

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MICHAEL SIEGEL, individually and on)
behalf of all others similarly situated,)
)
Plaintiffs,)

Case No. 11-cv-8791

v.)

CARRIER IQ, INC., a California Corporation,)
SPRINT-NEXTEL CORPORATION, a Kansas)
Corporation, SAMSUNG ELECTRONICS)
AMERICA, INC., a New York Corporation, and)
HTC AMERICA, INC., a Texas Corporation,)
)
Defendants.)

Jury Trial Demanded

CLASS ACTION COMPLAINT

NOW COMES PLAINTIFF, Michael Siegel, by and through his attorneys, Larry D. Drury, Ltd., and complains of the Defendants, Carrier IQ, Inc., Sprint-Nextel Corporation, Samsung Electronics America, Inc., and HTC America, Inc., as follows:

Nature of the Action

1. This case arises from the Defendants’ creation, use and implementation of software hidden in consumers’ cellular devices that surreptitiously logs and transmits especially sensitive information from the device to the mobile phone carriers, without the knowledge or consent of the consumer and in violation of federal and state privacy laws.

Jurisdiction & Venue

2. This Court has personal jurisdiction over all parties because all Defendants conduct business in this District, and the Plaintiff resides in this District. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 because this action arises under federal statutes, i.e., the Federal Wiretap Act, 18 U.S.C. §2511, the Stored Electronic Communications Act, 18 U.S.C.

§2701 and the Computer Fraud and Abuse Act, 18 U.S.C. §1020, and pursuant to 28 U.S.C. §1332(d) because the amount in controversy exceeds \$5,000,000.00.

3. Venue is proper in this District because all conduct business in this District, and the claims from which this lawsuit arises occurred within this District.

Parties

4. Plaintiff, Michael Siegel (hereinafter “Plaintiff”), is an individual who resides in the County of Lake, State of Illinois.

5. Carrier IQ, Inc., (hereinafter “Carrier IQ”). is a California corporation with its principal place of business in Mountain View, CA.

6. Sprint-Nextel Corporation (hereinafter “Sprint”) is a Kansas Corporation with its principal place of business in Overland Park, KS.

7. Samsung Electronics America, Inc., (hereinafter “Samsung”), is a New York Corporation with its principal place of business in Ridgefield Park, NJ.

8. HTC America, Inc., (hereinafter “HTC”), is a Texas corporation with its principal place of business in Bellevue, WA.

Facts Common to All Counts

9. Carrier IQ developed, marketed, and sold ‘rootkit¹’ software (hereinafter “Spy Software”) designed to collect and/or record data from consumers’ mobile cellular devices. Its software is designed to provide wireless carriers and device makers with access to the mobile device while actively hiding its presence from the device’s user.

¹ Rootkit software is software that enables continued privileged access to a computer while actively hiding its presence from administrators by subverting standard operating system functionality or other applications. Once a Rootkit is installed, it allows an attacker to mask the ongoing intrusion and maintain privileged access to the computer by circumventing normal authentication and authorization mechanisms.

10. Carrier IQ claims to be the market leader in “mobile service intelligence” rootkit software.

11. The Defendant carriers and device manufacturers, Sprint, Samsung and HTC, pre-install Carrier IQ’s Spy Software on cellular mobile devices used by its consumers. The Spy Software is a hard-to-detect and hard-to-remove application that conducts surreptitious and highly intrusive tracking of personal data including, but not limited to, a user’s location, Web browsing history and habits, videos watched, text messages read, keys typed (known as ‘keystroke logging’), and all other activities of the user.

12. The Defendants have designed and installed the Spy Software to run when the phone is switched on, and to continue to ‘spy’ on the user until the phone is switched off.

13. The United States Senate Committee on the Judiciary has labeled the Defendants’ use of the Spy Software as “a potentially very serious matter” that “may violate federal privacy laws, including the Electronic Communications Privacy Act and the Computer Fraud and Abuse Act”.

14. The Plaintiff is a customer of Sprint and a user of phones manufactured by HTC and Samsung which, on information and belief, include the Spy Software.

15. The Defendants undertook no steps to inform or otherwise notify the Plaintiff and Class that:

- a. his HTC and Samsung phones had Carrier IQ’s Spy Software pre-installed and operational;
- b. his every movement was being collected, tracked, recorded, monitored and transmitted; and

- c. his use of the HTC and Samsung phones, including Web history, private text messages, keys typed and videos watched, was being collected, tracked, recorded, monitored and transmitted.

16. The Plaintiff and Class did not consent to or otherwise authorize the Defendants to engage in the aforesaid conduct, to pre-install and operate Spy Software on their mobile devices, or to monitor, track, record and transmit their movements and private use data.

