 otherwise respond to plaintiff's complaint shall be extended until the earliest of the
20 following dates: forty-five days after the filing of a consolidated amended
21 complaint in these cases; or forty-five days after plaintiff provides written notice to
22 defendants that plaintiff does not intend to file a Consolidated Amended
23 Complaint; or as otherwise ordered by this Court or the MDL transferee court;
24 *provided*, however, that in the event that Carrier IQ, Inc. or HTC America, Inc.
25 should agree to an earlier response date in any of the CIQ cases, except by court
26 order, Carrier IQ, Inc. or HTC America, Inc., whichever of these two defendants
27 has so agreed, will respond to the complaint in the above-captioned case on that
28 agreed date;

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2. This extension is available, without further stipulation with counsel for plaintiff, to
2 all named defendants who notify plaintiff ~~in writing~~ of their intention to join this
3 Stipulation; **and the court**

4. This Stipulation does not constitute a waiver by Carrier IQ, Inc., HTC America,
5 Inc. or any other named defendant joining the Stipulation of any defense, including
6 but not limited to the defenses of lack of personal jurisdiction, subject matter
7 jurisdiction, improper venue, sufficiency of process, or service of process.

8. As a condition of entry into this Stipulation, defendants Carrier IQ, Inc., HTC
9 America, Inc., and any other defendant(s) joining this Stipulation, and the plaintiff,
10 agree that they are complying with and will continue to comply with all
11 evidentiary preservation obligations under governing law.

12 IT IS SO STIPULATED.

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1 DATED: January 13, 2012

2 By: /s/ Michael W. Sobol
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12 *Attorneys for Plaintiff and the Proposed Class*

13 DATED: January 13, 2012

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16 Jennifer J. Johnson

17 By: /s/ Tyler G. Newby

18 Tyler G. Newby
19 Attorneys for Defendant
20 Carrier IQ, Inc.

21 DATED: January 13, 2012

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28 By: /s/ Rosemarie T. Ring

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[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: January 19, 2012

Hon. Howard R. Lloyd
United States Magistrate Judge

CERTIFICATION

2 I, Rosemarie T. Ring, am the ECF User whose identification and password are
3 being used to file this STIPULATION EXTENDING TIME FOR DEFENDANTS TO
4 RESPOND TO COMPLAINT AND [PROPOSED] ORDER. In compliance with General Order
5 45.X.B., I hereby attest that Michael W. Sobol and Tyler G. Newby concurred in this filing.