17. As a result of the Defendants' aforesaid conduct, the Plaintiff and Class have suffered damages including, but not limited to, the cost of and service charges for the use and operation of said phones.

Facts Common to the Class

18. The Plaintiff brings these claims on behalf of himself and a class² of similarly situated individuals who, from 2001 to the date of judgment in this case, had a wireless contract for cellular service with Sprint, and who used at least one cell phone manufactured and/or distributed by at least one of the Defendant manufacturers, HTC and/or Samsung, that contained Carrier IQ's software.

19. The Class is comprised of thousands of class members, making the joinder of such cases impracticable.

20. Disposition of the claims as a class action will provide substantial benefits to the parties, the class, and the Court, including ensuring efficient and uniform proceedings.

² Excluded from the Class are the Defendants, any and all of the Defendants' agents, subsidiaries, parents, successors, predecessors, and/or any entity which the Defendants or any of its parents or subsidiaries have a controlling interest in and their current and former employees, officers, and directors, any Judge to whom this case is assigned and that Judge's immediate family, any and all persons who execute and file a timely request for exclusion, and the legal representatives, successors, or assigns of any such excluded person.

21. Certification of this case as a class action will reduce the possibility of repetitious litigation involving, potentially, thousands of class members.

22. The rights of each member of the Class were violated in a similar fashion based upon the Defendants' practice and policy of using pre-installed and activated Spy Software to surreptitiously and intrusively collect, track, record, monitor and transmit their consumers' personal data including, but not limited to, the user's location, Web browsing history and habits, videos watched, text messages read, keys typed, and all other activities of the user

23. Plaintiff is a member of the class he seeks to represent, and will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interest antagonistic to or that irreconcilably conflicts with those of any other members of the Class.

24. Plaintiff has retained counsel who are highly competent and experienced in the prosecution of class-action litigation.

25. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiff's and the other Class members' claims.

26. Questions of law and fact common to the Class exist and predominate over any questions that may affect individual members, including but not limited to:

- a. Whether Sprint concealed from its consumers and/or notified its consumers of the presence of pre-installed Carrier IQ Spy Software on their mobile cellular devices;
- b. Whether HTC and Samsung concealed from its consumers and/or notified its consumers of the presence of the pre-installed Carrier IQ Spy Software on their mobile cellular devices;

- c. Whether the Defendants collected, tracked, recorded, monitored and/or transmitted their consumers' data without their consumers' consent or knowledge;
- d. Whether the Defendants' conduct violated the Federal Wiretap Act, 18 U.S.C. §2511;
- e. Whether the Defendants' conduct violated the Stored Electronic Communications Act, 18 U.S.C. §2701;
- f. Whether the Defendants' conduct violated the Computer Fraud & Abuse Act, 18 U.S.C. §1030.
- g. Whether the Defendants' conduct rises to the level of an invasion of privacy and/or misappropriation of private information; and
- h. Whether the Defendants committed a trespass to chattel by their aforesaid conduct.

Count I

Violation of the Federal Wiretap Act, 18 U.S.C. §2511

27. Plaintiff and the Class re-allege and incorporate by reference the allegations contained in ¶¶1-26 above, as if fully restated in this Count I.

28. The Federal Wiretap Act, as amended by the Electronic Communications Privacy Act of 1986, prohibits the willful interception of any wire, oral, or electronic communication, and provides a private right of action to any person whose wire, oral or electronic communication is intercepted. 18 U.S.C. §2520(a).

29. Defendants installed Carrier IQ's Spy Software on Plaintiff's and the Class' mobile cellular devices for purposes of intercepting records of their users' phone communications and locations, and did so without the knowledge or consent of the Plaintiff and Class members.

30. The data that the Defendants intentionally intercepted are "communications" within the meaning of the Wiretap Act.

31. The Defendants' placement of the Spy Software on users' phones, and the Defendants' interception of the users' personal electronic communications, were done intentionally.

32. Plaintiffs are 'persons' whose electronic communications were intercepted within the meaning of the Wiretap Act. 18 U.S.C. §2520.

33. Pursuant to the Wiretap Act, Plaintiff and the Class are entitled to preliminary, equitable and declaratory relief, in addition to statutory damages of the greater of \$10,000.00 or \$100/day for each day of the violation, plus actual and punitive damages, reasonable attorneys' fees, and disgorgement of any profits earned by the Defendants as a result of the above described violation.

Count II

Violation of the Stored Electronic Communications Act, 18 U.S.C. §2701

34. Plaintiff and the Class re-allege and incorporate by reference the allegations contained in ¶¶1-33 above, as if fully restated in this Count II.

35. The Stored Electronic Communications Act ("SECA") permits a cause of action to be brought against a person who intentionally accesses without authorization a facility through which an electronic communication is provided, or who intentionally exceeds an authorization to access that facility, and thereby obtains, alters or prevents authorized access to a wire or electronic communication while it is in store in such a system. 18 U.S.C. §2701.

36. The SECA defines “electronic storage” as “any temporary, immediate storage of a wire or electronic communication incidental to the electronic transmission thereof.”

37. The Defendants intentionally placed software on users’ phones that accessed their electronically stored communications without authorization, and in doing so violated the SECA.

38. The Plaintiff and Class members were harmed by the Defendants’ violations, and are entitled to statutory, actual and compensatory damages, injunctive relief, punitive damages, and reasonable attorneys’ fees.

Count III
Violation of The Computer Fraud and Abuse Act, 18 U.S.C. §1030

39. Plaintiff and the Class re-allege and incorporate by reference the allegations contained in ¶¶1-38 above, as if fully restated in this Count III.

40. Plaintiff’s and the Class’ cellular phones are “computers” within the meaning of the Computer Fraud & Abuse Act (CFAA), and are used for interstate commerce or communication.

41. The Defendants intentionally and knowingly accessed the Plaintiff’s and Class’ cellular phones without authorization or by exceeding authorized access to said phones, and in doing so obtained information from a protected “computer” within the meaning of the CFAA.

42. The Defendants’ violated the privacy rights of the Plaintiff and the Class by their aforesaid conduct.

43. In committing the aforesaid acts, the Defendants violated the CFAA and caused Plaintiff and the Class to suffer irreparable injury. Unless retrained from doing so, the Defendants may continue to commit such acts.

44. Should the Court find that the Plaintiff’s and Class’ remedies at law are not adequate to compensate them for these wrongs, the Court may award injunctive relief as provided for by 18 U.S.C. §1030(g).

Count IV
Invasion of Privacy and Misappropriation of Confidential Information

45. Plaintiff re-alleges paragraphs 1 through 44 of this Complaint as if fully set forth herein in this Count IV.

46. Plaintiff and the Class have a legally protected privacy interest in their confidential and private communications and data, and have a reasonable expectation of privacy in such information. This right of privacy includes the right to not have their confidential and private communications and data collected, tracked, recorded, monitored and/or transmitted to some third-party or other unintended recipient.

47. As alleged herein, Defendants collected, tracked, recorded, monitored and/or transmitted confidential and private communications and data of the Plaintiff and the Class without their knowledge, authorization or consent. This unauthorized collecting, tracking, recording, monitoring and transmission of such private facts and information is one that is highly offensive or objectionable to a reasonable person of ordinary sensibilities. Moreover, the collecting, tracking, recording, monitoring and transmission of such private facts and information, as alleged herein, does not include information which is of a legitimate public concern.

48. As a result of the Defendants' unlawful conduct, as alleged herein, the privacy rights of Plaintiff and the Class have been violated, and Plaintiff and the Class have been harmed as a result thereof.

Count V
Trespass To Chattel

49. Plaintiff re-alleges paragraphs 1 through 48 of this Complaint as if fully set forth herein in this Count V.

50. The Defendants' placed its Spy Software onto the mobile cellular devices of the Plaintiff and Class for purposes of collecting, tracking, recording, monitoring and transmitting their private information as alleged above.

51. The Spy Software was pre-installed and made to be operational and functioning without any notice to the Plaintiff and Class, and without the Plaintiff's and Class' consent.

52. The Defendants' conduct constitutes a 'taking' of the Plaintiff's and Class' mobile cellular devices and/or of the Plaintiff's and Class' private and confidential information contained thereon.

Prayer for Relief

WHEREFORE, Plaintiff prays that this Court:

- a. Certify this matter as a class action and appoint Plaintiff as Class Representative, and designate Plaintiff's counsel as class counsel;
- b. Declare that the Defendants' conduct is in violation of the Federal Wiretap Act, 18 U.S.C. §2511;
- c. Declare that the Defendants' conduct is in violation of the Stored Electronic Communications Act, 18 U.S.C. §2701;
- d. Declare that the Defendants' conduct is in violation of the Computer Fraud and Abuse Act, 18 U.S.C. §1030;
- e. Find that the Defendants invaded the Plaintiff's and Class' privacy and misappropriated their private information and data;

- f. Find that the Defendants committed a trespass to chattel;
- g. Require the Defendants to pay actual, compensatory, and punitive damages for their conduct as alleged herein;
- h. Award reasonable attorneys' fees and costs; and
- i. Grant such other relief as this Court deems just and appropriate.

Plaintiff demands trial by jury on all counts.

Dated: December 12, 2011

Michael Siegel, individually and on behalf of all others similarly situated,

s/ Larry D. Drury
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